

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM MARION COUNTY

D. Craig Brown, Circuit Court Judge

THE STATE,

RECEIVED
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SC Court of Appeals

V.

RICHARD ALLEN WOODBURY,

APPELLANT

APPELLATE CASE NO. 2014-000390

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT NOS. 1 THROUGH 22 (PHOTOGRAPHS)
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DEFENSE EXHIBIT NOS. 8 THROUGH 13 (PHOTOGRAPHS)

STATE OF SOUTH CAROLINA))
COUNTY OF MARION) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
13-GS-33-00069

RICHARD A. WOODBURY,)

DEFENDANT.)

February 18, 2014
Marion, South Carolina

B E F O R E :

THE HONORABLE D. CRAIG BROWN, JUDGE;
AND JURY

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

EDGAR L. CLEMENTS, III, ESQ.
Solicitor of the Twelfth Circuit

RALPH J. WILSON, SR., ESQ.
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FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

1 but I will give the foreperson further instructions
2 about that at the conclusion of the case. Now in
3 order to preserve everyone's rights I will give the
4 parties an opportunity to object to anything that I
5 have said.

6 Any exceptions or objections to anything
7 that I have said to the jury by the State?

8 MR. CLEMENTS: No, Your Honor.

9 THE COURT: Defense counsel?

10 MR. WILSON: None, Your Honor.

11 THE COURT: Ladies and gentlemen, we are
12 now going to begin the trial of this case.

13 Mr. Solicitor, you're recognized for
14 opening statements.

15 MR. CLEMENTS: Thank you, Your Honor, may
16 it please the Court. Good morning, ladies and
17 gentlemen, the judge talked to you in his opening
18 charge about movies and TV, and I just wonder how
19 many of y'all like to watch mystery movies or see
20 mystery shows, read mystery books and figure out who
21 done it. Guess what, today you don't have to figure
22 out who done it. This is not a who-done-it; this is
23 a what-is-it.

24 On September 29th, 2012 on Withlacoochee
25 Avenue here in Marion, Mr. Woodbury here stabbed and

1 killed Ian Gause with what I call a Ninja knife,
2 Ninja sword when Rishawn Gause got his brother Ian,
3 put him in the car, drove him to the medical center
4 here in Marion where he succumbed to his stab wounds
5 where he was stabbed twice in the chest. So you
6 don't have to determine who done it. We all know
7 who done it. What you got to determine is what is
8 it.

9 And at the end of this trial the judge is
10 going to charge you on the law and don't take what I
11 say 'cause I might mess it up, but listen carefully
12 what the judge says about the law. But I believe
13 he's gonna tell you what murder is, and that is when
14 you kill someone with malice aforethought and use of
15 deadly weapon, you can infer that malice.

16 And I suspect, and I may be wrong, but I
17 suspect he may charge you with what he will call a
18 lesser included offense called voluntary
19 manslaughter. Voluntary manslaughter I believe he
20 will define for you is when you kill someone in the
21 heat of passion after legal provocation. You're
22 mad, you're amped up, and you kill somebody because
23 you're in the heat of passion. And I believe that
24 that's what you have here that you got to decide.
25 Is this murder or is this voluntary manslaughter?

1 We know it's a killing and you're gonna know who did
2 it and you're gonna have to answer what it is.

3 Now you will probably have to consider too
4 was this self-defense. Was this a situation where
5 someone was in fear of his life and couldn't get
6 away, had to defend himself? And I believe the
7 facts will show that is not the case. I believe the
8 facts will show from witnesses that were there at
9 the scene and for witnesses that were also with
10 Mr. Woodbury, that they all tried to get him to
11 leave and that he and Ian Gause were fussing and
12 carrying on and jawing at each other and ya ya'ing
13 at each other that even the two people with
14 Mr. Woodbury in his car, his black jeep, tried to
15 get him to leave and they tried to break up the
16 situation even so much so that the people at the
17 house that were there on Withlacoochee tried to get
18 him to leave and that Ian's brother Rishawn went to
19 the trunk of his car and got his legally registered
20 gun and fired it in the air, which is not a good
21 thing to do; but he fired it in the air to break
22 them up and put his gun back in the trunk. And then
23 when he fired that gun Mr. Lamont Davis who was with
24 Mr. Woodbury said, whoop, I don't know where that
25 gunshot came from but I'm out of here. Mr. Woodbury

1 isn't leaving, I'm getting out of here, I'm leaving.
2 And I believe you will hear testimony that's what
3 Mr. Davis did.

4 But it did not stop Mr. Woodbury. You're
5 gonna hear that he went to his car at some point in
6 time, he came back, and the witnesses are gonna say
7 look like he was punching wildly. But what they
8 found out is that he wasn't punching, he was
9 stabbing. And you're gonna see, if it gets into
10 evidence and I believe it will, if I'm gonna take a
11 gamble here and just go on out and tell you about
12 it. What looks like a stick but when you pull it
13 apart you got two long Ninja swords, Ninja knives,
14 and that was the weapon that took Ian Gause's life.
15 And when they were broken up and then Ian says, oh,
16 you stabbed me, and goes back after and they go in
17 again, Rishawn Gause gets in the middle to try to
18 break it up again and then he gets stabbed in the
19 process. And Mr. Woodbury is trying to stab wildly;
20 he's stabbing both the Gause brothers. And Rishawn
21 puts him in the car, drives to the medical center,
22 and Mr. Gause dies.

23 You will hear law enforcement received a
24 call come out about the gunshots and people
25 fighting, and they talked -- they saw Mr. Woodbury

1 but they didn't know who was involved; and he said,
2 oh, that was just down the road somewhere. And
3 you're gonna hear the way he acted, the way he
4 responded; . And I would submit to you, when you
5 hear those facts and you look at those facts, that
6 you will weigh those facts and you will determine
7 that this is not the behavior of a man who acted in
8 self-defense. This is not the behavior of a man who
9 acted in self-defense.

10 And you're gonna hear the witnesses from
11 that witness stand, and they're gonna explain the
12 facts and they're gonna have their different
13 perspectives and they might be a little different
14 because their perspective is different and this
15 thing is happening like this, bam, bam, bam. But
16 you're gonna hear enough that you're gonna take all
17 these pieces of the puzzle, and you're gonna be able
18 to put it together. And in the end of this case
19 when you've heard all the evidence and you're gonna
20 hear what I think it is, Mr. Wilson will have a
21 chance to talk to you, but you are the ones that are
22 gonna decide this. You're gonna decide what is it,
23 is this murder, did Mr. Woodbury kill Mr. Gause with
24 malice aforethought and attempt to kill Mr. Rishawn
25 Gause at the same time? Or is this voluntary

1 manslaughter, did he do this in the heat of passion?
2 And there might be a lesser included offense of
3 attempted murder of assault and battery high and
4 aggravated nature when he stabbed Mr. Gause. I'm
5 not sure when those facts come out the judge may
6 charge you with that law. Or is it self-defense.
7 But we thank you because we know that you come here
8 bringing the wisdom and the good old common sense
9 that you have that you've been raised with and
10 trained with and acquired through your years of
11 experience. And you're gonna say, hey, this is not
12 some man trying to defend himself, he's not gonna
13 leave and then turn around and come back with a
14 knife if he's just defending himself because a
15 person who wants to defend himself is scared because
16 somebody shot a gun they're gonna leave and not come
17 back like Lamont Davis did. They're not gonna come
18 back and get up in somebody's face and start
19 stabbing them because they had their chance to leave
20 and everybody told them to leave and they would have
21 left. That is the behavior of a man that thinks
22 he's got to defend himself. Certainly not someone
23 who sees law enforcement and says, aw, that happened
24 down the street somewhere, we don't know what you're
25 talking about. No, a man that would have defended

1 himself would have said, oh my God, let me tell you,
2 I got attacked, I had to defend myself, let me go
3 check on this guy. I would submit to you that would
4 be what you would hear if that was a man who was
5 defending himself. But you hear the witnesses
6 testimony, you weigh it, you judge it for its
7 credibility, its believability, and you look at the
8 pictures and what else we submit and you decide what
9 this is because it's not a who-done-it, it's a what
10 is it.

11 And Mr. Woodbury there is innocent,
12 presumed to be innocent by our laws. Just like he's
13 got that white shirt and that tie on, he's clothed
14 with what the law says is a robe of righteousness
15 just like any one of us would be if we were accused
16 of a crime. The presumption of innocence. And that
17 protects him until this case is decided by you good
18 people. And my job, representing the State of South
19 Carolina, is to present the facts of this case; and
20 I believe that the facts that will come from that
21 witness stand will prove to you that you need to
22 remove that presumption of innocence from Mr.
23 Woodbury and regrettably go back to that horrible
24 night on September 29th, 2012, and say,
25 Mr. Woodbury, you did wrong and that you're gonna

1 find him guilty because that's what the facts are
2 gonna dictate. And the law that Judge Brown charges
3 you with, when you apply it to those facts then the
4 only reasonable conclusion you can make is
5 Mr. Woodbury is guilty, is guilty. So the question
6 is not simple, but it's not convoluted. You don't
7 have to answer a bunch of questions. You just got
8 to answer what was this killing? Murder, voluntary
9 manslaughter, or is he innocent because he defended
10 himself. I believe that you're gonna conclude
11 beyond a reasonable doubt that he's guilty of murder
12 or maybe voluntary manslaughter, and he's guilty of
13 attempted murder or maybe assault and battery of a
14 high and aggravated nature for stabbing Rishawn
15 Gause. But that's your decision.

16 My duty is to present these facts to you,
17 and I have a burden to overcome and that is a burden
18 of proof beyond a reasonable doubt. And I believe
19 at the conclusion you're gonna say, Ed, you met your
20 burden, there is no reasonable doubt, Mr. Woodbury
21 killed Ian Gause and it was wrong and he violated
22 the law and you're gonna find him guilty. Thank
23 you. Thank you. Thank you for your service to
24 Marion County and your service to Rishawn Gause,
25 your service to Ian Gause and your service to

1 Mr. Woodbury. He deserves his day in court and Mr.
2 Wilson and I both chose y'all because you are fine
3 citizens of Marion County that can give him his day
4 in court, give the Gause family their day in court
5 and give the State of South Carolina its day in
6 court. Thank you.

7 MR. WILSON: May it please the Court.

8 THE COURT: Mr. Wilson.

9 MR. WILSON: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 MR. WILSON: Ladies and gentlemen, first
12 let me take this opportunity to say thank you for
13 your service. Probably the only thing the Solicitor
14 and I agree on during the course of this trial is
15 that we all appreciate your being here, and I know
16 when you got your summonses in order to come here
17 you could think of a hundred other things that you'd
18 much rather be doing than sitting here doing what
19 you're doing. But what you're doing is vitally
20 important. It's important to the State of South
21 Carolina and equally important to this defendant who
22 is on trial. Our system of justice is one where the
23 jury system is actually the backbone of the criminal
24 justice system. It only works because of you. It
25 doesn't work because of me. It doesn't work because

1 of the solicitor or some degree even the judge. But
2 you are the backbone of this system because you are
3 the fellow citizens who will sit in judgment and
4 reach a determination as to guilty or innocence
5 based on the law that His Honor will give you, based
6 on the facts as you understand them to be which are
7 produced in this courtroom. Not what you heard on
8 the street, not what somebody said on the radio, not
9 what was in the television, not what the Solicitor
10 says, 'cause what he says no matter how eloquent, is
11 not evidence in this case, okay. You're going to
12 hear witnesses who will take this stand who will
13 testify. You're gonna be able to judge the
14 credibility of those witnesses. That's just a fancy
15 words for believability because sometimes when
16 witnesses testify, it's not so much what they say,
17 it's how they say it because you can look at them
18 and say, well, you know, yeah, he says that but I
19 don't believe what he said. That's your prerogative
20 as a juror. You can believe what one witness says
21 versus what many witnesses say. You can believe
22 what many say versus the one or you can disbelieve
23 anything that you want to disbelieve provided you
24 have some reason in the record for doing so. That's
25 your prerogative as jurors. You're the judges, if

1 you will, of the facts.

2 Now what I will tell you is this, the
3 Solicitor wasn't there on this particular night. I
4 wasn't there either. We're going to have to depend
5 on those witnesses who come and who tell us what
6 they say happened and then we're gonna have to judge
7 based on that. No matter how flowery the words, the
8 real issue here is did this defendant have to take
9 the life of Rishawn Gause? Did he? Was he
10 justified in doing so? Because in our system every
11 defendant, every person, has the absolute right to
12 defend him or herself. What you will hear contrary
13 to anything the Solicitor has told you that he
14 hadn't mentioned this, is that they both had guns.
15 Both Rishawn Gause and Ian Gause had weapons, guns.
16 Multiple shots were fired from those guns so that
17 presents a whole different picture than someone with
18 two knives just stabbing somebody. No, that is not
19 what happened. That is not, those are not the
20 facts. And you will hear the true facts, the real
21 facts, when they come from this witness stand from
22 the witnesses who are gonna be under oath.

23 The only thing that I ask you to do is to
24 listen. Don't make up your minds after the first
25 witness. Don't make up your mind after the second

1 witness. Listen to every witness. If you do and
2 you accept His Honor's charge on the law, then
3 you're going to be at the end in a place where you
4 can render a verdict that speaks the truth. That's
5 all anybody asks of you. You have no friends to
6 reward. You have no enemies to punish. Your job is
7 simply to find the truth, wherever that truth is,
8 remembering the most important thing. The burden is
9 not on a defendant to ever come into this court or
10 any court and prove that he didn't do something or
11 why he did it. The burden is on him. It's on the
12 State of South Carolina to prove not just that it
13 happened, but prove beyond a reasonable doubt that
14 it was not self-defense and prove beyond a
15 reasonable doubt that it was, in fact, murder or
16 manslaughter, which it was not, if he cannot meet
17 that burden because it did not occur that way.

18 Well, what is a reasonable doubt?
19 Reasonable doubt is simply a doubt that would cause
20 you as an honest juror who is seeking the truth to
21 hesitate to act. And if you have that kind of doubt
22 about anything, then you must resolve by law that
23 doubt in favor of the defendant. And His Honor will
24 instruct you as to law -- if I say something that is
25 in conflict with anything His Honor says disregard

1 what I say. His job is to give you the law. He's a
2 lot more knowledgeable about that than I am, and I'm
3 an advocate. My job is to represent my client as
4 best I can. But I say to you that Mr. Woodbury as
5 he sits there is innocent; he's not guilty. He has
6 pled not guilty. He has maintained that he's not
7 guilty, and the burden is on the State to try to
8 disprove that, if they can. So in some ways you're
9 actually judging the State. You're judging whether
10 the State can meet its burden of proof beyond a
11 reasonable doubt. And what you're gonna hear are
12 conflicting stories about what happened that night,
13 about alcohol, maybe even drugs. You're gonna hear
14 all that. About the location where all this
15 occurred and what else was going on out there. I
16 simply implore you, I simply urge you, I simply ask
17 you to bear with us as we go through this trial.
18 It's going to take a while. You know, it's not
19 going to be a smooth or sailing ship unfortunately,
20 but we're gonna get through it and we will at the
21 end provide the information that you're gonna need
22 from this witness stand so that you can make a
23 decision. What we simply ask you to do is to allow
24 us to get in before you make up your mind because no
25 greater tragedy could exist than if jurors make up

1 their minds before all the evidence is in. That
2 would be a greater crime than any defendant could
3 possibly commit because you are the sole judges of
4 the facts; and if you don't have all the facts and
5 you've already made up your mind, then we got
6 problems and the system will not work.

7 This young man is entitled to his day in
8 court. Every person is guaranteed that right by the
9 constitution of this United States. The right to
10 face your accusers and the right of the State, if
11 they can, to try to prove beyond a reasonable doubt
12 that you committed crime that they have charged you
13 with. See, a defendant doesn't get a choice about
14 what he's charged with; the State does that.
15 Defendant doesn't get a choice about what he's
16 indicted for; the State does that. The defendant
17 doesn't get a choice about what his bond is; the
18 State does that. This is his choice, to select
19 twelve jurors to truly try the issues between the
20 State of South Carolina and this defendant, and I
21 submit to you there is no more greater right than
22 that. And I also submit to you that there's no
23 greater service that a citizen can do other than
24 jury service other than military service. There's
25 probably no other service that you could commit or

SW - A. BACCHUSS - DIRECT

1 engage in that's greater than jury service other
2 than going in the military and serving your country.
3 The system does work. It's not perfect but it
4 works, and it works both for the State and for the
5 defendants.

6 Now I'm gonna be through at this point. I
7 simply ask you to be patient and that let's go
8 through this process and I will come back again at
9 the end when we have heard all of the evidence, and
10 His Honor is getting ready to charge you on the law
11 and at that point we'll be able to talk some more
12 but thank you very much for your patience.

13 THE COURT: Thank you, Mr. Wilson.

14 Mr. Clements, call your first witness.

15 MR. CLEMENTS: We call Anthony Bacchuss,
16 Your Honor.

17 WHEREUPON,

18 **ANTHONY BACCHUSS,**

19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. CLEMENTS:

23 Q Would you please state your name for the record.

24 A Anthony Bacchuss.

25 Q Spell that for the court reporter please.

SW - A. BACCHUSS - DIRECT

1 A B-A-C-C-H-U-S-S.

2 Q Okay. Can you tell this jury where you work and
3 what capacity?

4 A I work at the Marion Police Department as shift
5 supervisor.

6 Q And how long have you worked in law enforcement?

7 A Approximately 15 years.

8 Q Okay. How long have you been a sergeant?

9 A I've been a sergeant now for three months.

10 Q And have you worked your whole 15 years with
11 Marion PD?

12 A No, sir, with the Sheriff's Department.

13 Q Okay. And how long have you been with the Marion
14 PD?

15 A Three years.

16 Q All right. Do you recall the night of
17 September 29th, 2012?

18 A Yes, sir, I do. That was my first night I was
19 promoted as a shift supervisor.

20 Q You were promoted as shift supervisor, and that
21 was your first night as shift supervisor?

22 A Yes, sir.

23 Q So that does stand out in your memory?

24 A Yes, sir.

25 Q Can you please tell this jury what a shift

SW - A. BACCHUSS - DIRECT

1 supervisor does?

2 A I'm in charge of all the guys on the shift to
3 make sure everything runs smoothly and to take care
4 of the city of Marion.

5 Q So how many officers you have on shift at that
6 time?

7 A Three.

8 Q And the shift goes from when to when? How many
9 shifts in a day do you have?

10 A The shift runs from 7 at night to 7 in the
11 morning. It's a 12 hour shift.

12 Q Okay. And during that time period you stay on
13 patrol?

14 A Yes, sir.

15 Q Respond to any calls that come?

16 A Yes, sir.

17 Q Did you have any calls to come to the
18 Withlachoochee, south Withlacoochee area of Marion
19 any time that evening?

20 A Yes, sir. We received a call that it was several
21 males out in the street fighting with gunshots. I
22 was on Dunlop, Dunlop Street in Marion, and
23 Withlacoochee is right over from Dunlop so I
24 responded there pretty quick. I came down
25 Withlacoochee and seen several males at this

SW - A. BACCHUSS - DIRECT

1 address. I didn't turn directly up into the
2 residence because of gunshot. I didn't want to just
3 run on something so I passed it and see what was
4 going on, and I turned around and I came by. I got
5 out of my patrol unit, and I met the defendant in a
6 driveway. He was peddling around his truck. I
7 asked him, I said, have you seen ---

8 Q Let me ask you first, what kind of truck did he
9 have?

10 A A black Jeep Cherokee.

11 Q Okay. And I want to show you what's been marked
12 State's Exhibit 1, 2 and 3 for I.D.?

13 A Yes, sir.

14 Q Can you identify State's Exhibit 1, yes or no?

15 A Yes, sir.

16 Q How about State's Exhibit 2?

17 A Yes, sir.

18 Q State's Exhibit 3?

19 A Yes, sir.

20 Q Okay. Did you take these pictures yourself?

21 A No, sir.

22 MR. WILSON: I have no objections, Your
23 Honor.

24 MR. CLEMENTS: We'd move State's Exhibits
25 1, 2 and 3 into evidence at this time, Your Honor.

SW - A. BACCHUSS - DIRECT

1 THE COURT: State's numbers 1, 2, and 3
2 are admitted into evidence without objection.

3 (WHEREUPON, State Exhibits
4 Nos. 1, 2, and 3 were admitted into
5 evidence.)

6 BY MR. CLEMENTS:

7 Q State's 1, 2 and 3, Sergeant Bacchuss, what does
8 State's 1, 2 and 3 represent?

9 A Black Jeep Cherokee, the defendant's vehicle.

10 Q The defendant's vehicle, Mr. Woodbury?

11 A Yes, sir.

12 Q Now you said you saw him. Did you see
13 Mr. Woodbury in this courtroom?

14 A Yes, sir.

15 Q Can you point him out for us?

16 A (Indicating.) He's sitting---

17 Q In the white shirt?

18 A Yes, sir.

19 Q Okay. Now is that the same gentleman you saw
20 that evening ---

21 A Yes, sir.

22 Q ---at this truck?

23 A Yes, sir.

24 Q Okay. Now you said he was outside his truck?

25 A Yes, sir.

SW - A. BACCHUSS - DIRECT

1 Q Okay. And it was at particular location at that
2 time?

3 A On south Withlacoochee.

4 Q All right. I'd like to show you what's been
5 marked as State's Exhibits for identification
6 purposes 17, 18, 19, 20, 21, and I'm gonna hold off
7 on 22. Do you recognize those exhibits?

8 A Yes, sir. This is the residence that
9 Mr. Woodbury was parked at. He was actually parked
10 behind, behind the van right there, and I pulled my
11 car up here.

12 Q Okay.

13 MR. WILSON: No objections, Your Honor.

14 MR. CLEMENTS: Your Honor, I move State's
15 Exhibits 17 through 21 into evidence at this time.

16 THE COURT: State's Exhibits 17 through 21
17 admitted into evidence without objection.

18 (WHEREUPON, State Exhibits Nos. 17 through
19 21 were admitted into evidence.).

20 BY MR. CLEMENTS:

21 Q All right. Now let me ask you if you recognize
22 State's Exhibit 22 at all?

23 A That's, I think that's next door to the
24 residence.

25 Q All right. And what's depicted there?

SW - A. BACCHUSS - DIRECT

1 A A street light.

2 Q Okay. That's on Withlacoochee?

3 A Yes, sir.

4 MR. WILSON: Okay, no objections.

5 MR. CLEMENTS: We'd move State's Exhibit
6 22 into evidence at this time.

7 THE COURT: State's Exhibit 22 admitted
8 into evidence without objection.

9 (WHEREUPON, State Exhibits No. 22
10 was admitted into evidence.)

11 MR. CLEMENTS: Your Honor, may I ask
12 permission for the witness to step down from the
13 jury box at this time momentarily?

14 THE COURT: That's fine, yes, sir.

15 BY MR. CLEMENTS:

16 Q Step down please, Sergeant Bacchuss, and if you
17 would, please keep your voice up because the court
18 reporter is going to be behind you and she needs to
19 hear everything you say.

20 BY MR. CLEMENTS:

21 Q State's Exhibit 17. 17, what does that depict?

22 A That's the residence that Mr. Woodbury was at.

23 Q Okay, all right. And which side of the house is
24 that as you're looking at it from the road?

25 A It's on the east side if that's what you're

SW - A. BACCHUSS - DIRECT

1 asking.

2 Q Okay. And so this is the front of the house?

3 A Yeah. This area is Withlacoochee Avenue right
4 here, and that's the driveway right there. When I
5 pulled up I parked kind of like right here at
6 Withlacoochee.

7 Q All right. I guess the simple question would be
8 is this the front of the house?

9 A Yeah, that's the front of the house.

10 Q Okay, all right. And State's Exhibit 18, how is
11 that different from 17?

12 A That's further down the road on that front of the
13 house but it's further down.

14 Q On the right side?

15 A On the right side.

16 Q Okay, all right. And number 19 is just another
17 view?

18 A Another view.

19 Q Okay. And what does State's Exhibit Number 20
20 depict?

21 A Is the -- it's the front of the house.

22 Q Okay, with the fence down that side?

23 A Yes, sir.

24 Q Fence down the left side of the house?

25 A Yes, sir.

SW - A. BACCHUSS - DIRECT

1 Q Okay. And State's Exhibit 21, is that just a
2 closer view of the carport?

3 A It's a closer view of the carport.

4 Q All right. And State's Exhibit 22, how close was
5 that to the house, that street light?

6 A If I remember correctly it's just the next lot
7 over.

8 Q The next lot over.

9 A Yes, sir.

10 Q So did they have a street light every other lot
11 or were they further apart than that?

12 A They were further apart because when -- it was
13 kind of dark in the area when you pull up so the
14 lights wasn't close.

15 Q Okay, all right. Have a seat back there.

16 A (Witness complies.)

17 Q So with what you told us about State's 22 when
18 you first pulled up there, was it dark ---

19 A Yeah.

20 Q ---was it well lit?

21 A Yeah.

22 Q Was it partially lit? What was it?

23 A It was partially lit but under the carport it was
24 dark.

25 Q Okay, all right. And that's where you saw males?

SW - A. BACCHUSS - DIRECT

1 A There was about three or four males setting up
2 under the carport.

3 Q And that's why you didn't just whip right in
4 there?

5 A Yes, sir.

6 Q Okay, all right. When you came up who was the
7 first person you talked to?

8 A First person I talked to was Mr. Woodbury. I
9 explained to him that I was dispatched there to a
10 call, that some males was out in the street
11 fighting, and that there was gunshot. Mr. Woodbury,
12 he was real nonchalant. He was like, naw man, ain't
13 nothing happen here. He was, as a matter of fact,
14 some guys was down the street fighting and one of
15 them shot up not air. So I left Mr. Woodbury and I
16 went up to the guys that was under the carport. I
17 was like, hey, I was like, did y'all hear anybody
18 fighting or any shooting. They kind of dropped
19 their head down and was like, no, we ain't hear
20 nothing.

21 Q Did you get any of their names?

22 A No, sir.

23 Q You didn't think anything happened there at that
24 time?

25 A No, sir.

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1 Q Did you stay at that location or did you move on?

2 A I moved on.

3 Q Where did you go next and what happened next?

4 A I left that location. I came out to Liberty
5 Street. I made a right which I will be heading east
6 on Liberty Street, and I normally scan -- had my
7 radio, my handheld radio, scan and by the time I got
8 to right around where the Kangaroo is at, I can hear
9 Sergeant Brad Gerald with the Sheriff's Department,
10 he asked dispatch, he said, who's the shift
11 supervisor that's on shift and she told him of
12 course it was me. Sergeant Gerald gave me a call.

13 He said, you're probably gonna need to go ahead and
14 get a hold of Chief. He was like, I got a guy ---

15 Q Don't tell us what he said, but tell us as a
16 result of what he said what did you do?

17 A I got hold of the Chief.

18 Q Okay.

19 A And explained to the Chief that we have a subject
20 at the emergency room and it's not looking good for
21 him.

22 Q Okay. Who else did you get a hold of as well as
23 the Chief, if anyone?

24 A I got a hold of Captain Barr and Lieutenant
25 Davis.

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1 Q Okay.

2 A He explained to me that a subject that was, you
3 know, in bad condition that he don't know exactly
4 where but he got in a fight somewhere over next to
5 Tiger Mart. So immediately I whipped around and
6 thinking, well, you know, I got a call in that area
7 and so I went back to that house and I got out and I
8 got my flashlight and I was shining around because,
9 you know ---

10 Q When you said you went back to that house next to
11 Tiger Mart, which house was that?

12 A The house that you showed me in the picture.

13 Q Okay. State's Exhibit 17, was that the house?

14 A Yes, sir.

15 Q Okay, and that Withlacoochee is next to Tiger
16 Mart?

17 A Yes, sir.

18 Q Okay. So I didn't mean to interrupt you; I just
19 wanted to be clear. So you got out here in front of
20 State's Exhibit 17.

21 A Yes, sir.

22 Q Had your flashlights?

23 A Yes, sir.

24 Q What was the weather like at that time?

25 A The weather was clear. The weather was clear.

SW - A. BACCHUSS - DIRECT

1 Q What happened shortly after?

2 A Shortly after the bottom dropped out.

3 Q All right. You had your flashlight?

4 A Right, I had my flashlight. And like I said, I
5 was looking on the ground to see if I could see some
6 scuffle marks, and at that time that's when I found
7 two blood spots on the ground.

8 Q All right, where were they located as far as how
9 close to the house or how close to the road, how
10 close to the driveway?

11 A If you give me a picture I can.

12 Q Okay. What I'm gonna do is give you State's 17,
13 18 and 19. You pick which one will serve the best.

14 A Blood spot.

15 THE COURT: What exhibit number is that,
16 sir?

17 THE WITNESS: 17.

18 THE COURT: You're referring to State's
19 Exhibit Number 17.

20 THE WITNESS: One of them was right there
21 where the water pole is at and another one was
22 further back on some rocks.

23 BY MR. CLEMENTS:

24 Q Can we step down, let's get where the jury can
25 see that. Can you show Mr. Wilson and the jury

SW - A. BACCHUSS - DIRECT

1 please what you just showed me up there. And be
2 sure that these ladies right here can see you too.
3 You might have to show them and then show this
4 group.

5 A One of the blood puddle was right there where the
6 water is at, and another one was further back on
7 some rocks right close to the driveway. And the
8 reason I didn't see it the first time when I pulled
9 up is because I, how Mr. Woodbury has his vehicle
10 parked and how he was standing I couldn't see in the
11 dark there.

12 Q Okay, all right. You ladies get to see it? All
13 right, thank you. Sit back down.

14 A (Witness complies.)

15 Q All right. So when you saw that blood with your
16 flashlight, then what did you do?

17 A I notified that I had found the incident location
18 and Officer Hartson responded there and me and him
19 secured the area.

20 Q Is that Officer Hartson that's now with Mullins
21 PD?

22 A Yes, sir.

23 Q He was working with Marion PD at that time?

24 A Yes, sir. That ---

25 Q Okay. What did y'all do there at the scene when

SW - A. BACCHUSS - DIRECT

1 he responded?

2 A We taped it off, secured it.

3 Q All right. So that, what was depicted there in
4 State's Exhibit 17 that yellow tape across from the
5 house, that's what y'all put up?

6 A Yes, sir.

7 Q And can you tell the jury what was the purpose
8 for putting that tape up?

9 A Keep the scene from becoming contaminated; and
10 when I say contaminated, to keep anyone from messing
11 with evidence or anything.

12 Q Okay. When you looked and you looked and you saw
13 the blood, were you looking for anything else?

14 A Like I said, my main reason was looking for
15 scuffle marks to see was the fight actually there.
16 And then when I seen the two bloods puddles I knew
17 it was there.

18 Q Did you continue to look for anything else?

19 A No, I backed out and I secured the scene then.

20 Q Is that your job as shift supervisor? Do you do
21 forensics or do you call in SLED, or what do y'all
22 do?

23 A I called in the investigator and they get in
24 contact with SLED.

25 Q Okay, all right. So did you see any shell

SW - A. BACCHUSS - DIRECT

1 casings or anything?

2 A No shell casings.

3 Q Okay, all right. After you backed out there and
4 you put up the tape, what did you do next?

5 A Lieutenant Davis and Lieutenant Smith arrived. I
6 took some pictures of the residence and some
7 pictures of the blood splatter; and Lieutenant
8 Smith, he took some samples of the blood and
9 probably like within 20 seconds the, I mean, the
10 bottom just dropped out, I mean ---

11 Q You say you took some, the, what, like take a
12 swab?

13 A A swab, yes, sir.

14 Q A swab on the blood, okay. And you say the
15 bottom dropped out?

16 A Uh-huh.

17 Q Was this area you were looking at, was it under
18 any sort of cover?

19 A No, it wasn't.

20 Q So when that deluge came ---

21 A Yeah.

22 Q You couldn't protect that scene ---

23 A No, sir.

24 Q ---from that kind of contamination, could you?

25 A No, sir.

SW - A. BACCHUSS - DIRECT

1 Q That tape didn't go any good for the rain, did
2 it?

3 A No, sir.

4 Q Okay. Once that bottom dropped out then what did
5 y'all do?

6 A I sat back and I waited on and I just let them
7 took care of everything.

8 Q Okay.

9 A Until I later made contact with Mr. Woodbury.

10 Q Okay, all right. So you left other people in
11 that scene?

12 A Yes, sir.

13 Q And you got in your vehicle and left?

14 A Well, actually I left and I came back, and I was
15 parked right on right close down Withlacoochee
16 behind everything and I was standing out and ---

17 Q What was your purpose in doing that?

18 A Just there just in case they need me for
19 anything.

20 Q Okay, all right. So you parked out on the
21 street?

22 A Yes, sir.

23 Q Okay. A little bit back from the residence?

24 A Yes, sir.

25 Q All right, what happened next?

SW - A. BACCHUSS - DIRECT

1 A And just standing out there and I noticed a
2 vehicle coming down Withlacoochee, and I said that
3 looks like the vehicle that was here earlier so I
4 jumped in my patrol unit and I went -- he made a few
5 minor traffic violations. He came down
6 Withlacoochee and he turned on Orange Street. When
7 he turned on Orange Street I got behind him and he
8 turned on Baker and turned up in a yard. I hit my
9 blue lights. He jumped out. He was like, what's
10 going ---

11 Q "He" being who?

12 A Mr. Woodbury. He jumped out. He was like,
13 what's going on, what's going on. I was like,
14 nothing. I was like, Lieutenant Flowers and
15 Lieutenant Smith need to talk to you, and he was
16 like, what you want to know, what you want to know,
17 tell me, tell me, ask me, ask me, I'll tell you what
18 you want to know, I'll tell you what you want to
19 know. I said no, and at that time I read him his
20 rights. I said Lieutenant Flowers and Lieutenant
21 Chris is on the way.

22 Q Okay, all right. So you didn't question him or
23 to him or anything?

24 A No, sir.

25 Q What was his demeanor?

SW - A. BACCHUSS - DIRECT

1 A He is real agitated like, what you want to know,
2 ask me, ask me, ask me, what you want to know. I
3 was like, naw.

4 Q Was anybody with him?

5 A Yes, sir, he had a passenger with him.

6 Q All right. Who was that passenger?

7 A I think his name was Crawford. I think that's
8 what; I'm not sure.

9 Q Could it have been Graham?

10 A Graham. I'm not sure what the passenger name
11 was.

12 Q Okay, all right. Did you have any interaction
13 with that passenger or not?

14 A After Lieutenant Flowers and Lieutenant Smith got
15 there they talked to him, and I transported Mr.
16 Graham up to the police department.

17 Q All right. And so they could talk with him
18 there?

19 A Yes, sir.

20 Q Okay. And so is it Mr. Graham, Mr. Crawford, or
21 do you know?

22 A I don't know. I can't remember his name.

23 Q Okay.

24 A I can't remember his name.

25 Q But he was with Mr. Woodbury?

SW - A. BACCHUSS - DIRECT

1 A Yes, sir.

2 Q Okay. And what did you do with Mr. Woodbury?

3 Did you stay there with him and Mr. Graham until

4 Smith and Flowers got there?

5 A No, sir. And Officer Hartson, he arrived right

6 behind me and he helped me out with them.

7 Q Okay, all right. Now so the next thing you did

8 after that you waited with them for Flowers and

9 Smith to get there, and then you, after they got

10 there you took Graham with -- or the person that was

11 with Mr. Woodbury ---

12 A To the police department.

13 Q ---to the police department?

14 A Yes, sir.

15 Q What, if anything, did you do next?

16 A That's all I did next. They talked to Mr. Graham

17 and I transported him. That's all I did.

18 Q You took him home?

19 A Yes, sir.

20 Q Okay. And then after you took him home where did

21 you go?

22 A I came back, completed all my paperwork, and then

23 I, you know, by that time it was getting close to my

24 shift ending.

25 Q Okay. That was all you did on this ---

SW - A. BACCHUSS - CROSS

1 A Yes.

2 Q ---this occasion?

3 A Yes, sir.

4 Q Okay. That was quite a opening for you as shift
5 supervisor; wasn't it?

6 A Yes, it was. That's what kind of make me
7 remember it so good. Like I said, it was my first
8 night as shift supervisor.

9 Q Okay. And you did all your paperwork and
10 documented all that; didn't you?

11 A Yes, sir.

12 Q Please answer any questions Mr. Wilson may have.

13 THE COURT: Cross-examination.

14 MR. WILSON: Thank you very much, Your
15 Honor.

16 **CROSS-EXAMINATION**

17 BY MR. WILSON:

18 Q Officer Bacchuss, let's go back. As I understand
19 it, now some of the pictures that he showed you
20 took; is that what you're saying?

21 A I can't say those pictures I took because also
22 more pictures was taken.

23 Q Okay. So you took some picture but you don't
24 know whether these are the pictures that you took or
25 not?

SW - A. BACCHUSS - CROSS

1 A No, no.

2 Q Okay, all right. Now that night when you first
3 got the call to go out to Withlacoochee?

4 A Withlacoochee Avenue.

5 Q Withlacoochee. When you got to go out there and
6 you said when you got there initially and you pulled
7 up, what time of night are we talking?

8 A Must have been about 11.

9 Q Okay.

10 A Approximately 11:00 it was.

11 Q How long after you received the dispatch before
12 you actually arrived at the residence?

13 A From the dispatch ---

14 Q From the time you got the dispatch to the time
15 you got the to residence?

16 A Approximately 2 to 3 minutes.

17 Q Okay. And when you got there, as I understand
18 your testimony Mr. Woodbury was still there?

19 A Yes, sir.

20 Q He was still at that house?

21 A Yes, sir.

22 Q And no question about that?

23 A No question about it. He was the first one I
24 made contact with it.

25 Q And not only was he there, the car that he was

SW - A. BACCHUSS - CROSS

1 driving was there?

2 A Yes, sir.

3 Q Okay. And were there any other people there?

4 A There was some -- it was three to four subjects
5 up under the carport.

6 Q And did you know any of the other individuals who
7 where there?

8 A No.

9 Q Did you know Mr. Woodbury before that?

10 A I didn't know him but I -- his face had ---

11 Q Seemed familiar?

12 A Seemed familiar because I had dealt with him, you
13 know, on one other prior other incidence, but you
14 know, nothing really, you know.

15 Q All right. Let me ask you something else. In
16 regards to Mr. Woodbury that night while you were
17 there, Mr. Woodbury give you any trouble?

18 A No, sir.

19 Q Did he threaten you in any way?

20 A No, sir.

21 Q You -- the only thing you're saying is you asked
22 him where the altercation took place and he said
23 some other place?

24 A Yes, sir.

25 Q All right.

SW - A. BACCHUSS - CROSS

1 A He said it was, he said it was some guys. He was
2 real nonchalant. He said it was some guys down the
3 street fighting. He said that one of them shot up
4 in the air.

5 Q Now are you familiar with that community, that
6 area where this house is?

7 A Yes, sir.

8 Q All right. And have you ever had to go there
9 before?

10 A On another incident.

11 Q Okay. And now, do you know who occupies the
12 residence there at Withlacoochee?

13 A I just know it's an older lady, and I think maybe
14 her grandson or son.

15 Q And would her grandson be named Charles Wilson?

16 A I have no idea, sir.

17 Q You don't know?

18 A I don't know.

19 Q Well, that night when you went there to take the
20 flashlight to look around, did you knock on the door
21 and see if anyone was home who might have seen what
22 went on outside in the yard?

23 A Yes, I did.

24 Q Okay. And who did you talk to as a result of
25 doing that?

SW - A. BACCHUSS - CROSS

1 A The older lady.

2 Q Okay, and what was her name?

3 A I don't remember her name.

4 Q Okay. Did you write her name down and ask her
5 whether or not she saw something, and if so, what
6 she saw, what she heard?

7 A I asked her did she see anything. She said no,
8 son, she said, I was -- she said, this time of night
9 I'm in my bed asleep. She said, I didn't hear not a
10 thing. So I didn't feel that was relevant I get her
11 name or anything; she didn't know nothing.

12 Q Well, did you ask her whether anyone else lived
13 there by the name of Charles Wilson?

14 A No, sir.

15 Q All right. And so, and this lady that you said
16 that you talked with, I mean, you said she was an
17 older lady, what does that mean? I mean, was she
18 89, 95, or 50? I mean, I don't know what that means
19 when you say?

20 A Well, I'm not good at judging age.

21 Q I'm old and I'm 60 so I don't know what that
22 means so you ---

23 A I'm not good at judging age so I would say she
24 was probably in her mid to late 60s.

25 Q Okay, so all right. And she said that she didn't

SW - A. BACCHUSS - CROSS

1 hear any gunshots?

2 A She said, son, she said, this time of night I'm
3 in my bed, I didn't hear anything. And so I didn't
4 figure it was much need to bother her.

5 Q Okay, all right. Let's go back to the house
6 itself. As I understand it, when you you pulled up
7 the lights on the porch at the house were off; is
8 that right?

9 A Yes, sir.

10 Q So there was no light under the ---

11 A Carport.

12 Q Under the carport?

13 A No, sir.

14 Q And as a result of that it was darker around the
15 porch area and around the edge of the house?

16 A Yes, sir.

17 Q Okay. Now the blood spots that you found ---

18 A Yes, sir.

19 Q As I understand it you found two blood spots?

20 A Yes, sir.

21 Q Where were those blood spots in relationship to
22 the actual dwelling?

23 A You're asking me ...

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

SW - A. BACCHUSS - CROSS

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 MR. WILSON: Thank you very much.

4 MR. CLEMENTS: I don't object to the
5 foundation being laid either.

6 BY MR. WILSON:

7 Q Let me show you a photograph and I just ask you
8 if you can identify the contents of that photograph,
9 the area.

10 MR. WILSON: Don't show it to the jury.

11 THE COURT: Hold on. You look at it first
12 please, sir.

13 THE WITNESS: Oh, I'm sorry. This is the
14 front of the residence.

15 BY MR. WILSON:

16 Q And do you recognize it?

17 A Yes, sir.

18 Q Okay. And let me show you another photograph,
19 ask you if you recognize that photograph?

20 A Yes, sir.

21 Q All right. And is that an accurate depiction of
22 what you observed essentially on the night which
23 would have been September 29th of 2012?

24 A Yes, sir.

25 Q All right. As to both these photographs?

SW - A. BACCHUSS - CROSS

1 A Yes, sir.

2 Q Thank you.

3 (WHEREUPON, Defendant Exhibits Nos. 1 and
4 2 were marked for identification and
5 received into evidence.)

6 MR. WILSON: Your Honor, may I ask him to
7 come down.

8 THE COURT: Yes, sir. You may step down,
9 sir.

10 BY MR. WILSON:

11 Q If you would, Officer, try to point out to us on
12 here where it was that you say the blood spots were?

13 THE COURT: What exhibit is that?

14 MR. WILSON: I apologize, Your Honor.
15 This is Defendant's Exhibit 2.

16 THE COURT: All right. He's referencing
17 Defendant's Exhibit 2 for the record.

18 THE WITNESS: It was, one was right up in
19 here and the other one was right, right where that
20 water at. I remember it good because when the
21 bottom dropped out the little water pole ---

22 BY MR. WILSON:

23 Q So actually in the driveway of the house ---

24 A Yeah.

25 Q ---from the house?

SW - A. BACCHUSS - CROSS

1 A Yeah. This vehicle was parked here.

2 Q Okay.

3 A And that's why I didn't see it the first time.

4 Q All right. And when you came the first time you
5 said that when you came the first time did you
6 actually pull into the driveway?

7 A No, sir. This here is Withlacoochee Avenue here.
8 Like I said, first time would have been gunshot. I
9 didn't just want to bail up in there so I passed
10 real slow, and right down here is Reed Street. I
11 turned in Reed Street and I pulled, parked further
12 back here. Then I got out of my unit, and I walked
13 around. Mr. Woodbury car was, vehicle was parked
14 here. He was up in this area fumbling around where
15 his vehicle and ---

16 Q Okay. While I got you down here let me ask you,
17 in regards to this light which they're referring to
18 Exhibit Number 2 which is the photograph, this light
19 that's on under the carport, was light on that night
20 when you got there?

21 A When I first responded?

22 Q Yes. sir.

23 A No, sir, it wasn't.

24 Q Okay.

25 A As a matter of fact, she turned that light on

SW - A. BACCHUSS - CROSS

1 because when I made contact with her she came and
2 she stood in the door and she reached and she turned
3 the light on but that light wasn't on during the
4 first time.

5 Q Let me also ask you about this silver car that
6 parked here. When you arrived the first time where
7 were -- were this car under the garage like this, or
8 was it first back here or do you recall?

9 A I don't recall.

10 Q Okay.

11 A But I know it was three or four subjects sitting
12 up under that carport.

13 Q So three or four subjects were sitting up in the
14 front of here?

15 A Yeah, all up in here.

16 Q All right. Thank you, sir. You can take the
17 stand.

18 A (Witness complies.)

19 Q Now when you got the initial report what was the
20 initial dispatch to you?

21 A The initial dispatch was several males out in the
22 street fighting with shots fired.

23 Q All right, several males out in the street
24 fighting with shots fired. Did they tell you how
25 many shots had been fired?

SW - A. BACCHUSS - CROSS

1 A No, she just gave shots fired.

2 Q Okay, all right. Now so when you arrived did you
3 know make an effort to search for weapons, guns, or
4 for shell casing from guns?

5 A No, sir.

6 Q Okay. And was that because that wasn't your
7 responsibility, that would have been the
8 responsibility ---

9 A No, the reason why because I spoke to everyone,
10 like I said, when I first arrived Mr. Woodbury he
11 was real nonchalant like, you know, hey man, it
12 didn't happen here. He, the way he told me, hey, it
13 happened down the street. I had no reason to search
14 that property.

15 Q Okay. Well, but you came back, and you said you
16 came back with a flashlight because you did suspect
17 that this is where it occurred, right?

18 A Right.

19 Q And you actually found blood splatters which
20 convinced you at that point that it must have
21 occurred in the yard there?

22 A Right.

23 Q All right. So then wouldn't it be obvious to you
24 that maybe these shell casings might be there from
25 the shorts that were supposedly fired?

SW - A. BACCHUSS - CROSS

1 A When I responded back there I -- when I located,
2 like I said, the reason why I went back there to see
3 actually was it there and could I see, you know,
4 some scuffle marks out in the street or in the grass
5 where there actually was fighting. By me looking
6 for the scuffle mark is when I located the two
7 puddles of blood, and that's when I stepped down,
8 Officer Hartson responded, we secured the scene. I
9 stepped out and waited on the investigators.

10 Q I understand, and I'm not gonna belabor it. I'm
11 simply trying to determine when you went back to
12 look and you actually found the blood splatters with
13 the flashlight, why it was that you didn't also look
14 for shell casings to see if there was a gun fired
15 there that would have left a casing. That's all I'm
16 trying to find out.

17 A Because my job is when I secure the scene and
18 turn it over to the investigators.

19 Q Okay, so and that's what I was asking.

20 A Yeah, yeah, waiting on their orders.

21 Q Your responsibility once you secure the scene ---

22 A Right.

23 Q ---was to leave it for the investigators?

24 A Right.

25 Q And then that would have been their

SW - A. BACCHUSS - CROSS

1 responsibility and do the followup including
2 forensics?

3 A Right.

4 Q Okay, now, after you -- well, let me back up just
5 one second. When we were talking about the light
6 not being on, when you say that there were three or
7 four males up under the carport and that light was
8 off, when you were coming up into the yard could you
9 see them clearly enough to identify who they were?

10 A No, sir.

11 Q Okay. So with that light being off the darkness
12 was such that when you were coming up into the yard,
13 until you got up right on them you could not
14 identify who those individuals were?

15 A Well, I could tell that, you know, from a
16 silhouette you --

17 Q That they were people.

18 A You could tell that someone was under there.

19 Q But you couldn't physically see their facial
20 features --

21 A No.

22 Q ---and things like that?

23 A No, no, I couldn't.

24 Q Now the two spots of blood that you found, how
25 far apart would you think that they were?

SW - A. BACCHUSS -- CROSS

1 A Probably 2 or 3 feet.

2 Q 2 or 3 feet apart?

3 A Yeah.

4 Q And was -- now if I'm clear it had not rained
5 yet?

6 A No, sir, it had not rained yet.

7 Q But it rained within minutes after that?

8 A Yes, sir, yes, sir.

9 Q Okay, all right. And obviously when it rains
10 then it can destroy whatever physical evidence that
11 there might be?

12 A Yes, sir.

13 Q Such as blood, things like that?

14 A: Yes, sir.

15 Q All right. Now how long were you there at the
16 house before it was that you say that you saw the
17 black jeep and you then proceeded to stop the black
18 jeep which Mr. Woodbury was driving at the time?

19 A Oh, man, it was, it was the early morning hours.
20 It was probably was like about, I want to say, if I
21 would guess about 4:00 in the morning.

22 Q So we're talking 11:00 when you first got there.

23 A Uh-huh.

24 Q And then we're talking 4:00 in the morning when
25 you see it later?

SW - A. BACCHUSS - CROSS

1 A Right.

2 Q The vehicle later on?

3 A Right.

4 Q So five hours or so?

5 A Yeah.

6 Q Okay, all right. It wasn't an immediate thing
7 where ---

8 A No.

9 Q ---fifteen minutes later you saw it?

10 A No, sir.

11 Q Okay. And then you stopped the vehicle?

12 A Yeah.

13 Q And then the two detectives came and Mr. Woodbury
14 went with them?

15 A Well, I left Mr. Woodbury there with the two
16 detectives. I transported.

17 Q The other two?

18 A The other person, the passenger to the police
19 department.

20 Q Okay, all right. Bear with me one second please.

21 THE COURT: Yes, sir.

22 MR. WILSON: No other questions. Thank
23 you so much, Officer.

24 THE COURT: Any redirect?

25 **REDIRECT EXAMINATION**

SW - A. BACCHUSS - REDIRECT

1 BY MR. CLEMENTS:

2 Q I think I may have asked this question but,
3 Withlacoochee Avenue is located where?

4 A It's over next to Tiger Mart.

5 Q In what city and what county?

6 A Marion, City of Marion.

7 Q County of Marion?

8 A Yes, sir.

9 MR. CLEMENTS: No further questions, Your
10 Honor, of Mr. Baccus.

11 THE COURT: Mr. Wilson, any recross?

12 MR. WILSON: Nothing, Your Honor.

13 THE COURT: Sir, you may step down. Thank
14 you.

15 MR. CLEMENTS: The next officer we'd call
16 will be Brad Gerald, Your Honor.

17 WHEREUPON,

18 **BRAD GERALD,**

19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. CLEMENTS:

23 Q Can you please tell us where you work, how long
24 you been employed there?

25 A I work for the Marion County Sheriff's

SW - B. GERALD - DIRECT

1 Department. I've been employed there for about
2 seven years.

3 Q And do you have any prior law enforcement
4 experience to those seven years?

5 A I worked for the city Marion Police Department
6 approximately seven years as well.

7 Q So 14 years of law enforcement experience?

8 A Yes, sir.

9 Q All right. Do you recall what you were doing
10 September 29th, 2012, in the evening hours, late
11 evening hours?

12 A I was working shift work.

13 Q All right. And when you work shift work what do
14 you do?

15 A Answer calls for service.

16 Q Okay. And did you have a occasion to answer a
17 call around 11, a little shortly after 11:00 on that
18 evening?

19 A Yes, sir.

20 Q Did you answer to -- where was the car based out
21 of?

22 A The Marion County Medical Center.

23 Q And what type of call was it?

24 A It's an assault.

25 Q And when you received that call what did you do,

SW - B. GERALD - DIRECT

1 where did you go, and what did you do?

2 A I responded to the Marion County Medical Center.

3 I made contact with Rishawn Gause.

4 Q You see him in the courtroom?

5 A Yes, sir.

6 Q Where is he?

7 A He's seated there, got a black and white shirt.

8 Q Black and white shirt?

9 A Yes, sir.

10 Q Okay. And you found him there and what else did
11 you find out when you got there?

12 A I learned that the incident took place in the
13 City of Marion and I contacted Marion Police
14 Department.

15 Q How did you do that?

16 A I believe it was by radio.

17 Q Okay. And what, did you radio in to dispatch or
18 to the ---

19 A It was by radio to the dispatch to contact the
20 City Police Department.

21 Q Okay. Who did you make contact with with the
22 police department?

23 A I don't know who the first arriving officer was.
24 I want to say it was Officer Smith.

25 Q Okay.

SW - B. GERALD - DIRECT

1 A Derrick Smith.

2 Q Okay. And he came to the hospital?

3 A Yes, sir.

4 Q Who did you first talk with?

5 A At some point I spoke with Officer Baccus by
6 telephone.

7 Q Okay. And is that because he was shift
8 supervisor?

9 A Yes, sir.

10 Q And after that who responded to the hospital?

11 A I saw, I believe Officer Smith was the first one
12 on scene, Derrick Smith. At some point Lieutenant
13 Flowers responded as well as Chief Gray I believe.

14 Q When you made contact with them what, through
15 dispatch, what did you relate to them other than
16 there was an assault near the Tiger mart? What else
17 did you tell them?

18 A I don't -- I believe I spoke with medical
19 personnel at the hospital and learned it was a very
20 serious situation and that they need to get the
21 investigators notified as well.

22 Q Okay, all right. When the city officers arrived
23 at the hospital did you brief them on what you had?

24 A Very little, yes, sir. I didn't have a whole lot
25 other than where it took place and the seriousness

SW - B. GERALD - CROSS

1 of the situation.

2 Q Okay. And so you relayed that information on
3 them for them to follow up on?

4 A Yes, sir.

5 Q Do you have any other responsibilities for this
6 case at all?

7 A No, sir.

8 Q Is that all you did? Okay. All right. Did you
9 stick around at the hospital any time period after
10 that?

11 A Maybe for a short length of time, yes, sir. I'm
12 sure we would offer our services.

13 Q All right. But you weren't required to do
14 anything else or needed in any other fashion?

15 A No, sir.

16 Q Please answer any questions Mr. Wilson has if he
17 has any.

18 THE COURT: Cross-examination.

19 MR. WILSON: Just a couple of questions.

20 **CROSS-EXAMINATION**

21 BY MR. WILSON:

22 Q Did I understand you to say you had contact with
23 Rishawn Gause at the hospital?

24 A Limited, yes, sir.

25 Q Okay. And what contact was that?

SW - B. GERALD - CROSS

1 A To the point of asking, you know, what happened,
2 where did it take place; and I'm sure the point that
3 he told me it took place, that's when I ended it and
4 contacting the police department.

5 Q And now what did he tell you?

6 MR. CLEMENTS: I object to hearsay.

7 THE COURT: Come on over here.

8 (WHEREUPON, counsel approached the Bench
9 for an off-the-record discussion.)

10 THE COURT: Objection sustained.

11 BY MR. WILSON:

12 Q Let me ask you this way, did you have a
13 conversation with Ian Gause -- I'm sorry, Rishawn
14 Gause, the night that you went to the hospital?

15 A Yes.

16 Q Okay. And was anyone else present during that
17 conversation other than the two of you, he and you?

18 A Not that I recall.

19 Q Did you ask him about what happened -- well, let
20 me rephrase that. Did you ask him where the
21 incident allegedly happened?

22 THE COURT: You got an objection?

23 MR. CLEMENTS: Yes, sir, it's been asked
24 and answered.

25 THE COURT: That's cross-examination.

SW - B. GERALD - CROSS

- 1 I'll allow it. Go ahead, Mr. Wilson.
- 2 BY MR. WILSON:
- 3 Q I'll repeat the question. The question was, did
- 4 you ask him where the incident occurred?
- 5 A I'm sure I did, yes, sir.
- 6 Q Did he answer you? I don't want to know what the
- 7 answer was. I want to know did he answer you?
- 8 A I'm sure he did, yes, sir.
- 9 Q Did you write that in your report?
- 10 A I did not complete a report.
- 11 Q Okay. Did you do an incident report?
- 12 A Not that I recall.
- 13 Q Okay. Are you saying that you didn't or you're
- 14 saying you don't remember?
- 15 A I don't know.
- 16 Q Okay. You could have done one?
- 17 A Yes.
- 18 Q All right, okay. Now as a result of whatever
- 19 occurred between you and Rishawn Gause, what did you
- 20 do after that?
- 21 A After I spoke to him?
- 22 Q Yes, sir.
- 23 A I contacted the city police department.
- 24 Q Okay. And why?
- 25 A Because it took place in their jurisdiction, the

SW - B. GERALD - CROSS

1 incident.

2 Q All right. And you figured that out based on
3 what he said to you; is that right?

4 A Yes, sir. It's very common -- our hospital is
5 located in the county, and it's very common that
6 both cities, people go out there, so normally one of
7 our first questions is where did the incident take
8 place.

9 Q Okay, all right. Now you also called one of the
10 Marion County -- I'm sorry, the City of Marion, who
11 did you call once you ---

12 A I don't know if I called him or he called me. We
13 spoke at some point.

14 Q Okay, all right. And you apprized him of
15 whatever had occurred thus far?

16 A Yes, sir.

17 Q Okay, all right. I don't have any other
18 questions.

19 MR. WILSON: But Your Honor, I would ask
20 the right to re-call this witness at some later time
21 in this trial.

22 THE COURT: All right, so granted. Any
23 redirect?

24 MR. CLEMENTS: No redirect, Your Honor.

25 THE COURT: Sir, you may step down.

SW - D. SMITH - DIRECT

1 Thank you.

2 MR. CLEMENTS: Your Honor, we call Officer
3 Robert Smith, excuse me, patrolman Derrick Smith.
4 WHEREUPON,

5 **DERRICK SMITH,**

6 having been duly sworn by the Clerk of Court,
7 testified as follows:

8 **DIRECT EXAMINATION**

9 BY MR. CLEMENTS:

10 Q Good morning. Can you please state your name for
11 the record and tell this jury where you work. And
12 I'm gonna ask you if you'll speak up 'cause you got
13 a soft voice and it doesn't carry very well in here.

14 A My name is Derrick Smith. I work for the Marion
15 Police Department.

16 Q And Derrick, in what capacity do you work for the
17 Marion Police Department?

18 A I'm a corporal.

19 Q Corporal, in patrol?

20 A Yes, sir.

21 Q Okay. How long have you worked in law
22 enforcement?

23 A Four years.

24 Q All with the City of Marion?

25 A Yes, sir.

SW - D. SMITH - DIRECT

1 Q Okay. Can you tell us, if you recall, what you
2 were doing, whether you were working the evening of
3 29th of September 2012?

4 A The evening of the incident date I was patrolling
5 the area.

6 Q About. And which area were you patrolling?

7 A I can't recall.

8 Q Okay. Do you know, remember the first notice you
9 got about this incident?

10 A Yes, sir.

11 Q And where did you receive that from?

12 A I received it from my supervisor.

13 Q Okay, all right. Did he contact you through
14 dispatch or contact you through radio or do you
15 remember?

16 A Contact me through the radio.

17 Q And do you know exactly where you were when he
18 contacted you?

19 A I can't recall.

20 Q All right. Well, as a result of that contact
21 what did you do?

22 A I responded to the ER in reference to two stab
23 victims. I was advised to meet the Sheriff's
24 Department out there.

25 Q Is that what Bacchuss told you to do was to go to

SW - D. SMITH - DIRECT

1 the hospital?

2 A Yes, sir.

3 Q So you were the first one on scene there for

4 Marion PD?

5 A Yes, sir.

6 Q When you got there tell us exactly what you found

7 and who you talked to?

8 A When I got there I spoke to Officer Brad Gerald.

9 He told me that two stab victims were in the ER, one
10 was in critical condition. I went in and checked on

11 Mr. Ian Gause. He was in critical condition,

12 received two stab wounds to his right torso area and

13 to the left chest area just past the left nipple.

14 Mr. Ian Gause was diagnosed and they were

15 resuscitating him, bringing him back. I took

16 pictures of Mr. Gause. At that time I spoke to Mr.

17 Rishawn Gause. He advised me that he wasn't at the

18 incident location. He arrived there to pick up his

19 brother Mr. Ian Gause. He was inside the residence

20 drinking.

21 Q Well, don't tell us what he said, just tell us

22 what you did, what you said. Okay. Have you --

23 can't have hearsay, okay. So you talked with him?

24 A I spoke with Mr. Rishawn Gause.

25 Q As a result of talking with him what did you do?

SW - D. SMITH - DIRECT

1 A Well ---

2 Q You remained on scene, did you contact another
3 law enforcement officer, or report back to Sergeant
4 Bacchuss, or what did you do?

5 A I informed my supervisor on the radio that what
6 Mr. Rishawn told me, and I advised him to have the
7 investigator respond to my location.

8 Q Okay. And which investigator responded to your
9 location?

10 A At that time it was Lieutenant Flowers and Chief
11 Gray.

12 Q Chief Gray and Lieutenant Flowers?

13 A Yes, sir.

14 Q Did you remain after they responded there on the
15 scene did you brief them as to what they had?

16 A Yes, sir.

17 Q Okay. And did you remain on the scene after
18 that?

19 A Yes, sir.

20 Q Okay. And what did you do while you remained on
21 the scene?

22 A I was informed by Lieutenant Flowers that there
23 was a vehicle sitting outside the ER, and I was
24 advised to sit on the vehicle.

25 Q Okay. When you were advised to sit on the

SW - D. SMITH - DIRECT

1 vehicle, can you explain to the jury exactly what
2 that means? Does that mean you went and plopped
3 down on the hood or anything?

4 A That means I was advised to stand by make sure no
5 one touched the vehicle.

6 Q Okay. I'm gonna show you what's been marked for
7 identification purposes as State's Exhibit Number
8 10. You recognize that?

9 A Yes, sir.

10 Q Okay.

11 MR. WILSON: I have no objections, Your
12 Honor.

13 MR. CLEMENTS: We move State's Exhibit
14 Number 10 into evidence at this time, Your Honor.

15 THE COURT: State's Exhibit Number 10
16 admitted into evidence without objection.

17 (WHEREUPON, State Exhibit No. 10
18 was admitted into evidence.)

19 BY MR. CLEMENTS:

20 Q All right. Can you tell this jury what that
21 picture depicts.

22 A It depicts a Ford Focus. It's the vehicle Mr.
23 Rishawn Gause brought his brother in, Mr. Ian Gause.

24 Q All right. So that's the vehicle that Rishawn
25 Gause transported Ian to the ER with?

SW - D. SMITH - DIRECT

1 A Yes, sir.

2 Q Okay, all right. When you sat on this vehicle
3 did you look in it, open it up, or was that somebody
4 else's job?

5 A I did look in the vehicle. I didn't touch the
6 vehicle, but I did look in it. I took pictures
7 also.

8 Q And what did you see on it, from looking from the
9 outside into through the window, what did you see?

10 A I saw blood in the passenger seat and floorboard
11 of the vehicle.

12 Q Okay. I'm gonna show you what's been marked
13 State's Exhibit Number 15 and 16 for identification
14 purposes only. Can you identify State's Exhibit 15?

15 A Yes, sir.

16 Q Can you identify State's Exhibit 16?

17 A Yes, sir.

18 MR. WILSON: Your Honor, I don't have
19 objection to number 16. I think 15 is cumulative,
20 and I think that it's also a little over the top and
21 it has no ---

22 THE COURT: Can I see the picture please.

23 MR. WILSON: ---value.

24 (WHEREUPON, counsel approached the Bench
25 for an off-the-record discussion.)

SW - D. SMITH - DIRECT

1 THE COURT: State's 16 is in evidence
2 without objection.

3 MR. CLEMENTS: I would move for State's
4 Exhibit 15 be admitted into evidence.

5 THE COURT: Subject to Defense counsel's
6 objection it is admitted into evidence.

7 MR. CLEMENTS: Thank you, Your Honor.

8 (WHEREUPON, State Exhibits Nos. 15 and 16
9 were admitted into evidence.)

10 BY MR. CLEMENTS:

11 Q Mr. Smith, you said you recognized State's
12 Exhibit 15. How do you recognize that and what is
13 it?

14 A It appears to be blood on the passenger seat.

15 Q Passenger seat of what vehicle?

16 A The vehicle Mr. Rishawn was driving.

17 Q All right. So the vehicle you were sitting on?

18 A Yes, sir.

19 Q Okay. You could look through the window and see
20 that?

21 A Yes, sir.

22 Q Okay. And which side seat is that?

23 A Passenger side.

24 Q Front or back?

25 A Front passenger side.

SW - D. SMITH - DIRECT

1 Q Okay. All right, State's Exhibit 16, what does
2 that depict?

3 A It depicts blood on the center console of the
4 vehicle.

5 Q The center console of that same vehicle?

6 A Yes, sir.

7 Q Okay. And you could observe that just from
8 standing outside the car, you didn't have to go
9 inside and see that?

10 A Yes, sir.

11 Q Okay. Did you participate -- well, let me back
12 up before I go there. You observed what you just
13 testified to looking through the windows of the
14 vehicle and the vehicle was parked where?

15 A It was parked under the canopy of the hospital.

16 Q Which canopy?

17 A The emergency room.

18 Q Where the emergency room is?

19 A Yes, where the passenger entrance is.

20 Q Okay.

21 A It's a building.

22 Q And after you were directed to sit on the car and
23 you looked in the car, and what did you do after
24 that?

25 A I stayed with the vehicle until Lieutenant Davis

SW - D. SMITH - DIRECT

1 arrived to relieve me.

2 Q All right. And that's Lieutenant Walker Davis?

3 A Yes, sir.

4 Q Okay. And he relieved you?

5 A Yes, sir.

6 Q Okay. Has SLED gotten there by that time?

7 A No, sir.

8 Q Okay. Now after you were relieved what did you
9 do from that point forward?

10 A I was advised to go to Baker Street to sit on
11 Mr. Woodberry's vehicle until ---

12 Q Okay?

13 A ---Lieutenant Flowers ---

14 Q Who advised you to go to Baker Street?

15 A I can't recall.

16 Q One of your superiors?

17 A Yes.

18 Q Lieutenant Davis or Lieutenant Flowers or
19 Sergeant Bacchuss, but somebody that was supervising
20 you?

21 A I can't recall.

22 Q Okay. So after you were advised to go to Baker
23 Street what did you do?

24 A I stayed with the vehicle until Lieutenant
25 Flowers secured a search warrant for the vehicle.

SW - D. SMITH - DIRECT

1 Q All right. So you stayed with that vehicle at
2 Baker Street until Lieutenant Flowers got a search
3 warrant?

4 A Yes, sir.

5 Q I'm gonna show you what's been marked in evidence
6 as State's Exhibit 1. Do you recognize that?

7 A Yes.

8 Q What is that?

9 A It appears to be the vehicle I was advised to sit
10 with.

11 Q Okay, all right. And State's Exhibit 2?

12 A Yes.

13 Q Same thing?

14 A Yes.

15 Q State's Exhibit 3?

16 A Yes.

17 Q All right. Did you walk around that vehicle
18 looking in the windows of that vehicle?

19 A No, sir.

20 Q You didn't? You just sat there and waited on
21 Lieutenant Flowers?

22 A Yes, sir.

23 Q And about how long did that take him, do you
24 remember?

25 A I can't recall.

SW - D. SMITH - DIRECT

1 Q Okay. When he returned with the search warrant
2 did you participate in the search of that vehicle?

3 A No, sir.

4 Q You did not? Okay, all right. Were you relieved
5 from that duty spot when Lieutenant Flowers
6 returned?

7 A Yes, sir.

8 Q All right, what did you do next?

9 A I went to the police department to type my
10 report.

11 Q Okay. And was that the end of your involvement
12 with this case?

13 A Yes, sir.

14 Q Okay. Now let me ask you this, while you were
15 sitting on the vehicle that was the Ford Focus at
16 the hospital, did anyone go into this vehicle and
17 enter that vehicle while you were maintaining watch
18 on it?

19 A No, sir.

20 Q Okay. Now the black Cherokee, Jeep Cherokee over
21 on Baker Street, did anyone enter that vehicle, go
22 into that vehicle at any time while you were
23 maintaining lookout on that vehicle?

24 A No, sir.

25 Q Okay. So nobody went in the car, messed with

SW - D. SMITH - CROSS

1 the car at either spot or either location?

2 A No, sir.

3 Q Okay.

4 MR. CLEMENTS: Beg the Court's indulgence
5 a moment.

6 THE COURT: Yes, sir.

7 MR. CLEMENTS: Please answer any questions
8 Mr. Wilson may have.

9 MR. WILSON: Thank you, sir.

10 THE COURT: Cross-examination.

11 MR. WILSON: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. WILSON:

14 Q Let me ask you, when you -- that night when you
15 got the call to go to the hospital that was from
16 dispatch?

17 A I actually received it from my supervisor.

18 Q Okay. And who was your supervisor at that time?

19 A Sergeant Bacchuss.

20 Q I'm sorry?

21 A Sergeant Bacchuss.

22 Q Sergeant Bacchuss, all right. Now, and when you
23 got to the hospital my understanding is you actually
24 encountered Rishawn Gause?

25 A Yes.

SW - D. SMITH - CROSS

1 Q And where was Mr. Gause when you initially
2 observed him?

3 A Mr. Gause was in one of the ER rooms.

4 Q Okay. And did you go into that room and have a
5 conversation with him?

6 A Yes, sir.

7 Q Were you alone or was there some other officer
8 with you when you went into the room?

9 A I was alone at the time.

10 Q Were there any medical personnel in the room with
11 you and he?

12 A I can't recall if there were.

13 Q Okay. Did you take a tape or video statement
14 from him in that room?

15 A No, sir.

16 Q Okay. Did you have a video recorder or an audio
17 recorder with you when you went to see him at the
18 hospital?

19 A No, sir.

20 Q Okay. Did you, and let me -- did you ask Mr.
21 Gause where he was when this occurred, when the
22 incident occurred?

23 A I did.

24 Q Okay. And did he state to you that he was at a
25 house inside the house drinking?

SW - D. SMITH - CROSS

1 A Yes, sir.

2 Q Okay. Now let me also ask you, let me show you
3 these photographs first. Would you take them and
4 look at them for me. I don't want you to tell me
5 anything other than if you can identify or recognize
6 the content of those photographs.

7 THE COURT: I want you to mark them for
8 identification purposes.

9 MR. WILSON: Yes, sure.

10 THE COURT: You don't have to admit them
11 into evidence unless you make that next step.

12 (WHEREUPON, Defendant Exhibits Nos. 3, 4,
13 and 5 were marked for identification
14 only.)

15 BY MR. WILSON:

16 Q Let me show you now what's been marked
17 Defendant's Exhibit 3, 4 and 5 which are three
18 photographs and ask you to take a look at them for
19 me please, sir. Can you identify the content of
20 those photographs?

21 A I can identify the vehicle as far as the content
22 in the vehicle.

23 Q Would you look on the back and tell me which
24 photographs you're referring to?

25 A Exhibit 3.

SW - D. SMITH - CROSS

1 Q Exhibit 3?

2 THE COURT: Identification purposes
3 Exhibit 3, okay.

4 BY MR. WILSON:

5 Q And you can identify this particular photograph,
6 is that what you're saying?

7 A Yeah.

8 Q But you cannot identify the other two; is that
9 what you're saying?

10 A Yes, sir.

11 Q Okay.

12 MR. WILSON: Your Honor, we just ask
13 exhibit 3 then be admitted after I show it to the
14 Solicitor.

15 MR. CLEMENTS: Without objection.

16 THE COURT: Without objection Defendant's
17 Exhibit Number 3 admitted into evidence.

18 (WHEREUPON, Defendant Exhibit No. 3
19 was admitted into evidence.).

20 BY MR. WILSON:

21 Q Now let me show you now what's marked Defendant's
22 Exhibit Number 3. Now when you observed that car
23 that night, were those, what would you -- just
24 explain to me what's in, what's shown in that
25 photograph first.

SW - D. SMITH - CROSS

1 A It's a vehicle. It appears to be bullet holes on
2 the passenger side of the vehicle.

3 Q I'm sorry? Bullet holes in the passenger side of
4 the vehicle?

5 A Yeah.

6 Q How many bullet holes?

7 A Two.

8 Q Okay.

9 MR. CLEMENTS: Your Honor, I would object
10 to the characterization. He says it seems to be. I
11 don't know if he can actually say what that is.
12 It's just two holes in the car.

13 THE COURT: I'll allow you to rephrase
14 your question if you can lay the ground work..

15 MR. WILSON: All right.

16 BY MR. WILSON:

17 Q Just let me ask you this, you see two holes in
18 the car?

19 A Yes, I do.

20 Q And the holes are on the passenger door or the
21 driver's door?

22 A The passenger door.

23 Q Okay. And you know how the holes got there?

24 A No, sir.

25 Q You know when they got there?

SW - D. SMITH - CROSS

1 A No, sir.

2 Q You know they were there when you saw the car?

3 A Yes, sir.

4 Q Okay. Now let me ask you in regards to you said
5 that you were left there under the canopy at the
6 hospital to secure the car to make sure that nobody
7 else entered it or took anything from it or anything
8 like that; is that correct?

9 A Yes, sir.

10 Q And how long were you there with the car before
11 they came back?

12 A I can't recall.

13 Q Okay. Well, do you know whether it was an hour
14 or whether it was minutes or several hours or all
15 night, or you have any idea?

16 A Maybe a little over, about an hour.

17 Q Okay, all right. And when they came back what
18 happened? Did you stay there while they actually
19 executed a search warrant on the car?

20 A No, sir.

21 Q You did not?

22 A I immediately left and went to Baker Street to
23 the other ---

24 Q Okay. So you immediately left once they
25 returned?

SW - D. SMITH - CROSS

1 A Yes, sir.

2 Q So you don't know what was in the trunk of the
3 car.

4 A No, sir.

5 Q You didn't see -- have you seen pictures of what
6 was in the trunk of the car afterward?

7 A No, sir.

8 Q Okay. Then you left there and you went to --
9 what's the name of the street?

10 A Baker Street.

11 Q Baker Street. And that was to secure the jeep
12 that was on Baker Street?

13 A Yes, sir.

14 Q Now how long did you stay with the jeep on Baker
15 Street?

16 A Until Officer Flowers returned with the search
17 warrant?

18 Q Okay, how long was that?

19 A I'd say about an hour.

20 Q Okay. Now did I understand you to say that you
21 actually took pictures of the interior of the
22 vehicle which was at the hospital which would have
23 been the silver car, the Fusion?

24 A Yes, sir.

25 Q You did? Okay. And how many pictures did you

SW - D. SMITH - CROSS

1 take?

2 A I took several pictures.

3 Q Okay. Now, and do you recall what the content of
4 those pictures show?

5 A I can't recall. I just ---

6 Q Okay. Well, do you recall whether or not there
7 was some liquor bottles in the back of car?

8 A I can't recall.

9 Q Don't recall, all right. And you don't have
10 those pictures anymore?

11 A No, sir.

12 Q Okay. And what happened to the pictures?

13 A I turned them pictures over to the investigator.

14 Q Okay. So you turned them over to the
15 investigator, all right.

16 MR. WILSON: Bear with me one second
17 please.

18 THE COURT: Yes, sir.

19 BY MR. WILSON:

20 Q You said that you turned it over to one of the
21 investigators. Do you recall which investigator you
22 turned it over to?

23 A I can't recall.

24 Q You don't recall, okay. No other questions.

25 Thank you.

SW - D. SMITH - REDIRECT

1 THE COURT: Any redirect?

2 **REDIRECT EXAMINATION**

3 BY MR. CLEMENTS:

4 Q Do you know if you're the only one who took
5 pictures?

6 A As far as I know I took pictures of the vehicle.

7 Q Did you open up the car door and take pictures or
8 did you take pictures from outside looking in?

9 A Took pictures from the outside of the vehicle.

10 Q At a later time though pictures were taken with
11 everything opened up, were they not, or do you know?

12 A I can't recall.

13 Q Okay.. Would you be -- would you say this is a
14 reasonable statement or not a reasonable statement
15 that normally vehicles that you're asked to sit on
16 are later opened up and examined ---

17 MR. WILSON: Your Honor, I object.

18 THE COURT: Rephrase your question, Mr.
19 Clements.

20 BY MR. CLEMENTS:

21 Q All right. You're often asked to sit on a
22 vehicle; is that correct?

23 A Yes, sir.

24 Q For a search warrant to be obtained and so no one
25 would interfere before that search warrant is able

SW - D. SMITH - REDIRECT

1 to be executed; is that correct?

2 A Yes, sir.

3 Q And as an officer in law enforcement when they
4 execute a search warrant on a vehicle what do they
5 do?

6 MR. WILSON: Your Honor, this ---

7 THE COURT: Hold on a minute. Come over
8 here please.

9 (WHEREUPON, counsel approached the Bench
10 for an off-the-record discussion.)

11 THE COURT: Rephrase your question, Mr.
12 Solicitor. You may continue.

13 BY MR. CLEMENTS:

14 Q Let me try to make this simple. I was being
15 convoluted, I apologize. You've got years of
16 experience as a law enforcement officer, correct?

17 A Yes, sir.

18 Q In your experience, when they execute a search
19 warrant on a vehicle what do they do? Do they go
20 inside it?

21 A Yes, sir.

22 Q They open it up?

23 A Yes, sir.

24 Q They open the trunk?

25 A Yes, sir.

SW - D. SMITH - RECROSS

1 Q Open the doors?

2 A Yes, sir.

3 Q And they inventory what's there, correct?

4 A Yes.

5 Q And take pictures?

6 A Yes, sir.

7 Q And all you did was take pictures of the outside,
8 right?

9 A Yes, sir.

10 MR. CLEMENTS: Okay. No further
11 questions.

12 THE COURT: Any recross?

13 MR. WILSON: Your Honor, just one other
14 question.

15 **RECROSS-EXAMINATION**

16 BY MR. WILSON:

17 Q In regards to this, did you make like a log or
18 something of the photographs that you took?

19 A No, sir.

20 Q All right. Nothing further.

21 THE COURT: You may step down, thank you.
22 Call your next witness please.

23 MR. CLEMENTS: Your Honor, I call
24 Lieutenant Walker Davis.

25 THE CLERK OF COURT: Would you place your

SW - W. DAVIS - DIRECT

1 left hand on the Bible, raise your right hand.
2 WHEREUPON,

3 **WALKER DAVIS,**

4 having been duly sworn by the Clerk of Court,
5 testified as follows:

6 THE CLERK OF COURT: Thank you.

7 **DIRECT EXAMINATION**

8 BY MR. CLEMENTS:

9 Q Lieutenant Davis, how are you doing?

10 A All right, how are you doing, sir?

11 Q Doing all right. Can you please tell this jury
12 your name and where you work and how long you've
13 worked there?

14 A My name is Walker Davis, Sr., and I work at
15 Marion Police Department. I've been working there
16 22 years.

17 Q All right. And prior to your experience with the
18 Marion Police Department did you have any other law
19 enforcement experience?

20 A I have a little bit of law enforcement experience
21 with the military.

22 Q Okay. So how many years total law enforcement
23 experience do you have?

24 A Well, with the military it's 22 years 7 months
25 and 27 days.

SW - W. DAVIS - DIRECT

1 Q All right. Were you lieutenant over the shift at
2 the night time of September 29th, 2012?

3 A I was called in and I wasn't the lieutenant over
4 the shift that night.

5 Q You weren't lieutenant over shift, but you got
6 called in to assist?

7 A Yes.

8 Q Does that happen often when you got a limited
9 number of police officer on a lot of locations?

10 A Yes.

11 Q All right. Did you have multiple locations in
12 this situation?

13 A We had a pretty good bit.

14 Q The hospital?

15 A The hospital.

16 Q Withlacoochee.

17 A Withlacoochee.

18 Q Baker Street?

19 A Baker Street, so on so forth.

20 Q Okay. Now when you were first called out do you
21 remember who called you?

22 A It was Officer Bacchuss.

23 Q Officer Bacchuss called you?

24 A Right.

25 Q Did he brief you on what he had, what kind of

SW - W. DAVIS - DIRECT

1 situation?

2 A No, they just told me they needed me to come to
3 work, they got a little problem, and they need some
4 more officers.

5 Q Okay, all right. And where did you go to?

6 A I went to Withlacoochee.

7 Q Okay. When you got to Withlacoochee who did you
8 find there?

9 A When I got to Withlacoochee Officer Bacchuss was
10 there and then Lieutenant Smith showed up and then
11 the captain showed up.

12 Q Okay. Did you get there before or after the
13 bottom dropped out?

14 A I got there just before the bottom dropped out.

15 Q Okay. And when you got there you were the second
16 officer there? Officer Bacchuss was the first one?

17 A Officer Bacchuss was the first.

18 Q Okay. And then you say Lieutenant Smith and
19 Captain Barr came?

20 A Right. Lieutenant Smith came close to the time I
21 got there.

22 Q And what were your duties or what were your
23 actions that you took there at Withlacoochee?

24 A Well, when I got there I asked Officer Bacchuss
25 what was going on and what he needed as far as. He

SW - W. DAVIS - DIRECT

1 told us he need help over in the area, look and see
2 if we seen any shell casings and everything because
3 he said somebody was shooting.

4 Q And did you find any shell casings?

5 A No.

6 Q And did you find anything or did you observe
7 anyone else find anything?

8 A No. We found some blood on the ground.

9 Q Okay.

10 A And Officer Smith took some swabs of it.

11 Q Okay, all right. And after that and the rain
12 came?

13 A Then the rain started to coming so we had to get
14 back into our vehicles so as it came down real hard.

15 Q And when the rain let up what did you do?

16 A Well, before the rain let up they need me to go
17 out to the hospital ---

18 Q Okay.

19 A ---and relieve Officer Smith.

20 Q Okay.

21 A And I left Lieutenant Smith, investigator, and
22 the captain there.

23 Q All right.

24 A And I went on out to the hospital and relieved
25 Officer Smith, and I sat on the car that was out to

SW - W. DAVIS - DIRECT

1 the hospital.

2 Q Okay. And how long did you sit on that car?

3 A I sat on the car until SLED got there.

4 Q Okay.

5 A And when SLED came, then SLED went on and took
6 pictures and stuff of it.

7 Q Okay. Did you talk to any of the family members
8 or anybody regarding that car about whether you
9 could go into it or not?

10 A I talked to the owner when she came up 'cause ---

11 Q Who was the owner?

12 A It was his sister, Ian Gause sister.

13 Q Ian Gause ---

14 A Right.

15 Q And Rishawn Gause's sister?

16 A Yes, sir.

17 Q She was the actual owner of the car?

18 A Yes.

19 Q Was anybody, to your knowledge was anybody
20 procuring a search warrant for that car?

21 A I believe SLED was the one that was handling that
22 when they got there.

23 Q Okay, all right. Did you get any permission from
24 her or not?

25 A Yes, I asked her if did she have any problems

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1 with us looking at the car, is anything inside the
2 car. She said, no, you don't have any problem, just
3 go ahead and look.

4 Q Okay.

5 A And I asked her was there any weapons or anything
6 in there; she said no.

7 Q Did you look in the trunk?

8 A When SLED got there we did.

9 Q Were there weapons in the trunk?

10 A There was weapons in the trunk.

11 Q Okay, all right. And where as a law enforcement
12 officer, your knowledge of the law, where are the
13 places you can carry a gun in a car in a vehicle?

14 A This would be in the glove compartment or you can
15 carry rifles, whatever, in the trunk.

16 Q Okay, and you carry them in the trunk. You can't
17 carry them in the car unless they're in the glove
18 box?

19 A Right.

20 Q Okay. State's Exhibit 10 I believe is in
21 evidence without objection. Do you recognize
22 State's Exhibit 10?

23 A Yeah.

24 Q What is that?

25 A That's the car that was out to the hospital.

SW - W. DAVIS - DIRECT

1 Q Hospital. And that's the car you were sitting
2 on?

3 A Right.

4 Q Till SLED got there?

5 A Right.

6 Q All right. I'm gonna show you State's Exhibits
7 Number 12, 13, 14, and just tell me whether you can
8 identify those, yes or no. Those are marked for
9 identification, not in evidence. Just tell me if
10 you can identify that, yes or no. And you may not
11 or you may.

12 THE COURT: Tell me what numbers they are
13 again for the record please.

14 THE WITNESS: I can identify that ---
15 BY MR. CLEMENTS:

16 Q State's Numbers 12, 13, and 14. You're not sure
17 about those? Those are for identification.

18 A I'm not sure about those.

19 Q All right. State's Exhibit Number 11 for
20 identification, can you identify that?

21 A I can identify this.

22 Q Okay, all right.

23 MR. WILSON: No objection, Your Honor.

24 THE COURT: All right.

25 MR. CLEMENTS: Your Honor, I move State's

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1 Exhibit Number 11 into evidence without objection.

2 THE COURT: State's 11 admitted without
3 objection.

4 (WHEREUPON, State Exhibit No. 11
5 was admitted into evidence.).

6 BY MR. CLEMENTS:

7 Q Lieutenant Davis, you said you can identify
8 State's Exhibit Number 11. Can you ---

9 A Right.

10 Q ---hold that up so the jury can see it and tell
11 us that that is.

12 A Those are two revolvers that we, that SLED got
13 out of the trunk of that vehicle.

14 Q Okay, and that was in your presence?

15 A That was in my presence.

16 Q So you know they came out the car?

17 A I know they came out the car.

18 Q Trunk?

19 A Right.

20 Q Okay.

21 A Yeah.

22 Q All right. And did SLED take those ---

23 A Yes.

24 Q ---with them?

25 A Yes.

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1 Q Okay, all right. Did you handle these guns or
2 examine them in any way?

3 A No.

4 Q You just saw them get removed from the car?

5 A I just seen them get removed from the vehicle.

6 Q Is there anything else you can tell us about
7 these guns?

8 A No, that's all I can tell you about them.

9 Q Okay. All right, Lieutenant Davis, you were
10 there to assist SLED if they needed you at the
11 vehicle. When they finished with the vehicle did
12 they move on to another site or did they go to the
13 other site before they came to the vehicle?

14 A They moved on to another site and turned the
15 vehicle back over to the owner.

16 Q To the owner, okay. And that was Miss Gause?

17 A Yes.

18 Q Okay. Now when they turn that vehicle back over
19 to the owner and they moved on to another location
20 what did you do?

21 A I left. I was, I was through then.

22 Q You were through?

23 A Yes.

24 Q So you didn't have any other responsibility on
25 this investigation?

SW - W. DAVIS - CROSS

1 A No.

2 Q You just came out to give them an extra hand?

3 A I just came out to give them an extra hand.

4 Q Did you make any kind of report or anything
5 yourself?

6 A No.

7 Q Okay, all right. Beg the Court's indulgence.

8 Please answer any questions Mr. Wilson has,
9 Lieutenant.

10 A Okay.

11 THE COURT: Cross-examination.

12 MR. WILSON: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. WILSON:

15 Q Lieutenant Davis, now as I understand it, when
16 you came out that night you went to the incident
17 location which is?

18 A Yes.

19 Q Withlacoochee?

20 A Yes, south Withlacoochee.

21 Q Okay. And while you were there, my understanding
22 from your conversations with the Solicitor is that
23 one of the things that you were looking for was you
24 wanted to find any shell casings?

25 A Uh-huh.

SW - W. DAVIS - CROSS

1 Q Is that correct?

2 A Right.

3 Q All right. Tell us what you did in order to look
4 for the shell casings. How did you proceed to look
5 for them?

6 A Walked up and down the street and walked around
7 in the area that supposedly had the shooting.

8 Q Okay.

9 A 'Cause ---

10 Q You say you walked up and down the street?

11 A Uh-huh.

12 Q You're talking about the actual paved street?

13 A Yes, asphalt.

14 Q Well, I thought that you found the blood inside
15 the driveway?

16 A They found the blood like on the corner of the
17 driveway.

18 Q Okay. Both puddles of blood or both spots of
19 blood were inside the driveway. Is that a fair
20 statement?

21 A That's fair.

22 Q Okay. And, well then why were you looking for
23 shell casings out in the street?

24 A Because if you're shooting you're not, you just
25 shooting on the outside. You're not -- shell

SW - W. DAVIS - CROSS

1 casings jump out, they jump. And if you didn't see
2 none in the driveway you had to try to look and see
3 if you see some like on the street.

4 Q Okay.

5 A And that's the reason why we were walking the
6 street 'cause shell casings can jump anywhere.

7 Q Well, did you look under the carport?

8 A I didn't go up underneath the carport.

9 Q Well, because guns, when they fire depending on
10 where you're standing that would kind of determine
11 which direction the bullet's gonna, the shell
12 casings gonna be ejected, right?

13 A Correct.

14 Q And so if you're -- if it's ejecting from the
15 left and then you would expect that it's gonna go a
16 few feet to the left maybe, right?

17 A Possible.

18 Q Okay. And sometimes it doesn't even go a few
19 feet?

20 A Right.

21 Q It just falls down.

22 A It just falls down. It all depends on what
23 you're shooting.

24 Q So my question is, once you determine that there
25 were two spots of blood inside the driveway of the

SW - W. DAVIS - CROSS

1 house, why wasn't your search concentrated to look
2 inside that parameter to look for the shell casings?

3 A Because that -- the reason why I didn't do that
4 because is because they said it was like on the
5 street. The shooting was from the street and they
6 was like shooting from a car. So the car --

7 Q Who told you that? Who told you that there was a
8 shooting from a car on the street?

9 A That's what we heard.

10 Q We heard from where?

11 A We heard from one of the guys that came up, like
12 the Gator guy from the Gators.

13 Q What Gator guy?

14 A It's the guy from the Gator garage.

15 Q A guy from a Gator garage?

16 A Right.

17 Q All right, now I have no idea who you're talking
18 about. Who is the guy from the Gator garage who
19 told you that the shooting was in the street?

20 A He said that there was shooting in the street and
21 the shots was just fired.

22 Q Okay, all right. So the Gator guy, does he have
23 a name?

24 A I don't know his name.

25 Q Okay, well.

SW - W. DAVIS - CROSS

1 A I just knew he ---

2 Q How many shots did the Gator guy say was fired?

3 A They said several shots.

4 MR. CLEMENTS: Your Honor, I object to any
5 hearsay. Now I let him go on for a while, but he's
6 asking a lot of hearsay questions.

7 THE COURT: Objection sustained to any
8 further.

9 MR. WILSON: I understand.

10 BY MR. WILSON:

11 Q Let me ask you this, in regards to the shell
12 casings that you're looking for?

13 A Right.

14 Q So you're explaining to us why it was that you
15 were then looking out in the street, right?

16 A Uh-huh.

17 Q Okay.

18 THE COURT: Is that a yes?

19 THE WITNESS: Yes.

20 THE COURT: Give me a yes or no for the
21 record please to make it clear. Thank you, sir.

22 THE WITNESS: Yes, Your Honor.

23 BY MR. WILSON:

24 Q But my original question to you was, and still
25 is, once you found the blood spots inside the yard

SW - W. DAVIS - CROSS

1 in the driveway, why wouldn't you then look in the
2 yard for shell casings and under the carport?

3 A It's no reason why I can give you that.

4 Q Okay. How many feet are we talking about? From
5 where the blood puddles were at, from where these
6 blood puddles were to -- let me show you what's
7 marked as State's Exhibit Number 20.

8 MR. WILSON: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. WILSON:

11 Q Let me show you this photograph. We're referring
12 now to State's Exhibit Number 20 which is a
13 photograph.

14 A Right.

15 Q And of the yard and the house, right?

16 A Uh-huh.

17 Q Now how far from this porch was it that you found
18 the blood spots?

19 A I'd say probably around about down in here.

20 Q Okay, so what's that, 10-feet maybe?

21 A Probably about 10-feet.

22 Q Okay, about 10-feet. And what I'm asking is,
23 once you found the blood spots down here 10-feet
24 away, is there any reason that you didn't look in
25 this area in here for the shell casings?

SW - W. DAVIS - CROSS

1 A No.

2 Q No?

3 A No, sir.

4 Q All right. And to your knowledge has any shell
5 casing been found as of yet?

6 A Not to my knowledge.

7 Q Okay. Now the Solicitor was asking you earlier
8 about whether you can carry a gun and you said,
9 well, I think your response to him was in the glove
10 compartment?

11 A Right, yes, sir.

12 Q And in the trunk of the vehicle; is that correct?

13 A If you got, if you're carrying a shotgun.

14 Q If you're carrying a shot gun?

15 A Uh-huh.

16 Q What about a pistol?

17 A If you're going hunting.

18 Q What about a pistol?

19 A Your pistol is normally carried in the glove
20 compartment.

21 Q Okay. Can you carry it in the trunk?

22 A Yes, you can have a gun in the trunk if -- yes,
23 if you -- depends on the size, your vehicle.

24 Q Okay, well let me ask you this. Where can you
25 carry a gun that has the serial number sawed off of

SW - W. DAVIS - CROSS

1 it? Where can you carry that?

2 A You shouldn't be carrying it anywhere.

3 Q Right. Okay, let me show you some photographs.

4 Just take a look.

5 THE COURT: You have them marked for
6 identification purposes?

7 MR. WILSON: No, sir.

8 THE COURT: I want them marked for
9 identification purposes please.

10 (WHEREUPON, Defendant Exhibits Nos. 6
11 through 13 were marked for identification
12 only.)

13 MR. CLEMENTS: Your Honor, may we have
14 side bar.

15 (WHEREUPON, counsel approached the Bench
16 for an off-the-record discussion.)

17 BY MR. WILSON:

18 Q I want to show you ---

19 THE COURT: Hold on a minute.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 THE COURT: Ladies and gentlemen, I'm
23 gonna have to ask you to step to the jury room just
24 a minute. Do not discuss the case. I'll get you
25 back out here as quickly as possible.

SW - W. DAVIS - CROSS

1 sure the record is clear as to which pictures will
2 be being referred here?

3 MR. WILSON: And Judge, the only ones that
4 I intend to ask him about because I think the only
5 ones I showed him in-camera was 6, 7, 10 and 13.

6 THE COURT: All right, that's what I have.

7 MR. WILSON: Thank you, sir.

8 THE COURT: Anything else before I bring
9 the jury back, Mr. Clements?

10 MR. CLEMENTS: No, Your Honor.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: No, sir.

13 THE COURT: Bring me the jury please.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 12:06 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE COURT: Mr. Wilson.

19 MR. WILSON: Thank you, Your Honor.

20 BY MR. WILSON:

21 Q Officer, may I show you four items please. And
22 I'm sorry, I apologize, I'm referring to what's
23 marked for identification purposes as Defendant's
24 Exhibit 6, 13, 7 and 10 and ask you if you would
25 take a look at those items for me and tell me if

SW - W. DAVIS - REDIRECT

1 you can identify the content of those photographs.

2 A No, sir.

3 Q You cannot?

4 A No.

5 Q All right.

6 MR. WILSON: I don't have any other
7 questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. CLEMENTS: Briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. CLEMENTS:

12 Q Lieutenant Davis.

13 A Yes.

14 Q Mr. Wilson asked you about searching under the
15 carport for shell casings and you told him you
16 didn't. How many other people were looking around
17 that area in addition to you?

18 A It was several other people looking around that
19 area, other men.

20 Q So not just you?

21 A Not just me, no, sir.

22 Q And you didn't cover the entire area?

23 A No, sir.

24 Q Y'all took sections of the area?

25 A Yes.

SW - W. DAVIS - REDIRECT

1 Q Now let me ask you this also. You were talking
2 to him about the Gator speed guy that worked Gator
3 speed?

4 A Right.

5 Q Is his first name Michael?

6 A It could be Michael.

7 Q He lived in that neighborhoods?

8 A Yes, sir.

9 Q He came out while y'all were out there?

10 A Yes, sir.

11 MR. WILSON: Your Honor.

12 THE COURT: Hold on, yes, sir.

13 MR. WILSON: I object. And one, he's
14 leading.

15 THE COURT: Hold on, what's your ground
16 for the objection?

17 MR. WILSON: He's leading.

18 THE COURT: Rephrase your question. I'll
19 sustain it on that ground.

20 BY MR. CLEMENTS:

21 Q All right. Do you know Ronnie Sanders?

22 A Yes, sir.

23 Q He live in that neighborhood?

24 A Yes, sir, he lives right across the street.

25 Q Did he come out while y'all were out there too?

SW - W. DAVIS - RECROSS

1 A Yes, sir.

2 Q Were y'all able to develop any leads or followup
3 on any information received from the Gator speed guy
4 or Ronnie Sanders?

5 A No, sir.

6 Q Okay, thank you.

7 THE COURT: Any recross?

8 **RECROSS - EXAMINATION**

9 BY MR. WILSON:

10 Q Well, I thought -- and correct me if I'm wrong.
11 I understood you to tell me that you had information
12 from the Gator guy that said that there were shots
13 fired.

14 A He said that, but we didn't find anything on
15 that.

16 Q Okay. So, but you did get that information?

17 A Yeah, he said that -- I told you that.

18 Q Yeah, that's what I'm saying.

19 A I told you from what the guy said that was around
20 here and you said who was that. I said the Gator
21 speed guy.

22 Q Okay.

23 A Okay.

24 Q All right.

25 THE COURT: Anything further, Mr. Wilson?

SW - M. HARTSON - DIRECT

1 MR. WILSON: No, sir.

2 THE COURT: Sir, you may step down. Thank
3 you, sir.

4 MR. WILSON: Thank you, sir.

5 MR. CLEMENTS: Your Honor, I ask
6 Lieutenant Davis be excused from his subpoena.

7 THE COURT: Any objection?

8 MR. WILSON: No objection.

9 THE COURT: Without objection, sir, you
10 may be excused. You have no further responsibility
11 from your subpoena. You're free to go. Thank you
12 for being here.

13 MR. CLEMENTS: Your Honor, we call Officer
14 Michael Hartson of the Mullins Police Department.

15 THE CLERK OF COURT: Raise your right hand
16 please, sir.

17 WHEREUPON,

18 MICHAEL HARTSON,
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. CLEMENTS:

23 Q Would you please state your name and spell your
24 last name for the record.

25 A Michael Hartson, H-A-R-T-S-O-N.

SW - M. HARTSON - DIRECT

1 Q Officer Hartson, can you please tell this jury
2 where you're employed?

3 A Mullins Police Department.

4 Q And how long have you been employed in Mullins?

5 A Approximately seven months.

6 Q All right. And prior to that seven months
7 employment with Mullins PD, do you have prior law
8 enforcement experience?

9 A Yes.

10 Q How long a period of time?

11 A Approximately three-and-a-half years.

12 Q And where was that time spent?

13 A Marion Police Department.

14 Q Marion Police Department. So in November --
15 excuse me, September 29th of 2012 where were you
16 working?

17 A Marion Police Department.

18 Q In what capacity?

19 A Patrol.

20 Q Okay. Were you working evening or the morning
21 shift that day?

22 A Evening.

23 Q All right. And who was working that shift with
24 you?

25 A Sergeant Bacchuss and Officer Smith, Derrick

SW - M. HARTSON - DIRECT

1 Smith.

2 Q And y'all were the three on shift?

3 A That's correct.

4 Q And how long a shift was this?

5 A Twelve hours.

6 Q Okay. And did you have occasion to be called out
7 to the area of Withlacoochee, south Withlacoochee?

8 A Yes, sir.

9 Q Can you please tell this jury how you received
10 that call and how you responded and what type of
11 call it was?

12 A We received a call for fight in progress,
13 possible gunshots in the area. At first we were
14 unable to locate anybody. As Sergeant Bacchuss
15 stated, he spoke with somebody at that residence. I
16 patrolled the area and cleared up after we were
17 unable to, you know, determine what went on.

18 Q So did you find anybody down the road from that
19 location?

20 A No, sir.

21 Q Didn't find out anything down the road?

22 A No, sir.

23 Q Okay. But you checked?

24 A Yes, sir, we searched the area.

25 Q Pursuant to response Bacchuss got y'all check?

SW - M. HARTSON - DIRECT

1 A That's correct.

2 Q Okay. And you cleared the area?

3 A Yes, sir.

4 Q Explain to the jury exactly what that means,
5 clearing the area?

6 A Well, we patrol the area. We were unable to
7 locate any suspicious activity, fights or gunshots
8 or anything like that, and I cleared up and
9 conducted additional patrols, you know, waiting for
10 my next call for service.

11 Q And what happened next?

12 A. Sergeant Bacchuss notified us that there was a
13 victim at the hospital and asked me to meet him back
14 at that residence that he originally went to.

15 Q I'm gonna show you State's Exhibit Number 21 and
16 State's Exhibits 17, 18, 19. Can you identify these
17 exhibits that are in evidence?

18 A Yes, sir, I can.

19 Q And what is depicted in those four photographs?

20 A The residence where the incident occurred where
21 we responded and I met back with Agent Bacchuss
22 after he was notified that there was a victim and a
23 possible assault occurred.

24 Q So State's Exhibit 17, 18, 19, 21 is the
25 residence you first responded to?

SW - M. HARTSON - DIRECT

1 A That's correct.

2 Q And it's the residence that you responded to the
3 second time after getting information from the
4 hospital?

5 A I did not respond, let me back up. I did not
6 respond to that residence the first time. I
7 responded to the area.

8 Q Okay.

9 A The second time, after we determined an assault,
10 an incident had actually occurred, I met Sergeant
11 Bacchuss at that location.

12 Q Okay. Thank you for clarifying that.

13 A Yes, sir.

14 Q Now when y'all met back at the residence there
15 the second time, were there any individuals there
16 then?

17 A No, sir, none that I saw outside.

18 Q Okay, all right. And can you recall if the porch
19 light or the carport light was on or off?

20 A I do not recall.

21 Q Okay. Do you recall if there were any street
22 lights in the area?

23 A I don't recall. I know from that area there are
24 street lights in that area, not many. It is a
25 rather dark area.

SW - M. HARTSON - DIRECT

1 Q I show you State's Exhibit 22 and tell me if you
2 can identify that, if that looks familiar to you?

3 A I believe that's a street light directly south of
4 the residence between the south, the lot directly
5 next door to the right if you're staring at the
6 front of the road.

7 Q So that would be the only light in the area close
8 by?

9 A That I'm aware of, yes, sir.

10 Q Okay. When you got back to Withlacoochee
11 Sergeant Bacchuss was there -- y'all parked your
12 cars and exited your vehicle?

13 A That's correct.

14 Q And what did you do?

15 A Sergeant Bacchuss instructed me to obtain some
16 crime scene tape and start taping off the area to
17 avoid anybody entering the area.

18 Q Okay, you did that?

19 A That's correct, I did.

20 Q Okay. And after you taped off the area what did
21 you do next?

22 A I was advised to clear up and stay ready for any
23 additional calls that may be coming out because
24 Officer Smith was at the hospital and Sergeant
25 Bacchuss was at the residence, and we needed

SW - M. HARTSON - DIRECT

1 somebody to catch any additional calls that may come
2 out so I cleared up at that time.

3 Q Did you, before you cleared up did you look
4 around any with your flashlights or with your eyes
5 or anything?

6 A I did not. All I did that I recall, all I did
7 was I taped off the area and Corporal Sergeant
8 Bacchuss advised me that I could clear up and catch
9 any calls that may come out.

10 Q Did any other officers arrive before you cleared?

11 A No, sir.

12 Q Okay. After you went back, you cleared out, you
13 went back to patrolling; is that correct?

14 A That's correct.

15 Q What is the next thing you recall or the next
16 thing you did that involved this investigation?

17 A I was advised, I believe it was by Lieutenant
18 Smith, to look for the subject that may possibly
19 live at that residence. I was advised to check with
20 Fusion Nightclub, and I was able to locate him, Mr.,
21 I believe it was Charles Wilson?

22 Q Charles Wilson, you found him there?

23 A Yes, sir.

24 Q Okay. All right, when you found him did you do?

25 A I asked him to step outside with me, and I

SW - M. HARTSON - DIRECT

1 immediately notified Lieutenant Smith who arrived
2 and spoke with Mr. Wilson.

3 Q Okay.

4 A I had no further interaction.

5 Q Okay, all right. And what did you do next in
6 regards to this investigation?

7 A I cleared up at that time, and it was only later,
8 several hours later, that I heard Sergeant Bacchuss
9 calling for an officer to assist him on Baker
10 Street, that he had located the possible vehicle,
11 the black jeep.

12 Q And who responded to back up Sergeant Bacchuss?

13 A I did.

14 Q Okay. And when you got to that location what did
15 you find?

16 A I observed Corporal Bacchuss -- or he was
17 Corporal at the time. That's why I keep referring
18 -- Sergeant Bacchuss standing with both subjects
19 that were in the vehicle Ky Graham, and the
20 defendant.

21 Q Ky Graham?

22 A Ky, I believe Ky Graham, yeah.

23 Q And the defendant. You see the defendant in the
24 courtroom?

25 A I do.

SW - M. HARTSON - DIRECT

1 Q And can you point him out for us?

2 A Right there wearing the white shirt with the gray
3 in color tie (indicating).

4 Q May the record reflect he has identified the
5 defendant. Is that who you saw out there with Ky
6 Graham?

7 A Yes, sir, I did.

8 Q And Anthony Bacchuss?

9 A That's correct.

10 Q And you were there for backup. Did you do
11 anything at that time?

12 A At that time Sergeant Bacchuss contacted
13 Lieutenant Smith and Lieutenant Flowers, and they
14 arrived on scene and took over from there.

15 Q How long did it take them to get there?

16 A Not very -- probably two minutes make.

17 Q All right.

18 A Did not take that long.

19 Q Okay. So you as a patrol officer, would you
20 normally interrogate someone?

21 A No.

22 Q Or interview someone?

23 A No.

24 Q Did you do it on that occasion?

25 A No, sir.

SW - M. HARTSON - DIRECT

1 Q Did you have any conversation with either ---

2 A No, sir.

3 Q ---either of the occupants of the jeep?

4 A No, sir.

5 Q Okay. I'm gonna show you State's Exhibit Number

6 1 and 2 and 3. If you can identify these for us

7 please do so.

8 A Yes, sir. That's the jeep that the defendant and

9 Ky Graham were riding in that we had stopped on

10 Baker Street.

11 Q Okay, all right. Did you have any occasion to

12 look in that vehicle or look in ---

13 A No, sir.

14 Q ---in the windows or anything?

15 A No, sir, I do not recall looking in the vehicle

16 at all.

17 Q Okay. That would have been somebody else's job

18 to do that?

19 A Yes, sir. We were advised to just sit by with

20 the defendant and Ky Graham until the investigators

21 arrived.

22 Q Okay, all right. After you cleared Baker Street

23 area where the jeep was and where y'all encountered

24 Mr. Woodbury and Mr. Graham, what did you do next?

25 A Well, when I cleared up I was, I was asked to

SW - M. HARTSON - DIRECT

1 transport the defendant to the police department for
2 the investigators.

3 Q Okay. And did you do so?

4 A I did.

5 Q Okay, all right. And you didn't have any
6 conversation with him?

7 A No, sir.

8 Q. Okay. Now after you transported him to the
9 police department did you have anything else that
10 you did in this investigation?

11 A No, sir, not that I recall.

12 Q Okay. That was the extent of ---

13 A Well, let me back up. After later on in the
14 early morning hours after they conducted their
15 interviews and everything, he and I transported him
16 to Marion County Detention Center.

17 Q Okay, all right. Did you transport anyone else?

18 A No.

19 Q Is there anything prior to this that you did that
20 we left out?

21 A Not that I recall.

22 Q Okay. Please answer any questions Mr. Wilson may
23 have. Thank you.

24 THE COURT: Cross-examination.

25 **CROSS-EXAMINATION**

SW - M. HARTSON - CROSS

1 BY MR. WILSON:

2 Q Do we know who called 9-1-1 to report the
3 gunshots?

4 A Not that I'm aware of, sir.

5 Q You don't know?

6 A I do not know.

7 Q All right. So if I'm clear, and just so I am, as
8 I understand it what you're saying essentially is
9 that you went to the residence and sealed it off for
10 security purposes?

11 A Yes, sir.

12 Q All right. And then your next assignment was you
13 went to assist Officer Bacchuss when he had the
14 vehicle stopped?

15 A That was several hours later on Baker Street.

16 Q Okay.

17 A Yes, sir.

18 Q Did you do anything in regards to this case in
19 between that?

20 A As I stated, I was, I was advised to look for
21 Charles Wilson who is a resident at south
22 Withlacoochee residence.

23 Q All right.

24 A He lives there. I was advised to go see if I
25 could locate him at Fusion Nightclub and I did.

SW - M. HARTSON - CROSS

1 Q Okay. And when you got to Fusion Nightclub do
2 you know what time of night that would have been?

3 A I don't recall. The incident occurred
4 approximately 11 p.m. It would probably be an hour
5 or so later maybe.

6 Q Okay, all right. And did you go inside the club?

7 A I don't recall. I think I spoke with some
8 employees there that stand at the door and asked
9 them if they had seen him and I think they walked in
10 and asked him to step outside.

11 Q And he came outside and spoke with you?

12 A He came outside, and I asked him to, you know,
13 step over with me for a moment, and it was shortly
14 thereafter that -- I didn't have any detailed
15 conversation with him or shortly thereafter
16 Lieutenant Smith arrived on scene.

17 Q And you stayed with him until ---

18 A I did.

19 Q ---Lieutenant Smith arrived?

20 A Yes.

21 Q Okay. Now when you went to assist Officer
22 Bacchuss when he had the black jeep stopped, did you
23 see Mr. Woodbury there?

24 A I did.

25 Q Okay. Did you any conversation with him?

SW - M. HARTSON - REDIRECT

1 A Not that I recall.

2 Q Okay. Did he give you any difficulty?

3 A No, sir, he was very inquisitive about what we
4 were talking to him about or interested, you know,
5 that's all.

6 Q All right. Didn't threaten you?

7 A No, sir.

8 Q Okay. Use any weapon on you or anything like
9 that?

10 A No, sir.

11 Q All right. No other questions.

12 THE COURT: Any redirect?

13 MR. CLEMENTS: Just one question.

14 **REDIRECT EXAMINATION**

15 BY MR. CLEMENTS:

16 Q Mr. Wilson asked you about Mr. Woodbury's
17 demeanor. What if any indications were there that
18 he had been drinking or was under the influence of
19 alcohol?

20 A I don't recall smelling any odor of alcohol on
21 him. I mean, other -- the other only thing I recall
22 is that he was very inquisitive, very -- seemed
23 paranoid in my opinion, was very inquisitive about
24 why we were talking to him.

25 Q But he wasn't drunk or intoxicated?

SW - M. HARTSON - RECROSS

1 A Not that I recall.

2 Q Okay. Thank you.

3 THE COURT: Mr. Wilson.

4 **RECROSS-EXAMINATION**

5 BY MR. WILSON:

6 Q I'm just unclear. Are you speaking of
7 Mr. Woodbury or Mr. Wilson? Who, when you were
8 referring to somebody being intoxicated, who were
9 you referring to?

10 MR. CLEMENTS: Mr. Woodbury was my
11 question of course.

12 THE WITNESS: That's who I was referring
13 to was Mr. Woodbury.

14 MR. WILSON: Okay, all right.

15 THE COURT: Sir, you may step down. Thank
16 you.

17 Call your next witness.

18 MR. CLEMENTS: We call Captain Cindy Barr.
19 WHEREUPON,

20 **CINDY BARR,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 **DIRECT EXAMINATION**

24 BY MR. CLEMENTS:

25 Q Would you please state your name and your

SW - C. BARR - DIRECT

1 occupation for the record.

2 A Cindy Barr, I'm Captain with the Marion Police
3 Department.

4 Q Captain Barr, how many years do you have in law
5 enforcement?

6 A Prior to working with the Marion Police
7 Department in 2000 I was working with the sheriff's
8 department in '95 up until 2000. In 2000 I went to
9 the police department up until the present time.

10 Q So that's almost 20 years in law enforcement?

11 A About 19.

12 Q Okay, all right. I don't want put too many on
13 there. And so I guess you started working law
14 enforcement when you were four years old?

15 A Not quite, '95.

16 Q All right, sorry about that, it's about lunch
17 time, my brain is -- now if you would please, would
18 you tell this jury how you came to be notified about
19 the investigation that was going on regarding the
20 stabbing and fighting on Withlacoochee on the date
21 in question which was in 2012, September 29th?

22 A Yes. Please the Court, on September the 29th,
23 2012 I was notified by Sergeant Bacchuss by
24 telephone and I was at home. I believe it was maybe
25 about a quarter till 12, I'm not sure, but it was

SW - C. BARR - DIRECT

1 between 11:15 and 11:45. After he contacted me he
2 gave me a briefing on what had happened, and so I
3 told him I was in route. So I went to [REDACTED]
4 Withlacoochee where I seen him, Lieutenant Smith,
5 and I believe Lieutenant Davis. Tape was already up
6 around the property and he was telling me about a
7 stabbing that may have occurred there. And so right
8 before I started looking around it started raining
9 real hard and so I really couldn't, you know, do
10 much there. The Chief had notified me and told me
11 that there was somebody at the hospital that could,
12 that was in critical condition, and so we were -- we
13 had to call in to SLED because when someone die we
14 have to call in SLED and I ---

15 Q What did you call SLED for specifically?

16 A Well, SLED was called because he died.

17 Q Okay.

18 A He had -- someone had died.

19 Q And Marion PD, y'all don't have a forensics or a
20 crime scene unit, do you?

21 A No, we don't have that at all. We call SLED for
22 all of that.

23 Q So SLED does all the forensic crime and scene
24 investigation?

25 A Yes.

SW - C. BARR - DIRECT

1 Q Okay. Did they respond to Withlacoochee?

2 A Yes.

3 Q Were you still there by the time they got there?

4 A I stayed there to wait for them because
5 Lieutenant Flowers was told by the Chief to do a, to
6 get a search warrant signed.

7 Q Okay, all right. And so you waited there and
8 maintained that position in Withlacoochee until SLED
9 arrived?

10 A Yes, I did.

11 Q Okay. Did you have occasion to -- would any of
12 the neighbors come out, outside?

13 A Yes. Mr. Ronnie Sanders that stayed right, you
14 know, in front of the location I was at, he had come
15 out.

16 Q Do you know the man that works at Gator Speed?

17 A I don't know him.

18 Q Did you see him that evening?

19 A Yeah, he just was walking out. He had his dog.
20 And you know how people do when they see us out,
21 they want to know what's going on; but neither one
22 of them had any information about what had happened
23 at that location.

24 Q That y'all could follow up on?

25 A That we could follow up on, no, we didn't have

SW - C. BARR - DIRECT

1 anything.

2 Q But y'all did talk to them ---

3 A Yes.

4 Q ---to see if they did know something?

5 A Yes, they didn't know anything.

6 Q Okay, all right. Now so they had no additional
7 information than what you originally gotten. Were
8 you able to speak to anyone else other than those
9 two on the scene there?

10 A Not at all, no.

11 Q Okay, all right. Did you conduct an interview
12 with anyone in regards to this, yourself?

13 A No, I didn't.

14 Q Okay. After Lieutenant Flowers obtained search
15 warrants were you present or did you participate or
16 assist in any way in executing those search
17 warrants?

18 A I was present at [REDACTED] Withlacoochee and SLED,
19 they'd done everything.

20 Q So they executed the search warrants?

21 A Yes, they did.

22 Q Did you go to Baker Street at all?

23 A Yes, I also, after we finished there, went to
24 Baker Street for the black jeep. And so until a
25 search warrant was secured by Lieutenant Flowers get

SW - C. BARR - DIRECT

1 signed by a judge, then SLED had came and they did
2 the searching of the vehicle..

3 Q So you stayed at the jeep until SLED finished
4 with Withlacoochee?

5 A I stayed at Withlacoochee, and then when we
6 finished with Withlacoochee, then I went to Baker
7 Street.

8 Q Okay.

9 A And I stayed with that vehicle until a search
10 warrant was obtained.

11 Q So did SLED go to hospital prior to going to the
12 jeep or do you recall?

13 A I don't re-- I'm not sure, but I had, you know,
14 waited by the jeep until they cleared up.

15 Q Okay. When they came and they started
16 inventorying and executing the search warrant on the
17 jeep did you remain present while they executed the
18 search warrant?

19 A I remained present while they were executing.

20 Q Did you observe them doing that?

21 A Yes, I did. Yes, I did.

22 Q I'm gonna show you some exhibits that have been
23 marked for identification. Tell me yes or no if you
24 can identify these exhibits that are marked for ID,
25 State's Exhibit 4.

SW - C. BARR - DIRECT

1 A Yes, I recall this. I think it's the jeep.

2 Q All right. Don't tell me what it is yet, just
3 tell me whether you can identify it or not. State's
4 Exhibit Number 5?

5 A Yes.

6 Q State's Exhibit Number 6?

7 A Yes.

8 Q State's Exhibit Number 7?

9 A Yes.

10 Q State's Exhibit Number 8?

11 A Yes.

12 Q State's Exhibit Number 9?

13 A Yes.

14 MR. WILSON: Your Honor, I have a matter
15 we probably need to take up.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 THE COURT: Mr. Clements, you may
19 continue.

20 MR. CLEMENTS: Thank you, Your Honor. If
21 it please the Court, I would move State's Exhibits
22 4, 5, 6, 7, 8, and 9 into evidence at this time.

23 THE COURT: Subject to Defense counsel's
24 objection they're admitted into evidence.

25 (WHEREUPON, State Exhibits Nos. 4 through

SW - C. BARR - DIRECT

1 9 were admitted into evidence.)

2 MR. CLEMENTS: Thank you, Your Honor, I
3 would ask permission for Captain Barr to step down
4 and stand in front of the jury.

5 THE COURT: Okay.

6 BY MR. CLEMENTS:

7 Q Captain Barr, you had testified that you were
8 present, you observed them as they executed the
9 search warrant on the jeep?

10 A Yes, I was.

11 Q Okay. Now State's Exhibit Number 1, 2, and 3
12 that are in evidence, you recognize that?

13 A Yes, sir.

14 Q Is that the jeep Mr. Woodbury was in?

15 A I didn't see him in it, but that's the jeep I was
16 at when SLED executed the warrant.

17 Q Good answer, fair enough. Mr. Woodbury was gone
18 by the time you got there; is that correct?

19 A I have not -- I never seen Mr. Woodbury.

20 Q Okay, all right. Thank you for clarifying that
21 for me. Now State's Exhibit 4, can you explain to
22 the jury where that was and what that is there that
23 looks like a brown stick with gold bands on it?

24 A Right here, this is the picture SLED had taken.
25 It was in the back, you know, when you pull up the

SW - C. BARR - DIRECT

1 back of the jeep and where the stuff is sitting at,
2 that's where this was located at.

3 Q Okay. And how is State's Exhibit 5, how is that
4 picture a little bit different? It's closer?

5 A It seems to be closer, the same area.

6 Q Okay, all right. Can you explain to this jury
7 what State's Exhibit Number 6 depicts?

8 A It's -- it depicts picture 5, but it's closed and
9 it's partially open.

10 Q All right. State's Exhibit 7, can you tell the
11 jury what that depicts?

12 A It depicts five closed and number 7 depicts that
13 it's open.

14 Q All right. State's Exhibit Number 8, compared to
15 number 5?

16 A Yes. Compared to Number 4 it's closed. Number
17 8, that is open. That looks, it appeared to be on
18 a, in the vehicle on a seat.

19 Q Are these the same items depicted in both
20 pictures?

21 A That I recall, yes.

22 Q All right. And lastly, State's Exhibit Number 9?

23 A Yes, another different picture, but you know.

24 Q All right. What is this?

25 A It looks like some knives. That's all I can

1 figure, some knives.

2 Q All right, thank you. You can have a seat,
3 ma'am.

4 MR. WILSON: Judge.

5 (WHEREUPON, counsel approached the Bench
6 for an off-the-record discussion.)

7 THE COURT: Ladies and gentlemen, I'm
8 gonna ask you to step to the jury room just a
9 minute. Do not discuss the case. I'll get you back
10 out here as quickly as I can. Thank you.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 12:39 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: Mr. Wilson, if you would, you
15 had an objection. We had it over here at side bar
16 as it related to exhibits 4, 5, 6, 7, 8 and 9 which
17 I admitted into evidence in the presence of the jury
18 subject to your objection. At this time since the
19 jury is out of the courtroom I'll give you an
20 opportunity to put on the record what your objection
21 was at side bar. That couldn't be picked up
22 obviously because we were at the opposite end of the
23 Bench from where the court reporter is. To make the
24 record clear and protect the record for your client,
25 please put on the record anything as far as that

SW - C. BARR - DIRECT

1 question on the record once and her answer should be
2 consistent with what she's already testified to.

3 MR. CLEMENTS: Yes, sir.

4 THE COURT: Okay.

5 MR. CLEMENTS: Yes, sir.

6 THE COURT: Anything else before I bring
7 the jury back out? Mr. Wilson, anything else before
8 I bring the jury back out?

9 MR. WILSON: Nothing, Your Honor.

10 THE COURT: Mr. Clements, anything
11 further?

12 MR. CLEMENTS: No, Your Honor.

13 THE COURT: All right, bring the jury
14 please.

15 (WHEREUPON, the jury was returned to the
16 courtroom and the following
17 proceedings commenced in open court.)

18 THE COURT: Thank you, ladies and
19 gentlemen, for your patience.

20 Mr. Clements, you may continue.

21 MR. CLEMENTS: Thank you, Your Honor may
22 it please the Court.

23 BY MR. CLEMENTS:

24 Q Captain Barr, I'm showing you State's Exhibit 23
25 and I'm gonna ask you, yes or no, can you identify

SW - C. BARR - DIRECT

1 this? Yes or no.

2 A Yes.

3 Q Other question, was this collected by SLED in
4 your presence?

5 A Yes.

6 Q Where at?

7 A On Baker Street.

8 Q From where?

9 A From the back of the black jeep I showed you on
10 the picture.

11 Q Okay, all right.

12 MR. WILSON: Your Honor, I have a matter I
13 need to discuss.

14 (WHEREUPON, counsel approached the Bench
15 for an off-the-record discussion.)

16 BY MR. CLEMENTS:

17 Q Captain Barr?

18 A Yes.

19 Q After you finished sitting on the jeep and stayed
20 there with SLED while they executed the search
21 warrant, when they finished executing the search
22 warrant what did you do next?

23 A After the search warrant was executed then we all
24 went back to the Marion Police Department because
25 they had papers that they had to do.

SW - C. BARR - CROSS

1 Q Okay, all right. And then after that did you do
2 anything else in the investigation of this case?

3 A No, I don't. No, I didn't.

4 Q Okay, you didn't go to the hospital?

5 A I didn't do -- what I told you all is what I did.

6 Q I just want to be sure I wasn't leaving something
7 out.

8 A Yes, sir.

9 Q Please answer any questions Mr. Wilson may have.

10 THE COURT: Cross-examination.

11 MR. WILSON: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. WILSON:

14 Q I just have a couple of questions, ma'am. Now
15 earlier you testified, did you not, that term in the
16 box appeared to be the item that you saw SLED take
17 pictures of and that you saw them collect; is that
18 right?

19 A Yes, sir.

20 Q But just now you changed your story and now you
21 said that is the item that was done. Is that what
22 you just did?

23 A The item that I said appeared to be what SLED had
24 collected on Baker Street out of the jeep --

25 Q Right.

SW - C. BARR - CROSS

1 A ---is the same weapon that appeared that he asked
2 me did I see SLED take. And it was. I didn't take
3 any pictures. I don't have a photographic memory of
4 what it was. I remember the item, and it came apart
5 and it had, you know, sharp ends.

6 Q So the truth of the matter then is that you
7 really can't sit here and testify that positively
8 that that is the same one. It appears to be, looks
9 like it, but you're not saying that absolutely
10 positively that is it?

11 A It was similar.

12 Q Okay.

13 A It looks similar and ain't nothing guaranteed.

14 Q All right, that's fair enough. Thank you so
15 much.

16 THE COURT: Anything else? Anything else,
17 Mr. Wilson?

18 MR. WILSON: No, I'm sorry, Your Honor.

19 THE COURT: Any redirect?

20 MR. CLEMENTS: No, your Honor.

21 THE COURT: You may step down. Thank you.

22 THE WITNESS: Thank you, Your Honor.

23 MR. CLEMENTS: Your Honor, our next
24 witness may take a little while. This seems to me
25 in my humble opinion a good time for a lunch break.

SW - S. HARDEE - DIRECT

1 MR. CLEMENTS: Your Honor, we call Agent
2 Scott Hardee from SLED.

3 THE CLERK OF COURT: Mr. Hardee, if you
4 would place your left hand on the Bible and raise
5 your right hand.

6 WHEREUPON,

7 L. SCOTT HARDEE,
8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 THE CLERK OF COURT: Thank you.

11 **DIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q Could you please state your name for the record
14 and spell your last name please.

15 A It's Leland Scott Hardee, H-A-R-D-E-E.

16 Q Can you please tell this jury where you work.

17 A I'm a senior special agent with the South
18 Carolina Law Enforcement Division.

19 Q What does it mean to be a senior special agent?

20 A I'm a certified law enforcement officer for the
21 State of South Carolina with statewide jurisdiction.
22 The senior part is because I've got some time in --
23 it's a, I guess, it's a promotion based on
24 longevity.

25 Q And what does SLED stand for, what does it do?

SW - S. HARDEE - DIRECT

1 A SLED stands for South Carolina Law Enforcement
2 Division, and they assist other agencies working
3 crime scenes, arsons. We also, we are class one
4 certified officers. We have full arrest authority
5 jurisdiction just like any county or municipality.
6 But predominantly we're an assisting agency where if
7 an agency, in this case Marion Police Department,
8 asks for our help with a crime or investigating a
9 crime then we respond to assist them.

10 Q How long have you worked in law enforcement?

11 A Since 2000, April of 2000, so almost 14 years.

12 Q And how long have you worked with SLED?

13 A Since April -- I'm sorry, May 2nd of 2008.

14 Q All right. And before working with SLED where
15 did you work?

16 A With the Florence Police Department.

17 Q Okay, and do you have any other law enforcement
18 experience other than SLED and Florence PD?

19 A No, sir, I do not.

20 Q Now in January -- excuse me, in September 2012,
21 were you a senior special agent then?

22 A No, at that time I was still a special agent. I
23 didn't have my five years in yet so.

24 Q And were you assigned to one particular bureau of
25 SLED?

SW - S. HARDEE - DIRECT

1 A During that time I was assigned to the crime
2 scene latent prints department at SLED.

3 Q And what does the crime scene latent prints
4 department do?

5 A The crime scene aspect of it we respond to crime
6 scenes at the request of an agency to assist with
7 investigating, finding, collecting physical evidence
8 and document about the scene and transporting that
9 evidence back to SLED at the agency's request for
10 further analysis in the lab. Latent prints, which
11 is what crime scene fell under, was a department and
12 that lab that looked at latent prints to make for
13 identification.

14 Q Kind of like CSI?

15 A Sort of like but not as glamorous.

16 Q All right. Did you have occasion to be called to
17 assist Marion Police Department September 29th,
18 2012?

19 A Yes, sir. I received a call from our operations
20 which would be the equivalent of central dispatch.
21 They stated they received a call from Marion Police
22 Department requesting crime scene. I was on-call
23 that week, and they gave me that contact number. I
24 made contact with a Detective Barr I believe, if
25 memory serves. She advised me of what they had

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1 going on over here. I told her I would be in route.
2 So I called my partner who resided closer to
3 Columbia. I live in Florence and so it didn't take
4 me any time to get here, and I responded. She
5 actually got here shortly after I did so.

6 Q What was your partner's name?

7 A Her name was Melinda Worley.

8 Q Okay. And when y'all go respond to a crime scene
9 and do forensics do you always do that in pairs?

10 A Yes. We've come to find out that working in
11 pairs is the old saying four eyes are better than
12 two. We go back and check behind each other and you
13 confer with each other. She may have an idea that
14 may have slipped my mind and vice versa, and we
15 just -- when you get a good team you can kind of
16 feed off each other and work better together.

17 Q And where did y'all respond, to what address do
18 you know?

19 A I know it was on Withlacoochee [REDACTED] I think, if
20 memory serves, in that area.

21 Q South Withlacoochee?

22 A Yes.

23 Q All right. And when you got there what did you
24 find at that scene?

25 A There ---

SW - S. HARDEE - DIRECT

1 Q What was the nature of the call?

2 A The nature of the call, originally Detective Barr
3 advised that there was — it was a shots fired,
4 fight in progress call. They found one of their
5 detectives had found some blood on the scene, and
6 then she told me that two individuals were at the
7 Marion County hospital. One had died as a result of
8 stab wounds and then they were — and it was
9 discovered during the conversation, she said that
10 Marion County actually responded to that scene. But
11 it was discovered that the incident location was
12 within the city limits of Marion, and she was
13 calling for us to help collect evidence and provide
14 assistance with that scene.

15 Q All right. So what was the first scene that you
16 responded to?

17 A It would be the initial scene which was [REDACTED]
18 Withlacoochee, south Withlacoochee.

19 Q Thank you. Now when you got there who was
20 present on the scene then?

21 A Detective Barr with Marion Police Department.

22 Q What agency?

23 A I believe if memory serves, Officer Bacchuss was.
24 He came, he kept on coming and going because they
25 were looking for the vehicle. Chief Jim Gray

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1 arrived at some point and he was there for a while,
2 and that was about it.

3 Q When you got there and you were briefed on what
4 all you had. What do y'all do? What does the crime
5 scene unit do? Take us from the start of your
6 process to the end of it. Tell us what you do.

7 A Basically as soon as we get there we start
8 getting the whos and whats, the names of everybody
9 involved, officer's names, victim's names, suspect's
10 names if there's a suspect at the time. We take --
11 we find out what the temperature is, the times
12 everything happened. All that stuff that can play a
13 factor in any crime scene investigation. After ---

14 Q What was the weather like when you were there?

15 A It was rainy and my notes had it as 70-degrees at
16 that night so, and of course everything is
17 approximate. My thermometer may be off from some
18 else's so I put everything approximate. After we
19 get the initial information and get a briefing from
20 the officers on scene we -- that's part of our note
21 taking. We take a few more notes, then we
22 immediately start recording the scene by camera
23 taking photographs at the scene as it was so that
24 nothing will be lost later, especially when you have
25 rain, some kind of weather that can cause evidence

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1 to possibly be spoiled or lost or changed
2 somewhat so we immediately start taking photographs.
3 And after that we -- after everything has been
4 photographed if there's evidence that we're gonna
5 collect from the scene we, as a general rule, we'll
6 put markers down and take photographs again showing
7 where the items of evidence are in the photographs.
8 And then after that we collect that evidence and we
9 package it and we secure it inside our vehicle.

10 Q Did you go over that entire scene there at south
11 Withlacoochee?

12 A We did. We walked. And during the photographs,
13 the photograph taking, that gives us time to walk
14 around and look at everything because we're taking
15 photographs of the house, the vehicles that are on
16 scene during at that time. We're taking photographs
17 of the fence. If it's a -- for example, if it had
18 been a break-in we would take photographs of the
19 door. We take photographs showing if there was
20 damage to the door, stuff like that. In this case
21 it wasn't obviously; but in fact, we didn't even
22 have need to go inside the house because everything,
23 as we were told, occurred outside of that residence
24 so we spent most, all the time actually,
25 photographing and documenting that actual yard.

SW - S. HARDEE - DIRECT

1 Q Okay. I'm gonna show you State's Exhibit 17. Do
2 you recognize that?

3 A That would be the house that we responded to ---

4 Q All right.

5 A ---initially.

6 Q And State's Exhibit 18?

7 A That's another side of the house. It's still the
8 front or front facing the actual road, and this was
9 just taken from a different corner.

10 Q State's Exhibit 19?

11 A The house again. Well actually, right next to
12 the fence. You can still see the crime scene tape
13 in place.

14 Q All right. And State's Exhibit 21?

15 A That's the same residence with a photograph of
16 the minivan that was under the carport.

17 Q A little closer?

18 A Yeah, just a closer view of it.

19 Q State's Exhibit 22?

20 A That is a street light that was turned off or it
21 was off.

22 Q Okay. Now where this van is under this carport,
23 did y'all look under there good for any evidence?

24 A We did, and we looked at the exterior of the van
25 and 'cause, you know, on vans you look for, like in

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1 this case we had a stab wound. You suspect to see
2 blood. And so we look on surfaces for blood; and if
3 we find any, we photograph it. We also photograph
4 it to-scale, just a fancy way of saying we get a
5 ruler and put there right beside it and photograph
6 it again.

7 Q Were you also looking for anything other than
8 blood?

9 A Yes. Since there were shots fired we were
10 looking for bullet holes and stuff. Didn't locate
11 any bullet holes, didn't locate any blood on that
12 vehicle or on the exterior of the house.

13 Q Any shell casings under the shed or in the yard?

14 A Not that we located, no, sir.

15 Q Couldn't locate anything?

16 A No, sir.

17 Q Did you locate anything of evidentiary value at
18 Withlacoochee that you collected?

19 A No, we didn't collect anything from there. I
20 saw, if memory serves, I saw suspected blood
21 droplets on some rocks, gravel, or something like
22 that, but we were -- Investigator Barr advised that
23 Lieutenant Smith had already collected blood swabs
24 from that location and so there was no need for us
25 to collect any so we didn't collect anything

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1 additional at that scene.

2 Q And there was nothing else additional found?

3 A No, sir, was not there at that scene.

4 Q About how long did it take y'all to process this
5 scene at Withlacoochee?

6 A Not too long. I wouldn't say any more than an
7 hour, an hour-and-a-half tops. We had to wait for a
8 while for the search warrant to come in so that we
9 could go because we worked with search warrants.

10 Very rarely will we work with a consent to search,
11 which basically consent to search is, if you're not
12 familiar, is the homeowner gives us the right to
13 work and process that scene. With a search warrant
14 the Court gives us that right. And as a general
15 rule we also work with a search warrant.

16 Q Now part of your job as a forensic officer, does
17 that require you to, or do you normally interview
18 witnesses or is that somebody else's job?

19 A That's usually -- we're -- SLED is kind of unique
20 in that we, if you have crime scene you work crime
21 scene. If you had -- if you're firearms you work
22 firearms. If you're a field agent, a field agent is
23 classified as an investigator. They talk to people
24 and stuff like that. The department that I'm
25 currently in is arson, and that's one of those rare

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1 departments where we work the crime scene and we
2 investigate so normally we just -- in that case I
3 was in crime scene. I worked only the crime scene,
4 didn't talk to any witnesses except to get the
5 information that I needed to do the job better.
6 Like, for example, if I'm not jumping ahead, we're
7 arrived at a hospital.

8 Q We're getting ready to go there next.

9 A Okay, then I'll stop and let those questions be
10 asked.

11 Q You don't do interviews. You collect physical
12 evidence?

13 A That's right. We collect physical evidence.

14 Q Now you finished up at Withlacoochee.

15 A Yes, sir.

16 Q Where did you go next and why?

17 A After we finished up with that scene we were
18 advised that County had gotten -- actually,
19 beforehand County had gotten out with the victims at
20 Marion Hospital. They were called by Marion County
21 Hospital, or Marion Carolinas Hospital Systems, that
22 you had two vic-- a stab victim there so they
23 responded and it was determined, as I stated
24 earlier, that that was our victim from
25 Withlacoochee. So we responded out there to process

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1 the vehicle that had been left at the ER entrance
2 right close to where the ambulances drive up
3 underneath the canopy and then to go and collect
4 evidence from the victim in this case.

5 Q When you got there to the hospital what did you
6 do?

7 A Lieutenant Walker Davis was there securing the
8 scene. There was family members there. The search
9 warrant was already in hand so we immediately
10 started photographing the vehicle that the two
11 victims had arrived at the hospital in. And again,
12 and by that we also get the VIN, the license tag,
13 that kind of information. We look and see if we can
14 find the registration to find out who the owner of
15 the vehicle is and stuff like that. Then we look
16 for any evidence, physical evidence, that we can
17 collect that would help tie that vehicle to the
18 victims, to the scene, connect everything.

19 Q I'm gonna show you a couple of photographs that
20 have been marked for identification purposes.

21 A Yes, sir.

22 Q State's Exhibit Number 20 for I.D. You recognize
23 that picture? Can you tell us what that is?

24 A This is a photograph of the residence 
25 Withlacoochee; and it's got a, looks like a car,

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1 van, mini van right there.

2 Q And did y'all take that photograph?

3 A Yes, sir. We took all the photographs of that
4 scene so far that I've seen that you gave to us.

5 THE COURT: Which exhibit was that?

6 MR. CLEMENTS: Number 20, Your Honor.

7 Your Honor, we move State's Exhibit Number 20 into
8 evidence at this time.

9 THE COURT: Mr. Wilson?

10 MR. WILSON: No objection, Your Honor.

11 THE COURT: Without objection State's
12 Exhibit Number 20 admitted into evidence.

13 BY MR. CLEMENTS:

14 Q Now the kind of car that was at the location at
15 the emergency room entrance to the hospital, you
16 recall what kind of vehicle that was?

17 A It was a four door silver, silver-ish color Ford
18 Focus if I recall.

19 Q Okay.

20 A I think it was a Ford Focus.

21 Q And what — did y'all conduct inventory in search
22 of that car?

23 A We did. As part of our search, I mean, we look
24 at everything. And in the — that car was actually
25 pretty clean, I mean, as far as items go. There was

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1 blood in the -- or suspected blood, I'm sorry, in
2 the passenger seat. And there was a -- in the
3 driver's seat there was like a black seat cover and
4 observed suspected blood there as well. And in the
5 rear seat there was a Coca Cola bottle, I believe
6 the alcohol, and those were things that stuck out
7 from there. And then in the trunk of the car there
8 was a book and two pistols.

9 Q All right, I'm gonna show you what's been marked
10 State's Exhibit Number 12. Can you identify that
11 and do you know what that is? Just tell us yes or
12 no.

13 A Yes.

14 Q Did y'all take that picture?

15 A Yes, sir, I did.

16 Q How about State's Exhibit 13, same question?

17 A Yes, sir.

18 Q How about State's Exhibit 14, same question?

19 A Yes, sir.

20 MR. CLEMENTS: No objection? Your Honor,
21 we'd move State's Exhibit 12, 13, 14 into evidence
22 at this time.

23 THE COURT: Without objection State's
24 Exhibits 12, 13, and 14 admitted into evidence.

25 (WHEREUPON, State Exhibits Nos. 12, 13, 14

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1 were admitted into evidence.)

2 MR. CLEMENTS: All right. Your Honor, I
3 would ask permission for Agent Hardee to step down
4 in front of the jury.

5 THE COURT: Sir, you may step down.

6 BY MR. CLEMENTS:

7 Q Stand in the back a little bit so everybody has
8 got a good angle so I can see. I'm gonna stand over
9 here and keep your voice up so the court reporter
10 can get it. State's Exhibit 10, can you explain to
11 the jury what that is, who took that picture and ---

12 A Okay. At that time in point this is the vehicle
13 that we, myself and Agent Worley saw it at the ER
14 entrance. It was the victim that we were -- I'm
15 sorry, it was the vehicle that we were told actually
16 was driven by the victims to the ER.

17 Q All right. Now when y'all do a processing of the
18 vehicle, tell me what does that all require you to
19 do?

20 A In this instance, and since we knew who the
21 vehicle belonged to we also knew who drove the
22 vehicle to the hospital, the identity is no longer a
23 concern to us. We were told that the victim had
24 passed away was in the passenger seat was driven by
25 his brother. So in that case, more or less, more of

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1 inventory and collecting for, in example, would be
2 blood so we collect some swabs and just more or less
3 documentation, photographing the scene.

4 Q All right. I show you State's Exhibit Number 11.
5 Do you know what that depicts and who took that
6 statement? I mean, who took that picture, excuse
7 me.

8 A This photograph was taken by either myself or
9 Melinda Worley.

10 Q Your partner?

11 A My partner. And she was actually the one that
12 discovered the guns in the trunk of the car and then
13 -- 'cause I was at the front of the vehicle. And
14 she said for me to come and look at what she found;
15 I said okay. And so I came back and we discovered,
16 or she discovered, these two guns in the trunk of
17 the vehicle and so we photographed it and documented
18 it.

19 Q All right. Now what type of the gun here is on
20 the right and the left-hand side, my right, the
21 jury's left. What type of gun is that called?

22 A This is a revolver. It's a ---

23 Q And the one that's on the other side, what kind
24 of gun is that?

25 A It's gonna be a semiautomatic pistol.

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1 Q Now the revolver, when you took that in to
2 collected it for evidence how many shot revolver was
3 that, do you recall?

4 A It was a five shot I believe.

5 Q And were any of the chambers empty or all five
6 had bullets in it?

7 A All five had unfired cartridges inside.

8 Q Okay. So it was complete, fully loaded?

9 A Yes, sir.

10 Q No spent cartridges?

11 A No, sir.

12 Q Okay, all right. Now was the magazine on the
13 automatic because it has a magazine instead of a
14 cylinder, correct?

15 A I'm sorry, repeat that.

16 Q The automatic has a magazine with bullets instead
17 of a cylinder with bullets; ---

18 A Yes, sir.

19 Q ---is that correct?

20 A Yes, sir yes, sir.

21 Q Would you be so kind to explain to the jury what
22 I'm asking you about a cylinder and a magazine.

23 A Okay. This is on my own personal knowledge with
24 firearms because I'm not a firearms examiner. A
25 revolver uses a cylinder that revolves each time a

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1 shot fired to an unfired cartridge. It doesn't
2 eject those cartridges. They stay inside the
3 cylinder until they're manually removed by the
4 person or someone by having the gun. A
5 semiautomatic is different because you actually load
6 a magazine for whatever the number it can hold, and
7 you would you insert it inside the grip of the gun.
8 And when you fire it, first of all, you have to pull
9 the slide back. When you pull the slide back that
10 loads one round into the chamber taking one out of
11 the magazine. Once that's happened take it off
12 safety -- guns don't have an external safety. You
13 pull the trigger. The blowback from that gun, will
14 pull the slide back, it will eject that cartridge
15 and then in that sense it'll -- or actually
16 cartridge case, and then another cartridge, fire
17 cartridge, from the magazine is then taken into the
18 chamber.

19 Q And that's why you look for shell casings at a
20 crime scene?

21 A Correct. If we find any shell cartridge cases
22 from at a crime scene, chances are, almost
23 99 percent chance, a semiautomatic weapon was used.
24 If you don't locate any, then either person released
25 their brass, which means they picked up their

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1 cartridge cases after they left or it was a revolver
2 was used and they didn't eject those cartridge
3 cases.

4 Q Or you just couldn't find them?

5 A Or we just couldn't find them. It's always that.
6 It could be heavy in brush, I mean, or kicked, run
7 over, picked up by a tire and carried off somewhere
8 else so there's any number of reason why.

9 Q But these are the two guns that were in the trunk
10 of that car?

11 A Yes, sir.

12 Q Okay. Now quickly go through these, State's
13 Exhibit 12, tell the jury what that is.

14 A All right. This is the revolver of the gun of
15 the revolver that was discovered in the trunk as it
16 was before we touched it.

17 Q So that's where it was in the trunk?

18 A Yes, sir.

19 Q Okay, all right. State's Exhibit 13?

20 A Okay. Another photograph of the contents of the
21 trunk prior to us touching anything. That's gonna
22 be the semiautomatic that was located.

23 Q Okay. Now State's Exhibit 14?

24 A Okay.

25 Q Explain that to the jury to make sure everybody

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1 sees it.

2 A I'm sorry, I'll come over here. This is going to
3 be the driver's seat to the Ford Focus, and that was
4 actually that black cover that was over the seat.

5 Q Okay. What was on that cover?

6 A It was wet 'cause it had been raining. And if
7 I'm not mistaken, there was some suspected blood on
8 it also.

9 Q State's Exhibit 15, why did y'all take that
10 picture and what is that of?

11 A This is the passenger seat, front passenger seat
12 to that same vehicle, as you can see the center
13 console right there and then you got the black seat
14 cover right there. And that had a significant
15 amount of suspected blood in that seat.

16 Q Okay. That was where the passenger died riding?

17 A I don't know if he died there, but that's where
18 we were told he had been sitting because his brother
19 had driven him to the hospital.

20 Q State's Exhibit 16?

21 A That's gonna be the center console to that
22 vehicle between the driver's seat and the passenger
23 seat. There's a passenger seat, seatbelt, and cup
24 holders, and that was a photograph of suspected
25 blood also.

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1 Q Okay. You can have a seat.

2 A (Witness complies.)

3 Q What pieces of evidence would -- tell me, is
4 there anything else you noticed visually in the car
5 that was significant or out of the ordinary?

6 A No, it had -- the only thing, it had a Texas
7 license plate, and we were told that it actually
8 belonged to the sister of the victim, victims.

9 Q Nothing unusual on the outside or inside of the
10 car?

11 A Oh, there was some -- on the passenger's door
12 there was a bullet, suspected bullet holes, but we
13 were told that was from a -- it had no bearing on
14 this investigation.

15 Q Okay. Did you collect anything of evidentiary
16 value from the vehicle itself and where from?

17 A We collected blood swabs, or suspected blood
18 swabs. We also collected the two handguns and their
19 contents, and I believe that was it.

20 Q Okay.

21 A And of course the photographs.

22 Q Okay. And that was it as far as that Ford Focus?

23 A Yes, sir.

24 Q What did you do next?

25 A After we were finished processing the vehicle we

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1 went to the hospital morgue and collected -- from
2 the victim we collected a set of postmortem prints
3 and what we consider, called postmortem prints, and
4 a GSR kit and we did the GSR, go back there. GSR
5 stands for gunshot residue. And we use a two part
6 test that we try to collect particles that indicate
7 a gun was recently fired from the hands of somebody.

8 Q And who did you do the gunshot residue test on?

9 A That was gonna be Ian Gause.

10 Q The deceased victim?

11 A Yes, sir.

12 Q Okay. Did you do any other gunshot residue test?

13 A No, that was the only one we did.

14 Q Do you know the results of that test?

15 A No, sir, I do not.

16 Q Okay. That's not what you do?

17 A No, sir.

18 Q Okay, all right. Now when you gather that you
19 submit it to SLED; is that correct?

20 A Correct. After ---

21 Q They test it and send it back to the local
22 agency?

23 A Yes, sir.

24 Q All right. As far as the Ford Focus, was there
25 anything else, or the hospital, was there anything

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1 else done by you?

2 A No, sir. No, sir.

3 Q All right. So where did you and Agent Worley go
4 next?

5 A When we finished there Lieutenant Davis advised
6 us that they had located the vehicle that Officer
7 Bacchuss had gotten out with when he originally
8 arrived at the initial scene on Withlacoochee. And
9 they -- he said that we need to go over there 'cause
10 they've got the vehicle. It was in the yard at this
11 house, and so we followed.

12 Q Is that Baker Street location?

13 A I'm sorry?

14 Q Was that Baker Street?

15 A Yes, sir, we followed him there. And they
16 already had a search warrant, and Investigator Barr
17 and another officer -- I can't recollect his name --
18 they were both on scene securing the vehicle.

19 Q Okay, all right. And so then y'all had the
20 search warrant so you executed the search warrant?

21 A Yes, sir.

22 Q And processed the vehicle?

23 A Yes, sir. And in this case they had already
24 gotten out with the people so, again, there was no
25 question as to who the vehicle belonged to. And so

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1 we photographed the vehicle, documented what we saw
2 inside.

3 Q Who did the vehicle belong to?

4 A I can't recall.

5 Q You don't know?

6 A No.

7 Q Okay, all right. But then again, that's not,
8 that wasn't part of your job at that time?

9 A No, sir.

10 Q Okay. And the owners or the passengers of the
11 vehicle were not there by the time, they were
12 already gone by the time you got there?

13 A Yes, sir.

14 Q So what did you to do process this vehicle?

15 A Again, photographed it, looked for any physical
16 evidence that would tie it into the initial crime
17 scene; and in that case we actually did locate an
18 item that proved to be part of the scene.

19 Q All right. Let me show you State's Exhibit 1
20 through 9. If you'd look at those and tell me if
21 you recognize and took all these pictures.

22 A Yes, sir, I was the one who took these
23 photographs.

24 Q Okay.

25 A And I do recognize them.

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1 Q All right. I'm gonna show you what's been marked
2 State's for identification purposes Exhibit 23. I
3 want to ask you if you recognize that and know what
4 that is and how you know what that is.

5 A Yes, sir. Actually it's the item that we
6 recovered from the, the cargo area of that jeep
7 Cherokee, Grand Cherokee.

8 Q And how do you know that's the one you recovered?

9 A It's got my initials and the date on it and the
10 tape. It also has my handwriting which I can
11 obviously identify, and in the bag that it was
12 originally placed in to be transported back to SLED
13 headquarters.

14 Q Okay, all right.

15 MR. CLEMENTS: Your Honor, at this time
16 we'd move State's Exhibit 23 into evidence.

17 THE COURT: Any objection?

18 MR. WILSON: No objection.

19 THE COURT: Without objection State's
20 Exhibit Number 23 admitted into evidence 23.

21 (WHEREUPON, State Exhibit No. 23
22 was admitted into evidence.).

23 MR. CLEMENTS: Your Honor, I'd ask for
24 Agent Hardee -- I don't want to exercise him to
25 death, but if he can step down one more time.

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1 THE WITNESS: No, I don't mind. Believe
2 me, I can probably use some exercise, ain't no
3 problem about it. I was being nice to myself.

4 BY MR. CLEMENTS:

5 Q Now that I've got you with the gloves on let me
6 talk about the pictures real quick.

7 A Okay.

8 Q State's Exhibit 1 is what?

9 A This is the jeep Grand Cherokee that we were
10 escorted to?

11 Q On Baker Street?

12 A Yes, sir.

13 Q State Exhibit 2, same vehicle different angle?

14 A Same vehicle different angle including license
15 tag.

16 Q State's Exhibit 3, the same vehicle different
17 side?

18 A Yes, sir.

19 Q State's Exhibit 4 is a picture of what?

20 A This is the speaker box that -- I assume that was
21 in the cargo area -- and this is a long cylinder
22 that when you actually pull it apart two blades are
23 housed inside.

24 Q Okay. State's Exhibit 5, a closer picture?

25 A Closer picture of the same item.

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1 Q State's Exhibit 6?

2 A Actually what I just told y'all. So everybody
3 can see. Starting to pull apart. You start to see
4 the two knife blades coming out.

5 Q And you took these pictures?

6 A Yes, sir.

7 Q State's Exhibit 7?

8 A Actually this is when they've been both removed,
9 just placed and removed from each other to where now
10 they are two separate weapons.

11 Q And State's Exhibit 8?

12 A Just a different photograph showing the entire
13 thing.

14 Q And State's Exhibit 9?

15 A Different angle, same picture.

16 Q And what is that they're laying across there?

17 A That is going to be the seat to the -- a seat to
18 the Grand Cherokee.

19 Q Now if you would please, if you will pull out
20 State's Exhibit 23 for us.

21 A Okay. This is the original packaging. We
22 package items in paper if we're gonna do further
23 analysis to it. Like in this case it was checked
24 for prints, got my initials and another initial
25 there. And as you can see it has our lab number and

SW - S. HARDEE - DIRECT

1 the item it was logged in as. A further example
2 that this was the same item that we processed that
3 was recovered from the scene. Once you pull it
4 apart you have two blades, not exactly sharp but
5 they do have a point. And again, you can tell also,
6 you look SLED's lab number, the item number, and two
7 initials including my own. Even when we process
8 something we work in teams of two, that way there's
9 usually, especially like I was in training evidence
10 processing at the time. I was signed off as a crime
11 scene investigator but to process stuff in the lab
12 you have to go through another training process. In
13 that case we have a senior agent that has already
14 passed the processing lab to come up behind us, work
15 with us. They add their initials to it as well just
16 to say what Scott did was what we would have done.
17 He was under our supervision at the time.

18 Q And when you first found this and saw this what
19 did you think it was? Do you have any idea?

20 A No. Actually at first it was, it was a two, and
21 like I said but you see it's got this little crease
22 right here once you pull it you got two blades.

23 Q When you look at it can you tell if it's a weapon
24 or deadly weapon at all? Can you ---

25 MR. WILSON: Your Honor, object to the

SW - S. HARDEE - DIRECT

1 Solicitor testifying as to his characterizations.

2 THE COURT: Objection is sustained.

3 BY MR. CLEMENTS:

4 Q What happens when you pull it apart?

5 A Two blades are exposed.

6 Q Ever seen one of these before?

7 A No, sir.

8 Q Ever seen one since?

9 A No, sir. Again, also if you'll notice the bag
10 itself has a identifier for what it is that we
11 placed it in the bag. I'm usually pretty good about
12 putting date and time that I collect it just because
13 it helps me remember, and then we transported from
14 lab for analysis so it stays in our custody until
15 it's sent.

16 Q And they sent it back to local agency?

17 A To my knowledge once I finished with it it goes
18 on to if it had a request from other departments
19 then it goes to those. If not, it gets sent but
20 that's not done by me.

21 MR. CLEMENTS: Beg the Court's indulgence
22 a moment.

23 THE COURT: Yes, sir.

24 BY MR. CLEMENTS:

25 Q Agent Hardee, you said you collected GSR from Ian

SW - S. HARDEE - DIRECT

1 Gause's dead body; is that correct?

2 A Yes, sir, I did.

3 Q Can you please tell the jury how you did that,
4 where you did that from?

5 A Okay.

6 Q And what is the purpose of it?

7 A Okay. GSR which stands for gunshot residue, as I
8 alluded to earlier, it's a test that we do. It
9 picks up particles. There's a two part test. You
10 have a dry test and a wet test. The dry test is
11 basically a little -- it's not a tube, but it's more
12 like, looks almost like a little bottle. And you
13 pull the top off it's got like a little black pad
14 that's got like a little bit of adhesive to it and
15 you just put it all over the hands. And it's got
16 left hand, right hand, back and front. And so you,
17 the one that says left back you just do that
18 indicating). You put the top back into the bottle,
19 put it down. Then it says left front or left palm
20 (indicating) and you just do the same thing to the
21 palm. Then you do the same to the right hand.

22 After you finish with the dry test you do
23 a wet test. A wet test you get swabs. You get a
24 control where you have a, I believe it's five
25 percent nitric acid. It doesn't do any harm to the

SW - S. HARDEE - DIRECT

1 body. You put a couple of drops on there, and you
2 put it in a — you get two, collect two swabs from
3 an area where you don't, you wouldn't suspect there
4 to be any kind of gunshot residue like on their leg
5 if they're wearing long pants 'cause normally you're
6 not going to get gunshot even if they're shooting
7 all day, chances are it's gonna stay on the pants
8 but not on the leg. So we collect that sample.

9 Then after that you get two swabs, you wet them with
10 the same nitric acid and swab the back, swap the
11 front, and/or again on the right hand. Finally
12 we'll do a cartridge case if we have a cartridge
13 case if it's not unused. When we're done with that
14 we put all the tubes, all the bottles, back into the
15 package. It's a prepackaged item that we get from a
16 forensic supply company. Once we're finished with
17 that there's a little bit of paperwork that we fill
18 out which helps the trace department. Then we seal
19 up the envelope, put our initials on it. It's an
20 item of evidence and we secure it inside our vehicle
21 like we would any item of evidence.

22 Q Once you collect this what are you trying to find
23 out?

24 A That, we're trying to see if that person fired a
25 weapon recently, fired a handgun recently. Whenever

SW - S. HARDEE - DIRECT

1 you have a gun discharge a bullet it's gonna have
2 powders and stuff that float around in the air and
3 they should get on the person's clothing, on their
4 hands, face, whatever. And so we do it to see if
5 that person did, in fact, fire a weapon recently.

6 Q Okay. So you fire these particles come out the
7 barrel; is that correct?

8 A Yes, sir.

9 Q Or any other crevice, crack, they can get out of?

10 A Yes, sir.

11 Q Now you collect it, you don't test it, do you?

12 A No, sir, that's for the trace department.

13 Q And when you take it back to SLED what do you do
14 with it?

15 A Put it in a Manila envelope, seal it up, initial
16 and date it. When I log it into evidence I put it
17 in -- I take it downstairs to the log-in individuals
18 that work in log-in, and then they submit it to that
19 department that I'm requesting that test to be done
20 for.

21 Q Okay. And that's the end of what you do with it?

22 A Yes, sir.

23 Q Okay. Just out of abundance of caution, we
24 covered three scenes you went to and processed, what
25 you did and what you collected. Is there anything

SW - S. HARDEE - CROSS

1 else that you did that I failed to ask you about in
2 regards to this investigation?

3 A Yeah. After we left the scene with the Jeep
4 Grand Cherokee we went to the Marion Police
5 Department because they had collected evidence.
6 They collected clothing, clothing belonging to I
7 believe Mr. Woodbury maybe, and that was collected
8 by an officer. And then Lieutenant Smith had
9 collected those swabs, and we took custody of those
10 to save them of having to come up to Columbia. And
11 we filled out a chain, and we collected those items
12 and took them with our evidence so they wouldn't
13 have to. Everything is kind of kept together.

14 Q Okay, all right. And that was it?

15 A That was it.

16 Q Okay. I appreciate that. Thank you so much,
17 Agent Hardee. If you would please answer any
18 questions that Mr. Wilson may have.

19 A Yes, sir.

20 THE COURT: Cross-examination.

21 MR. WILSON: Thank you very much, Your
22 Honor.

23 **CROSS-EXAMINATION**

24 BY MR. WILSON:

25 Q Agent, let me, if I could, start out by showing

SW - S. HARDEE - CROSS

1 you some photographs which have been marked for
2 identification. And I'm referring to Defendant's
3 Exhibit numbers 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
4 and 3. I just ask you if you can look at those for
5 me please, sir.

6 A Yes, sir.

7 Q All right. And can you identify each of those
8 other than exhibit 3?

9 A Yes, sir, I can, as photographs that we took at
10 the scene.

11 MR. CLEMENTS: Your Honor, I think number
12 three is in evidence. Number 13, the State does not
13 object to. Number 12, we don't have any really
14 objection to that. Number 11, we don't object to,
15 and 10 we don't object to. Number 9, we don't
16 object to. Number 8 we don't object to. Number 6
17 and we have a matter of law we need to discuss and,
18 also Your Honor, number 5 and number 4 we object to
19 that on the basis of relevance. And that's it on
20 that.

21 THE COURT: Can I see the photos please.

22 MR. WILSON: Yes.

23 THE COURT: All right, Defendant's 8, 9,
24 10, 11, 12 and 13 are admitted without objection.

25 (WHEREUPON, Defendant Exhibits Nos. 8, 9,

1 MR. CLEMENTS: No, sir.

2 MR. WILSON: Nothing further.

3 THE COURT: We'll stand down for a few
4 minutes.

5 You can step down, but you're not allowed
6 to discuss your testimony.

7 THE WITNESS: Yes, sir.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE COURT: Anything from the State before
11 I bring the jury back in?

12 MR. CLEMENTS: No, Your Honor, thank you.

13 THE COURT: Defense counsel?

14 MR. WILSON: No.

15 THE COURT: Bring me the jury, Mr.
16 Bailiff, please.

17 (WHEREUPON, the jury was returned to the
18 courtroom at approximately 3:43 p.m., and
19 the following proceedings commenced in
20 open court.)

21 THE COURT: Mr. Wilson.

22 MR. WILSON: Thank you very much.

23 THE COURT: You may continue, sir.

24 BY MR. WILSON:

25 Q Agent, let me start by showing you what's been

SW - S. HARDEE - CROSS

1 marked as State's Exhibit Number 11.

2 A All right.

3 Q Ask you if you would take a look at that for me.

4 A Yes, sir.

5 Q Now those are the two weapons that you retrieved
6 from the trunk of the car that you found at the
7 hospital?

8 A Yes, sir.

9 Q Okay.

10 A Yeah.

11 Q And let me ask you, did you perform any other
12 tests on those particular weapons once you found
13 them?

14 A Other than they were photographed we observed
15 what appeared to be suspect blood on one of the
16 guns; and if I'm not mistaken, I believe we
17 collected two swabs at that time.

18 Q And which gun was it that you swabbed for the
19 suspected blood, which of the two weapons?

20 A It would be the revolver.

21 Q The revolver, okay. Did you send those swabs to
22 SLED for them to analyze and test to determine:
23 One, if in fact it was blood, and if so, whose blood
24 it was?

25 A Yes, sir.

SW - S. HARDEE - CROSS

1 Q All right. And do you have the results of that
2 test?

3 A No, sir, I don't.

4 Q Okay. So at this point you don't know whose
5 blood it was or even if it was blood?

6 A No, absolutely right.

7 Q Now did you test the second gun which would have
8 been the 380? Did you also test that gun or swab
9 it?

10 A I can't recall right now. I don't have any of my
11 paperwork with me to...

12 Q Well, let me show you this SLED forensic -- take
13 a look at that for me if you would please, sir, and
14 see if that will help you.

15 MR. WILSON: I'm sorry, Your Honor, let me
16 mark this for identification purposes.

17 (WHEREUPON, Defendant Exhibit No. 15 was
18 marked for identification only.)

19 BY MR. WILSON:

20 Q All right. Let me show you what's marked for
21 identification purposes Defendant's Exhibit Number
22 15 and just ask you if you can identify that first.

23 A Yes, sir, this would have been --

24 Q Don't tell me anything about it.

25 A I want to make sure my -- it's got my signature

SW - S. HARDEE - CROSS

1 there so this is the one.

2 Q All right.

3 A Know who it is, what it is.

4 MR. WILSON: Your Honor, I'm not really
5 offering this. I'm simply wanting to -- I'm just
6 using it to refresh his memory.

7 THE COURT: You can look at it.

8 THE WITNESS: Yes, sir, thank you. Okay.

9 BY MR. WILSON:

10 Q All right. And so my question again was in
11 regards to the 380 weapon. Did you also, or did
12 someone give you swabs for that to take to SLED?

13 A Actually, as it says here, we -- two swabs were
14 collected from the grips, trigger, and slide ribbing
15 of the 380 semi-auto, that if there had been
16 suspected blood on it I would have indicated
17 suspected blood on there so there obviously wasn't
18 suspected blood on that gun.

19 Q Now in regards to State's Exhibit Number 11 which
20 has two weapons, if you would -- and I apologize
21 Your Honor, could he come down?

22 THE COURT: Yes, sir.

23 BY MR. WILSON:

24 Q What I want you to do for me first is just point
25 out to the jury which one is the revolver that had

SW - S. HARDEE - CROSS

1 the suspected blood on it and which one is the 380?

2 A Okay. This right here is the revolver that had
3 suspected blood. This right here was the 380
4 semiautomatic that he just collected for DNA, touch
5 DNA.

6 Q Agent, would you come down this end so everybody
7 at the end too?

8 A I'll repeat everything. This right here was the
9 revolver with suspect blood and this is the 380
10 automatic, semiautomatic I believe that we collected
11 swabs just for touch DNA.

12 Q Thank you, sir. Now let me ask you, in regards
13 to State's Exhibit Number 11 which are these two
14 weapons did you make a determination as to whether
15 or not these weapons were capable of being fired?

16 A That -- not by myself. They would have been sent
17 to another department that specializes in firearm
18 examination.

19 Q Okay. Did you do any kind of testing which would
20 have been submitted to SLED for them to make that
21 determination?

22 A No, sir, I would have just submitted the weapons
23 themselves to the firearms department, and then they
24 would have done whatever they do to see if the
25 weapons were serviceable, fireable.

SW - S. HARDEE - CROSS

1 Q Let me ask you if there is, in fact, a test where
2 you can swab the interior of the barrel of the gun
3 to see if it were recently fired?

4 A To my knowledge, no. I mean, you can swab to see
5 if there's gun powder residue in it; but it wouldn't
6 indicate if it was recently fired unless the gun was
7 reported to be cleaned prior to such a date. But
8 even then I don't know how sensitive that
9 examination would be if they could go back even
10 further; but I mean, to age it, I don't think so.
11 That's not my area of expertise though.

12 Q Okay, all right. Now where are these guns now?

13 A I don't know. They could either be in Marion or
14 they can still be at SLED. Once I submit it to that
15 department I'm done with it.

16 Q Okay.

17 A It goes from that department when they're
18 finished with their examination. Then they'll send
19 it downstairs to log-in. And then when Marion PD
20 comes to pick up the evidence it may have been with
21 that, or it could still be in log-in. I'm not sure
22 where it is.

23 Q Okay, all right. So when is the last time that
24 you would have had possession of either of these
25 weapons?

SW - S. HARDEE - CROSS

1 A Let's see, okay, the -- both handguns had two
2 examination requests placed on. One was for
3 firearms and one was for latent prints. Latent
4 prints would have been conducted first, and then
5 firearms would have been done so we would have look
6 back at paperwork to give me exact date as to when
7 they were examined for latent print evidence.

8 Q Okay, so are you saying to me that they were, in
9 fact, submitted for latent prints?

10 A Yes, sir.

11 Q So they were submitted to someone at SLED for
12 them to make a determination as to whether or not
13 there were for fingerprints on the gun and whether
14 or not they could lift those print and match them to
15 something?

16 A Correct.

17 Q Or somebody?

18 A Yes, sir.

19 Q And do you know what the results of any of those
20 tests were?

21 A No, sir. That's in the latent print section of
22 crime scene which I wasn't a latent print examiner.

23 Q Now you said of the two guns the revolver had
24 five shells in it, or is it six?

25 A The revolver ---

SW - S. HARDEE - CROSS

1 Q Or do we know?

2 A Let's see. A revolver -- I kind of spoke all
3 over myself. The revolver had five 38-Special
4 caliber cartridge removed from the cylinder so that
5 was five shot.

6 Q Okay. Is there a photograph when you took those
7 five, did you take a photograph of taking those five
8 cartridges out of the gun and separating them and
9 taking a picture of them?

10 A I can't recall. If you've got one --

11 Q I'm just asking.

12 A I can't recall from the top of my head, no.

13 Q All right. Do you know whether or not, do you
14 know when bullets had been placed in that gun last
15 --

16 A No, sir.

17 Q ---before you took the pictures?

18 A No, sir.

19 Q Could it have been recently as 15, 20 minutes
20 before you took the pictures?

21 A Sure -- that would be --

22 Q An hour?

23 A ---who has access to the trunk of the car.

24 Q Yes.

25 A But that is following whatever happened before I

SW - S. HARDEE - CROSS

1 got them, it's possible.

2 Q Okay. Now secondly, with a 380 there was a
3 magazine which is Defendant's Exhibit Number 11.

4 Take a look at that for me please.

5 A Yes, sir.

6 Q And how many bullets are there?

7 A Six.

8 Q Six. And how many bullets does that magazine
9 hold?

10 A Actually I can't recall.

11 Q Okay, all right. Do you know whether it's more
12 than six or less than six?

13 A Again, I can't recall.

14 Q Okay.

15 A I don't know what the -- I believe this was a
16 KBI. I don't know what their magazine capacity is.

17 Q Okay. Well, who emptied the bullets from the
18 magazine?

19 A That would have been me and there were six.

20 Q Then was it full when you emptied it?

21 A I didn't have an extra bullet to check to see if
22 it was full so.

23 Q Okay.

24 A I wouldn't be able to tell.

25 Q And where is that gun now you say it's still

SW - S. HARDEE - CROSS

1 either at SLED or ---

2 A With Marion PD.

3 Q ---or Marion Police Department have it. If you
4 had the gun and you had the shells -- I'm sorry, if
5 you had the cylinder and the magazine ---

6 A Yes, sir.

7 Q ---and you had the shells, you could tell us
8 whether or not six was a full load or whether it was
9 less than a full load?

10 A Yeah, if I had the gun in my possession I could.

11 Q But you don't have it?

12 A No, sir.

13 Q Now let me ask you in regards to -- there was
14 some talk about some blood spots being found in the
15 yard at what, Whichlacoochee [sic].

16 A Yeah, I'm having the same trouble you are.

17 Q Let me ask you, did you take samples of whatever
18 that substance was at Whichlacoochee?

19 A No, sir. We were advised that Lieutenant Smith
20 had already collected samples from that location and
21 so it would have been redundant.

22 Q Did you receive samples from the lieutenant to
23 take to SLED to have them analyzed?

24 A Yes, sir.

25 Q All right. And do you have results from those

SW - S. HARDEE - CROSS

1 tests?

2 A No, sir, they would have been submitted to
3 another department. I wouldn't have seen that
4 report.

5 Q Okay. Now I also understand that you looked for
6 some shell casings?

7 A Yes, sir.

8 Q Okay. And you didn't find any and it was -- this
9 was you and Mr. Worley?

10 A Worley.

11 Q Worley?

12 A Yes, sir.

13 Q The two of you were searching ---

14 A Together.

15 Q ---for the shell casings?

16 A Yes, sir.

17 Q And did you look up under the carport area of the
18 house where the cement is in front of the house?

19 A Yeah. We went up under there and looked around
20 and we didn't see any.

21 Q Okay. Now there was a van parked in the yard?

22 A Yes, sir.

23 Q Now you got there at what time in the morning
24 or -- yeah, which would have been the morning of the
25 30th when you arrived, correct?

SW - S. HARDEE - CROSS

1 A Yes, sir, and I can't recall. It was in the
2 morning time. I mean, it was still dark so.

3 Q Okay.

4 A But I can't recall exact approximate time.

5 Q And it had already rained?

6 A Yes, sir.

7 Q And the vehicle was under their carport. Could
8 you tell whether or not the vehicle had been under
9 the carport before it rained or after it rained, did
10 you look to see if it was dry up under?

11 A No, sir.

12 Q All right, okay. Now let me ask you, you took
13 pictures of the silver Ford Focus; is that correct?

14 A Yes, sir.

15 Q And why was that?

16 A It was at the hospital that the victim or the
17 victims drove to, and so it became probative to that
18 investigation.

19 Q You testified that there were two holes which
20 appeared to be bullet holes in the vehicle; is that
21 correct?

22 A Yes, sir, I think I said several. I'm not sure
23 of the number.

24 Q Several?

25 A Yes, sir.

SW - S. HARDEE - CROSS

1 Q All right. And you also said that someone told
2 you that it wasn't related?

3 A Yes, sir.

4 Q Who told you that?

5 A Again, I mean, I can't be sure but I believe it
6 was the victim's sister who actually owned the
7 vehicle. She was, I believe, military and stationed
8 in Texas and we talked to her. And I actually
9 talked to Mr. Rishawn Gause also, and I believe if
10 I'm not mistaken it was her that told me that it was
11 previous.

12 Q All right. Can I get that back from you. Let me
13 ask you in regards to State's Exhibit 23.

14 A Yes, sir.

15 Q This item, did you perform any swab testing on
16 that item?

17 A Yes, sir.

18 Q All right. And what was the conclusion or
19 results of any testing that you did?

20 A We processed for latent prints and we processed
21 it for suspected blood which meant we collected two
22 swabs and then sent to DNA for analysis.

23 Q Sent to DNA for analysis. And did you get a
24 result back from those tests?

25 A No, sir, I didn't.

SW - S. HARDEE - CROSS

1 Q All right. Have you seen any kind of results
2 from those tests from the time you submitted them
3 till today testifying here in court?

4 A No, sir.

5 Q Did you get any result back from the fingerprint
6 department of SLED as to whether or not there were
7 any fingerprints on this item?

8 A No, sir.

9 Q Okay, all right. Now you're not telling this
10 Court and this jury that this weapon was used in
11 this case, are you?

12 A No.

13 Q All right. What you're simply saying is that it
14 was found in the car and you photographed it and you
15 brought it here and you tested it?

16 A Yes, sir, I didn't render any opinion.

17 Q Right. But in fact, in fact, I was asking you
18 about the blade. You actually swabbed the blades of
19 this item?

20 A Yes, sir.

21 Q 23, did you not?

22 A Yes, sir.

23 Q And you sent that to be tested?

24 A Right.

25 Q All right. Now did you suspect that there might

SW - S. HARDEE - CROSS

1 be blood on there?

2 A Yes, sir, I believe there's visibly suspected
3 blood. I use suspected because I'm not sure if it
4 is but that's what the DNA department is for.

5 Q And based on your visual observation you wouldn't
6 know whether it was human blood or animal blood or
7 even if it was rust?

8 A No, sir.

9 Q Just that it appeared to be a red liquid dark
10 color?

11 A Yeah.

12 Q All right, just one second. Let me ask you in
13 regards to the guns. Did you make a determination
14 as to who owned those guns?

15 A The -- I didn't make a determination but when I
16 spoke with Mr. Rishawn Gause, he did say that the
17 semiautomatic was his.

18 Q Okay, all right. Did he say who the other one
19 belonged to?

20 A No, sir.

21 Q No other questions. Thank you, sir.

22 THE COURT: Any redirect?

23 **REDIRECT EXAMINATION**

24 BY MR. CLEMENTS:

25 Q At this time in 2013 you were a crime scene

SW - S. HARDEE - REDIRECT

1 agent; is that right?

2 A Yes, sir.

3 Q And Mr. Wilson asked you about all these test
4 results?

5 A Yes, sir.

6 Q What is the normal expectation for a crime scene
7 agent who gathers evidence ever get test results
8 back?

9 A We don't. The results always go to the
10 investigator in charge of this investigation. They
11 get mailed or emailed to them so I don't see
12 results.

13 Q Thank you. No further questions.

14 THE COURT: Any recross?

15 MR. WILSON: Nothing further, Your Honor.

16 THE COURT: Sir, you may step down. Thank
17 you.

18 THE WITNESS: Yes, sir.

19 THE COURT: Call your next witness please.

20 MR. CLEMENTS: Your Honor, we'd call
21 Mr. Charles Wilson.

22 THE CLERK OF COURT: Mr. Wilson, if you'd
23 place your left hand on the Bible, raise your right
24 hand.

25 WHEREUPON,

SW - C. WILSON - DIRECT

1 **CHARLES WILSON,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 THE CLERK OF COURT: Have a seat in the
5 witness chair.

6 **DIRECT EXAMINATION**

7 BY MR. CLEMENTS:

8 Q Good afternoon.

9 A All right.

10 Q Can you please state your name for the jury and
11 tell us where you live?

12 A My name is Charles Wilson. I stay on [REDACTED] South
13 Withlacoochee.

14 Q Okay. I'm gonna back up right here. I'm a
15 little hard of hearing; but you speak so soft, I
16 know I can hear you if these jurors can hear you
17 okay. It's very important they hear what you say so
18 if you don't mind, try to speak up. Tell us where
19 you live again.

20 A I stay on [REDACTED] South Withlacoochee Avenue.

21 Q And did you live there on September 29th, 2012?

22 A Yes.

23 Q Who lives there with you?

24 A My mother and that will be it.

25 Q Okay. And is it just the two of y'all there?

SW - C. WILSON - DIRECT

- 1 A Stays there like every day, yes.
- 2 Q Okay. I'm gonna show you State's Exhibit Number
- 3 17. What is that?
- 4 A That will be my front yard.
- 5 Q That's your front yard?
- 6 A Yes.
- 7 Q Is that your car shed there?
- 8 A Yes, sir.
- 9 Q Okay. Charles, how old are you?
- 10 A 29.
- 11 Q How long have you lived in Marion, lived at South
- 12 Withlacoochee?
- 13 A South Withlacoochee I'd say over five years.
- 14 Q Okay. How long have you lived in Marion?
- 15 A All my life.
- 16 Q All your life. Did you know Ian Gause?
- 17 A Yes, sir.
- 18 Q You know Rishawn Gause?
- 19 A Yes, sir.
- 20 Q Do you know Ky Graham?
- 21 A Yes, sir.
- 22 Q Do you know Ronnie Boatwright?
- 23 A Yes.
- 24 Q Do you know Richard Woodbury?
- 25 A I knew him not that long but I knew him.

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1 Q Okay. How about Lamont Davis?

2 A No, sir.

3 Q Okay, all right. How long did you know Rishawn
4 and Ian Gause? How long had you known them?

5 A I went to school with them.

6 Q Okay. How about Ky Graham, how long had you
7 known him?

8 A Let's see, I knew Ky, had to be some years. He
9 used to stay across the street from my aunt, my aunt
10 house.

11 Q Okay. He'd been -- you've known him for several
12 years?

13 A Yes, sir.

14 Q Okay. You recall what you were doing late
15 evening in September 29th, 2012?

16 A I know me and Rishawn were at my house, and we
17 was on the laptop downloading music.

18 Q Downloading music?

19 A Yes, sir.

20 Q Were y'all inside the house or under the carport,
21 car shed, where were you exactly?

22 A Underneath the car shed. Under the car shed.

23 Q Who else was there kind of hanging around?

24 A Ron Boatwright, Ian Gause, Rishawn, that's all I
25 can recall right now. That's all I can recall right

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1 now.

2 Q Do you recall Ky Graham coming up to your house?

3 A Yes, sir.

4 Q Who did he come up there with?

5 A Initially when he got out the vehicle it was just
6 him. He came up on the car shed where we were.

7 Q All right. So he got out of the car by himself
8 and came up under the shed?

9 A Yes, sir.

10 Q Do you know what kind of car he got out of?

11 A It was a black Jeep Cherokee.

12 Q I'm gonna show you State's Exhibit Number 1 and
13 tell this jury if you recognize this at all?

14 A Yes, sir.

15 Q What is that?

16 A Black Jeep Cherokee. I recognize, Ky got out of
17 that.

18 Q Ky got out of that?

19 A Yes, sir.

20 Q He get out the passenger side or the driver's
21 side, or do you know?

22 A I would assume the driver -- not the driver, the
23 passenger side.

24 Q Okay, he wasn't driving?

25 A I assume he wasn't.

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- 1 Q Okay. He came up, and did y'all have any
2 conversation or anything?
- 3 A Yes, sir.
- 4 Q All right. Pleasant?
- 5 A Yes, sir. Yes, sir.
- 6 Q Okay, all right. Did anybody else come up next?
- 7 A Richard Woodbury.
- 8 Q He walked up?
- 9 A Yes, sir.
- 10 Q He speak to you, speak to everybody?
- 11 A Yes, sir, he spoke to everyone, except Ian Gause.
- 12 Q And do you have any reason to know why he didn't
13 speak to Ian?
- 14 A No, sir.
- 15 Q Okay. Well, what happened as a result of that?
- 16 A I recall Ian Gause saying, you don't see me, or
17 something like that.
- 18 Q Okay. Did they begin to fuss or argue?
- 19 A He said that and it was kind of like he just
20 walked off.
- 21 Q Who walked off, Richard or Ian?
- 22 A Richard.
- 23 Q Okay.
- 24 A Yes, sir.
- 25 Q Walked off in what direction?

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- 1 A Back towards the jeep.
- 2 Q And where was the jeep parked at, in the
3 driveway, along the roadside, where?
- 4 A The jeep was parked right behind the van, my
5 mother's van you see in the picture.
- 6 Q Okay, all right. And he walked back towards the
7 jeep?
- 8 A Yes, sir.
- 9 Q Okay. What do you recall happening next?
- 10 A He walks back towards the jeep. I thought
11 everything was over. That's when he -- he said
12 something else. He said something to Ian.
- 13 Q He said something to Ian. You don't know what it
14 was?
- 15 A No, sir.
- 16 Q What did Ian do as a result of that?
- 17 A Ian standing all the way under the car shed. He
18 walked towards the jeep to where he's outside the
19 jeep at.
- 20 Q So he was all the way under the car shed---
- 21 A Yes, sir.
- 22 Q ---Ian walks out and walks towards the jeep?
- 23 A Yes, sir.
- 24 Q Okay. Then what happened?
- 25 A There was a lot of trash talking I guess, you can

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1 say like that.

2 Q A lot of trash talking, smack talking?

3 A Yes, sir.

4 Q Both of them?

5 A Yes, sir.

6 Q Okay, all right. And then what did you notice
7 happen next?

8 A After that -- let's see.

9 Q Let me ask you this question. When they start
10 talking a lot of smack to each other what did the
11 rest of y'all do? Did y'all try to do anything?

12 A At that point where they actually was like meet
13 up like, almost meet up between them, so my back is
14 like turned to Ian Gause and I'm telling Richard to
15 go ahead and leave, you know.

16 Q Told Richard to leave?

17 A Yes, sir.

18 Q Okay. How about the rest of the fellas, were
19 they trying to break it up too?

20 A I was kind of concerned more about what was going
21 on right there so I ain't really see where everybody
22 was at.

23 Q So you just got in between them?

24 A Yes, sir.

25 Q Okay, all right. After you told Richard to leave

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1 what happened?

2 A They still back and forth talking trash to each
3 other.

4 Q All right.

5 A And let's see, at one point Richard said
6 something to Ian Gause which I try to like put my
7 hands out like this behind me so (indicating). Ian
8 try to actually break passed me.

9 Q So Ian tried to break passed you?

10 A Yes, sir.

11 Q Towards Richard?

12 A Yes, sir.

13 Q So would it be fair or not to say it was real
14 heated?

15 A Yes, sir.

16 Q Okay. Do you have any idea what it was about?

17 A No, sir.

18 Q Okay. And after Ian tried to break passed you
19 when you had your arms out, then what happened next?

20 A I kind of like turn around and like almost start
21 to wrestle him.

22 Q Okay.

23 A That's when I noticed he had a gun out.

24 Q All right. Where did he have the gun at?

25 A He had it by his side. He never had it like up

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1 or nothing like that. But I got my head ducked down
2 like, I'm about to hug him like. That's when I look
3 down I see Ian had, he had the gun out.

4 Q All right. Did he ever shoot that gun?

5 A No, sir.

6 Q Did he ever point that gun at anybody?

7 A No, sir.

8 Q All right. Didn't do anything, just had it down
9 by his side?

10 A Yes, sir.

11 Q All right. What else happened?

12 A At that point when I notice he had his gun I kind
13 of like moved out the way 'cause I ain't want like
14 tackle him or something go off and I get shot.

15 Q So you walked, tried to walk, walk him away or
16 you walk away?

17 A. I walk myself from the situation.

18 Q Did you ever hear a gunshot?

19 A Yes, sir.

20 Q How many?

21 A One.

22 Q Where did that come from, if you know?

23 A Like if you standing close to that fence so it's
24 on this side of me to my left side.

25 Q So you're standing close to the fence?

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- 1 A Yes, sir.
- 2 Q Kind of facing the road?
- 3 A Yes, sir.
- 4 Q And it was to your left side?
- 5 A Yes, sir.
- 6 Q All right. Where was Ian at this point in time?
- 7 A Well, the gun shot -- he still behind me.
- 8 Q He's still behind you?
- 9 A Yeah.
- 10 Q So it wasn't Ian that fired the shot?
- 11 A No, sir, no.
- 12 Q Do you know who fired the shot?
- 13 A I didn't see who fired the shot, but I heard -- I
- 14 don't know.
- 15 Q You heard it was who?
- 16 A It was Rishawn.
- 17 Q Okay. Did he fire it in the air or fire where?
- 18 A I'm assuming the air; I didn't see it.
- 19 Q Okay, all right. And what did that do? When he
- 20 did that what did everybody do then?
- 21 A Everybody like froze, like, oh.
- 22 Q Kind of stepped back?
- 23 A Yeah.
- 24 Q And froze for a minute?
- 25 A Yeah, yeah.

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1 Q All right. Well, after that did everybody stay
2 frozen?

3 A No. Richard Woodbury like, I thought he was
4 leaving, he was going to leave after that, but he
5 kind of like came back talking some more junk ---

6 Q So he went to his truck?

7 A He was like by the side of the truck.

8 Q He was by the side of his truck?

9 A By the side of his truck.

10 Q And he came back talking more trash?

11 A Yeah.

12 Q Okay. And what did Ian do?

13 A Let's see. You talking about ---

14 Q He talking trash too?

15 A Yeah, he talking trash too something about like
16 what part you at now.

17 Q Say what now?

18 A Like what part you at, like -- after I try to
19 grab him I seen the gun, I'm out the situation, kind
20 of went back a little bit.

21 Q Did Ian ever pull that gun up ---

22 A No, sir.

23 Q ---and point it?

24 A No, sir.

25 Q Okay. So what happened next?

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1 A After I removed myself from the situation they --
2 and after that they like in the road really. They
3 in the road by a light pole and they like face to
4 face talking to each other.

5 Q So like nose to nose?

6 A Yeah, you could say that, yes, sir.

7 Q Bowed up sort of?

8 A Yes, sir, they still just talking to each other.

9 Q Okay, all right. Did you ever see anyone throw
10 any punches, push anybody, ever see anybody actually
11 start fighting other than just talking?

12 A In the road, no, sir.

13 Q Okay, all right. Well then did they move away
14 from the road, come back towards the yard?

15 A Yes, sir. At that time I'm standing to the side
16 in the road, somebody took off running.

17 Q Okay. Who was that?

18 A I couldn't really tell you. Both of them really,
19 yes, sir.

20 Q All right. Then what happened next?

21 A After that they end up under the car shed like in
22 front of the van.

23 Q So they took off running, what direction were
24 they running in?

25 A They running toward back towards the house that's

SW - C. WILSON - DIRECT

1 under the car shed.

2 Q Back towards the house?

3 A Yes, sir.

4 Q And they got under the car shed or at the car
5 shed?

6 A Under the car shed.

7 Q What were they doing?

8 A I couldn't tell you. I didn't see. All I can
9 tell you that I heard like chairs and stuff moving
10 around. I saw concrete.

11 Q So you heard noises. Would it be fair to say
12 sounding like scuffle noises what kind of noises?

13 A Yes, sir.

14 Q Okay. Were they still talking?

15 A No, sir.

16 Q They were -- were they physically engaged with
17 each other at that time?

18 A I assume that, yes, sir.

19 Q But you were ---

20 A I didn't see.

21 Q Had the van between y'all?

22 A I'm still behind the van. I can't really see
23 what's going on in front of me.

24 Q So then what happens?

25 A After that, after the tussling and stuff was over

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1 somebody shot through the backyard, and that's when
2 I see Ian coming back from underneath the car shed.

3 Q Saw somebody ran through the backyard?

4 A Yes, sir.

5 Q But it wasn't Ian 'cause he came out from under
6 the shed?

7 A Yes, sir.

8 Q What did he do?

9 A He was telling his brother he need to go to the
10 hospital.

11 Q All right. And what happened then?

12 A I remember Rishawn said something like, you don't
13 need to go to the hospital, you alright, or
14 something. I don't know so...

15 Q Did they get in the car?

16 A Eventually they did.

17 Q Okay. What did they do before they got in the
18 car?

19 A Ian come back underneath the car shed; and he's
20 like, you need to go to the hospital. And he said
21 something about, I should have shot him, or
22 something like that.

23 Q Okay, all right. Did he -- did you see any blood
24 on him or see any injuries or hear anything about
25 any injuries?

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1 A At the point when he said he need to go to the
2 hospital I seen Rishawn like stick his elbow out
3 like, I got cut or something, it ain't no big deal.

4 Q Rishawn said he got cut?

5 A Yes, sir.

6 Q But did you ever see any injuries on Ian?

7 A No, sir.

8 Q Okay, all right. They got in the car and left?

9 A Yes, sir.

10 Q Okay. And then did Richard come back there? Was
11 Ky till there?

12 A Yeah, was Ky still there 'cause I remember
13 apologizing to him. I don't know what's going or
14 nothing like that, you know.

15 Q And Richard came back?

16 A Oh, yes, he did.

17 Q What happened then, what did he say?

18 A He came back and say he left something or
19 something like that.

20 Q He said he left something?

21 A Yea.

22 Q What did he pick up?

23 A He picked up like a bamboo stick thing something.

24 Q Bamboo stick? I'm gonna show you State's Exhibit
25 23. Was it this?

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1 A Yes.

2 Q This was it?

3 A Yes, sir. It didn't look like that though. It
4 was broken apart.

5 Q It was broken apart like this?

6 A It was one of them.

7 Q It was one of them. So he dropped one of them?

8 A Yes, sir.

9 Q Did you see if he had the other one or not?

10 A No, sir.

11 Q You don't know but he came back and picked this
12 up?

13 A Yes, sir.

14 Q All right. And after he picked it up what did he
15 do then?

16 A He left.

17 Q He left. Who left with him?

18 A Ky, Ky Graham.

19 Q Did Ky leave with him?

20 A Yes, sir.

21 Q All right. Did you ever see what happened to
22 Lamont?

23 A Lamont, during the part where I'm holding him and
24 I'm standing behind with my arms like this Lamont
25 actually, he actually got in the driver's seat and

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1 told Richard let's go, get in, let's go, let's go.

2 But I believe, I'm gonna say, when he heard a
3 gunshot I didn't see him no more.

4 Q He was gone?

5 A Yeah, he was gone.

6 Q So he was trying to get Richard to go too, right?

7 A Yeah. Yes, sir.

8 Q You told Richard to go?

9 A Yes, sir.

10 Q How about Ky?

11 A I really don't know about Ky. I really don't.

12 Q Well what opportunity, if any, did Richard have
13 to go? Did he have opportunity to leave?

14 A Oh, yes, sir.

15 Q Yes, sir?

16 A Yes, sir.

17 Q Okay. But he didn't do it?

18 A No, sir.

19 Q Now do you recall Anthony Bacchuss coming up to
20 the house?

21 A Bacchuss, I don't know who that is.

22 Q The police officer.

23 A Oh, Bacchuss.

24 Q Yeah.

25 A After I came back to the house myself I seen him

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1 in the car and I start talking to him for a few
2 seconds.

3 Q Okay. Did you see him talk to Richard?

4 A No, sir.

5 Q Do you recall him asking you what happened?

6 A Mr. Bacchuss?

7 Q Yeah.

8 A Yes, sir.

9 Q All right. Was this before or after you went to
10 Fusion?

11 A This after.

12 Q After?

13 A Yes, sir.

14 Q And did you tell him what happened, what you saw?

15 A Yes, sir.

16 Q Okay, all right. After Richard and Ky left you
17 at your house was Ronnie still there?

18 A Yes, sir.

19 Q Everybody else had gone?

20 A Yes, sir, we like left at the same time really.

21 Q And went to Fusion?

22 A We went to another little club first, then me and
23 Ronnie went to Fusion.

24 Q Okay, all right. When law enforcement talked to
25 you, you remember talking to Lieutenant Flowers,

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1 either Lieutenant Smith?

2 A Yes, sir.

3 Q Okay. Did they -- did anyone come get you out of
4 Fusion to come talk to them?

5 A Actually I was in the line to go inside but
6 somebody had pull me out, and then I had talked to
7 them, either Flowers, I think it was him, Flowers..

8 Q Okay. When did you find out what happened to
9 Ian?

10 A Right -- I pull out the line and talked to
11 lieutenant. He asked me what happened. I told him
12 what I knew and I asked about Ian. Then he said
13 he's barely hanging on to his life then.

14 Q Okay. Mr. Wilson, how many opportunities did
15 Richard have to leave before the fight ensued?

16 A I would say about three.

17 Q Three times to leave?

18 A Yes, sir.

19 Q Okay. From what you saw, you might can't tell
20 from what you saw or could tell what you saw, but
21 from what you saw did it look like anybody had to
22 hurt somebody seriously?

23 MR. WILSON: Your Honor, I'm gonna object
24 to that question.

25 THE COURT: I'll sustain the objection.

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1 BY MR. CLEMENTS:

2 Q Mr. Wilson, do you have any friends here you're
3 trying to help today?

4 A No, sir.

5 Q You have any enemies you're trying to punish?

6 A No, sir.

7 Q You telling the truth?

8 A Yes, sir.

9 Q Now you've been -- have you gotten in trouble
10 before with the law?

11 A Yes, sir, when I was younger, yes, sir.

12 Q And you got a crack distribution conviction; is
13 that correct?

14 A Yes, sir.

15 Q And you got open container of beer or wine?

16 A Yes, sir.

17 Q That's it. That's all the trouble you've been in
18 with the law?

19 A Yes, sir.

20 Q Okay. Please answer any questions Mr. Ralph
21 Wilson has.

22 **CROSS-EXAMINATION**

23 BY MR. WILSON:

24 Q When was your distribution of crack?

25 A I want to say 2003 or -4.

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1 Q Okay. Now that ---

2 MR. CLEMENTS: Your Honor, I would object
3 if he is going to go into -- I don't think he can go
4 into the details of the conviction.

5 THE COURT: Hold on. I'm gonna let him
6 ask and he's already asked and he's gonna answer
7 that question that he asked. He's not going into
8 details of it. I will allow that subject to your
9 objection.

10 MR. WILSON: I've already finished with
11 that, Your Honor. I've already finished with that.

12 THE COURT: Okay, thank you. You may
13 continue.

14 MR. WILSON: Thank you, Your Honor.

15 BY MR. WILSON:

16 Q Let me ask you know about this night that we're
17 talking about. And so let's talk about what was
18 going on at the house that night, okay. Now you
19 had how many fellas up there? How many guys were
20 under the shed that night when you say Richard
21 showed up along with two other fellas? How many
22 people were there?

23 A Let's see, I know that I was there. Rishawn was
24 there, Ian was there, Ron Boatwright was there, and
25 that's really all I can recall. Oh, my cousin Tywan

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1 Grisham was there.

2 Q So that's five of y'all and then three more shows
3 up?

4 A Yes, sir.

5 Q So now there are eight, right?

6 A Yes, sir.

7 Q And when you knew when they showed up, that is,
8 when Mr. Woodbury showed up with Lamont Davis and Ky
9 Graham, you knew Ky Graham, right?

10 A Yes, sir.

11 Q And y'all were friends?

12 A Yes, sir.

13 Q But now you were better friends with Rishawn
14 Gause and Ian Gause, right?

15 A I mean, about the same type of friends.

16 Q Well, you didn't know Mr. Woodbury hardly, did
17 you?

18 A No, sir.

19 Q And you didn't know Mr. Lamont Davis at all?

20 A No, sir.

21 Q All right. So you weren't friends with them?

22 A No, sir.

23 Q Right?

24 A Yes, sir.

25 Q Okay.

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1 A That's right.

2 Q And so your buddies were at your house and then
3 Woodbury and two other fellas show up. Now let me
4 first, let me ask you about the van. There was this
5 van that was parked in the yard, correct?

6 A The van parked in the yard?

7 Q Yes, sir.

8 A That's my mother's van.

9 Q Let me show you what's marked as Defendant's
10 Exhibit Number 1. Let's show you what's marked as
11 Defendant Exhibit Number 1.

12 MR. WILSON: Your Honor, can I stand this
13 way, is that all right?

14 THE COURT: Yes, sir.

15 BY MR. WILSON:

16 Q This van, where was this van parked that night
17 when all this fighting or commotion or whatever it
18 was that was going on, where was this van?

19 A The van was under the car shed.

20 Q Well, if the van is under the car shed, where are
21 you, where are you and the other five guys?

22 A We were in front of the van.

23 Q Where?

24 A In front of the van.

25 Q So you're saying that the van was parked just

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1 like it is in this picture and y'all were in the
2 front of the van up there; is that what you're
3 saying?

4 A No, I can't see the van parked just like it is in
5 that picture.

6 Q Well, that's my question, is do you know where it
7 was parked?

8 A Not exactly, but I'm quite sure it was pulled
9 halfway under or we had space to be in front of the
10 ---

11 Q So the van wouldn't have been here. It would
12 have been further back. Would you agree with that?

13 A Yeah.

14 Q Okay, all right. Now so if the van was pulled
15 further back and the five of y'all are sitting up
16 under there, you say, making music?

17 A Yes, sir.

18 Q And y'all making anything else other than music?

19 A CDs. About to put on CDs, yes, sir.

20 Q And why was it that Mr. Ky Graham, why was he
21 coming to your house?

22 A I guess come see what the plans were for the
23 night.

24 Q Okay. Now so when he comes and Richard gets out
25 of the vehicle, is that what your testimony is, and

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1 comes up to where the five of you are, right?

2 A You say who comes?

3 Q Richard, Mr. Woodbury?

4 A When he comes, he gets out the vehicle, he comes
5 up to where we are.

6 Q He comes up to where you are and he gets you,
7 right?

8 A Yes, sir.

9 Q What does he say? What was his words to you
10 under the thing? What did he say?

11 A I can't recall exact words.

12 Q I mean, did he say what's up or?

13 A To something to that effect, yeah.

14 Q Okay. Well did he single each individual out who
15 was up under the porch and point to them and say,
16 what's up with you Charles Wilson, what's up with
17 you Mr. Boatwright, what's up with you, or did he
18 just say what's up guys, what's going on?

19 A I mean, me singled every two, three, like close
20 by them, handshake. You know what I mean.

21 Q Okay, so he came out, he made general greeting,
22 then he shook hands with people?

23 A Yes, sir.

24 Q And then Mr. Ian Gause wanted to know why he
25 didn't shake his hand?

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- 1 A Yes, sir.
- 2 Q And at that point had Mr. Woodbury done anything
- 3 to Mr. Gause?
- 4 A Yes, I seen ---
- 5 Q He just came up and was speaking, right?
- 6 A Yes, sir.
- 7 Q Ain't no question about that, is there?
- 8 A Yes, sir.
- 9 Q And at that point you didn't see no knife, did
- 10 you?
- 11 A No, sir.
- 12 Q Right. Now in fact, the truth of the matter is
- 13 the first person you saw with a weapon, a gun, was
- 14 your friend Ian Gause; isn't that right?
- 15 A The first person I seen with a weapon that night?
- 16 Q Yes.
- 17 A Yes, sir.
- 18 Q Yeah. Yeah. And he had it in his hand; didn't
- 19 he?
- 20 A Yes, sir.
- 21 Q Down by his side?
- 22 A Yes, sir.
- 23 Q And he had just been arguing at Richard, right?
- 24 A Yes, ma'am -- I mean, argue first, yes.
- 25 Q And you say that, well, you know, I told Richard

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1 he could have left. Well, did you try to stop
2 Mr. Gause, Mr. Ian Gause, from shooting him in the
3 back if he left?

4 A I mean, I'm not knowing that he had a gun, my
5 back turn to him and I'm between the two, I mean,
6 yeah, I could have got shot in the back.

7 Q No, I'm asking you. Mr. Woodbury could have got
8 shot in the back if he had left; couldn't he?

9 A No, I don't think so, I mean.

10 Q You don't think so?

11 A No, sir.

12 Q So you just think he had the gun out for fun? Is
13 that what you think?

14 A He didn't use it.

15 Q Well, is that a normal thing when they come
16 around your house they pull out guns and just kind
17 of hang around with them? I mean, is that how it
18 goes?

19 A No, that's not normal.

20 Q Not normal. And it wasn't normal when he pulled
21 this gun out, was it, right?

22 A When somebody is arguing and it gets heated like
23 that, that's not normal.

24 Q Let's talk about this, how -- when you were under
25 the shed originally the lights were on. When y'all

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1 were first out there, as you say, making music there
2 was a light up in the little shed; wasn't it?

3 A Yes, but it's kind of daytime, night time.

4 Q But the light got off at some point. Who turned
5 off the light?

6 A I have no idea.

7 Q But the light mysteriously goes out before the
8 fighting starts or right during the time the
9 fighting starts; does it not?

10 A I couldn't tell you exactly when the light go
11 off.

12 Q Well, it's your house, these are your friends,
13 you're in control of this premises, right?

14 A Yes, sir.

15 Q And these guys are starting to fight. Did
16 Richard go in your house and turn off the lights?

17 A No, sir, we all outside so who turn off the
18 lights?

19 Q Well, that's my question, do you know who turned
20 them off?

21 A No, sir.

22 Q Okay. Now do you know what kind of gun it was
23 that Mr. Ian Gause had that night?

24 A No, sir.

25 Q Do you know the difference between a revolver and

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1 a semiautomatic?

2 A Yes, sir.

3 Q Okay. And do you know whether or not he had a
4 revolver and/or semiautomatic?

5 A I haven't seen then till time I regulate the
6 fight stop them from getting past.

7 Q And at the time you tried to stop him from
8 fighting and then you said when you tried to stop
9 them he had the gun, he just pushed past you; didn't
10 he?

11 A I couldn't let him go past me, noticed he had the
12 gun.

13 Q Yeah, 'cause why?

14 A If I have wrestled him to the ground I could have
15 got shot.

16 Q You could have got shot and you could be dead,
17 right?

18 A Yes, sir.

19 Q And so you are afraid enough of him and his
20 having that gun that you weren't willing to jump on
21 him and try to stop him from hurting Richard, were
22 you?

23 A No, sir.

24 Q No, no. And the reason you weren't was because
25 you knew that he might shoot you or you might get

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1 shot in the process, right?

2 A I'm not saying he would shoot me but knowing
3 anything happen once you hit the ground, the gun hit
4 the ground, you know what I mean.

5 Q Anything can happen when you have a gun in your
6 hand and alcohol in your system, right?

7 A I mean, I don't know about that.

8 Q Okay. Were you drinking that night?

9 A Yes, sir.

10 Q Okay. And was there other people up there
11 drinking that night?

12 A I believe so.

13 Q Okay. Now you said at one point that Richard and
14 Mr. Gause ended up all the way out into the road.

15 A Yes, sir.

16 Q All right. Now is this before or after Mr. Gause
17 pushed past you with the gun?

18 A End up in the road. That's when I removed
19 myself. I seen the gun, removed myself in the
20 situation so they in the road face to face d.

21 Q Okay. And at that point they're in the road face
22 to face. Now the road is actually leaving your
23 house, right?

24 A I mean, leaving the driveway, yes.

25 Q Leaving the driveway. So there's no question

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1 that Mr. Woodbury is headed out to the road. And
2 Mr. Gause doesn't stay in the yard with you, he goes
3 out into the road with Mr. Woodbury; doesn't he?

4 A I guess so; I don't know.

5 Q Well, you just said he was out there.

6 A Yes, sir.

7 Q And he had that gun. So he couldn't leave
8 because he was following him already with his gun;
9 wasn't he?

10 A I mean, he could have left though.

11 Q He could have left? How?

12 A Before they end up in the road.

13 Q 'Cause he ended up in the road leaving your
14 house. That's how you leave your house, get on that
15 road and get out of there.

16 A I mean, it seem like he was standing -- as long
17 as I would stay between them it's like he was going
18 to stay there.

19 Q Yeah, well, and you were standing between them,
20 what was to prevent Mr. Gause from just raising his
21 hand and shooting him as he turned and walked. What
22 was to stop him? You said you weren't going to stop
23 him, right?

24 A I mean, I didn't see him have a gun out with my
25 back turned to them. I'm between them so.

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1 Q Let's talk about this. Let's talk about where
2 was Rishawn Gause? When all this is going on where
3 is the brother? Where is Rishawn Gause during this
4 incident, where is he at?

5 A I mean, he's there, but I don't know exactly
6 where he's at 'cause at the time I'm trying to calm
7 the situation down 'cause my mother is in the house
8 asleep, you know what I mean.

9 Q Well, was he trying to calm it down? Now this is
10 his brother who's in this altercation in your yard
11 and you're saying that he's there. Where is he? Is
12 he trying to hold back Richard or hold back Ian?

13 A I mean, I don't know.

14 Q No. Well, in fact, what you told the Solicitor
15 earlier was that as some point he went and got a gun
16 and was shooting, right?

17 A I didn't say he got a gun and shooting. I ain't
18 said that.

19 Q Right. So now both brothers got a gun, both
20 brothers got a gun, and at that point nobody had
21 been stabbed. But that wasn't enough, was it, for
22 Ian Gause and Rishawn Gause because they both now
23 had guns; and at this point you hadn't seen any
24 weapon at all with Mr. Woodbury, had you, at that
25 point?

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- 1 A At which point?
- 2 Q At the point where Mr. Gause and Mr. Woodbury
- 3 were in the road?
- 4 A Mr. Gause and Mr. Woodbury in the road?
- 5 Q Yes, sir.
- 6 A I haven't seen Mr. Woodbury with any weapon.
- 7 Q Right.
- 8 A No, sir.
- 9 Q All right. That's right. Now let's talk about
- 10 when Mr. Rishawn Gause fires the shot. And you say
- 11 that there was just one shot?
- 12 A I only heard one shot.
- 13 Q Well, now you were out there the whole time and
- 14 you only heard the one shot?
- 15 A I only heard one shot.
- 16 Q Okay, all right. And where did Mr. Rishawn Gause
- 17 get his gun from?
- 18 A I didn't see who shot the shot so I don't know if
- 19 it was him that shot the shot. I mean, just
- 20 assuming really.
- 21 Q Okay, so you don't know who fired the shot?
- 22 A I know it wasn't him 'cause he behind me.
- 23 Q You know it wasn't who?
- 24 A Ian Gause 'cause he's behind me.
- 25 Q You knew it wasn't Ian Gause?

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1 A Yeah, because he was probably ran when it shot.

2 Q So you don't know who fired the shots?

3 A Not exactly. See ---

4 Q It wasn't Mr. Woodbury, was it?

5 A No, sir, he was in front of me, he probably shot.

6 Q You know it wasn't Mr. Woodbury; you know it

7 wasn't Ian Gause. Now so let's go back to the

8 lights again. The lights go out but we don't know

9 how they went out, right?

10 A That's correct.

11 Q And actually, that's when whatever happened

12 happened, right? When the lights went out, somebody

13 turned off the lights, the lights go out ---

14 A I couldn't tell you the lights was on when they

15 actually run under the car shed or they were off. I

16 couldn't tell you with what was going on, I mean.

17 Q Okay. Now let's talk a minute about the location

18 of these vehicles. There was the van that we

19 described, that gray van which was up under the

20 carport, right? But it wasn't all the way up under

21 the carport, was it?

22 A I couldn't, I can't recall that. It was ---

23 Q Well, you had to have enough -- I'm sorry, you

24 had to have enough room under the carport for you

25 and your five friends to be hanging out, right, or

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1 four friends, right?

2 A Yeah, if you stand up, yes, sir.

3 Q And were y'all sitting or were y'all just all
4 standing up or how, what were y'all doing?

5 A Sitting on the side kind of got space to sit on
6 the side close to the house; but like in front, you
7 probably more most likely standing up.

8 Q Probably most likely standing up. Now was
9 anybody parked behind the gray van?

10 A The gray van?

11 Q Yes, sir.

12 A The black Cherokee was behind.

13 Q When Mr. Woodbury came up they parked behind the
14 gray van, right?

15 A Yes, sir.

16 Q The black Cherokee would have parked behind the
17 gray van?

18 A Yes, sir.

19 Q Okay. Now would the end, was anybody parked
20 behind Mr. Woodbury's car?

21 A No, there was no car behind him.

22 Q There was no car back there.

23 A No, sir.

24 Q Now how far from the edge of the road 'cause he's
25 got a short driveway. What is your driveway, 30

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1 feet?

2 A I never thought about that.

3 Q Well, how many cars can you park in the driveway
4 before you get to the highway?

5 A As far as that driveway I only park two; but you
6 can like catty corner three way, you know.

7 Q Okay. Maybe able to squeeze three in there. And
8 so we know that the van was parked there. We know
9 that based on your testimony that the black jeep was
10 parked there. Was there any vehicle behind the
11 black jeep?

12 A No.

13 Q All right. What kind of car did Mr. Ian Gause
14 and Rishawn Gause arrive in?

15 A They were in a Ford Focus!

16 Q Ford Focus. Where was the Ford Focus parked in
17 relationship to the driveway?

18 A They on the grass beside like on the grass right
19 off the main driveway.

20 Q Okay, so they were on the grass. And let me show
21 you again, this is Defendant's Exhibit Number 1.
22 Can you show me where they would have been parked in
23 relationship to the van and the car that you said,
24 the black jeep?

25 A Well, it was go a little bit further.

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1 Q Okay, so it'd be on the other side?

2 A Yeah, you can't really see the grass right there.

3 Q So they would have been parked on this side of
4 the house over here on the grass?

5 A Yeah, that's how the picture is.

6 Q Okay, thank you, sir. Now as I understand it,
7 you left after -- well, let me back up just a
8 minute. At some point in time when all this was
9 over and you said that Mr. Rishawn Gause and Mr. Ian
10 Gause, Mr. Ian Gause said he wanted Rishawn to take
11 him to the hospital?

12 A Yes, sir.

13 Q Is that right?

14 A That's correct.

15 Q Now where was Mr. Woodbury when that conversation
16 took place?

17 A I didn't see him so I'm thinking he probably was
18 the one took off to the back house, the back yard.

19 Q You think he was the one that ran. In fact, ran
20 and you say left after the weapon that he was
21 supposed to be trying to use, right?

22 A Yes, he came back and got them.

23 Q Because knives don't work too well against guns,
24 do they?

25 A Evidently, sir, I don't know.

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1 Q He left. Then you say that Mr. Rishawn Gause and
2 Mr. Ian Gause then got in their vehicle and they
3 left, right?

4 A Yeah, Ian was shot.

5 Q I'm sorry?

6 A I said Ian Gause and Rishawn left to go to the
7 hospital.

8 Q Now at that point you don't know how badly
9 Mr. Ian Gause is hurt, do you?

10 A No, sir.

11 Q All right. And as far as you know Richard
12 doesn't know either, does he, as far as you knew?

13 A As far as I know.

14 MR. CLEMENTS: Your Honor, I object to
15 speculation. How could he know what Richard knew.

16 THE COURT: I'll sustain the objection.

17 MR. WILSON: All right.

18 THE COURT: Rephrase your question.

19 MR. WILSON: Yes, sir.

20 BY MR. WILSON:

21 Q Let me ask you this, did you see Richard later on
22 at the club Fusion, or whatever the name of the
23 place was?

24 A Yes, sir.

25 Q So when you left the house what time did you go

SW - C. WILSON - CROSS

1 to club Fusion?

2 A I couldn't give you the time because we went
3 somewhere else before we went to club Fusion.

4 Q And if you had known that your friend was hurt
5 critically you wouldn't have gone out to the club,
6 would you?

7 A I mean, no, sir.

8 Q No, sir. And you didn't know that. You
9 didn't -- honestly, you didn't know how he was,
10 right?

11 A I didn't know he was, how bad his injuries were.

12 Q Okay. And now so you went out to the club and
13 when you got out there you saw Mr. Woodbury. Was he
14 there before you got there, or did he come after you
15 got there?

16 A I honestly couldn't tell you. I mean, when I got
17 there I ain't really seen, I ain't seen him when I
18 was there.

19 Q You didn't see him anymore that night?

20 A No, I seen him in the club, but I don't know what
21 point where he got there or what ---

22 Q You just don't know when he got there?

23 A Yea, I don't know if he was there or I was there
24 first or he was there first, I don't know.

25 Q Did y'all have any conversation at the club?

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1 A Let's see, he said something to me but I wasn't
2 really trying to hear it 'cause I was concerned
3 about my friend. By that time I had done got pull
4 out the line before I got in the club so I was
5 thinking about wondering how he was doing 'cause he
6 said — the lieutenant who I talked to, said he was
7 in critical, you know what I'm saying, he say he was
8 critical.

9 Q So at that point when you got to the club an
10 officer stopped you or had you come out of the club,
11 and then he told you that he was in serious
12 condition?

13 A No, I wasn't in the club. I was in the line to
14 go in the club.

15 Q Okay.

16 A I was pulled out of the line.

17 Q So they pulled you out of the line and then you
18 went and talked with the officer, and that's when
19 you learned?

20 A Yes, sir.

21 Q What time of night is this now?

22 A What time of the night is this?

23 Q Yes, sir.

24 A I don't know what time.

25 Q Was it after midnight, do you know?

SW - C. WILSON - CROSS

1 A I mean, I don't know.

2 Q You don't really know? Okay, it's okay. Now
3 let's go back to you say that Mr. Woodbury had --
4 you think it was him -- ran around the back of the
5 house and ran so fast that he left the knife. He
6 comes back, right? After Mr. Ian Gause and Mr.
7 Rishawn Gause leaves he comes back, right?

8 A Yeah, he comes back. They're gone when he comes
9 back.

10 Q And you're still there. Who else is there when
11 he comes back?

12 A Mr. Ronnie Boatwright.

13 Q All right.. There's the two of you?

14 A Yes, sir.

15 Q All right. And did y'all have conversation at
16 that point?

17 A Conversation with who? Did I have a conversation
18 with Woodbury?

19 Q Yes.

20 A Yeah, he said something about he left something,
21 he dropped something.

22 Q Okay, all right. And that was it? And he picked
23 up what he left and left?

24 A That's all I can recall like saying. There's
25 some other words but I can't recall what everything

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1 he was saying.

2 Q His car was still there, right, when he came
3 back?

4 A I believe, yes, sir. Yes, sir, I believe so.
5 Yes, sir.

6 Q Because when he left, he left in the jeep, right?

7 A I believe so.

8 Q All right. And now let me ask you in regards
9 to -- well, let me back up. When did the -- you say
10 that the police came and talked to you that night.

11 Did you ever give a statement to the police?

12 A Like written?

13 Q Like a video tape statement or like a written
14 statement saying what you saw, heard, done that
15 night?

16 A Let's see, I can't.

17 Q Before today I'm talking about?

18 A I'm trying to think. I don't remember. I don't
19 think I remember writing a statement but I can't
20 remember. Let's see, video -- I can't remember. I
21 can't recall, man.

22 Q As far as you know you don't recall giving one
23 before now?

24 A I mean, I don't recall giving one or not.

25 Q Okay, all right.

SW - C. WILSON - REDIRECT

1 MR. WILSON: No other questions, Your
2 Honor. Thank you.

3 THE COURT: Any redirect?

4 MR. CLEMENTS: Just briefly, Your Honor.

5 **REDIRECT EXAMINATION**

6 BY MR. CLEMENTS:

7 Q I want to be sure I understand this. Defendant's
8 Exhibit 1 here, what's back there towards there in
9 front of where that van is parked?

10 A The fence part, it's a chair like this. It's
11 like two right here in front of that van and behind
12 that chair is a table.

13 Q Okay. So you got chairs and a table back there
14 in front of that van?

15 A Yes, sir.

16 Q All right. 'Cause Mr. Wilson kept asking you
17 about the van being pulled, not being pulled all the
18 way in. Is it true or is it not true that that van
19 being pulled all the way in you still got room in
20 front of it?

21 A Yes, sir.

22 Q That's true?

23 A Yes, sir, it is.

24 Q Okay. So the van could have been pulled all the
25 way in?

SW - C. WILSON - REDIRECT

1 A Could have.

2 Q Okay. And y'all would have still had room for
3 all five of you with the chairs and the table and
4 stuff?

5 A Yes, sir.

6 Q Okay, I just want to clarify that. Was there any
7 trouble or was there any disagreement that night
8 before Richard Woodbury showed up?

9 A No, sir.

10 Q None?

11 A Before Richard got there it wasn't no --
12 everything was going smoothe.

13 Q Everything was going smooth, all right, thank
14 you.

15 MR. WILSON: Nothing further, Your Honor.

16 THE COURT: Sir, you may step down, thank
17 you.

18 Can the lawyers approach a minute please.

19 (WHEREUPON, counsel approached the Bench
20 for an off-the-record discussion.)

21 THE COURT: Ladies and gentlemen, what
22 we're going to do at this time, it is about ten till
23 five, okay. Rather than call the next witness and
24 possibly be here longer than I told you I usually
25 like to go that is beyond 6:00, I'm going to break

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1 THE CLERK OF COURT: Doctor, if you'd
2 place your left hand on the Bible, raise your right
3 hand.

4 WHEREUPON,

5 **NICHOLAS BATALIS,**
6 having been duly sworn by the Clerk of Court,
7 testified as follows:

8 THE CLERK OF COURT: Thank you, sir. You
9 may sit in the jury box [sic].

10 **DIRECT EXAMINATION**

11 BY MR. CLEMENTS:

12 Q Doctor, could you please state your name and
13 spell it for the record?

14 A My name is Nicholas Batalis, B-A-T-A-L-I-S.

15 Q And where do you work doctor?

16 A I work at the Medical University of South
17 Carolina in Charleston, South Carolina.

18 Q And how long have you worked there?

19 A I've been employed there for just under six
20 years.

21 Q And in what capacity?

22 A I'm employed there as a forensic pathologist.

23 Q Can you please tell the jury what a forensic
24 pathologist is and how that is different from other
25 doctors?

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1 A Sure. Forensic pathology is field of medicine
2 that specializes in really the legal aspects of
3 medicine. Specifically, the main duties of our job
4 is performing autopsies after someone has died which
5 is an examination to determine in what manner they
6 died.

7 Q Could you please tell this jury about your
8 educational background.

9 A Sure. After finishing high school I went on to
10 four years of college up at Butler University in
11 Indiana. Following that to four years of medical
12 school also in Indiana. After finishing medical
13 school then came down to Charleston MUSC for four
14 years of training in general pathology after which I
15 became board certified. General pathology involves
16 examining tissue to determine if there's cancer or
17 not cancer. Helping your doctor interpret if you
18 get any blood test drawn, the pathology would be the
19 one that would help them interpret those values. So
20 after completing that four year general training I
21 then went on to one year specialty fellowship in
22 Dallas, Texas, where it was just one year
23 specializing in forensic pathology. After finishing
24 that I became board certified again and then came to
25 work at MUSC.

SW - N. BATALIS - DIRECT

1 Q Are you a member of any professional
2 organizations or honorary organizations?

3 A Yes, I'm a member of several national pathology
4 and forensic pathology organizations as well as a
5 couple local ones.

6 Q Have you ever been published?

7 A Yes, several times.

8 THE COURT: Hold on a minute, Mr.
9 Clements. You may continue.

10 BY MR. CLEMENTS:

11 Q Approximately how many autopsies have you
12 performed?

13 A Approximately 1500 autopsies over the last
14 several years.

15 Q And have you ever been qualified to serve as an
16 expert in the field of forensic pathology in either
17 state or federal court?

18 MR. WILSON: Your Honor, I would stipulate
19 that Doctor Batalis is imminently qualified to
20 testify as an expert in the field of forensic
21 pathology.

22 THE COURT: Anything further you want to
23 ask him, though, Mr. Clements?

24 MR. CLEMENTS: Just to answer the question
25 I just posed.

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1 THE WITNESS: Yes, I've been qualified in
2 the state of Texas, North Carolina, and South
3 Carolina.

4 MR. CLEMENTS: Your Honor, I would submit
5 him as an expert in the field of forensic pathology.

6 THE COURT: All right, let me give this
7 instruction to you all, ladies and gentlemen.
8 Normally, ladies and gentlemen, a person cannot give
9 opinion testimony. Normally when a person testifies
10 they must testify as to what they either saw, heard,
11 or sense by smell or something of that nature.
12 However, there is an exception when someone is
13 qualified because of education or experience. They
14 are permitted to give their opinion in certain areas
15 if the Court qualifies them that way. This witness
16 will be qualified as a forensic pathologist to give
17 opinion testimony in that area. That does not mean
18 that you must accept the opinion because it is
19 evidence for you to use in any way that you see fit
20 or give it the credibility that you believe is
21 appropriate.

22 All right, Mr. Clements.

23 MR. CLEMENTS: Thank you, Your Honor. May
24 it please the Court.

25 BY MR. CLEMENTS:

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1 Q Did you have the opportunity to perform an
2 autopsy on Mr. Ian Gause?

3 A Yes, I did on September 30th, 2012.

4 Q And did you perform an autopsy on him?

5 A Yes, I did.

6 Q At that time did you -- were you able to
7 determine to a reasonable degree of medical
8 certainty in your field of expertise what the manner
9 of death was?

10 A Yes, I was.

11 Q What was that manner of death?

12 A The manner of death was homicide.

13 Q And to a reasonable degree of medical certainty
14 in your field of forensic pathology were you able to
15 determine what the cause of death was?

16 A Yes, I was. The cause of death was a stab wound
17 of the trunk.

18 Q Can you tell us in your field what does the term
19 homicide, what does that mean, what's the
20 definition?

21 A Sure. When we talk about the manner of death
22 it's how the death came about. So a, for example, a
23 stab wound, it -- we have one manner of death, it
24 would be natural. It wouldn't qualify for that. We
25 have accidental manner so typically a car accident,

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1 may be a drug overdose, something unanticipated.
2 Suicide is when one would choose to take their own
3 life. We reserve homicide as the manner of death
4 when a death comes back as a result of the hands of
5 another person. That's why it was chosen in this
6 case.

7 Q And you determined this to be homicide ---

8 A Yes.

9 Q ---by the stabbing?

10 A Yes.

11 Q Okay. Can you please explain for the jury the
12 nature of Mr. Gause's wounds and where they were.

13 A Sure. He had -- the decedent had two more
14 significant wounds and two fairly minor wounds. The
15 first wound he had was an injury on the upper right
16 side of the chest which I qualified as an incised
17 wound. So when a wound is made with a sharp object,
18 whether a knife, a blade of glass, we either qualify
19 it as an incised wound. If the wound is longer than
20 it goes deep, so if it's two inches wide and a half
21 inch deep it would be an incised wound. So the
22 wound on the upper right of the chest was incised
23 wound. It was about a inch long, and it went about
24 a half inch into the muscle, did not penetrate into
25 any of the organs to really cause any significant

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1 bleeding.

2 The major injury that he had was a stab
3 wound so a sharp force injury that went deeper than
4 it was wide. So he had a stab wound left side of
5 the chest centered right on the left nipple. So
6 this wound, the stab wound was about an inch long
7 centered directly on the nipple. The knife then
8 after perforating through the nipple went through
9 the muscle of the chest, went through one of the
10 ribs, s went through the sack that wraps around the
11 heart an then into one of the big blood vessels that
12 drains the blood back to the body. As a result of
13 that there was abundant, lots and lots of bleeding
14 that spilled into the chest cavity which resulted in
15 his death.

16 Q So would it be fair to say that he bled to death
17 as a result of the stab wounds?

18 A Yes.

19 Q About how long, do you have an opinion to a
20 reasonable degree of medical certainty in your field
21 as to about how long it would take for someone to
22 have a wound like that and to then expire?

23 A It's gonna vary to some extent. This wound
24 didn't -- it depends whether you hit a blood vessel
25 that is an artery which is one that's squirting out,

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1 or a vein which is one that's draining blood so it's
2 a little bit slower though. This one did hit the
3 big vein drawing back so this isn't a wound that you
4 would suspect to die within, you know, seconds or a
5 minute or to, but anywhere between several minutes
6 and a couple of hours for enough time for that blood
7 to build up.

8 Q Okay, all right. I'm gonna show you what's been
9 marked as State's Number 23. I'm gonna ask if you
10 have an opinion to a reasonable degree of certainty
11 in your field that the wounds that you observed in
12 Mr. Gause, would they be consistent with being
13 caused by a weapon such as this?

14 A They could be.

15 Q Okay. Now you described the wound to the chest
16 on the right side and wound to the, around the left
17 nipple that was the most significant wound; is that
18 correct?

19 A Yes.

20 Q And you said there were two other ones?

21 A Yes, there were. The other wounds were fairly
22 minor. There was a very small so one eighth of an
23 inch so less than a quarter of an inch, very small
24 superficial incised wound. So just a very
25 superficial cut that was on the right wrist on the

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1 front surface of the right wrist. And then there
2 was a scrape on the left thumb about a half inch, a
3 relatively small scrape on the back of the left
4 thumb. Those were the only injuries that we saw.

5 Q Is there a term that would characterize those
6 types of wounds such as -- or could those be
7 characterized as defensive wounds?

8 A They could be. The term defensive wounds can be
9 used to injuries on the hands, arms, or even
10 sometimes the legs if it was used in a position of
11 block.

12 Q Okay. And would that be consistent with these
13 wounds?

14 A These could be.

15 Q Okay. Now did you also do a toxicology on
16 Mr. Gause?

17 A We did. As part of the autopsy process we
18 collect blood and body fluids from the decedent and
19 we send them to a national laboratory where
20 toxicology testing is performed. And we did do that
21 in this case.

22 Q And what were the results of that, Mr. Batalis?

23 A The results was, we tested his blood, positive
24 for a relatively small amount of delta 9THC, or
25 marijuana. He was also positive for alcohol with a

SW - N. BATALIS - DIRECT

1 blood alcohol concentration of 0.04, which is about
2 half of the legal limit. He also ---

3 Q So he would have been all right to drive with
4 this type of blood alcohol level?

5 A Yes, sir.

6 Q Okay.

7 A Additionally he had three medications on board,
8 morphine, codeine, and rocuronium. The last I'm
9 fairly confident was part of being resuscitated and
10 treated often, a drug that's used when they go to
11 intubate somebody, give them a tube to help their
12 breathing. The morphine and codeine may have been
13 administered during the resuscitation, or it could
14 have been used by the decedent beforehand.

15 Q Okay. So but he had like .04 blood alcohol level
16 for alcohol?

17 A Yes.

18 Q And very minor THC which would be marijuana?

19 A Yes.

20 Q Okay. Nothing else of any significance there in
21 that toxicology report?

22 A No.

23 Q Okay.

24 MR. CLEMENTS: Beg the Court's indulgence
25 one moment.

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1 THE COURT: Yes, sir.

2 MR. CLEMENTS: Doctor Batalis, we
3 appreciate you coming this morning. Please answer
4 any questions Mr. Wilson has.

5 THE COURT: Cross-examination.

6 **CROSS-EXAMINATION**

7 BY MR. WILSON:

8 Q Doctor, let me ask you this, in conducting the
9 pathological exam did you make a determination as to
10 how tall and how large a man Mr. Gause was?

11 A Yes, we weigh and measure all of the decedents as
12 part of the autopsy.

13 Q Okay. And what was his weight?

14 A His weight was 186-pounds.

15 Q Okay. And what was his height?

16 A His height was 79 inches which would be 6-foot
17 7-inches.

18 Q Okay. So he was a pretty big fella?

19 A Yes.

20 Q All right. And now let me ask you, you were
21 talking about the alcohol and the marijuana. Now
22 based on your understanding he would not have been
23 intoxicated with what you see from your exam?

24 A Yes. At a .04 everybody will handle alcohol
25 differently but should not be overly intoxicated in

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1 that.

2 Q He could still legally drive if he was, as the
3 Solicitor suggested, he could drive if he wasn't
4 drunk enough that he couldn't drive a vehicle ---

5 A Right.

6 Q ---in the state of South Carolina. And you said
7 that the amount of marijuana that he had in his
8 system was relatively small as well, right?

9 A Correct.

10 Q All right. Now is there any way for us to
11 quantify that like we do with the alcohol and ---

12 A We can't quantify it with the marijuana. There
13 is a parent drug and then the breakdown product of
14 the drug that. We do see the parent drug like we
15 did in this case you feel pretty confident it was
16 used within minutes to hours before he died so
17 that's really the only thing we can do to quantitate
18 it because we know he used it and approximate to his
19 death. It wasn't a day before or two days before.

20 Q So he would have used the marijuana within
21 minutes to hours before he died?

22 A Yes.

23 Q Okay. Now let me ask you, there was some other
24 scars on the body, did you find some other scarring
25 on the body?

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1 A We did.

2 Q All right. And was that scarring from this
3 incident or could you tell?

4 A No. When we talk about a scar it indicates that
5 it's happened in the past. Usually takes, you know,
6 at least several weeks to form a good scar. Once it
7 gets beyond a few weeks I can't tell if it was two
8 months ago or 20 years ago, but these scars did not
9 happen from this incident.

10 Q Okay. Tell us about those scars.

11 MR. CLEMENTS: Your Honor, I object to
12 that on the basis of relevance. I don't see
13 anything it has to do with the cause of death or any
14 injuries sustained in this incident.

15 THE COURT: All right.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 THE COURT: Objection is sustained. You
19 may continue, Mr. Wilson.

20 BY MR. WILSON:

21 Q Let me ask you, you said that -- let me go back
22 and ask you this. Let's talk about the wound that
23 you say was the most serious of those wounds. And
24 now in your report you said that this wound was
25 made, I think you said, the approximate depth is

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1 five-and-a-half inches. Pathway is from front to
2 back upward and to the left; is that correct?

3 A It was correct. The last went it was front to
4 back, upward, and from left to right.

5 Q Okay.

6 A So traveling towards the decedent's midline.

7 Q Let me ask you if, if you would just take that
8 for me.

9 MR. WILSON: And Your Honor, I'm referring
10 now to portions of State's Exhibit Number 23 which
11 is the knife.

12 BY MR. WILSON:

13 Q What position would that knife have had to have
14 been in to make that wound on a person the size of
15 Mr. Rishawn Gause -- I'm sorry, Mr. Ian Gause who
16 was 7'2".

17 THE COURT: What is that?

18 MR. WILSON: 6'7".

19 THE COURT: Thank you. I'm sorry.

20 MR. WILSON: I apologize.

21 THE WITNESS: Yeah, he was 6'7". And to
22 be honest, the relationship of the knife to the body
23 would be the same whether it was 4-feet or 8-feet so
24 it's coming from (indicating) front to back. It's
25 moving upward and then moving toward the midline so

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1 essentially it would be coming (indicating) at an
2 angle about like that.

3 BY MR. WILSON:

4 Q Okay. So let me ask you this, if -- and you can
5 sit back down if you would. If a person was laying
6 down on his back with that knife and if Mr. Ian
7 Gause was over that person, would that be consistent
8 with that kind of wound if he was leaning over him
9 or falling over him?

10 A If the decedent was falling over?

11 Q Yes. Standing over him leaning over him as he is
12 on the ground with this knife up towards him.

13 A That's one way it could occur, again, the
14 relationship that I spoke of it doesn't mean they're
15 standing vertical. It could be up in the air, it
16 could be on the ground, but the knife had to be
17 coming from that angle.

18 Q Okay, all right. Now you're not -- you're saying
19 that the cause of death is homicide; and by that,
20 that simply means that in your interpretation he
21 didn't take his own life essentially?

22 A You're referring to the manner of death as
23 homicide.

24 Q Yes.

25 A Yes. I'm saying that the death was due to

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1 actions of another individual.

2 Q Okay, all right. Bear with me just one second.

3 THE COURT: Yes, sir.

4 BY MR. WILSON:

5 Q Just let me ask you one other thing. You
6 indicated in your report that there was Morphine and
7 some other drug found. What was the other one?

8 A Morphine, codeine, and a drug called rocuronium.

9 Q And you attribute that to fact that he was being
10 treated at the emergency room and that those drugs
11 may have been used there, is that?

12 A The rocuronium almost certainly. There's really
13 no other setting that we see that outside of people
14 being treated. The morphine and the codeine are
15 drugs that could have been used in treatment or
16 could have been used before he was at the hospital.

17 Q And we don't know that?

18 A Yeah, I don't have hospital records to see
19 whether he was administered those particular drugs.

20 Q But there's no question that he had morphine in
21 his system and that he had -- what else, what was
22 the other?

23 A Codeine.

24 Q Codeine. And those were in his system. Was
25 there any significant amount of those in his system?

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1 A You know, significant as far as -- I'm not sure
2 what you mean by significant.

3 Q Significant in the sense that they would affect
4 his ability to navigate himself?

5 A I don't believe so. The morphine was not a small
6 amount. I don't believe that it contributed to his
7 death in any way. I can't say how it would have --
8 if he'd had it beforehand I can't say how it would
9 have affected his actions.

10 Q Okay. Let me ask you, once that major stab wound
11 was inflicted would the -- would Mr. Gause have
12 still been able to be aggressive and fight and
13 continue to fight?

14 A It's possible for a short period of time. Again,
15 this did not strike a major artery that he would
16 have bled out within seconds so it's possible that
17 he could continue to strive to be --

18 Q Would he have become weakened after that blow,
19 substantially weakened with blow like that?

20 A Within a few minutes I would think so.

21 Q So within a few minutes in your opinion he would
22 have?

23 A Yes.

24 Q Okay, all right. Now the Solicitor asked you
25 about defensive wounds. Well, there are aggressive

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1 wounds also sometimes; aren't they? When he asked
2 you earlier about whether or not some wounds might
3 be considered to be -- I think he was referring to
4 the wound on his wrist and the one on his thumb --
5 and you said, well, those wounds were defensive
6 wounds. But you don't know if they're defensive
7 wounds or aggressive wounds, do you?

8 A Correct. You know, defensive wounds is a term
9 that will be used sometimes. Typically aggressive
10 wounds isn't what's used; but yeah, these could have
11 been -- I don't know exactly how they were obtained.
12 It could have been from blocking. You know,
13 certainly, the one being the cut there had to be,
14 again, the sharp object, the wound on the thumb was
15 a scrape so again, that could have been from
16 blocking, it could have been from striking. I have
17 no idea how that one occurred. Again, we do know
18 the one on the wrist was from a knife.

19 Q Thank you so much, Doctor. Thank you.

20 THE COURT: Hold on, let me talk to the
21 lawyers at side bar just a minute.

22 (WHEREUPON, counsel approached the Bench
23 for an off-the-record discussion.)

24 THE COURT: Ladies and gentlemen of the
25 jury, I need to ask you to step out for just a

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1 THE COURT: All right, bring the jury
2 please.

3 (WHEREUPON, the jury was returned to the
4 courtroom at approximately 10:25 a.m., and
5 the following proceedings commenced in
6 open court.)

7 THE COURT: Thank you, ladies and
8 gentlemen. Mr. Wilson, anymore questions of this
9 witness?

10 MR. WILSON: No, sir.

11 THE COURT: Any recross?

12 MR. CLEMENTS: Yes, Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MR. CLEMENTS:

15 Q Doctor Batalis, Mr. Wilson asked you about if
16 this, if one of the wounds could have been made if
17 the defendant was laying on the ground and the
18 victim fell on him was over him.

19 A Yes, sir.

20 Q If you could, could you stand up for me please.
21 That would put you a couple of inches taller than
22 me, a few inches, and I'm 6'1" I believe. Would
23 those wounds be consistent with someone -- I'm going
24 to back away from you -- someone coming in and
25 making that first incision wound to the left side

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1 which it wasn't as deep ---

2 A To my right side.

3 Q To your right side, and then following through in
4 a punching motion or stabbing motion and making the
5 left side of the chest wound which went in
6 five-and-a-half inches towards the midline and
7 slightly upwards; is that correct?

8 A Correct.

9 Q So that would be consistent with somebody coming
10 in here and here?

11 A That's one way in which the injuries could have
12 occurred.

13 Q Thank you, sir. Doctor Batalis, thank you.

14 MR. CLEMENTS: That's all the questions we
15 have, Your Honor. We ask he be released from his
16 subpoena if Mr. Wilson has no further questions.

17 MR. WILSON: Nothing further, Your Honor.

18 THE COURT: Any further questions?

19 MR. WILSON: No, sir.

20 THE COURT: Sir, you may step down.

21 You're free to go. You have no further
22 responsibilities from your subpoena. Thank you for
23 being here today.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Call your next witness please.

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1 MR. CLEMENTS: Your Honor, we call Agent
2 Jennifer Stoner.

3 WHEREUPON,

4 JENNIFER M. STONER,
5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CLEMENTS:

9 Q Good morning.

10 A Good morning.

11 Q Can you please state your name for the record and
12 spell your last name.

13 A Jennifer M. Stoner, S-T-O-N-E-R.

14 Q Can you please tell this jury, Ms. Stoner, where
15 you work?

16 A I'm employed by the South Carolina Law
17 Enforcement Division in the trace evidence section
18 of the forensics laboratory.

19 Q Okay. And how long have you been so employed?

20 A I have been employed by SLED for 16 years and
21 I've been in forensic evidence for 15 years.

22 Q Can you please explain to this jury what the
23 trace evidence part of the forensic lab at SLED
24 does?

25 A Trace evidence has several different disciplines

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1 in which we receive evidence. We receive evidence
2 for gunshot residue analysis, paint analysis, fiber
3 analysis, glass analysis, fire debris cases,
4 explosives, and tape and adhesive, and general
5 chemical unknown analyses.

6 Q And what exactly do you do?

7 A What do I do, or just in general in the lab?

8 Q General, what do you do?

9 A We receive evidence from law enforcement agencies
10 and we analyze the evidence according to their
11 requests. For a fire debris request we would look
12 to see if there's accelerant present that possibly
13 could have started a fire. For paint analysis
14 normally what we receive is paint evidence from a
15 hit and run victim. We look at their clothing to
16 see if we can find paint chips to possible identify
17 the suspect vehicle. Gunshot residue analysis, we
18 analyze gunshot residue kits that are collected in a
19 field to see if that person was potentially in the
20 area of the weapon when it was discharged.

21 Q What type of training and what type of education
22 does it take to do your job that you have at SLED;
23 and in answering that question, could you please
24 tell us what your educational training and
25 background is.

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1 A One of the requirements for trace evidence
2 section is to have a degree in chemistry. I have a
3 bachelor in science degree in chemistry that I
4 obtained in 1997 from California University of
5 Pennsylvania. It's a state school in Pennsylvania.

6 Q All right. And you have to have that kind of
7 degree. What kind of training do you get other than
8 just the college degree to do your job?

9 A The training program is three to four years in
10 our department to cover each area of analysis that
11 we perform. I underwent that training program under
12 the supervisor of the department and other senior
13 analysts. During that training period we also
14 attend classes and courses outside of SLED that deal
15 with the casework that we analyze and the
16 instrumentation that we use to analyze the evidence.

17 Q Approximately how many other continuing education
18 programs have you attended or degrees or
19 certificates you've got particularly in the area of
20 gunshot residue?

21 A I only have a BS degree in chemistry so I have no
22 other degrees, but I've attended probably in excess
23 of 25 other outside training courses or classes in
24 all of the areas. I can't specifically say how many
25 were on GSR. One in particular is done with a

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1 standing electron microscope which is the instrument
2 we utilize to analyze gunshot residue.

3 Q In all those trainings you attended you
4 successfully completed those; is that correct?

5 A Yes.

6 Q Now have you ever been qualified to testify as an
7 expert in the area of gunshot residue in state or
8 federal court?

9 A I've been qualified in federal court, state
10 court, and magistrate court in New Mexico?

11 Q Approximately how many times?

12 A 80.

13 Q 80?

14 A Uh-huh.

15 MR. CLEMENTS: Your Honor, I offer Agent
16 Stoner as an expert in the field of gunshot residue
17 analysis.

18 MR. WILSON: Without objection, Your
19 Honor.

20 THE COURT: Does that include trace
21 analysis and gunshot residue?

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. WILSON: No objections whatsoever.

25 THE COURT: Ladies and gentlemen, this

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1 witness is being offered and has been qualified as
2 an expert in trace analysis and gunshot residue
3 analysis. As I gave you in previous instruction
4 that prior instruction is the same. Just because
5 they've been qualified as an expert does not mean
6 that you must accept the opinion. It is evidence
7 for you to use any way you see fit and give weight
8 and credibility that you believe is appropriate.

9 Mr. Clements, you may continue.

10 MR. CLEMENTS: Thank you, Your Honor.

11 BY MR. CLEMENTS:

12 Q Ms. Stoner, did you have the opportunity to
13 examine and analyze a gunshot residue kit that was
14 collected from Ian Gause?

15 A I received in lab number L1212379, the GSR kit
16 from Ian D. Gause which I did analyze.

17 Q You know, did you receive that from Agent Scott
18 Hardee?

19 A We do not receive directly from the field agents,
20 only in certain circumstances. Normally our
21 evidence, we receive it from the evidence location
22 at SLED which is called the log-in department. The
23 agency submitted evidence to that department and
24 then we pick it up from there.

25 Q So Agent Hardee would submit it there at the

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1 log-in and then you take it from there and then
2 analyze it?

3 A Yes, either me or another person in the
4 department pick up the sealed evidence.

5 Q Can you explain to us exactly what gunshot
6 residue is, what the metals comprise gunshot
7 residue, how it gets on an individual so that we can
8 understand what your test results bear on as far as
9 information in this case?

10 A Yes, sir. When a gun is fired a cloud of gunshot
11 residue is formed from the action of the gun being
12 fired. Anyone in the vicinity to the discharge of
13 that weapon will have gunshot residue deposited on
14 them. Different types of guns will deposit
15 different types of residue. A larger caliber gun
16 will deposit more than a lower calib-- smaller
17 caliber gun. In this case I didn't have any
18 information on a weapon so I don't know what type of
19 gun it could have been.

20 Gunshot residue is made up of three
21 components that we look for. We look for barium,
22 antimony, and lead. We look for these in
23 combination and alone in a particle. Can I show
24 them a picture?

25 THE COURT: Certainly.

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1 MR. CLEMENTS: And let me be sure Mr.
2 Wilson has no objection.

3 (Picture was tendered to Mr. Wilson).

4 MR. WILSON: Your Honor, I just ---
5 (WHEREUPON, counsel approached the Bench
6 for an off-the-record discussion.)

7 MR. WILSON: I have no objections.

8 THE COURT: Without objection.

9 Sir, you may continue.

10 BY MR. CLEMENTS:

11 Q All right. Will it help you, Agent Stoner, to
12 stand in front of the jury to show them this,
13 explain this to them?

14 MR. CLEMENTS: Your Honor, permission for
15 her to get down.

16 THE COURT: Yes, sir.

17 THE WITNESS: Now these victims in this
18 case — these are just examples of what we look for
19 when we analyze GSR. This is a printout, and this
20 is an older instrument. Our printouts look
21 different now, but this just shows the particles
22 that we look for. They're put on your hands; you
23 can't seem them. They're microscopic. This one is
24 actually iron and that's one of the things we look
25 for in GSR. If there's iron present, it's not

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1 gunshot residue because iron has other sources that
2 eliminated the GSR. So this particle I'm just
3 showing you that it's round. That's one of the
4 things we look for, or if it's non-crystal. So it
5 doesn't have to be round, just non-crystal and it
6 can't have angles.

7 This is actually a lead particle. This
8 came from one of our, probably one of our test
9 firings we do for GSR because there is lead present
10 in GSR, present in other things but we look for it
11 in GSR. This shows, that's the particle I looked
12 at, part of this case. This is an x-ray spectrum I
13 took to tell me what it was made of. So that's what
14 I do. I look for gunshot residue. I analyze the
15 kit looking for any particles that are present.
16 Then I take an x-ray spectrum of them so that I can
17 tell what that particle is made of to determine if
18 the components are, in fact, gunshot residue.

19 BY MR. CLEMENTS:

20 Q So lead, barium, and antimony, that doesn't
21 commonly occur in combination anywhere else but in
22 gunshot residue?

23 A Not together in a single particle, no, it does
24 not.

25 Q All right. Now can you explain a little more to

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1 the jury about how that gunshot residue, how it
2 escapes from the gun and how it floats down on and
3 gets on people's hands or the clothes or whatever?
4 A When the gun is fired, of course the bullet is
5 gonna come out of the end of the gun. Any opening
6 in that gun and breach any hole in that gun, the
7 gunshot residue will exit from that because it's
8 microscopic; it's in a cloud form. So if you fire a
9 weapon you're gonna have gunshot residue coming out
10 of the front of the weapon. It's gonna come around
11 the trigger guard or depending if it's a revolver or
12 an automatic, it will come out of the slide or the
13 cylinder. So any of those areas it will come out of
14 and it will deposit on things in the vicinity to
15 that weapon. We've done testing where we've test
16 fired weapons and you can find it on your clothing.
17 If I fire a gun I will have it on my shirt. I can
18 even have it on my pants so. And then, of course,
19 the person that is shot should have more of that
20 gunshot residue on them because they are directly in
21 the line of the end of the gun.

22 Q Okay. But if someone is shooting a gun you
23 normally expect to find it on their hands?

24 A On their hands or on their clothing, yes.

25 Q And that's why -- do you do the gunshot residue

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1 collection kit on hands?

2 A Yes. The kit that we provide to the agencies is
3 a kit for a hand collection. They collect samples
4 from the right palm, the back of the right hand, the
5 left palm, and the back of the left hand.

6 Q Okay. So four different areas?

7 A Four different areas is the standard kit.

8 Q Was this done -- is that what you received on Ian
9 Gause?

10 A On this one I received a standard collection kit,
11 yes.

12 Q All right. And did you test that kit from all
13 four locations that were collected from?

14 A I did.

15 Q And what were the results of your test?

16 A May I read the one result to? The results were
17 the same for all four areas, and there was no prime
18 or gunshot residue found. The absence of gunshot
19 residue on the hands is consistent with an
20 individual not having discharged a firearm. A
21 negative result could also occur from circumstances
22 such as washing the hands, wiping the hands, wearing
23 gloves, sweating profusely, environmental factors
24 including wind and rain, bloody hands, excessive
25 debris on the sample, normal physical activity

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1 within four to six hours passing between firing and
2 sampling, or the firearm not producing gunshot
3 residue on the hands when discharged..

4 Q So ---

5 A And that was the same result for each area.

6 Q So gunshot residue on all the areas of Ian Gause
7 that were tested, front and back of the left hand,
8 front and back of the right hand, there was no
9 gunshot residue?

10 A On all four areas of the kit I tested there was
11 none.

12 Q And that could be -- gunshot residue is fragile;
13 is it not?

14 A It is fragile.

15 Q So if you wash your hands you're gonna get rid of
16 it?

17 A You are.

18 Q If you sweat profusely eventually it's gonna come
19 off?

20 A Anything you do that comes in contact with your
21 hands can remove it.

22 Q Okay. And normal passage of time over four to
23 six hours, it's gonna come off; is that correct?

24 A If -- yes. If I fire a weapon within four to six
25 hours after that it will be gone.

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1 Q Okay. And if you don't fire a weapon it's not
2 going to be there?

3 A If you don't fire a weapon you should not have
4 gunshot residue on your hand, or if you're not near
5 a weapon that was fired.

6 Q So it's fair to say here, all you know is that
7 there was no gunshot residue on Ian's hand, right?

8 A That is correct.

9 Q You don't know if he washed his hands or any of
10 that?

11 A. I don't have any knowledge of that. I have the
12 collection kit. I have the particle lifts that I
13 look at, and I analyze it but. And from what I
14 found I did not find any, but I don't know any
15 circumstances from the time of the incident until
16 the collection.

17 Q Okay, all right. Thank you. That's all. Please
18 answer any questions Mr. Wilson may have.

19 THE COURT: Cross-examination.

20 **CROSS-EXAMINATION**

21 BY MR. WILSON:

22 Q Now you're not saying by any stretch of the
23 imagination that Mr. Gause didn't fire a gun that
24 night? That's not what you're saying, is it?

25 A What I'm saying is I have no evidence to say that

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1 he did.

2 Q You have no evidence to say that he did. And
3 let's talk about that for a minute. You're saying
4 that the powder that comes back, and it's blowback.
5 Can we refer to it as a blowback when it's gonna
6 come on his hands because the gun, when it fires
7 it's going outward, is that a fair statement, the
8 powder?

9 A The bullet will go outward. The powder will exit
10 the bullet and form a cloud.

11 Q Okay. And he's behind the cloud?

12 A Yes.

13 Q All right. And now did they send you his
14 clothing so that you could test the clothing to see
15 if there was gunshot residue on the clothing?

16 A I did not receive clothing.

17 Q Okay. And in fact, wouldn't it be probably
18 easier to find it on the clothing than on the hands
19 because the hands are usually touching other things
20 and moving about. For instance, let me ask it this
21 way, if he is on his way to the hospital and he has
22 a wound and he has his hand over that wound and that
23 wound is bloody, would that be a good way to get rid
24 of the powder that would be on that hand?

25 A That could remove the powder from the hand and

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1 from the clothing itself. It didn't ---

2 Q So it could remove it from both?

3 A Yes.

4 Q And what if he was in ---

5 MR. CLEMENTS: Your Honor, I would object
6 right there. He's got to allow the witness to
7 answer. I think he's kind of testifying. But if
8 he's asking a question she ought to get an
9 opportunity to answer and not be cut off.

10 THE COURT: Did you finish answering your
11 question?

12 THE WITNESS: He made a comment that
13 wasn't something I would testify to so I wanted to
14 ---

15 THE COURT: Restate your question, Mr.
16 Wilson.

17 MR. WILSON: Judge, I don't even remember
18 what the question was.

19 THE COURT: Hold on a second.

20 THE WITNESS: It was about the clothing
21 and the evidence ---

22 MR. WILSON: I know generally where I was
23 going so if you permit me I can ---

24 THE COURT: You asked about ---

25 (Court reporter reads back last question.)

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1 THE WITNESS: No, it was right before that
2 when you asked about the clothing being better
3 evidence or the hands and the clothing.

4 BY MR. WILSON:

5 Q Yes, ma'am.

6 A There is a caveat with clothing.

7 Q Okay.

8 A That with hands we can say that it occurred
9 within six hours of the incident; but with clothing,
10 if I find gunshot residue on someone's clothing I
11 cannot link it to an incident because there's no
12 time frame with it. You could have shot a gun the
13 day before, worn the same shirt, and I can still
14 detect it if the clothing's not been washed.

15 Q Let me ask you this, did they send you a gunshot
16 residue kit on Rishawn Gause? The State send you
17 that?

18 A No, sir. The only kit I received was on the, Ian
19 Gause.

20 Q So they didn't ask you whether he fired a gun?

21 A No, sir.

22 Q All right. Now let me ask you if, also in
23 regards to this powder when this cloud of powder
24 that forms, you're saying that you could under some
25 circumstances get it off clothing, you could under

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1 some circumstances get it off hands. And then there
2 are a number of things which actually affect that
3 and we were talking about that actually before we
4 got cut off. But one of the those things that would
5 affect and I was specifically asking you about, if
6 the hand is used to cover a bloody wound as you're
7 going, say, to the hospital, would that in fact
8 remove the powder from the hands?

9 A It could on the area that came in contact with
10 the wound, yes, sir.

11 Q And I think your comment was not only could it
12 remove from the hand, it could also remove it from
13 the clothing?

14 A Yes.

15 Q Also, if an individual is at the hospital and
16 their hospital is performing whatever functions they
17 perform and especially a hand that was used to fire
18 the gun is, comes in contact with the personnel at
19 the hospital for various purposes, that could also
20 remove the powder?

21 A What is correct.

22 Q All right. And even if the person had been, say,
23 engaged in an altercation, a fight, or tussle of
24 some type after they had fired the weapon, then that
25 could also remove it?

SW - J. STONER - CROSS

1 A Yes, sir.

2 Q So under any of those scenarios you could get a
3 test and it not show anything and it would not mean
4 that the person had not fired a weapon?

5 A That is correct.

6 Q All right. I have no other questions. Thank
7 you.

8 THE COURT: Any redirect?

9 MR. CLEMENTS: No, Your Honor, we ask
10 Agent Stoner be released from her subpoena.

11 MR. WILSON: Without objection. Your
12 Honor.

13 THE COURT: All right. Agent Stoner, you
14 may step down. You are free to leave. You have no
15 further responsibilities under your subpoena. Thank
16 you for being here.

17 Call your next witness please.

18 MR. CLEMENTS: We'd like to call Mr.
19 Ronnie Boatwright.

20 WHEREUPON,

21 **RONNIE BOATWRIGHT,**

22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 THE DEPUTY CLERK OF COURT: Have a seat in
25 the witness chair.

SW - R. BOATWRIGHT - DIRECT

DIRECT EXAMINATION

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BY MR. CLEMENTS:

Q Mr. Boatwright, how are you doing today?

A All right.

Q I'm going to ask you to kind of speak up loudly.
Some courtrooms have a microphone; we don't have one
in here. Make sure the jury hearing everything
you're saying and the court reporter can get it all
down, okay. All right, if you don't understand the
question I'm asking, which sometimes I can be
confusing, I apologize, please ask me to state it
again; I'll be happy to do so.

A All right.

Q Mr. Boatwright, how old are you?

A 33.

Q And where do you live?

A Dillon.

Q Dillon?

A South Carolina, yeah.

Q How long have you lived in Dillon?

A About a year.

Q About a year? Before living in Dillon where did
you live?

A Marion.

Q In Marion?

SW - R. BOATWRIGHT - DIRECT

1 A Yes.

2 Q You live in Marion back in September of 2012?

3 A Yes.

4 Q Okay. Where in Marion did you live?

5 A Silver Trace.

6 Q Silver Trace. And you, had you lived here all
7 your life before moving to Dillon?

8 A Yes.

9 Q Did you know Ian Gause?

10 A Yes.

11 Q Did you know Rishawn Gause?

12 A Yes, sir.

13 Q Did you know Charles Wilson?

14 A Yes.

15 Q Did you know Ky Graham?

16 A Not like that.

17 Q Not as you knew him, but not like you do the rest
18 of them?

19 A Yes.

20 Q How about Lamont Davis, did you know him?

21 A No.

22 Q How about Richard Woodbury, did you know him?

23 A No.

24 Q All right. Now you recall where you were
25 September 29th, 2012?

SW - R. BOATWRIGHT - DIRECT

- 1 A Yes.
- 2 Q Where were you?
- 3 A Withlacoochee Street.
- 4 Q Whose house were you at?
- 5 A Charles Wilson.
- 6 Q And what were you doing there?
- 7 A We just burning CDs, drinking a little bit.
- 8 Q Okay. And where were y'all at?
- 9 A At the house or in the yard. We was outside
- 10 under the car shed.
- 11 Q Under the car shed? I'm gonna show you State's
- 12 Exhibit Number 17. Do you recognize that?
- 13 A Yes.
- 14 Q What is that?
- 15 A That's the house.
- 16 Q All right. And what is that on the left side of
- 17 the house here?
- 18 A In the yellow?
- 19 Q Right, this part of the house here.
- 20 A Car shed.
- 21 Q That's the car shed? And is there a van parked
- 22 there?
- 23 A Yes.
- 24 Q Was that van parked there on the night you were
- 25 there?

SW - R. BOATWRIGHT - DIRECT

- 1 A Yes.
- 2 Q Okay, up under the car shed?
- 3 A Yes.
- 4 Q And y'all were in the front of the van?
- 5 A I was in the side of the van.
- 6 Q You were on the side of the van? Okay, all
- 7 right. What -- who all was there with you when you
- 8 were there burning CDs?
- 9 A Rishawn Gause, Ian Gause, Charles Wilson, Tywana
- 10 Grisham (ph).
- 11 Q Tywana Grisham? Anybody else?
- 12 A I think that's it.
- 13 Q You think that's it. How were y'all burning CDs,
- 14 using computer or ---
- 15 A Computer.
- 16 Q ---downloading music? Putting them on CDs you
- 17 play them in the car or whatever?
- 18 A Yes.
- 19 Q And were y'all having a good time?
- 20 A Yes.
- 21 Q Was there any problems, any trouble?
- 22 A No.
- 23 Q Anybody else upset, mad, or anything?
- 24 A No problem, trouble.
- 25 Q Okay, all right. And five of y'all were there..

SW - R. BOATWRIGHT - DIRECT

1 Did y'all all get there at the same time or did
2 people kind of arrive at different times?

3 A Ian and Rishawn did. We got there like around a
4 little bit after 7.

5 Q All right. And Charles and the other fella ---

6 A They had already been there.

7 Q They had already been there, okay. Who was the
8 next person that showed up?

9 A Probably like two hours later Woodbury, Davis,
10 and Graham.

11 Q They showed up?

12 A They showed up.

13 Q How did they get there?

14 A Black Cherokee.

15 Q Black Cherokee?

16 A Yeah.

17 Q State's Exhibit 1, does that look familiar to
18 you?

19 A Yeah.

20 Q What is that?

21 A Black Cherokee.

22 Q That's the black Cherokee they came up in?

23 A Yes.

24 Q Who got out of the car first, if you know?

25 A I think Mr. Graham.

SW - R. BOATWRIGHT - DIRECT

1 Q Graham did?

2 A Yeah.

3 Q Okay. And what did he do after he got out the
4 car?

5 A He came up and spoke to everybody.

6 Q Okay.

7 A That's about it.

8 Q And who got out next, if anyone?

9 A I think Davis got out next.

10 Q Okay. And who else got out?

11 A Woodbury.

12 Q Woodbury. Could you tell who was seated where in
13 the Cherokee?

14 A No, I ain't pay no attention.

15 Q You didn't pay it any attention? Okay. All
16 right. Mr. Woodbury came up. Did he come up to
17 where the front of the van was, where everybody was?

18 A Yes.

19 Q All right. When he came up what was said or what
20 happened?

21 A He spoke to everybody. Him and Mr. Gause, Ian
22 Gause, had got into it so we broke them up. You
23 know, then he left. He left, then he came back and
24 they had got into it again so ---

25 Q When you say they got into it did they -- were

SW - R. BOATWRIGHT - DIRECT

1 they hitting each other or ---

2 A No.

3 Q ---running their mouth?

4 A Running their mouth.

5 Q Okay.

6 A Yeah, so we broke it up. He left went, back to
7 the truck and he came back, they start fussing
8 again. Then he laid out in front of his truck so
9 next thing I know, what happened, he was holding
10 like something on his side. So he was like, you got
11 something, you got something.

12 Q Who was holding something?

13 A Mr. Woodbury.

14 Q Okay.

15 A Yeah.

16 Q What did Ian say?

17 A He was like, you got something, you got
18 something. But I ain't never know what he said
19 after that, but he was like, you got something, you
20 got something so ---

21 Q Where was Rishawn when all this was going on.

22 A He was around.

23 Q How about Charles?

24 A Charles was around. He was trying to break it
25 up. Everybody was trying to break it up.

SW - R. BOATWRIGHT - DIRECT

1 Q Okay.

2 A So, yeah, he was like, you got something, you got
3 something. So a few minutes later that's when
4 Rishawn had went to his car. I don't know where he
5 went at the car, went in the street and shot the gun
6 in the air. So he calmed down for a little bit.

7 Q So that, when he fired that warning shot
8 everybody kind of calmed down, chilled out?

9 A Yes.

10 Q Okay. And he did that out in the front?

11 A Yeah, out in the front.

12 Q Okay. And after he did that everybody chilled
13 out for how long?

14 A A couple of seconds. Not long, a couple of
15 minutes.

16 Q Okay. Minutes or seconds?

17 A I say a couple of minutes.

18 Q Okay.

19 A Yeah. So ---

20 Q Then what happened?

21 A What happened after that?

22 Q Did you ever see anybody leave after Rishawn
23 fired his gun in the air?

24 A Ain't nobody leave.

25 Q You didn't see nobody leave?

SW - R. BOATWRIGHT - DIRECT

1 A Ain't nobody leave.

2 Q Okay, all right.

3 A So after that I don't know what happened then.

4 Just everybody end up in the road after that. Next
5 thing I know people just took off running, took off
6 running, ran in the car porch. The next thing I
7 know ---

8 Q Who ran into the carport?

9 A Mr. Woodbury, Rishawn Gause, Ian Gause. So, what
10 happened? Probably like about five minutes Ian came
11 back out and he said, man, I got stabbed, he stabbed
12 me. Rishawn came, he said, he stabbed me too. He
13 like, man, he got me good. He like, man, I need to
14 go to hospital. I was like, Rishawn, take him to
15 hospital. He jumped in the car and went to the
16 hospital and about ---

17 Q Where was, where was Woodbury when Ian said, man,
18 he stabbed me?

19 A He wasn't nowhere in sight.

20 Q All right.

21 A Yeah, so once they went to the hospital probably
22 like 20 minutes, something like 10, 20 minutes later
23 Mr. Woodbury came back looking for his knife. He
24 found his knife and he went on.

25 Q Did you ever see his knife?

SW - R. BOATWRIGHT - DIRECT

- 1 A Yes.
- 2 Q Where did you see it?
- 3 A It was laying right off the cement under the car
- 4 shed, like the cement right there, like the cement
- 5 right there, right here beside it.
- 6 Q On the ground?
- 7 A Yes.
- 8 Q Did you see this?
- 9 A I see half of it.
- 10 Q Or you saw this?
- 11 A Yeah, I seen that.
- 12 Q It was one of the halves; you're not sure?
- 13 A He had the other half in his hand.
- 14 Q He had the other half in his hand?
- 15 A Yeah.
- 16 Q Okay. Did you see where he came from, which side
- 17 of the house he came from when he said, when he
- 18 picked the other half of his knife up?
- 19 A He came from the back. I ain't for sure. I
- 20 believe he came from the back; I ain't for sure.
- 21 Q Back of the house but you're not sure?
- 22 A Yeah, I'm not sure.
- 23 Q Around the opposite side that the car shed was on
- 24 or the same side the car shed was on?
- 25 A Behind the car shed.

SW - R. BOATWRIGHT - DIRECT

1 Q Okay. How well lit was it out there, Ronnie?

2 A Dark.

3 Q Okay. Dark?

4 A Yeah, dark.

5 Q When y'all were downloading music on the CD,
6 burning CDs, did y'all have the light on under the
7 shed?

8 A Yes. Actually when they ran out, when they start
9 running out the street, I say Ian -- I mean, Ian,
10 Rishawn Gause, and Mr. Woodbury, once they ran
11 secrete ran, once they got up under the carport
12 somebody cut the light off in the car porch.

13 Q Was there a switch to cut it off under the
14 carport?

15 A Yeah, it's a switch all the way beside the door.

16 Q Do you know who cut it off?

17 A I'm thinking Tywana Grisham 'cause he was really
18 about the only one in the house.

19 Q He was in the house?

20 A Yeah, he was in the house.

21 Q Why would he cut the light off, if you know?

22 A I think he was -- I think maybe he was under the
23 car porch. When they started running he probably
24 got scared and ran in the house and cut the light
25 off trying to keep the heat down.

SW - R. BOATWRIGHT - DIRECT

1 Q Okay. Did you see anybody jump anybody?

2 A No, huh-uh. I ain't even see the stabbing. I
3 ain't seen nothing, you know.

4 Q The light was off under there?

5 A Yes. And they were fighting like, it looked like
6 they were fighting in front of the van. I didn't
7 run, you know, I didn't run behind them.

8 Q Who was fighting and who was trying to break it
9 up?

10 A Whatever happened it happened under the van, I
11 mean, in front of the van so I didn't see that. I
12 don't know what happened.

13 Q All right. So you just know it was kind of
14 chaos?

15 A Yes.

16 Q All right. What was Rishawn trying to do? Was
17 he trying to fight anybody or?

18 A No.

19 Q What was he trying to do?

20 A He was trying to calm it down too. Everybody
21 really trying to calm it down.

22 Q Ky Graham trying to calm it down?

23 A Yes, everybody. Everybody.

24 Q Everybody?

25 A Everybody.

SW - R. BOATWRIGHT - DIRECT

1 Q All right. What else did you see about stabbing
2 or hitting or anything?

3 A That's it, what I just told you. That's all I
4 know.

5 Q Okay. And there was constant mouthing off,
6 right?

7 A Yes.

8 Q Okay, all right. Did you see anybody try to get
9 anybody to leave?

10 A Yes.

11 Q Who did you see try to leave?

12 A Charles Wilson.

13 Q Charles Wilson?

14 A That's his house so he, yeah, he try to kill the
15 drama before it happened.

16 Q Who did Charles Wilson try to get to leave?

17 A Woodbury.

18 Q Woodbury?

19 A Yes.

20 Q And it was his house and he tried to kill the
21 drama?

22 A Yes.

23 Q Okay, all right. Was anybody trying to help him
24 get Woodbury to leave?

25 A My understanding I think his ride.

SW - R. BOATWRIGHT - DIRECT

- 1 Q His ride was trying to get him to leave too?
- 2 A Yes.
- 3 Q Okay, all right. From where you were watching
- 4 and observing did he have opportunity to leave?
- 5 A Yes.
- 6 Q How much opportunity?
- 7 A Million chances.
- 8 Q All right. A million chances?
- 9 A A million chances.
- 10 Q Okay. After whatever happened happened, you
- 11 didn't see it, it was on other side of the van?
- 12 A Yes.
- 13 Q And then you didn't see where Woodbury went, did
- 14 you?
- 15 A No.
- 16 Q And then you saw and heard Ian Gause say he
- 17 stabbed me and come out from behind there?
- 18 A Yes.
- 19 Q And take me to the hospital?
- 20 A Yes.
- 21 Q All right. Who took him to the hospital?
- 22 A Rishawn Gause.
- 23 Q In what car?
- 24 A Ford Focus.
- 25 Q Where was the Ford Focus parked at, if you know?

SW - R. BOATWRIGHT - DIRECT

- 1 A It like it was parked in the grass.
- 2 Q Okay. All right. Tell me if I'm right. Say
- 3 this is the car shed right here, the van is parked
- 4 here, right?
- 5 A Yes.
- 6 Q Is that correct?
- 7 A Yes.
- 8 Q And they're right behind the van. You got the
- 9 Cherokee parked ---
- 10 A Yes.
- 11 Q ---the same in line?
- 12 A Yes.
- 13 Q Where -- to the left or right? Where would the
- 14 Ford Focus have been parked?
- 15 A It was to the right.
- 16 Q To the right?
- 17 A Yeah.
- 18 Q Over here on the grass?
- 19 A Yes.
- 20 Q Was it parked like this or was it parked at an
- 21 angle like this, if you know?
- 22 A I ain't for sure.
- 23 Q You're not for sure. Don't tell me if you're not
- 24 for sure.
- 25 A All right.

SW - R. BOATWRIGHT - DIRECT

- 1 Q It was parked over here?
- 2 A Yes.
- 3 Q So this is where Rishawn went before you heard a
- 4 gunshot?
- 5 A Yes.
- 6 Q Did you see Rishawn fire the gun or you just
- 7 heard him fire the gun?
- 8 A Yes.
- 9 Q Okay. And he fired in the air?
- 10 A Yeah.
- 11 Q And that chilled everybody out for a moment?
- 12 A For a moment, yeah.
- 13 Q After he shot the gun what did Rishawn do?
- 14 A He put the gun back up.
- 15 Q He put the gun back?
- 16 A Yeah.
- 17 Q Did you see where?
- 18 A He put it in the trunk.
- 19 Q You think he put it in the trunk?
- 20 A Yeah.
- 21 Q All right. Did you see anybody else with a
- 22 weapon up or a gun up?
- 23 A No, no.
- 24 Q You didn't see any of that?
- 25 A No, no, no.

SW - R. BOATWRIGHT - DIRECT

1 Q Okay, all right. How much opportunity did
2 Woodbury have to leave after Rishawn fired the gun
3 and until the time you heard Ian say, man, he
4 stabbed me?

5 A It just ---

6 Q Was there opportunity to leave?

7 A He been have the opportunity, sir.

8 Q Sir?

9 A He been have the opportunity to leave. He had
10 plenty of opportunity to leave.

11 Q Plenty of opportunity to leave?

12 A Yeah, he chose to stay.

13 Q Okay. Beg the Court's indulgence a moment.

14 Mr. Boatwright, you're under oath, right?

15 A (No verbal response.)

16 Q You got any friends ---

17 THE COURT: Say yes or no. Hold on a
18 minute. I need a verbal statement for my court
19 reporter.

20 THE WITNESS: Oh, yes. Yes. Yes.

21 THE COURT: Thank you. Go ahead.

22 BY MR. CLEMENTS:

23 Q Yes, you're under oath. You trying to reward any
24 friends here today?

25 A No.

SW - R. BOATWRIGHT - DIRECT

1 Q You trying to punish any enemies?

2 A No.

3 Q What are you telling today?

4 A I come to tell the truth.

5 Q Is that what you saw and what you heard?

6 A Yeah, yes.

7 Q Now have you been -- had a problem with the law
8 before?

9 A Yes.

10 Q All right. You, in 2003 did you have a
11 conviction for safe cracking?

12 A Yes.

13 Q And did you also have a conviction for giving
14 false information?

15 A Yes.

16 Q And breaking into a car?

17 A Yes.

18 Q And having possession of a controlled substance?

19 A Yes.

20 Q And that was 2005?

21 A Yes.

22 Q All right. And have you been in any trouble
23 since then?

24 A No, huh-uh.

25 Q All right. Please answer any questions

SW - R. BOATWRIGHT - CROSS

1 Mr. Wilson may have.

2 THE COURT: Cross-examination.

3 MR. WILSON: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. WILSON:

6 Q So is there any question that you will give false
7 information? There's no question about that 'cause
8 you've done it in the past; haven't you?

9 A Gave false information in the past?

10 Q Yes, sir.

11 A No, sir.

12 Q You've never done that?

13 A No, sir.

14 Q So you deny that you were convicted of that?

15 A Convicted of what?

16 Q Giving false information?

17 A Oh, giving false information?

18 Q Yes, sir.

19 A Oh, yes, yes. I plead guilty to that, yes.

20 Q You did that. You did that.

21 A Yeah.

22 Q And so there's no question you've been convicted
23 of it before so there's no question that you're
24 capable of giving false information, right?

25 A No, not today I won't.

SW - R. BOATWRIGHT - CROSS

1 Q Let's talk about this, not today. But you'd do
2 it some other day but not today.

3 A Never, never.

4 Q Never.

5 A First and last.

6 Q First and last?

7 A Yes.

8 Q Okay, let's talk for a minute. Now let's talk
9 about what we know. We know you were there, right?

10 A Yes.

11 Q Okay. And, well let me ask you this first. You
12 related to Rishawn and Ian?

13 A Yes.

14 Q Yeah, y'all cousins, right?

15 A Yes.

16 Q So you're not unbiased, are you? This is your
17 family, right?

18 A Yes.

19 Q All right. Right. And you over there there
20 night with your family, right?

21 A Yes.

22 Q And you're not happy about what happened 'cause a
23 member of your family got injured, got killed,
24 right?

25 A Yes.

SW - R. BOATWRIGHT - CROSS

1 Q Ain't no question about that, right?

2 A No question.

3 Q Okay. And you here today -- well, let me ask
4 you, when is the first time that you gave a
5 statement to the Solicitor about what happened?

6 A Probably about three months, three, four months
7 ago.

8 Q Three or four months ago. This happened, what, a
9 year-and-a-half ago. And three or four months ago
10 you finally show up and give a statement, and say,
11 you know, let me tell you what happened, right?

12 A They subpoenaed me to come give my statement so I
13 came gave my statement.

14 Q Well, didn't you know that the police were
15 investigating this way back 18, 15, 16 months ago,
16 however many months ago?

17 MR. CLEMENTS: Objection, Your Honor. Him
18 coming and talking with me has nothing to do with
19 talking to the police. I think that's
20 mischaracterizing this in front of the jury.

21 MR. WILSON: I simply asked him when he
22 did.

23 THE COURT: All right, I'll -- you may
24 continue. Objection sustained.

25 MR. WILSON: Thank you.

SW - R. BOATWRIGHT - CROSS

1 BY MR. WILSON:

2 Q Did you ever go to the police and give a
3 statement from the day that this incident happened
4 back in September of 2011 or 12 and three months ago
5 when you gave the Solicitor a statement?

6 A No.

7 Q No, no. And you didn't want no part of talking
8 to the police about this, did you?

9 A Well, if it came about, you know, I would.

10 Q Yeah, but, and who got you to go down to the
11 Solicitor's Office and give him a statement three
12 months ago? How did that come about? Did your
13 cousin Ian Gause, Rishawn Gause, get you to go down
14 there and talk?

15 A No, my -- his mother.

16 Q Yeah, his mom got you to come and go down there.
17 That's how you ended up down there, right?

18 A Yes.

19 Q Yeah. And before that you'd been silent. You
20 hadn't had anything to say about all this?

21 A 'Cause ---

22 Q Right?

23 A Ain't nobody asked me no questions so, you know.

24 Q But you knew about it, right?

25 A Yes.

SW - R. BOATWRIGHT - CROSS

1 Q Okay. Let's talk about what happened at the
2 house that night. What time of day did you get out
3 to Withlacoochee? What time did you get out there?

4 A A little bit after 7.

5 Q Huh?

6 A A little bit after 7.

7 Q A little bit after 7. So you're out there a
8 little bit after 7 and when you get there who's
9 there at the house?

10 A Charles Wilson, Tywana Grisham.

11 Q Charles Wilson, Tywana Grisham. Just the three
12 of you then. When you get there, three guys there?

13 A Two guys there.

14 Q Well, two there when you get there and you make
15 the third, right?

16 A No, I make the fifth.

17 Q Well, that's what I'm asking. When you get there
18 who was there?

19 A Tywana Grisham and Charles Wilson. When I got
20 there I came with Ian Gause and Rishawn Gause.

21 Q So you brought some other folks with you?

22 A Yes.

23 Q Okay. So when you got there, a total of five
24 people there?

25 A Yes.

SW - R. BOATWRIGHT - CROSS

1 Q Okay. And you guys are sitting out around
2 drinking, and what else y'all doing? Any pot.

3 A Burning DVDs. No, I don't smoke pot.

4 Q You don't smoke pot? Nobody else smoking no pot
5 out there?

6 A I don't know.

7 Q You don't know?

8 A No.

9 Q And you knew you wasn't gonna tell us anyway,
10 right?

11 A Yeah.

12 MR. CLEMENTS: Objection, Your Honor.

13 THE COURT: Objection sustained.

14 MR. WILSON: All right.

15 BY MR. WILSON:

16 Q Let me ask you this, was there any pot out there
17 that night, anybody smoking?

18 A No.

19 Q You didn't see anybody ---

20 A I ain't seen nobody smoking.

21 Q When you and these other five guys are out there
22 and this is before Mr. Woodbury comes up, at what
23 point did Rishawn and Ian Gause come up?

24 A They been there. They all been sitting outside
25 in the car shed.

SW - R. BOATWRIGHT - CROSS

1 Q So they were there when you got there at 7:00?

2 A No, I rode with him. I rode with them, Rishawn
3 and Ian Gause.

4 Q Okay, so you went to this event with Rishawn and
5 Ian?

6 A Yes.

7 Q So the three of y'all showed up there. And the
8 other guys were there, two guys, and that made five?

9 A Yes.

10 Q Okay. Now how long were y'all there before you
11 say Mr. Woodbury showed up?

12 A Probably about two, two-and-a-half hours,
13 something like that.

14 Q Okay. Now what are y'all doing this whole
15 two-and-a-half hours?

16 A We drinking a little, burning CDs.

17 Q Drinking liquor. Well, was Ian drinking?

18 A Yes.

19 Q What about Rishawn, was he drinking?

20 A Yes.

21 Q What about you, were you drinking?

22 A Yes.

23 Q Okay. What about Charles Wilson, was he
24 drinking?

25 A Yes.

SW - R. BOATWRIGHT - CROSS

- 1 Q Okay. What were y'all drinking?
- 2 A E&J Co cola.
- 3 Q E&J and Co cola?
- 4 A Yeah.
- 5 Q All right. Now how many CDs did y'all burn
- 6 before ---
- 7 A I don't know. I don't know.
- 8 Q You don't know?
- 9 A No.
- 10 Q Well, did you burn any?
- 11 A I wasn't coming there for CDs, but they were
- 12 burning CDs so I don't know how many they burned.
- 13 Q So you didn't see no CDs but y'all were
- 14 supposedly burning some CDs, right?
- 15 A Yes.
- 16 Q So at some point in time Mr. Woodbury shows up in
- 17 a car with two other individuals?
- 18 A Uh-huh?
- 19 Q Fair?
- 20 A Yes.
- 21 Q Okay. Now it's night, right, by this time?
- 22 A Yes.
- 23 Q And now at that point in time the lights on on
- 24 the porch, right?
- 25 A (No verbal response.)

SW - R. BOATWRIGHT - CROSS

1 Q You have to say yes or no.

2 A It was night, yeah. It was night, yeah, we put
3 the lights on, yeah.

4 Q Yeah, so the light was on. Well, now at some
5 point in time during the evening the light gets cut
6 off, right?

7 A Yes.

8 Q Now, and you told the Solicitor, I think, that
9 you think that Mr. Grisham cut the light off.

10 A Yes.

11 Q And he cut it off because of the heat?

12 A I'm thinking so.

13 Q What heat you talking about? Now this is
14 September 30th when this is happening so it ain't
15 hot.

16 A No. His mom was in the house so he ain't want
17 drama around his house so he ain't want her all in
18 it so.

19 Q So he cut the light off on the porch?

20 A I guess so. I'm not him; I don't know.

21 Q Well, let's talk about it a minute. Look, at
22 that point there's some arguing and some whatever
23 going on out there; is that fair?

24 A Yes.

25 Q And who is doing the arguing now? When we're out

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1 there, who is doing the arguing? Before the light
2 gets cut off, who is arguing?

3 A Mr. Gause, Ian Gause and Woodbury.

4 Q Okay. When Mr. Woodbury came up, did he strike,
5 did he do anything to anybody other than speak?

6 A No.

7 Q No. He came up and he spoke to everybody who was
8 there and your friend —

9 MR. CLEMENTS: Is that a question, Your
10 Honor, or a statement. I would object if it's a
11 statement.

12 THE COURT: Hold on a minute. Question
13 and answer, question and answer. Please continue.

14 BY MR. WILSON:

15 Q He came up and he spoke to everybody there; did
16 he not?

17 A Yes.

18 Q All right. And Mr. Gause, Mr. Ian Gause, wasn't
19 happy with that, was he?

20 A No.

21 Q No. In fact, he said to him, you know, well, you
22 disrespect me, you ain't speaking to me, what's up
23 with that?

24 A He just asked him, you can't speak to me, simply
25 like that, you know.

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1 Q Yeah, and it started from there; didn't it?

2 A Yes.

3 Q Yeah, it started from there. And no question at
4 that point in time Mr. Woodbury hadn't done a single
5 thing other than appear and speak, and it was on
6 from that moment; wasn't it?

7 THE COURT: Is that a question, Mr. ---

8 MR. WILSON: Yes, sir.

9 BY MR. WILSON:

10 Q Is that a fair statement?

11 A Well, yes, but at the same time we broke it up
12 during that time right there. Mr. Woodbury went
13 back to his truck. He could have left then but I
14 guess he went and got what he got and came back.

15 Q We're going to come to that in just a minute.

16 A Okay.

17 Q We're going to come to that. Let me just go back
18 with you so we're clear. At that point in time
19 absolutely nothing had happened except that, right?

20 A Yes.

21 Q Except that Mr. Ian Gause was upset 'cause he
22 says he didn't get spoken to?

23 A Yes.

24 Q All right. And Mr. Woodbury didn't hit him at
25 that point, did he?

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1 A I don't think so.

2 Q No. In fact, didn't Mr. Woodbury walk away and
3 walk back towards his car?

4 A Yes.

5 Q Yeah. And Mr. Gause, Mr. Ian Gause, followed him
6 back to the car; did he not?

7 A No, no.

8 Q Oh, he didn't follow him back to the car.

9 A No, he didn't follow him back to the car.

10 Q Oh, he didn't follow -- well, where did Mr. Ian
11 Gause go?

12 A He stay right here in the carport.

13 Q And so then what happened?

14 A Like you say, Mr. Woodbury walked out, went to
15 the truck. He came back to the carport and then, I
16 guess they started, they started fussing more and
17 they end up in front of his truck and then out to
18 the street and then.

19 Q Okay, go ahead, you finished?

20 A Head out to the street. The next thing I know
21 Mr. Woodbury start running, Ian behind him.

22 Q Mr. Woodbury start running?

23 A Yeah.

24 Q And Mr. Ian Gause ran behind him, right?

25 A Yes.

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1 Q Did you see that gun in Mr. Ian Gause's hand?

2 A No.

3 Q You never saw the gun in Ian Gause's hand?

4 A I never seen no gun.

5 Q Never saw it. So if he had a gun that night you
6 don't know nothing about it?

7 A No.

8 Q Is that right?

9 A Yes.

10 Q All right. And that's what your testimony is?

11 A Yes.

12 Q Okay. Now but no question that Mr. Woodbury was
13 running out into the road and Mr. Gause was chasing
14 him? Ain't no question about that, is there?

15 A I don't know. Like I said, I don't know whether
16 he got stabbed in the road or what.

17 Q No, that wasn't my question.

18 THE COURT: Answer his question if you
19 know the answer.

20 THE WITNESS: He say it again.

21 BY MR. WILSON:

22 Q There's no question that Mr. Woodbury was running
23 out into the road and Mr. Ian Gause was chasing him
24 at that point into the road?

25 A He ran behind him, yes.

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1 Q All right, yeah. And then Mr. Woodbury runs back
2 and runs up into the carport, and Mr. Ian Gause and
3 Mr. Rishawn Gause chased him back up under the
4 carport, right?

5 A Yes.

6 Q Yeah. So he was running for his life; wasn't he?

7 A I don't know about that.

8 Q Well ---

9 A I don't know.

10 Q Well, you know for a fact that Rishawn Gause had
11 gun. Ain't no question about that, right?

12 A Yes, but he put the gun back up.

13 Q He put it back up. So he just takes his gun out
14 of the trunk of his car is what you told the
15 Solicitor, right, and he fires a shot and then he
16 just takes the gun and puts it back up under truck
17 of the car, close it down, and then comes back over
18 there to where y'all are all standing and y'all just
19 sit around and get another drink; is that what
20 happens?

21 A No, they were still in the highway after that
22 'cause he shot the gun. They were still in the
23 highway.

24 Q That's right. Rishawn Gause -- I'm sorry, Ian
25 Gause and Mr. Woodbury were still in the road

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1 because Mr. Ian Gause was still chasing him at that
2 point when his brother fired the gun, right?

3 A No.

4 Q No? No, what? What part of that is no?

5 A He wasn't chasing him.

6 Q He wasn't chasing him?

7 A He was never chasing him.

8 Q He was just walking behind him?

9 A No. When they was in the road, when he ran
10 that's when he ran after.

11 Q Well, that's what I'm saying. Is that not
12 chasing him? In your mind that's not chasing if he
13 runs and he runs after him, that's not chasing him?

14 A Yes.

15 Q Yeah, it's chasing him. And then Mr. Woodbury
16 managed to get away from that, runs back up under
17 the carport, and he comes up under there, right?

18 A Once they ran out of the road, once they ran out
19 of the road, when they ran to the car porch, that's
20 when Ian ran to the car porch with him. So after
21 they ran up to the car porch, about five minutes Ian
22 came out said he had got stabbed. His brother had
23 came out and said I got stabbed too, he stabbed me
24 good ---

25 Q So what about ---

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1 A ---I need to go to the emergency room.

2 Q So what about those five minutes then, let's talk
3 about that. Those five minutes when Mr. Woodbury
4 runs from out of the road and runs back up under the
5 carport with them in pursuit of him, and for five
6 minutes there's nothing going on and then Mr. Ian
7 Gause tells you, or says to y'all, that he has been
8 stabbed?

9 A Yes.

10 Q So now what happened during those five minutes?
11 Where are Mr. Woodbury, Mr. Rishawn Gause, and
12 Mr. Ian Gause when these five minutes are occurring?

13 A He was in front of the van in the car porch.

14 Q Right. 'Cause they were fighting. They were
15 fighting in front of the carport?

16 THE COURT: Is that a question, Mr. ---

17 BY MR. WILSON:

18 Q Were they not?

19 A I don't know. I told you I never seen it.

20 Q You didn't see it?

21 A No.

22 Q So for the whole five minutes after they run back
23 up under there, you are just -- what are you doing?

24 A I just gave up because we tried to break it up so
25 long I just gave up.

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1 Q You just gave up?

2 A Yes.

3 Q So what are you doing? That's my question. What
4 are you doing during these five minutes?

5 A I'm just standing around.

6 Q Standing around?

7 A Yeah.

8 Q And where was Charles Wilson during these five
9 minutes?

10 A I don't know.

11 Q Where was Mr. Grissett?

12 A He probably in the house.

13 Q Probably was in the house?

14 A Yeah.

15 Q Is that when the lights got cut off?

16 A Yes.

17 Q In fact, the lights got cut off, isn't it true,
18 that the lights got cut off when Mr. Woodbury ran
19 back up under the shed of the house and they were in
20 pursuit of him, that's when the lights got cut off?

21 A Yes.

22 Q Right. And the lights got cut off because we
23 don't want nobody knowing what's going on, right?

24 MR. CLEMENTS: Objection.

25 THE WITNESS: Your Honor.

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1 THE COURT: Hold on a minute.

2 MR. CLEMENTS: Pure speculation.

3 THE COURT: Objection sustained.

4 MR. WILSON: Thank you.

5 THE COURT: Rephrase -- you can ask the
6 question, rephrase your question.

7 BY MR. WILSON:

8 Q When did you -- that's fine. Just let me move to
9 another issue here. Let me ask you about this, now
10 as I understand your testimony at no point in time
11 did you ever see Mr. Ian Gause with a gun?

12 A No.

13 Q That's your testimony?

14 A Correct.

15 Q That's your testimony, right?

16 A Yes.

17 Q Okay. And the only time that you saw a gun in
18 the hands of Rishawn Gause was when he was firing a
19 shot in the air?

20 A Yes.

21 Q Is that right?

22 A Yes.

23 Q Okay. Now anybody else out there have any guns?

24 A Not to my recall.

25 Q How many shots total were fired out in that night

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1 while you were there?

2 A One.

3 Q One shot?

4 A Yes.

5 Q No question in your mind about that?

6 A No question.

7 Q All right. One shot?

8 A One shot.

9 Q Okay. Now you said at some point in time that
10 after this five minute gap where you don't really
11 know what's going on and the lights are off, that at
12 some point in time Mr. Woodbury is gone around the
13 side of the house or the back of the house or
14 somewhere?

15 A Well, after the Gauses came from under the shed I
16 never seen Mr. Woodbury till later on 'cause he came
17 back in the light.

18 Q Well, you told the Solicitor about 15, 20 minutes
19 later that Mr. Woodbury showed back up.

20 A Look, after they went to the ER, he showed up
21 like 20 minutes later ---

22 Q Okay.

23 A ---to get his knife.

24 Q I'm sorry?

25 A To find his knife. He showed up like 20 minutes

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1 later after that.

2 Q Yeah, he came back from around the house -- or
3 where did he come from?

4 A Came from around the house.

5 Q Right, came from around the house and after they
6 had left, right?

7 A Yes.

8 Q He came from around the house and he picked up
9 the knife that was there, plus his car was still
10 there; was it not?

11 A I don't know.

12 Q Well, the jeep that he was in?

13 A I don't know about that jeep. Could be still --
14 the jeep could have been still there; I don't
15 remember.

16 Q Well, let me ask you this, didn't you tell the
17 Solicitor earlier that the jeep was parked in the
18 yard?

19 A I said I don't know how he left. It was parked
20 in the yard 'cause he came back with the knife. I
21 said I don't know how he left.

22 Q Well, you were there. When he came back ---

23 A I probably went in the house once he got the
24 knife; I don't know.

25 THE COURT: Let him finish answering his

SW - R. BOATWRIGHT - CROSS

1 question. When he's talking let him finish
2 answering your question.

3 MR. WILSON: Yes.

4 BY MR. WILSON:

5 Q Go ahead.

6 A Go ahead.

7 Q My question is, when Mr. Gause, when Mr. Ian
8 Gause told you that he had been injured and that
9 they left and went to the hospital?

10 A Yes.

11 Q Right?

12 A Yes.

13 Q At some point in time you said a few minutes
14 later that Mr. Woodbury came back from around the
15 side of the house?

16 A Yes.

17 Q Right?

18 A Yes.

19 Q Now you're still there?

20 A Yes.

21 Q Where are you standing when Mr. Woodbury comes
22 back from around the side of the house, where are
23 you standing?

24 A I was standing like in front of the van right by
25 the knife.

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1 Q You're standing in front of the van?

2 A Right by the knife.

3 Q Right by the knife. And there are only two cars
4 parked in the yard, right?

5 A I recall the van. I don't recall nothing else.

6 Q You recall the van, but don't recall anything
7 else. So how did Mr. Woodbury leave?

8 A I don't know. Probably went in the house after
9 that. I don't remember how he left.

10 Q You don't remember, okay. So he gets the knife,
11 then you just went in the house?

12 A Once he got the knife he wiped the knife off.

13 Q What did he wipe it off with?

14 A He wiped it with his shirt or something; I don't
15 remember. I don't really remember. I know when he
16 wiped it off. I think he wiped it on his shirt up
17 here somewhere.

18 Q Okay, all right. And so then he gets the knife,
19 he leaves. But you go in the house first, is that
20 what you're saying?

21 A After he left -- once he got there I don't
22 remember what he did after that. I can't remember.

23 Q Okay.

24 A I don't know how he left.

25 Q Okay. Now is the reason that can you can't

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1 remember because you were intoxicated or you just
2 don't know?

3 A No, I just don't remember.

4 Q Well, is there any reason that you didn't go to
5 the police and tell them this story the day after
6 this happened?

7 A No, because they ain't came to question me so I
8 really didn't say nothing but really to no police;
9 but to my family that's all I said something to.

10 Q Okay, all right.

11 MR. WILSON: Court bear with me one second
12 please.

13 THE COURT: Yes, sir.

14 BY MR. WILSON:

15 Q I just want to ask you one last thing. And I
16 know we talked about this a minute, but you used the
17 phrase to keep the heat down when you said they
18 turned the lights off to keep the heat down ---

19 A To keep his ---

20 Q The heat being the police ---

21 THE COURT: Hold on, let him finish.

22 BY MR. WILSON:

23 Q The heat meaning the police or the heat meaning
24 the electric heat?

25 A Naw, to keep his mom from out -- keep his mom

SW - R. BOATWRIGHT - CROSS

1 from knowing what's going on, really.

2 Q So when you were referring to heat you were
3 referring to his mom?

4 A Yes.

5 Q Okay. Not to the police?

6 A Not the police, no.

7 Q Okay.

8 MR. WILSON: No other questions, Your
9 Honor, thank you.

10 THE COURT: Any redirect?

11 MR. CLEMENTS: No, Your Honor, I ask he be
12 released from his subpoena.

13 MR. WILSON: No objections, Your Honor.

14 THE COURT: Sir, you're free to step down.
15 You have no further responsibilities from your
16 subpoena. Thank you for being here.

17 Ladies and gentlemen, we're going to take
18 a break at this time. We've been going for a while.
19 You all stepped out earlier, but we did not, we did
20 not. So we're going to step down a few minutes.
21 I'm gonna ask you to step to the jury room. Do not,
22 do not discuss the case. I'll get you back out here
23 quickly as possible.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 11:22 a.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: Anything from the State before
3 we step down?

4 MR. CLEMENTS: No, Your Honor.

5 THE COURT: Defense counsel?

6 MR. WILSON: Nothing.

7 THE COURT: We'll stand down ten minutes.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE COURT: State ready to proceed?

11 MR. CLEMENTS: We are, Your Honor.

12 THE COURT: Defense counsel?

13 MR. WILSON: Yes, sir, Your Honor.

14 THE COURT: Anything before I bring the
15 jury in, Mr. Clements.

16 MR. CLEMENTS: Yes, sir, may we approach.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 THE COURT: All right, bring the jury
20 please.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 11:41 a.m., and
23 the following proceedings commenced in
24 open court.)

25 THE COURT: All the jurors are present.

SW - K. GRAHAM - DIRECT

1 Mr. Clements, call your next witness
2 please.

3 MR. CLEMENTS: Thank you, Your Honor. If
4 it please the Court, Your Honor, we call Ky Graham.

5 THE CLERK OF COURT: Mr. Graham, place
6 your left hand on the Bible, raise your right hand.
7 WHEREUPON,

8 **KY GRAHAM,**
9 having been duly sworn by the Clerk of Court,
10 testified as follows:

11 THE CLERK OF COURT: Have a seat in the
12 witness box.

13 **DIRECT EXAMINATION**

14 BY MR. CLEMENTS:

15 Q Mr. Graham, could you please state your name and
16 spell your name please for the court reporter.

17 A My name is Ky Graham, K-Y G-R-A-H-A-M?

18 Q I'm gonna ask, if you would, speak up 'cause you
19 have a sort spoken voice. If you'd speak up so all
20 these jurors can hear you, okay?

21 A All right.

22 Q Mr. Graham, how old are you?

23 A 40.

24 Q Where do you live?

25 A [REDACTED]

SW - K. GRAHAM - DIRECT

- 1 Q In Marion?
- 2 A Yes.
- 3 Q How long have you lived in Marion?
- 4 A Since about '91.
- 5 Q Okay. Where did you live before then?
- 6 A Connecticut.
- 7 Q Connecticut?
- 8 A Yes.
- 9 Q And do you have a record for burglary second and
10 criminal conspiracy?
- 11 A Yes.
- 12 Q Okay. That happened a long time ago?
- 13 A Yes.
- 14 Q All right. Now you know Richard Woodbury?
- 15 A I knew him for a couple of years.
- 16 Q Okay. How about Lamont Davis?
- 17 A Yes.
- 18 Q All right. Do you know Charles Wilson?
- 19 A Yes.
- 20 Q All right, does he have a nickname?
- 21 A They call him Junior.
- 22 Q Okay.
- 23 A Yeah.
- 24 Q They also call him Banner?
- 25 A Yes.

SW - K. GRAHAM - DIRECT

1 Q Okay. And did you know Ian Gause?

2 A No.

3 Q Did you know Rishawn Gause?

4 A No.

5 Q Did you know Ronnie Boatwright?

6 A Not really, no.

7 Q You just knew him but didn't know him well?

8 Okay. Do you recall the night of September 29th,
9 2012?

10 A Yes.

11 Q Who were you riding around with?

12 A I was with Richard Woodbury.

13 Q And who else?

14 A Lamont, Lamont Davis.

15 Q How long you been riding with them? What time
16 y'all start riding around?

17 A I can't recall the time, how long we were riding
18 around.

19 Q You been with them a few hours before you went to
20 Junior's house?

21 A Yes.

22 Q Where was Junior's house?

23 A It was on south Withlacoochee.

24 Q I'm gonna show you State's Exhibit Number 1, do
25 you recognize that?

SW - K. GRAHAM - DIRECT

- 1 A Yes.
- 2 Q What is that?
- 3 A That's a Cherokee jeep.
- 4 Q Whose car is that?
- 5 A Richard Woodbury.
- 6 Q Is that the car you were riding in?
- 7 A Yes.
- 8 Q Where were you seated in the car?
- 9 A Passenger side.
- 10 Q Passenger side front?
- 11 A Yes.
- 12 Q Who was driving?
- 13 A Richard.
- 14 Q Where was Lamont Davis seated?
- 15 A He was in the back.
- 16 Q Okay, the driver's side or passenger side, if you
- 17 know?
- 18 A I think it was -- I can't remember.
- 19 Q Can't remember, that's okay. I'm gonna show you
- 20 State's Exhibit 17. Do you recognize that?
- 21 A Yes.
- 22 Q What is that?
- 23 A That's Charles Wilson's house.
- 24 Q That's Junior's house?
- 25 A Yes.

SW - K. GRAHAM - DIRECT

1 Q Okay, you recognize that van?

2 A Yes.

3 Q Was that van there that night?

4 A Yes.

5 Q I'm gonna show you State's Exhibit Number 10. Do
6 you recognize that or not? It's fine if you don't.

7 A Can't recall.

8 Q You can't recall it, that's fine. That's good.

9 Now you were riding in the passenger side of Richard
10 Woodbury's car and y'all went up to Junior, Charles
11 Wilson's house; is that correct?

12 A Yes.

13 Q Where did you pull in and park at?

14 A Right on the -- before you get to the, under the
15 shed.

16 Q All right, right behind that van?

17 A Yes.

18 Q Pull in behind that van? Were there any other
19 car in the yard that you remember?

20 A I think it was just one other car. I think it
21 was on the side, the grass part.

22 Q Okay. Do you know what kind of car that was or
23 not?

24 A No.

25 Q Okay, all right. It is parked over on the grass?

SW - K. GRAHAM - DIRECT

- 1 A Yes.
- 2 Q All right. And as you were sitting on the
- 3 passenger side of the car it'd been over to your
- 4 right?
- 5 A Yeah, on the right.
- 6 Q Okay, all right. Now y'all pulled up to Charles
- 7 Wilson's house. Had you been drinking any at that
- 8 time?
- 9 A I had a little something.
- 10 Q Little something?
- 11 A Yeah.
- 12 Q Weren't drunk, weren't intoxicated?
- 13 A No.
- 14 Q How about Richard?
- 15 A He had a little something.
- 16 Q Okay. Was he drunk or intoxicated?
- 17 A He was just -- wasn't really.
- 18 Q Wasn't really?
- 19 A No.
- 20 Q He was okay to drive?
- 21 A Yes. Yes.
- 22 Q When y'all pulled up to that home in
- 23 Withlacoochee who got out the car?
- 24 A I had got out the car.
- 25 Q You got out the car?

SW - K. GRAHAM - DIRECT

- 1 A Yes.
- 2 Q And what did you do when you got out the car?
- 3 A I came over to the car porch and spoke to
- 4 everybody.
- 5 Q Okay. Now was there any particular reason you
- 6 were coming or just said, hey, let's stop by and see
- 7 my boy?
- 8 A I just wanted to see my boy Junior.
- 9 Q No real reason, just visit?
- 10 A Yes.
- 11 Q All right. When you got there and you spoke to
- 12 everybody was everybody seem to be fine?
- 13 A Yes.
- 14 Q You didn't see any trouble brewing at that time?
- 15 A No.
- 16 Q Who got out the Cherokee next?
- 17 A I think after a while I think Richard got out
- 18 after a while.
- 19 Q You were standing around talking a little bit.
- 20 A Yeah.
- 21 Q Then he got out?
- 22 A Yeah.
- 23 Q And Lamont stayed in there at that time?
- 24 A Yes.
- 25 Q Okay.

SW - K. GRAHAM - DIRECT

1 A Yes.

2 Q What did Ian -- I mean, what did Rich Woodbury
3 do?

4 A Uh, he came and spoke to everybody.

5 Q All right. After he spoke to everybody, anybody
6 else say anything?

7 A I think him and Ian had a little words.

8 Q Start having words?

9 A Yes.

10 Q Do you have any idea what that was about?

11 A No.

12 Q You aware of any trouble they had in the past or
13 any beef or anything, to your knowledge?

14 A No.

15 Q No. You said they started having words, what do
16 you mean? As far as the volume or the type of
17 language or that kind of thing, how would you
18 describe it?

19 A Just like regular talking, you know, a little
20 heated a little bit but.

21 Q Little heat.

22 A Yeah, a little heat.

23 Q Did it stay a little heated, did it get much more
24 heated?

25 A I think it calmed down after that.

SW - K. GRAHAM - DIRECT

1 Q Calmed down for a minute?

2 A Yeah.

3 Q And then what did Richard do? He go back to the
4 jeep?

5 A Yes.

6 Q Okay. And you stayed under the carport?

7 A I had went back to the jeep too.

8 Q You went back to the jeep too?

9 A Yes.

10 Q All right. And what, if anything, did you say to
11 Richard about what's going on, let's leave, want to
12 go, what about it?

13 A You know, I was just sitting in the truck
14 whatever and stuff, you know, just talking and stuff
15 and ---

16 Q Did you suggest that y'all leave?

17 A Well, yeah, at first but ---

18 Q Okay.

19 A ---you know.

20 Q But Richard didn't leave, he didn't want to
21 leave?

22 A He would leave but...

23 Q But he didn't?

24 A I had said, you know, I said, you know, he had --
25 the guy Ian was saying a little something and, you

SW - K. GRAHAM - DIRECT

- 1 know, after that he had got out of the jeep.
- 2 Q So he got out the jeep again?
- 3 A Yes.
- 4 Q Was he mad?
- 5 A I can't...
- 6 Q Wasn't happy, was he?
- 7 A I don't think he was, wasn't.
- 8 Q Were they still talking smack?
- 9 A Yeah. Well, when he got out, you know, he
- 10 just ---
- 11 Q They started talking smack?
- 12 A Yes, when he was over at the carport.
- 13 Q Did they get nose to nose, or were they just a
- 14 little bit apart talking junk to each other?
- 15 A At first they was nose to nose. He just, he
- 16 was -- Ian was in the car porch.
- 17 Q And they were talking smack to each other,
- 18 Richard got back out the car?
- 19 A Yeah.
- 20 Q All right. Richard retrieve anything at that
- 21 time from the car?
- 22 A Yes, the knife.
- 23 Q He had the knife then?
- 24 A Yes.
- 25 Q Okay. And Ian was at the back under the carport?

SW - K. GRAHAM - DIRECT

1 A Yes.

2 Q Okay. Is this the knife?

3 A Yes.

4 Q Had you ever seen it before?

5 A Yes.

6 Q You had seen it before?

7 A Yes.

8 Q Richard carried it with him?

9 A Yes.

10 Q In the car?

11 A Yes.

12 Q Okay.

13 THE COURT: For the record that's State's
14 Exhibit 23.

15 MR. CLEMENTS: Thank you, Your Honor.

16 BY MR. CLEMENTS:

17 Q So Ian is still in the carport talking junk.

18 Richard gets back out the car, got that sword. What
19 kind of sword is that, do you know? Ninja, martial
20 arts, something like that?

21 A I think it's some kind of martial arts.

22 Q Do you have any knowledge of Richard's into that
23 or likes martial arts or takes martial arts or
24 anything?

25 A Yes.

SW - K. GRAHAM - DIRECT

1 Q He does?

2 A Yes.

3 Q Okay. Now pretty involved in martial arts or a
4 little bit, if you know?

5 A I think he pretty much a little bit. I can't
6 recall too much.

7 Q Okay. After he got out did Richard go back
8 towards the carport?

9 A No. I think Ian had came up. They were having
10 a few words and stuff.

11 Q Okay. Outside the car?

12 A Yes.

13 Q All right. What was anybody else saying about
14 anything? What did anybody do to try to calm it
15 down?

16 A Well Charles, he had Ian, you know, by you know,
17 by -- he had, Ian was on his back and he was trying
18 to, you know ---

19 Q But y'all split them in between?

20 A Yeah.

21 Q Like this?

22 A Yeah.

23 Q Is that right? Okay. And did you or Lamont get
24 out the car and try to get Richard get in the car?

25 A Well, I had got out the passenger side, you know.

SW - K. GRAHAM - DIRECT

1 We was talking and stuff, you know, trying to calm

2 ---

3 Q What were you saying, calm down, or what?

4 A You know, tell him to get back in the car and
5 stuff.

6 Q All right. Did you tell him it's time to go?

7 A Yes.

8 Q You did? All right. But he didn't go? He
9 didn't get back in the car then?

10 A No.

11 Q All right. Lamont in the car the whole time
12 during this part of it so far?

13 A Eventually he got out after that.

14 Q Eventually he got out too?

15 A Yes.

16 Q And what was he doing when he got out? What was
17 he trying to do when he got out the car?

18 A You know he was trying to break it up too.

19 Q What was he trying to do with Richard?

20 A Tell him to get in the car and stuff, the jeep.

21 Q Okay. And did Richard do that?

22 A Not at -- I can't recall what happened.

23 Q You can't recall? Did you see other than Charles
24 who is in between them, and you and Ian and Richard
25 out, did you see what anybody else did to try to

SW - K. GRAHAM - DIRECT

1 break it up or anything?

2 A Not that I know.

3 Q Okay. Did you hear anybody else say anything
4 about anything?

5 A No.

6 Q Okay. Did you see Richard pull his Ninja sword
7 out, not apart, but did you see him pull it out?

8 A Yes.

9 Q Okay. But he didn't pull it apart at that time?

10 A No, he didn't pull it apart.

11 Q What was Ian doing and what was Charles doing?
12 Was Charles still in between them?

13 A Ian had pulled out his, you know, gun from the
14 side?

15 Q He had his gun, he had it down by his side?

16 A Yeah, and that's when Charles moved out the way.

17 Q Okay. And Richard had his sword, he pulled his
18 sword out, and then Ian pulled his gun out?

19 A Yes.

20 Q That's the way it went?

21 A Yes.

22 Q Okay. Now when did you hear a noise at all, if
23 you heard a noise, let me ask you that? Did you
24 hear a noise?

25 A We talking about like a -- yeah, I heard a noise.

SW - K. GRAHAM - DIRECT

- 1 Q What was the noise? What did it sound like?
- 2 A A gunshot.
- 3 Q A gunshot? Where did it come from? Did it come
- 4 from Ian?
- 5 A No.
- 6 Q Where did it come from?
- 7 A Came from Rishawn.
- 8 Q Rishawn?
- 9 A Yeah.
- 10 Q And where was Rishawn at?
- 11 A I think he was on the car porch I believe.
- 12 Q He was on the carport or over by his car?
- 13 A No, I think he was on the car porch.
- 14 Q He was on the carport. And where did he shoot?
- 15 Fire in the air, or did you see him, or you just
- 16 heard him?
- 17 A He shot in the air, shots in the air.
- 18 Q What did he say?
- 19 A He didn't say nothing.
- 20 Q He didn't say go away, get him out of here, or
- 21 anything like that?
- 22 A I think he probably was just trying to stop it or
- 23 something like that.
- 24 Q So that's warning, in your mind that's a warning
- 25 shot?

SW - K. GRAHAM - DIRECT

1 A I'm not ---

2 Q To stop everything?

3 A I'm not too sure.

4 MR. WILSON: Your Honor.

5 THE COURT: I'll sustain the objection.

6 BY MR. CLEMENTS:

7 Q To stop everything. What did you take that shot
8 to be for, for what purpose?

9 A I was thinking of a warning shot.

10 Q You were thinking it was a warning shot?

11 A Yes.

12 Q Try to break everything up?

13 A Yes.

14 Q All right. Did it stop everything momentarily or
15 not?

16 A No, Ian had Richard go down the street, you know,
17 pointing the gun at him.

18 Q All right. And when did they come back into the
19 yard?

20 A I was on the carport. And after a while, you
21 know, I saw, you know, Richard backing up. And
22 Rishawn and, you know, Ian had, you know, going
23 towards the car porch, and had the guns out and
24 stuff like.

25 Q So Ian had his gun out then?

SW - K. GRAHAM - DIRECT

- 1 A Yes.
- 2 Q And you could see it. What kind of gun was it?
- 3 A I can't, I can't recall.
- 4 Q You don't know?
- 5 A I can't remember.
- 6 Q Do you know the difference between different
- 7 kinds of guns?
- 8 A Somewhat.
- 9 Q Okay. But it was a handgun?
- 10 A It seemed like it. I'm not sure.
- 11 Q All right. Now when did you see them start
- 12 swinging?
- 13 A I didn't really actually see them swinging. I
- 14 just was hearing it. I had moved all the way around
- 15 the van and came all the way back to the, near to
- 16 the grass part, you know.
- 17 Q All right. And when you heard a shot you backed
- 18 up more towards the house?
- 19 A Yes.
- 20 Q Okay.
- 21 A Yes.
- 22 Q And you remember giving a statement to law
- 23 enforcement?
- 24 A Yes.
- 25 Q Okay.

SW - K. GRAHAM - DIRECT

1 A Yes.

2 Q Did they ever move from the street to the front
3 yard and then start swinging at each other or not?

4 A They was under the car porch, you know. I could
5 hear them, you know, sound like they, you know,
6 fighting and stuff.

7 Q All right. And Ian and Richard both you heard?

8 A I couldn't see it, but you know, 'cause the light
9 had went out so.

10 Q Okay, all right. Did you see anybody turn the
11 light out?

12 A No, I didn't see nobody turn the light out.

13 Q Okay, all right. And what did you hear next
14 after you heard the sounds like fighting?

15 A You know, I just backed away, you know, trying to
16 stay, you know.

17 Q You didn't try to break them up at that point in
18 time any further?

19 A No.

20 Q Why not?

21 A You know, 'cause they had guns on them, you know.

22 Q They had a gun and a sword?

23 A You know, I didn't want to get involved like that
24 so.

25 Q All right. And what did you hear next?

SW - K. GRAHAM - DIRECT

1 A You know, after a while I thought I heard Ian,
2 you know, saying -- he got up. It sound like he was
3 saying, you know, like -- I can't recall. He was
4 saying something but I can't recall.

5 Q Saying something?

6 A Yeah.

7 Q To his brother or to who?

8 A I think he was saying something to his brother.

9 Q Yeah. After he said that what did they do?

10 A After a while they got in the car and they left.

11 Q Did you know where they were going, hear where
12 they were going?

13 A No, not at first.

14 Q You see any blood on anybody?

15 A Huh-uh.

16 Q Did you have opportunity to see that?

17 A No. You talking about the blood, right?

18 Q You just saw them get in the car and leave?

19 A Yes.

20 Q And then after that where did Richard -- what did
21 he do? You saw him right after that?

22 A After that I think he was coming from around the
23 building.

24 Q Came from around the building, around the house?

25 A Yes.

SW - K. GRAHAM - DIRECT

1 Q What did you see him do?

2 A He came back. You know, he had one of his
3 knives. One of them was on the ground in front of
4 the car porch.

5 Q One was in his hand?

6 A Yes.

7 Q And so one was on the front, in the front of the
8 carport, right?

9 A Yes.

10 Q Okay. And when he -- when you heard them
11 fighting they were inside the carport, right?

12 A Yes.

13 Q And when Richard ran out from -- you saw Ian come
14 out the front of the carport, right?

15 A Yes, Ian and his brother?

16 Q And Richard went the other way, went out the back
17 of the carport?

18 A He must have ran behind the building.

19 Q Okay. But he went out the back of the carport;
20 he didn't come out the front of the carport?

21 A The back, yeah, back.

22 Q He went out the back and came around the
23 building?

24 MR. WILSON: Your Honor.

25 THE COURT: Rephrase your question.

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1 BY MR. CLEMENTS:

2 Q Okay. Where did you see him come from?

3 A He looked like he was coming from around the side
4 of the house.

5 Q Around the side of the house, the other side?

6 A From the ---

7 Q From the carport?

8 A Yeah, from the back, yeah, going towards straight
9 to the back.

10 Q Okay, all right. So if this is the carport and
11 this is the front of the house, which direction did
12 he come from, this direction or this direction?

13 A The back of the house.

14 Q Back of the house?

15 A Yeah, back.

16 Q All right. Now did you or did you not see
17 Richard retrieve his sword from the car before you
18 ever saw a gun? Is that true or not true?

19 A Before I saw the gun?

20 Q Yeah.

21 A I think I saw him before he got to, you know,
22 before he got the gun.

23 Q All right. And at that time when he went and got
24 his sword out the car did he have opportunity to
25 leave then or didn't have opportunity?

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1 A I mean, he could have, yeah.

2 Q He could have?

3 A He could have, yeah.

4 Q And you were trying to get him to leave; weren't
5 you?

6 A Yeah, we were trying.

7 Q Who else was trying to get him to leave?

8 A Me and Lamont.

9 Q How about Charles?

10 A I think he was; I'm not too sure.

11 Q All right. But everybody was trying to break it
12 up?

13 A Yes.

14 Q And about how many different opportunities did
15 Richard have to leave?

16 A I say about a few, maybe about a few.

17 Q About three or so?

18 A Yeah.

19 Q Okay. Beg the Court's indulgence a moment.
20 Please answer any questions Mr. Wilson may have.

21 THE COURT: Cross-examination.

22 **CROSS-EXAMINATION**

23 BY MR. WILSON:

24 Q Mr. Graham, you told the Solicitor you recall
25 giving a statement to the police back on September,

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1 actually the morning of September, right?

2 A Yes.

3 Q And to Lieutenant Smith and Lieutenant Flowers.

4 And at this time in that statement did you ever tell
5 them about any guns being there that night, did you?

6 A No.

7 Q I'm sorry?

8 A No.

9 Q No. The first time that you're talking about
10 guns is today, right?

11 A Yes.

12 Q But you told them back on September 30th, did you
13 not, that you saw a knife in the hands of Mr.
14 Woodbury but you never ever mentioned anything about
15 any guns being on or in the possession of Shawn,
16 Rishawn, or Ian, correct?

17 A No.

18 Q Right. And the answer was, no, you did not?

19 A No.

20 Q Is that correct?

21 A No.

22 Q All right.

23 MR. CLEMENTS: Your Honor, can he get a
24 verbal response.

25 THE COURT: He did give a verbal response.

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1 It might not have been loud enough. He gave a
2 verbal response. Yes, sir.

3 MR. CLEMENTS: I couldn't hear. I
4 apologize, Your Honor.

5 THE COURT: That's all right.

6 BY MR. WILSON:

7 Q What changed between September 30th and today so
8 that your testimony is different today than it was
9 September when this happened?

10 A You know, I just, I guess I just want to, you
11 know, tell the truth, you know.

12 Q So today you're trying to tell the truth a little
13 bit more, is that what you're saying?

14 A I just couldn't recall so many things at the
15 time, you know.

16 Q Well, you saying that you couldn't recall the
17 night this happened -- this happened around 11:00,
18 correct, 11:00, somewhere there's about and you're at
19 the police station at five a.m. giving a statement
20 six hours later but your memory was better today
21 than it was a year-and-a-half ago when this happened
22 or within hours after this happened? Is that what
23 you're saying?

24 A Yes.

25 Q Yes, sir. Okay. So let me ask you this, whose

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1 idea was it to go to your boy Junior's house?

2 A That was mines.

3 Q That was your idea?

4 A Yes, sir.

5 Q It wasn't Woodbury's idea, was it?

6 A No.

7 Q And he took you there and when he went there he
8 wasn't even gonna get out car originally, was he?

9 A That question I don't know.

10 Q You said that you wanted go to your boy's
11 Junior's house so y'all go to Junior -- why were you
12 going there again?

13 A Just went there in you know, to talk, chat with
14 them.

15 Q About what?

16 A See what's going on tonight.

17 Q Didn't go there to buy drugs?

18 A No.

19 Q You under oath?

20 A Well yeah, I bought one.

21 Q Right, you went there to buy drugs. That's why
22 you went there and --

23 MR. CLEMENTS: Your Honor, we need a side
24 bar please, or we have a point of law.

25 (WHEREUPON, counsel approached the Bench

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1 for an off-the-record discussion.)

2 BY MR. WILSON:

3 Q Okay. I forget exactly where we was at again,
4 but let's go back. So when you get there and you
5 get out of the car, you go to the house, and Mr.
6 Woodbury and Mr. Davis are still in the vehicle,
7 right?

8 A Yes.

9 Q They stay in the vehicle.

10 A Yes.

11 Q And when you go, is the light on up under that
12 carport when you first get there?

13 A Yes.

14 Q And you go in and you greet whoever is there, you
15 speak to the people ---

16 A Yes.

17 Q ---who are there?

18 A Yes.

19 Q And you're there for how long before you go back
20 to the car?

21 A I say about several minutes.

22 Q Okay. You're there several minutes. At some
23 point while you're still up there under the carport
24 Mr. Woodbury gets out, and he comes up to where
25 y'all are?

SW - K. GRAHAM - CROSS

- 1 A Yes.
- 2 Q Under the carport?
- 3 A Yes.
- 4 Q And when he comes under the carport he speaks to
- 5 everybody, does he?
- 6 A Yes, he does.
- 7 Q And at that point is there any problem when he
- 8 gets out speaks to everybody?
- 9 A No.
- 10 Q Okay. The problem started when Mr. Woodbury
- 11 supposedly didn't speak to Ian Gause?
- 12 A Yes.
- 13 Q And Mr. Gause took offense to that; did he not?
- 14 A Yes.
- 15 Q All right. And he demanded some kind of response
- 16 as to why he wasn't spoken to?
- 17 A Yes.
- 18 Q Okay. And they had some words?
- 19 A (No verbal response.)
- 20 Q You have to say yes or no please, sir.
- 21 A Yes.
- 22 Q And after they had these words Mr. Woodbury then
- 23 goes back to his car; does he not?
- 24 A Yes.
- 25 Q All right. Well, and Mr. -- and as I understand

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1 it you went back to the car too?

2 A Yes, I did.

3 Q Well, then Mr. Ian Gause comes to the car where
4 y'all are, to the door, right?

5 A He didn't come to the door.

6 Q Well, how did he get to the car?

7 A After -- no, Richard had came out.

8 Q Richard came out of where?

9 A The jeep.

10 Q So Richard gets out of the jeep, that's what your
11 testimony is?

12 A Yes.

13 Q All right. He gets out of the jeep and does
14 what?

15 A He had grabbed his, you know, his, you know,
16 knife.

17 Q He got a knife out of the jeep is what you're
18 saying?

19 A Yes.

20 Q Then what?

21 A Him and Ian, you know, they was talking.

22 Q Talking where?

23 A You know, talking to each other, you know.

24 Q I understand. Where were they, where were they
25 as they were speaking to each other?

SW - K. GRAHAM - CROSS

1 A Ian, he was on the car porch and, you know,
2 Richard was outside.

3 Q Richard was outside where?

4 A Of his jeep.

5 Q He was standing at the jeep.

6 A Yes.

7 Q Was the door open or was the door closed?

8 A I think it was still open.

9 Q Okay, all right. So Ian -- I'm sorry, Ian is
10 under the carport. Mr. Davis -- I'm sorry, Mr.
11 Woodbury is, as you say, standing near the car with
12 the door open, correct?

13 A Yes.

14 Q Where are you?

15 A I was still in the jeep. After a while I got it.

16 Q So you're still in the jeep. Are you in the
17 passenger, front passenger seat?

18 A Yes.

19 Q You're sitting in the front passenger seat.

20 Mr. Davis is in the back?

21 A Yes.

22 Q So then what happens?

23 A You know, they had a few words, then Charles, you
24 know, was trying to, you know, was holding, you
25 know, Ian back.

SW - K. GRAHAM - CROSS

1 Q Holding Ian back from what?

2 A 'Cause he had, you know, took his gun out.

3 Q Ian take his gun out?

4 A Yeah.

5 Q All right. Now where is the -- you say that mr.

6 Woodbury had the knife. Where was the knife?

7 A It was inside the jeep.

8 Q Yeah, but I'm saying, as I understand your

9 testimony, what you're saying is that Mr. Woodbury
10 retrieved the knife from the jeep at some point. Is
11 that what you're saying?

12 A Yes.

13 Q All right. And where was it? Where did he put
14 it? Where did he have it?

15 A He had it in his pocket.

16 Q He had it in his pocket?

17 A Yes.

18 Q So it was concealed?

19 A Yes.

20 Q Okay.

21 A Yeah.

22 Q So did Mr. -- could anybody see it?

23 A No.

24 Q All right. So Mr. -- Ian Gause would not have
25 seen the knife if he had it?

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1 MR. CLEMENTS: Objection, calls for pure
2 speculation.

3 THE COURT: Objection sustained.

4 BY MR. WILSON:

5 Q He had it and you said that it was covered up by
6 his clothing. Is that a fair statement?

7 A Yes.

8 Q All right. So it was not ready visible to you
9 and you were standing close to him?

10 A Well, I was standing like on the side of the
11 jeep.

12 Q Well, were you closer to him than Ian Gause was?

13 A Yes, a little, yeah.

14 Q Okay. And then Ian Gause you see, then see Ian
15 Gause with a gun in his hand?

16 A Yes.

17 Q Right? And Ian Gause is being, trying to, is
18 being held back by Charles Wilson, correct?

19 A Yes.

20 Q All right. 'Cause he's trying to get past
21 Charles Wilson to get to Mr. Woodbury, right?

22 A Yes.

23 Q All right. And now, let me ask you this, backing
24 up just a second, how many shots were fired out
25 there that night that you heard?

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- 1 A Just one.
- 2 Q One shot?
- 3 A Yes.
- 4 Q One shot, the whole night one shot is fired. Is
- 5 that your testimony?
- 6 A Yes.
- 7 Q Okay. There wasn't three or four shots fired?
- 8 That never happened?
- 9 A No, I just heard just one shot.
- 10 Q And there's no question you were out there
- 11 because you brought Mr. Woodbury there and did you
- 12 leave with Mr. Woodbury?
- 13 A I was still there.
- 14 Q That's what I'm saying. You brought him there
- 15 and you left with him?
- 16 A Yes.
- 17 Q So if any shots had been fired at that location
- 18 you would have heard them?
- 19 A Yes.
- 20 Q And you didn't hear but one?
- 21 A Just one.
- 22 Q Okay. Now let me ask you this, is there any
- 23 question about the fact that Mr. Ian Gause was
- 24 trying to get past your friend Junior to get to Mr.
- 25 Woodbury? No question about that, is there?

SW - K. GRAHAM - CROSS

1 A Richard had grabbed his side.

2 Q Okay.

3 A So I guess he was probably maybe thinking that he
4 probably had a, you know, a gun on him or something
5 like that.

6 Q Now did you tell the Solicitor that just a minute
7 ago or is that something new? Richard grabbed his
8 side. Did you say that earlier in your testimony or
9 is this the first time you're saying that?

10 A I don't -- I don't recall.

11 Q You speaking to me or are you speaking to the
12 Solicitor?

13 A I don't recall, you know.

14 THE COURT: He's answered the question.

15 BY MR. WILSON:

16 Q All right. So you don't recall if you said that
17 earlier?

18 A No.

19 Q So you don't know if that's a third version of
20 your story, the one that you gave to police that
21 night, your earlier testimony to the Solicitor, and
22 now what you're telling me?

23 A I don't recall.

24 Q You don't recall, okay. Now as I understand it
25 you have known Junior for a while, right?

SW - K. GRAHAM - CROSS

1 A Yes.

2 Q And how long you say you've known Junior?

3 A Probably about seven years.

4 Q About seven years. And how long had you known
5 Rishawn and Ian Gause?

6 A I didn't know them.

7 Q Okay, all right. Let me, let me ask you this, in
8 your statement on September 30th of 2012, you recall
9 giving that statement to those two officers
10 lieutenant Smith and Lieutenant Flowers?

11 A Yes.

12 Q All right. Do you recall telling them saying
13 that a tall guy, Ian ---

14 MR. CLEMENTS: Your Honor, I would object.
15 May we approach.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 BY MR. WILSON:

19 Q Again, let me ask you, you recall giving a
20 statement to the police back in September of 2030
21 (sic)?

22 A Yes.

23 Q And you testified today that there were guns in
24 the hands of both Ian and in the hands of Rishawn at
25 some point during the evening, correct?

SW - K. GRAHAM - CROSS

1 A Yes.

2 Q All right. And do you recall telling the police
3 that back then?

4 A I don't, I don't recall.

5 Q Okay. All right, you don't recall that?

6 A No.

7 Q All right. Do you recall telling the police that
8 at some point in time that Ian came up to the car
9 that you and Mr. Woodbury were sitting in. You
10 recall telling him that?

11 A I don't recall that.

12 Q You don't recall that either, all right. So you
13 don't recall a lot about what you told the police
14 back on September 30th, right?

15 A No.

16 Q Have you seen the statement that you made to the
17 police? Have you seen it at all, ever?

18 A I'm not sure.

19 Q Okay, all right. Let me go on and ask you some
20 other stuff here. Let's go to the lights going out.
21 Now at some point in time you said if I -- and I --
22 don't want to miss quote your testimony again. If I
23 say something you didn't say you just stop me.

24 A Okay.

25 Q You're saying at some point Ian and Mr. Woodbury

SW - K. GRAHAM - CROSS

1 was out in the road?

2 A Yes.

3 Q Okay. And then at some point they came out of
4 the road back into the carport area?

5 A Yes.

6 Q All right. When they come back into the carport
7 area that's when the lights go out, fair?

8 A Yes.

9 Q All right. The lights go out. Now while the
10 lights are out, how long are the lights out before
11 it is that Mr. Ian says that he has been injured,
12 and wants to go to the hospital? How long?

13 A I'd say about maybe several minutes.

14 Q Several minutes. The lights are out.

15 A Several minutes.

16 Q Now during that time when the lights are out can
17 you see anybody or you just hearing what's going on?

18 A I couldn't really see nobody. I was just hearing
19 what's going on because I had backed up, you know.

20 Q Okay. Now during the five minutes or several
21 minutes or couple of minutes, however long a period
22 it was when these lights were out and whatever is
23 going on is going on, where is Mr. Rishawn Gause?

24 A He was on the car porch.

25 Q He was on the carport?

SW - K. GRAHAM - CROSS

- 1 A Yes, sir.
- 2 Q Where is Mr. Ian Gause?
- 3 A He was on the car porch.
- 4 Q He was on the carport. Where was Mr. Woodbury?
- 5 A He was on the car porch.
- 6 Q So somehow they got from the road up under the
- 7 carport?
- 8 A Yes.
- 9 Q All right. And there's no question that all
- 10 three of them are up under this carport at this
- 11 point in time?
- 12 A Yes.
- 13 Q All right. Now did you ever see Mr. Rishawn
- 14 Gause go back to his car and put his gun back in the
- 15 trunk of his car?
- 16 A I haven't seen.
- 17 Q You never saw that?
- 18 A No.
- 19 Q What kind of gun was it that Mr. Ian Gause had?
- 20 A I can't, I'm not, I can't recall that.
- 21 Q Okay. You just know it was a gun?
- 22 A Yes.
- 23 Q All right. Now did you actually see anybody get
- 24 cut or stabbed or struck, period?
- 25 A No, I haven't seen it.

SW - K. GRAHAM - CROSS

1 Q I'm sorry?

2 A I haven't seen it.

3 Q All right. You never saw that. So you don't
4 know what happened during that period of time when
5 the lights are out?

6 A No, I haven't, you know.

7 Q And whatever happened happened during that period
8 when the lights are out?

9 A Yes.

10 Q Is that a fair statement?

11 A Yes.

12 Q All right. Now as I understand your testimony
13 you, after the whatever happened had happened, that
14 Mr. Woodbury came back from around the side of the
15 house at some point?

16 A Yes.

17 Q Okay. And one of the knives that the Solicitor
18 been referring to was laying down on the pavement in
19 where you were at under the carport?

20 A Yes.

21 Q Right?

22 A Yes.

23 Q And you then do what? When he comes back what
24 occurs?

25 A You know, we were standing, just you know, I

SW - K. GRAHAM - CROSS

1 think he was apologizing to, you know, Charles and
2 stuff.

3 Q All right. For what?

4 A You know, I guess the incident, you know, around
5 his house and stuff.

6 Q Apologizing for it happening at his house at,
7 Mr. Junior's house?

8 A Yes.

9 Q Okay. Then what?

10 A I think that's when he had left I believe.

11 Q So then you and Mr. Davis -- I'm sorry, you and
12 Mr. Woodbury left?

13 A Yes.

14 Q In the black jeep that we've been talking about?

15 A Yes.

16 Q And now how long was it -- well, let me rephrase
17 that and ask it this way I guess. At some point in
18 time Ian, Mr. Ian and Rishawn both left before Mr.
19 Woodbury came from around the house. Is that a fair
20 statement?

21 A Yes.

22 Q All right.

23 A Yes.

24 Q How long were they gone before Mr. Woodbury came
25 from around the house?

SW - K. GRAHAM - CROSS

1 A I say about, you know, maybe about several
2 minutes or so.

3 Q Okay. Did you ask him why he was around the side
4 of the house?

5 A No.

6 Q All right, okay. And when Mr. Ian Gause and Mr.
7 Rishawn Gause left did you know that Mr. Ian Gause
8 was injured?

9 A At the time I didn't know.

10 Q You did not know?

11 A I didn't know.

12 Q In fact, you didn't learn about that until later
13 on; is that correct?

14 A Yes. Yes.

15 Q How much later was it that you learned about his
16 injuries?

17 A It was at Club Fusion.

18 Q Okay. So you went to Club Fusion at some point
19 in time?

20 A Yes.

21 Q Later this same night after this happened?

22 A Yes.

23 Q Okay. And you learned about the fact that he had
24 some severe injuries at that point?

25 A Eventually, yes.

SW - K. GRAHAM - CROSS

1 Q Yes, okay. Now during the -- well, let me ask it
2 this way I guess. What was the purpose of turning
3 out the lights?

4 MR. CLEMENTS: Calls for speculation, Your
5 Honor. I object, he's ---

6 THE COURT: Restate your question. Hold
7 on, restate your question.

8 MR. WILSON: Judge, he's right. I asked
9 what was the purpose of turning out the lights.
10 I'll rephrase it and ask it a different way.

11 BY MR. WILSON:

12 Q I probably should have asked you this, one, did
13 you turn out the lights?

14 A No.

15 Q Okay. Do you know who did turn out the lights?

16 A I didn't know.

17 Q Okay, all right. And, but you know the lights
18 were turned down?

19 A Yes.

20 Q No question about that?

21 A Yes.

22 Q And did you ever go in the house at all?

23 A No, I never went in.

24 Q Okay, all right. Did Mr. Woodbury ever go in the
25 house?

SW - K. GRAHAM - CROSS

1 A No.

2 Q And did the lights come back on after Mr.
3 Woodbury came from around the house? Did somebody
4 ever turn the lights back on before you left, you
5 and he?

6 A I can't recall that part.

7 Q Okay. Well, what happened to all the other
8 people who were there after Mr. Woodbury ran around
9 the back of the house? What happened to the rest of
10 the people? Where did everybody go?

11 A All I know is, you know, Lamont, he was, he was
12 gone, you know, the situation was gone and stuff
13 like that. I think everybody else was sitting on
14 the porch.

15 Q Okay, all right. Did you ever see Mr. Rishawn
16 Gause fighting with Mr. Woodbury?

17 A I couldn't see that part.

18 Q You couldn't see that part. That was when the
19 lights were out ---

20 A Yes.

21 Q ---whatever happened?

22 A Yes.

23 MR. WILSON: Court bear with me just one
24 second please.

25 THE COURT: Yes, sir.

SW - K. GRAHAM - REDIRECT

1 BY MR. WILSON:

2 Q Let me ask you this about this whole incident
3 with the street now. When Ian and Mr. Woodbury were
4 going into the roadway at some point early on,
5 right?

6 A Yes.

7 Q And this has been before the lights got cut off?

8 A Yes.

9 Q And at that point you saw Ian with a gun and Mr.
10 Woodbury going into the road; is that right?

11 A Yes.

12 Q All right. I don't have any other question.

13 THE COURT: Any redirect?

14 **REDIRECT EXAMINATION**

15 BY MR. CLEMENTS:

16 Q And when you saw them go into the road, Mr.
17 Woodbury had what that he had retrieved from the
18 jeep?

19 A He had the knife.

20 Q Okay.

21 A Yes.

22 Q Now Mr. Wilson asked you about where everybody
23 went, and you talked about Lamont had gone, right?

24 A Yes.

25 Q When did Lamont leave?

SW - K. GRAHAM - REDIRECT

1 A It was sometime during the middle, but I don't
2 really know.

3 Q When the gunshot was fired? Was that it or not?

4 A I'm not sure. I'm not sure.

5 Q So if Lamont left anybody could have left, right?

6 A Yes.

7 Q Including Mr. Woodbury?

8 A Yes.

9 Q And after Ian, were you -- wait a minute, you
10 said you didn't know Ian and Rishawn, didn't you?

11 A No, huh-uh.

12 Q Mr. Woodbury was your friend?

13 A I just knew them for a couple of years.

14 Q That's who you were hanging out with?

15 A Yes.

16 Q Okay. Now you said you didn't see Rishawn, you
17 told Mr. Wilson you didn't see Rishawn putting the
18 gun in the trunk. You didn't -- did you see him
19 fire the gun or just hear him?

20 A I actually saw him, you know, fire the gun.

21 Q And did you see him retrieve the gun from the
22 trunk---

23 A I didn't see him ---

24 Q ---before he fired it?

25 A I didn't see him retrieve it from the trunk.

SW - K. GRAHAM - REDIRECT

1 Q So you don't know where he got it from and what
2 he did with it?

3 A No, I don't. I don't recall.

4 Q All right. Now Mr. Wilson asked you about where
5 everybody went and then what y'all did after Ian and
6 Rishawn left to go to the hospital and Mr. Woodbury
7 comes back from around the house to get his sword
8 out by the driveway there, the part, half of it.
9 What time after that did the police show up?

10 A I can't recall exact time.

11 Q Who did they talk to?

12 A Um...

13 Q Did they talk to Richard?

14 A Yes.

15 Q What did he tell them?

16 MR. WILSON: Your Honor, this is not new
17 matter. I mean, this is totally new. It's not ---

18 THE COURT: Restate your question, Mr.
19 Clements.

20 MR. CLEMENTS: I'm asking him about what
21 they did. He asked them about what they did after
22 Mr. Woodbury came from around the house and Ian and
23 Rishawn had left and he asked him about talking to
24 the police so this is ---

25 THE COURT: I'll allow it. Go ahead.

SW - K. GRAHAM - REDIRECT

1 BY MR. CLEMENTS:

2 Q What did Mr. Woodbury tell the police about where
3 the fight, the gunshot was, when they asked him?

4 A I think he said down the street or...

5 Q He told them it was down the street?

6 A Yes.

7 Q And they left, right?

8 A Yes.

9 Q Okay. Y'all went to Club Fusion, and on your way
10 home what happened?

11 A We came back to my house and ---

12 Q Who came up there at your house also?

13 A It was a cop.

14 Q And what did you tell the cop about the knife?

15 MR. WILSON: Your Honor, I object.

16 THE COURT: Sustain the objection.

17 THE WITNESS: Um....

18 THE COURT: Hold on a minute.

19 (WHEREUPON, counsel approached the Bench
20 for an off-the-record discussion.)

21 THE COURT: Go ahead, Mr. Clements.

22 BY MR. CLEMENTS:

23 Q Mr. Graham, what did you tell the police there
24 about where the knife was?

25 A You know, I told them, you know, it was in the

SW - K. GRAHAM - REDIRECT

1 jeep.

2 Q And what did Richard tell them, if anything?

3 A I don't know.

4 Q Okay. And then you went and gave your statement

5 ---

6 A Yes.

7 Q ---at the police department?

8 A Yeah.

9 Q And do you recall whether you did or you can't
10 recall whether you did? You understand my question?

11 You can either recall if you did or recall that you
12 did not say anything about guns to the police?

13 A I can't recall.

14 Q You can't recall whether you did or whether you
15 did not, either one?

16 A Yes, I can't recall.

17 MR. WILSON: Your Honor -- I withdraw it.

18 I withdraw the question yes the objection.

19 THE COURT: Anything further, Mr.

20 Clements?

21 MR. CLEMENTS: Beg the Court's indulgence
22 a second. That's all we have, Your Honor.

23 THE COURT: Any recross?

24 MR. WILSON: Nothing, Your Honor.

25 MR. CLEMENTS: We'd ask Mr. Graham be

1 relieved from his subpoena.

2 THE COURT: You may step down. You have
3 no further responsibilities under your subpoena.

4 Call your next witness.

5 MR. CLEMENTS: Your Honor, we'd call --
6 it's going to be lengthy. It's our last witness and
7 it's gonna take a little bit of time. I just want
8 to let the Court know.

9 THE COURT: Ladies and gentlemen of the
10 jury, it's 12:30. Rather than possibly push well
11 beyond lunch I'm going to let you go to lunch at
12 this time. Do not discuss the case. Do not discuss
13 the case. Be back here at 1:45, 1:45.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 12:35 p.m., and the following
16 proceedings commenced in open court.)

17 THE COURT: Anything from the State at
18 this time?

19 MR. CLEMENTS: No, Your Honor.

20 THE COURT: Mr. Wilson?

21 MR. WILSON: Nothing, Your Honor.

22 THE COURT: 1:45.

23 (WHEREUPON, a lunch break was taken.)

24 MR. CLEMENTS: Your Honor, I just handed a
25 wrap sheet of my next victim to Mr. Wilson to look

1 at and we need to approach, Your Honor, to see if.
2 there's any impeachable offenses.

3 THE COURT: Just come on over here.

4 (WHEREUPON, counsel approached the Bench
5 for an off-the-record discussion.)

6 THE COURT: Anything from the State?

7 MR. CLEMENTS: No, sir.

8 THE COURT: Mr. Wilson, anything from
9 defense counsel?

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

11 THE COURT: Bring me the jury please, sir.
12 State ready to proceed?

13 MR. CLEMENTS: We are ready, Your Honor.

14 THE COURT: Defense counsel?

15 MR. WILSON: Yes, sir.

16 (WHEREUPON, the jury was returned to the
17 courtroom and the following proceedings
18 commenced in open court.)

19 THE COURT: Madam forelady, I hope you
20 all, and ladies and gentlemen of the jury, I hope
21 you had a nice lunch at least a somewhat filling
22 lunch and ready to proceed. At this time I'm going
23 to recognize Mr. Clements.

24 Call your next witness please, sir.

25 MR. CLEMENTS: Your Honor; we call

SW - R. GAUSE - DIRECT

1 Rishawn Gause.

2 THE CLERK OF COURT: Mr. Gause, if you
3 will come forward. Place your left hand on the
4 Bible, raise your right hand.

5 WHEREUPON,

6 **RISHAWN GAUSE,**

7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK OF COURT: Have a seat in the
10 witness box.

11 **DIRECT EXAMINATION**

12 BY MR. CLEMENTS:

13 Q Could you please state your name for the record
14 and would you spell it for the court reporter?

15 A Rishawn Gause, R-I-S-H-A-W-N.

16 Q Rishawn, you're kind of soft spoken so I'm gonna
17 ask you if you can, please keep your voice up so
18 everybody can hear you. How old are you, Rishawn?

19 A 24.

20 Q And back in September 2012 you were how old?

21 A 22.

22 Q 22. And where do you live?

23 A Redding Road, [REDACTED]

24 Q And what town is that in?

25 A Marion.

SW - R. GAUSE - DIRECT

1 Q And have you lived in Marion all your life?

2 A Yeah.

3 Q Can you please tell this jury who your family
4 members are, siblings, mom and dad?

5 A You mean point them out?

6 Q Just tell us their names.

7 A Henry Gause, Elizabeth Gause.

8 Q Is that your mom and dad?

9 A Yeah. And my sisters and brothers, I got a
10 brother named Quinton Gauze; a sister, Lawan Gause,
11 she pass; a brother Ian Gause -- well, that's why
12 we're here -- and another sister, Rodey Gause.

13 Q All right. Is she the one that live in Texas?

14 A Yeah.

15 Q And owned the Ford Focus?

16 A Yes.

17 Q All right. Ian Gause was your older or younger
18 brother?

19 A Older.

20 Q How old was he at the time of his death?

21 A He had to be 25, 25.

22 Q Three years older than you?

23 A Yeah.

24 Q Okay. Now you remember that night, you remember
25 talking to the police department?

SW - R. GAUSE - DIRECT

1 A Yes, sir.

2 Q Were you or were you not, completely honest with
3 them and forthcoming with all the information?

4 A I wasn't.

5 Q You weren't?

6 A No, I wasn't all the way honest.

7 Q And why was that?

8 A 'Cause I felt, how the situation went down, I
9 felt like we got played in a way or something like
10 that so I felt like if he did that I ain't about to
11 tell so they can lock him. I was like, I'm gonna
12 get revenge on my own.

13 Q You were gonna get your own revenge? What
14 changed your mind about that, if anything?

15 A Speaking with my family, my mom, and all them.
16 They said we don't need nobody going to jail or none
17 of that, and then they — I heard they had already
18 had him so.

19 Q And so what did that do as far as your attitude
20 about being completely honest with my office or with
21 law enforcement? Does did that have any impact on
22 that?

23 A Yeah, it changed.

24 Q What did you decide to do?

25 A Leave it up to the system.

SW - R. GAUSE - DIRECT

1 Q Okay, all right. Now ---

2 A So I ---

3 Q I'm gonna ask you some questions and Mr. Wilson
4 is gonna ask you some questions, and you don't have
5 any revenge to be sought anymore, you be honest with
6 us, okay?

7 A Yes, sir.

8 Q Can you tell us that night early on where you
9 went, where did you end up, and how did you get to
10 Withlacoochee?

11 A We went over there because to download some
12 music. I drove over there, me, my cousin Ron, Ron
13 Boatwright and Ian. I went over -- we went over
14 there, called, and told him we was coming over to
15 download some music. So while we was over there it
16 was me and Charles Wilson. We was all sitting
17 around just chilling and he was showing me exactly
18 how to do it.

19 Q Where were y'all sitting?

20 A Had to be right there in the driveway like under
21 the garage, I'm guessing, like.

22 Q Where the cars were parked, where you park your
23 car?

24 A The car had to be parked on the side on the
25 grass.

SW - R. GAUSE - DIRECT

1 Q Okay, all right. I'm gonna show you State's
2 Exhibit 17. Do you recognize that?

3 A Yes.

4 Q What -- is that the house where this all
5 happened?

6 A Yes.

7 MR. CLEMENTS: Can I ask permission for
8 the witness to step down one second, Your Honor.

9 THE COURT: Yes, sir. What exhibit is it?

10 MR. CLEMENTS: 17.

11 BY MR. CLEMENTS:

12 Q Step down here a second, Rishawn.

13 A (Complies.)

14 Q If you would, can you point out to the jury where
15 about y'all would have been parked?

16 A That would be right up here on the grass.

17 Q On the grass. Does that look like tire marks
18 right there?

19 A Yeah.

20 Q Is that about where y'all were parked?

21 A Yeah.

22 Q And about where -- can you point out whereabouts
23 were y'all sitting downloading music?

24 A This way between right there.

25 Q Okay, all right.

SW - R. GAUSE - DIRECT

1 A It's more, it's 'cause on that picture it looks
2 close. It's more room really.

3 Q A lot more room?

4 A Yeah.

5 Q You can't see the room because of the van?

6 A Yeah.

7 Q All right. Charles was showing you how to
8 download music off the computer and burn a disk. Is
9 that what you said last?

10 A Correct.

11 Q Well tell this jury, if you can, exactly what
12 y'all were doing and who was sitting around,
13 standing around?

14 A Well, me and Banner, he was showing me how to
15 download the music. We was drinking a little ---

16 Q Let me stop you, Banner, is that a nickname?

17 A Charles, Charles Wilson, I apologize. I
18 apologize.

19 Q That's okay. That's his nickname?

20 A Yes.

21 Q Has he got another nickname too?

22 A Unt.

23 Q Nobody ever calls him Junior?

24 A Junior, Junior, okay. But Ian and Ron, they was
25 there too, but during all that I guess we were just

SW - R. GAUSE - DIRECT

- 1 drinking.
- 2 Q Okay.
- 3 A Chilling.
- 4 Q Had you drunk enough to get drunk or you just
- 5 having a drink or two?
- 6 A A drinking or two.
- 7 Q You don't feel like you were intoxicated yet?
- 8 A No, we wasn't.
- 9 Q Okay, all right. Who else came up there to the
- 10 house after y'all had been there a while?
- 11 A From my understanding -- what was his name? The
- 12 one, the guy who was up here earlier. I don't know
- 13 ---
- 14 Q The guy was just testified last?
- 15 A Yeah, yeah, him.
- 16 Q The big guy?
- 17 A Yeah.
- 18 Q You didn't know him before?
- 19 A No, I don't know him.
- 20 Q Okay. You talking about Kye Graham?
- 21 A Yeah.
- 22 Q Okay.
- 23 A Yes, sir.
- 24 Q All right. He came up?
- 25 A Yes.

SW - R. GAUSE - DIRECT

1 Q Okay. Did you notice how he got there?

2 A When Woodbury got out that's when I realized.

3 But at the same time I wasn't, my focus wasn't on

4 the situation with him coming there. I was just, I

5 was just around; we were just hanging around. But

6 then when I seen Woodbury get out, he got out -- I

7 watched him 'cause I know him. I know of him. I

8 know of him. So he came up, like, I was just

9 watching how, I was really just paying attention to

10 his body language. And from my understanding when

11 he came up he did speak, he spoke, he shook hands

12 though but on purposely he did not shake my brother

13 hand, Ian, even though that ain't a crime but he did

14 it like, you know, like you trying to be funny in

15 some way or something. So that when Ian was like,

16 oh, he had a smirk, my brother had a smirk. He was

17 like, oh, so you can't shake my hand. So that when

18 he was like, he said something and he

19 started walking off. He got in the car. They got

20 in the truck so I'm guessing -- what's his name,

21 Kyle?

22 Q I don't want you to guess, okay, just tell me

23 what you saw and ---

24 A Well, I know for a fact he walked, got in the

25 truck. The other guy got in the truck. But the

SW - R. GAUSE - DIRECT

1 whole situation is, they left. The thing on--
2 that's the thing I don't understand, the point key
3 is that they had left but before, when they got into
4 the little confrontation like, you know, exchanging
5 words he got in the truck, he did leave. He -- they
6 left. About three minutes later they pulled back
7 up. I don't know if everybody else was aware, aware
8 like that they did leave; but that when I said, I
9 looked, I said, I said dang, I said, why dude come
10 back 'cause -- let me retrack myself. Before he
11 left, when they was leave -- they backed out the
12 yard and left, and that's when Charles Wilson asked
13 Ian, he was like, oh, he said, do you know him. And
14 Ian laughed. He said oh, yeah, yeah, I know him.
15 He said he was just messing with him 'cause he,
16 'cause they knew each other before then but a few
17 weeks before that Ian had told me like all of a
18 sudden he, Woodbury been ---

19 MR. WILSON: Objection. Objection.

20 THE COURT: Hold on.

21 THE WITNESS: Woodbury ---

22 THE COURT: Hold on. I'm sorry, what is
23 your objection?

24 MR. WILSON: Objection to whatever he was
25 told.

SW - R. GAUSE - DIRECT

1 THE COURT: Objection sustained.

2 BY MR. CLEMENTS:

3 Q All right. You can't tell us hearsay from back
4 in the past, okay?

5 A No, it wasn't relating to nothing. Okay, okay, I
6 understand that.

7 Q Understand?

8 A Well ---

9 Q Just want to know what you saw and what you heard
10 and what you know, okay?

11 A Well, I know that ---

12 Q Not from something ---

13 A I know they was --

14 Q ---from the past.

15 A I know they was cool at one point. I know that
16 'cause he's ---

17 Q At one point they were cool ---

18 A Yeah, 'cause he was at my house.

19 THE COURT: Hold on. Hold on. Mr. Gause,
20 when he's talking let him finish.

21 And Mr. Clements, when he's talking let
22 him finish.

23 MR. CLEMENTS: Yes, sir.

24 THE COURT: She can't take both of you
25 talking, okay.

SW - R. GAUSE - DIRECT

1 THE WITNESS: Oh, yes, sir.

2 THE COURT: You may continue.

3 BY MR. CLEMENTS:

4 Q At one time, you just told me at one time they
5 were cool but tonight evidently they weren't?

6 A Yes.

7 Q Okay, all right. Well, you said they left and
8 pulled around a couple of minutes, came right back?

9 A Yeah.

10 Q What happened then?

11 A It raise everybody's eyebrows 'cause I said,
12 why — I said, here go dude again. So that when
13 Ian, my brother looked, and he got out the truck and
14 he was messing with his pants so Ian said, oh, oh, m
15 you went and got something. He said, you went and
16 got something, and that when he didn't say nothing.
17 he was just looking, you know, if you have like a
18 point to prove just messing with his pants. So
19 during the process we under the garage still; they
20 in the driveway. So Ian ain't go — he never went
21 up to the truck. He was just like, oh, you went and
22 got something? And that when he was just standing
23 there like just looking.

24 Q When you said he was just standing there looking
25 you talking about Ian or Woodbury?

SW - R. GAUSE - DIRECT

1 A Woodbury. Woodbury was standing there looking
2 so.

3 Q Like this?

4 A Yeah, so that's when I went -- I walked off and
5 went to my trunk and I got the gun 'cause I was like
6 I do see him fidgeting with something. So that's --
7 when I got the gun I was watching the whole
8 situation. They was, they kind of about to get into
9 it so I shot the gun in the air and that when they
10 calm down. They ---

11 Q All right, hold on one second. Let me find
12 something for you. I'm gonna show you State's
13 Exhibit Number 11. You recognize that?

14 A Yes.

15 Q What is that?

16 A Two guns.

17 Q All right. Are you extremely familiar with one
18 of those guns?

19 A Yes.

20 Q Which one?

21 A This one.

22 Q That one. What kind of gun is that?

23 A A 380.

24 Q Is that a semiautomatic?

25 A Semiautomatic.

SW - R. GAUSE - DIRECT

1 Q Whose gun is that?

2 A Mine.

3 Q Tell me about your ownership of it. Is it
4 registered?

5 A Yes?

6 Q Legally registered to you?

7 A Yes, it's registered.

8 Q And where do you keep that gun most of the time?

9 A In the trunk. If I got it in the glove
10 compartment I have the clip up; they say don't have
11 it in. So I have it separated.

12 Q Okay. So if you have it in the glove box you
13 have the clip out of it; but if you have it in the
14 trunk, you may have the clip in it? Okay. And it's
15 legally registered to you?

16 A Yeah.

17 Q All right. You pulled it out and you said you
18 shot it? How did you shoot it? Up in the air, down
19 on the ground, where?

20 A The reason, the reason I shot it 'cause they was
21 in a confrontation and I told him -- like everybody
22 telling them to leave, like Charles Wilson was
23 telling him to leave and I was like go -- I said,
24 man, y'all need to go ahead and chill. I said go
25 ahead and leave, man, but they kept going back and

SW - R. GAUSE - DIRECT

1 forth so I shot it in the air.

2 Q Okay.

3 A I put it up and just shot it in the air. That
4 when everybody looked, got calm.

5 Q Did they stay calm?

6 A No, 'cause they didn't stay calm because after I
7 shot in the air everybody, they got calm. I told
8 them, I was like, go ahead and leave man. I said go
9 ahead and leave. So I went back to the trunk to put
10 it in there.

11 Q Okay.

12 A But he, for some reason I'm not -- it was like
13 Woodbury had a point to prove. He---

14 Q You put the gun back in the trunk?

15 A Yeah.

16 Q Okay.

17 A And that's where I get it when I say, okay, I
18 mess something up. I mess something-- he said he
19 didn't have nothing. That's why I put it back --
20 after I shot I was like 'cause Ian was steady saying
21 he got something. Ian was like he got something
22 so ---

23 Q And he said he did have something?

24 A Yeah, he said he didn't. He said I'll fight you.
25 He said I will fight -- he said something like, I'll

SW - R. GAUSE - DIRECT

- 1 fight you.
- 2 Q Okay. So ---
- 3 A So that's when I put the gun in the trunk.
- 4 Q All right.
- 5 A So ---
- 6 Q Do you know whether or not if Ian had his gun
- 7 with him?
- 8 A I didn't see no gun. I was busy ---
- 9 Q All right. You can't say he didn't have one
- 10 though, can you?
- 11 A No, I can't say that. I can't.
- 12 Q All right.
- 13 A But it's kind of seen him, possible for him too
- 14 'cause I know for a fact, I know he wasn't fighting
- 15 with a gun in his hand.
- 16 Q Yeah.
- 17 A And when I came, and when they got into -- when
- 18 they got into the whole brawl when I came up I seen
- 19 my brother, they was, they were both tangling, going
- 20 at it, whatever. So I got in the mid-- that when
- 21 Ian, he kind of backed up. He was like ---
- 22 Q What was Woodbury doing with his arms or with his
- 23 hands.
- 24 A Swinging wild.
- 25 Q Swinging wild?

SW - R. GAUSE - DIRECT

1 A Like, I never seen nobody fighting like that so
2 it kind of -- that's what stands out with me.

3 Q Can you stand up and demonstrate for this jury
4 how you saw him swinging or not?

5 A Well -- yeah, I can.

6 Q Stand up.

7 A He was swinging like, he was real low. He was
8 low, but he was swinging like that. So I thought he
9 was just throwing like, hey, so I run over there
10 trying to break it up but that -- Ian was like, oh,
11 so, he said oh, he said oh, so you're gonna cut me.
12 And I seen some blood dripping out his hand. He,
13 said oh, so you're gonna cut me, and that when he
14 looked -- that when I was like, I said man, hey, yo,
15 chill 'cause I'm seeing blood running down. He was
16 like, he said man, he said -- you want me to use the
17 exact words he said?

18 THE COURT: Sit down. You can sit back
19 down, okay. You're done illustrating?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay, you can sit down now.

22 THE WITNESS: But he was like ---

23 BY MR. CLEMENTS:

24 Q You asked me about the words, or there was some
25 profanity used?

SW - R. GAUSE - DIRECT

- 1 A It ain't really profanity, but it's ---
- 2 Q Rough wording?
- 3 A Pretty -- yeah, he was like, he was like ---
- 4 Q Go ahead and tell us exactly what you heard.
- 5 A He said, he said, oh, so you're gonna, he said
- 6 oh, so you're gonna cut me. And that -- so that
- 7 when he was like, man, he said, oh, that nigger done
- 8 stabbed me. That what he said. He said I need --
- 9 so when he said that ---
- 10 Q Who said that?
- 11 A My brother Ian.
- 12 Q Okay, all right.
- 13 A So that when he walked to my cousin, run, run,
- 14 like run, Boatwright, and he said, he like, man, I
- 15 got to go to the hospital. But he done took off
- 16 running 'cause when I heard that, when I heard that
- 17 when he said he done stab me, he took off just full
- 18 speed running.
- 19 Q Which way?
- 20 A Behind the house.
- 21 Q Okay. And where were y'all when he took off
- 22 ruining?
- 23 A Still like by the garage like.
- 24 Q By the car shed?
- 25 A Where the whole brawl was taking place.

SW - R. GAUSE - DIRECT

1 Q Okay. And that was back under the car shed?
2 Okay. So he took off to the backyard. What did you
3 and Ian do?

4 A Like, the whole, the whole time the fight was
5 going on he had to be at -- he had to -- I know for
6 a fact how he was swinging -- I don't know if
7 everyone every time, everyone connected 'cause I'm
8 sure he was defending himself too; but he didn't
9 realize, he thought he was getting hit and like
10 earlier I noticed the doctor had said like at one
11 point you'll start to get weak but I seen him start
12 being the aggressor in the fight.

13 Q Who, Ian or ---

14 A Woodbury.

15 Q ---Woodbury?

16 A Yeah. So, and I was looking. That's what made
17 me like, I was like, man, chill, chill, and that
18 when he was like oh, you gonna cut me and then he
19 just took off running.

20 Q Okay.

21 A 'Cause he realized it was dark, kind of dark so
22 he knew, he didn't know he had it.

23 Q Okay.

24 A So he was like oh, so you, he said, man, he
25 stabbed me. So that when he walk, he was like I

SW - R. GAUSE - DIRECT

1 guess he was in a state of shock really.

2 Q Okay, who Ian?

3 A Yeah, 'cause he, he wasn't panicking. That's why
4 people saying, like, they didn't know how serious it
5 was. But I started realizing -- me knowing him
6 because that's my brother; I know how he is. So
7 when we got in the car like blood pouring down but
8 I'm like, I'm telling him, I'm like, man, you good.
9 I said, you good, man. I said he stabbed you; he
10 got me too. And he said, naw, he said, but the
11 thing, he said he got me good though. So I was
12 like, I said man, he said man, we got to, he said
13 hey, you can't, he said you got to put, you can't
14 stop for no lights. That's the last thing he really
15 told me. He was like, he said you can't stop for no
16 lights so I hit the -- I put the beamers on and I
17 started speeding down the road.

18 Q The flashers?

19 A Yeah, the blinkers.

20 Q Yeah.

21 A So while I'm in there I'm just running everything
22 trying to get him to the hospital, but that when I
23 started noticing like blood coming out of, running
24 down my back and on my arm and stuff. I'm like
25 dang, so I ain't never felt when I got stabbed or

SW - R. GAUSE - DIRECT

1 whatever.

2 Q How did you get cut?

3 A In the mix of it, trying to break it up.

4 Q Okay. And when you were trying to break it up
5 did you have your front towards Mr. Woodbury or your
6 front towards Ian trying to stop him?

7 A It was like trying to break both, in the mix of
8 both.

9 Q In the middle of them?

10 A Yeah.

11 Q So you weren't turned to one or the other, you
12 were in the mix?

13 A In the middle, yeah, sort of like just both like
14 trying to in the mix of it.

15 Q Okay.

16 A But I never, I never felt, I ain't felt no -- all
17 I did was see when he say he got cut, that's -- when
18 we got in the car I realized that that's when I
19 realized I got stabbed so I, that's why I was like
20 it had to be a sharp blade or something 'cause I
21 ain't never, I didn't feel it. And he didn't feel
22 it and until he started slowing down. In the middle
23 of the tussle he started, he wasn't moving like I
24 was, you know, or a normal person like in a fight
25 would do.

SW - R. GAUSE - DIRECT

1 Q Okay.

2 A It was like they were favoring something; but he
3 was in the mix so he didn't, I guess he didn't --
4 well, he didn't realize, it happened so quick. It
5 happened so quick and it was dark.

6 Q All this transpired, did it take a long period of
7 time, was it all seem to be pretty quick?

8 A What exactly you mean?

9 Q I mean, did it take a long period of time for all
10 this to all kind of did it all happen pretty quick
11 with each other?

12 A It folded out -- it happened quick after I shot
13 the gun up, it was calm.

14 Q Okay.

15 A But then after that it just happened quick.
16 Everything just went quick.

17 Q All right.

18 A And the whole, like I'm saying, like, it was dark
19 so I seen, I seen, I just seen his wild swinging so
20 I wasn't.

21 Q You never saw a weapon in his hand, just his wild
22 swinging?

23 A No, I never seen the weapon. I just seen, I seen
24 when, I seen when he was fidgeting with something in
25 his pants; but then what made me put the gun back,

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1 like, when he said I'll fight you.

2 Q Okay. All right.

3 A So I know, like, I know for, I know, I know I
4 wouldn't have fought him if I would have seen two
5 long blades.

6 Q Yeah.

7 A So I was, I was thinking maybe that's why, like,
8 well you said I can't assume so I'm gonna keep it
9 like that.

10 Q Okay.

11 MR. CLEMENTS: Beg the Court's indulgence
12 moment.

13 BY MR. CLEMENTS:

14 Q When you went to the hospital did you stay up
15 there with your brother?

16 A Yes.

17 Q What did the police ask you about your parents at
18 the hospital?

19 A What did they ask about?

20 Q What did they ask you about your parents at the
21 hospital?

22 A Their name.

23 Q And why were they asking?

24 A They wouldn't never really tell me but...

25 Q What did you say? Did you ---

SW - R. GAUSE - DIRECT

1 A Oh, I told him, I said ---

2 Q ---give them their phone number?

3 A Yeah, I said I wouldn't give them the phone
4 number because I didn't, they -- I said tell me
5 what's going with my brother and they said, they
6 said we need to talk to your parents. And I was
7 like, nobody ain't getting no phone number. I said,
8 'cause if it's some bad news I said I want to be the
9 one who break, I be the one who call. I said I
10 don't need nobody to go calling my parents, you
11 know, telling them something like that, and that
12 when -- that was really it, but then ---

13 Q Did you know how bad it was at that point?

14 A No.

15 Q Okay.

16 A I didn't know.

17 Q All right.

18 A But I had some kind of -- he was -- when we made
19 it to the hospital he was sluggish. He, he had
20 like, it was -- I could tell it put effect. That's
21 when I realized, like, to be honest I, if, I just
22 went in panic mode really so I can't, a lot of
23 things like in that process when we got out the car
24 that's when I started realizing how serious it was
25 'cause there was blood every where from blood coming

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1 out of me shooting, it was shooting out of my back.
2 And him, it's dripping on him and he's like, he
3 staggering a little. I'm like, I'm like, dang, so
4 this is that serious. So I started telling
5 everybody we need, we need some help in here. They
6 were trying to get me, but I said take care of my
7 brother. I was, like, get him. I said, I'm good,
8 'cause I see blood coming from me but I don't feel,
9 I ain't feeling no weakness or nothing. But him, I
10 could tell like, I guess it was a ma-- I don't know
11 if it was a major organ or something but I could
12 tell it was a big effect. I know his was worser
13 than mine so.

14 Q Yeah. How many opportunities, if any, did Mr.
15 Woodbury have to leave Mr. Wilson's house before
16 this happened?

17 A The first time when we didn't speak and they got
18 in the confrontation, when he left he could have
19 left for good.

20 Q And before the fight could he have done that?

21 A Yeah, he had plenty of chances then. That was
22 just when -- at our point it just, it wasn't really
23 making no sense 'cause they, 'cause like they say,
24 Ian was trying to get to him. He was trying to get
25 to Ian too.

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1 Q So they were both trying ---

2 A Yeah, they were trying to get, they was like
3 trying to get to each other. And from my, I was
4 wanting to know the question that was always in my
5 head, I was like, when he came, like, he just --
6 when he left to be the honest truth, he was, he was
7 scared. He act like he was scared when he left and
8 got in the car and drove off, but when he came back
9 he was tough, wanting to fight, this and that,
10 taunting.

11 Q Well, when you fired the gun in the air what, if
12 anything, did you say?

13 A I tell them to go ahead. I said, man, just go
14 ahead, man.

15 Q Okay.

16 A He stood right there holding like to his pants
17 like, I ain't going nowhere like.

18 Q Okay. Please answer any questions Mr. Wilson may
19 have.

20 **CROSS-EXAMINATION**

21 BY MR. WILSON:

22 Q Mr. Gause, you, you don't deny obviously based on
23 your conversation with the Solicitor early on that
24 you gave at least, at least two different statements
25 to the police all of which weren't true, right?

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1 A No, I don't deny.

2 Q All right. And ---

3 A Hold up. As a matter of fact, I need you to say
4 that over. I ain't want to get twisted.

5 Q Okay, well let's ask it this way. Officer Smith
6 came and spoke to you at the jail, the patrol
7 officer; did he not?

8 A Yes.

9 Q I'm sorry.

10 A I'm not sure who it was.

11 Q I'm sorry, my mistake. At the hospital, right?

12 A Yes.

13 Q And you told Officer Smith that you were in the
14 house when all this occurred, right, the first
15 officer?

16 A Honestly, I can honestly tell you this, whatever
17 I told when I was at the hospital that was, it was
18 garbage. I can honestly say that.

19 Q Right. It wasn't true?

20 A Nothing, it wasn't true. I said I didn't know
21 who it was.

22 Q Yeah.

23 A Like any -- everything, whatever was jotted down,
24 the only thing probably the truthful thing that I
25 said was I said it happened somewhere at Tiger Mart

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1 or something. But at the same time, my mind frame
2 wasn't, I wasn't thinking straight 'cause I felt
3 like, I said oh, if my brother don't make it then
4 I'm gonna handle this.

5 Q Right.

6 A So that was my whole mind frame.

7 Q Right. So you were going to tell the police
8 things that weren't true because you were going to
9 handle it, you were gonna take care of it. You
10 don't need the police to do that, right? You were
11 going guilty take care of it?

12 A Correct.

13 Q Right? Yeah. And that was your intent, and,
14 right, to take care of it?

15 A Correct.

16 Q And so you knew that you were telling little the
17 police something that wasn't true, right?

18 A Say that again.

19 Q You knew when you were saying that to the officer
20 at the hospital, the first officer that came to you,
21 that what you were telling him was a ball face
22 story, just was not true. You knew that.

23 A When I said I didn't know who it was?

24 Q Yes, sir.

25 A Yeah, I know that wasn't true.

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1 Q Okay. Yeah, not only did you tell them you
2 didn't know who it was, you told him that it wasn't
3 even on that street, that it was on Mills and
4 Huggins Street, right?

5 A You got a statement with me saying that?

6 Q I'm asking you, is that not what you told the
7 officer when he came to you at the hospital
8 initially?

9 A Oh, I can't remember if -- I can't remember
10 exactly what I said at the hospital 'cause, again,
11 like I told you, a lot what I was saying I was, I
12 was in my whole mind frame wasn't right because my
13 brother had just got stabbed and I ain't knew was he
14 gonna make it or not.

15 Q All right. So the first officer comes to you,
16 you talk to him, Officer Smith. But then the Chief
17 and Lieutenant Flowers come and talk to you, right,
18 at the hospital?

19 A If that what you saying.

20 Q I'm asking you. You're testifying. I'm asking
21 you is that what happened?

22 A You -- I mean, if you got a statement with me
23 talking to them, then yes, it's correct.

24 Q Well, let me go back, let's do it this way. Let
25 me ask you this.

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1 A I don't know, I don't know everybody by first
2 names or positions.

3 Q Okay. Well, let me ask it this way, did you talk
4 to a uniformed officer initially at the hospital?

5 A Yes, sir.

6 Q All right. Then did you talk to two more
7 officers later on at the hospital?

8 A I remember being questioned a few times by police
9 officers.

10 Q Right, by police officers. And the first officer
11 that you talked to, what you told him you admit
12 wasn't true, right? We could go through it but
13 whatever you told them wasn't true in the first
14 place so there's no point standing here going
15 through it, is it?

16 A Yes.

17 Q And then when the Chief and the lieutenant came
18 they talked to you, and what you told them wasn't
19 true either, was it?

20 A Can you give a statement that I said?

21 Q Yeah.

22 A I'm sure.

23 Q Yes, sure. When the Chief and Lieutenant Flowers
24 came to talk to you over at the hospital the Chief
25 asked you where the fight took place, was it in the

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1 yard. Your answer was no. Is that correct?

2 A Was it in the yard?

3 Q Yeah, he asked you wasn't it in the yard meaning
4 the yard at Wachaloochee [sic] or Wachahoochee.

5 A Nobody, nobody I ain't knew if -- to my
6 understanding the people who were questioning me
7 nobody really knew exactly what was going on. It
8 was people asking me what had, what took place.

9 Q Do you deny that you told him that it happened on
10 the roadway on Huggins Street?

11 A I don't deny it.

12 Q All right. Lieutenant Flowers asked you whose
13 house y'all supposed to be at. Do you deny that you
14 told him that you were not at any house and that
15 you're not going to any house?

16 A No, I don't deny that.

17 Q Okay. And you, Officer Smith, Derrick Smith, the
18 first officer that you talked to, he asked you what
19 were y'all doing at the house? You told him that
20 you were at the house drinking when you heard
21 argument outside. You deny telling him that?

22 A No, I don't deny it.

23 Q All right. So my point simply is, everything you
24 told these officers on the night that your brother
25 was stabbed was not true, right?

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1 A Which again, what I'm saying, what — when they
2 came and talked to me, it wasn't no mistake or I
3 don't take it as a lie I was telling. I take it as
4 I was -- at the moment if somebody ever been in a
5 situation like that you ain't gonna be thinking with
6 your head straight. And then more, the whole thing
7 about it is that I didn't like that he said he
8 didn't have nothing; but turns out, both of us got
9 stabbed. So I felt, I felt like it was trick, I
10 felt like he tricked my brother into fighting him
11 just to stab him.

12 Q Let's go back. You want to talk about it. Let's
13 go back and talk about that then. That night you
14 say that you were already at the house, right, when
15 you say that Mr. Woodbury and the other two
16 individuals came up to the house, right?

17 A Yes.

18 Q All right. And when they came up there is no
19 question that Mr. Ky Graham came over and greeted
20 everybody, right?

21 A (No verbal response.)

22 Q You have to say yes or no for me please.

23 A You say Ky came and greeted?

24 Q Ky Graham?

25 A Yes.

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1 Q Did he come and speak to everybody?

2 A Yeah, he did the normal, the normal.

3 Q Then Mr. Woodbury came over and he spoke; is that
4 right?

5 A No, he picked certain people out. He shook
6 everybody hand but ---

7 Q Did he shake your hand?

8 A Did he shake my hand?

9 Q Did he shake your hand or speak to you?

10 A I can't recall.

11 Q Okay, you can't recall that. But you do recall
12 that your brother felt disrespected because he
13 didn't shake his hand or speak to him, right?

14 A You said I recall my brother feeling
15 disrespected?

16 Q I'm asking you, yes, that's my question.

17 A I recall him asking him like, oh, so you can't
18 shake my hand.

19 Q Right.

20 A That's -- I recall that.

21 Q And your brother was insulted because he said
22 Mr. Woodbury didn't speak to him, didn't shake his
23 hand?

24 A No, no, the mis-- I guess I see where you getting
25 confused. When he shook his hand, when he shook

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1 everybody ---

2 Q Yes, sir.

3 A He didn't shake my brother hand and my brother,
4 it wasn't that he felt disrespected. He really
5 didn't care, but he just said it. He said, oh, so
6 you can't shake my hand. He had a smirk on his
7 face.

8 Q Yeah.

9 A When he, when he said what he said, like he said
10 something smart, some mumble under his breath, that
11 when my brother said something back to him and they
12 had a little confrontation like exchanging words.
13 So he hopped in the car. He walked, he was walking
14 away and hopped in the truck. They left. And it
15 was like, how they left, when they left we were
16 still in the mix like, Charles Wilson asked him
17 like, dude, you even know him? He was like, he was
18 like oh, yeah, whatever. So we just, we laughed and
19 talking. So that's when the truck pulled back up
20 and I looked, I said, dang, I said, I said why he
21 coming back. So he got out the truck. He was just
22 standing at the truck fidgeting with something. So
23 Ian, we in the garage, he in the driveway. Ian said
24 oh, so you went and got something. He said, oh, so
25 you went and got something. And that when he ain't

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1 never said nothing. He was just steady like just
2 trying to, you know, cover up whatever it was so
3 that's what made me go to my car and get the
4 protection.

5 Q Okay. When is the first time you told this story
6 that you're telling today? When is the first time
7 you told the Solicitor this story you're telling
8 today?

9 A You said when is the first time?

10 Q Yes, sir. When is the first time you told the
11 Solicitor this story that you're telling me in court
12 today 'cause you didn't tell it, did you, do officer
13 Smith and you did not tell that story to the captain
14 to the chief and to the cap -- to the lieutenant.
15 So when is first time that you told it to anybody in
16 law enforcement?

17 A When -- after my brother, after he passed I
18 realized it was serious. If we dealing with a
19 murder it ain't no time to joke or play or nothing,
20 or nothing else. They got the, they got the person
21 who did it. It wasn't nothing to try to find out so
22 that's when I told.

23 Q My question is when, when was it?

24 A The first, whenever, the first time we met.

25 Q When was that?

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1 A I'm not sure. I can't recall the first time we
2 met. Like you say, it was a while ago, like ---

3 Q That's what I'm asking. When was it that you
4 told -- you gave two statements; ---

5 A I'm ---

6 Q ---did you not?

7 A I'll be honest, I -- to be honest, as far as ---

8 MR. CLEMENTS: Objection, asked and
9 answered, Your Honor. He told him several times he
10 doesn't know. He can't recall exactly when.

11 THE COURT: It's cross-examination. I'm
12 gonna -- ask what you're getting ready to ask again
13 and I'll make a decision.

14 THE WITNESS: If nobody ain't never been,
15 if nobody ain't never been in this situation it's
16 not something, it ain't something that time and
17 dates, it's not something you trying to keep on your
18 head with the situation with what happened. It was
19 something serious. My brother got murdered. He --
20 that was my brother; every day me and him together.
21 So at the same time I try to, I try to have a normal
22 day. I try to go on about my day. I don't try to
23 lock in my memory like every -- I remember what
24 happened with that night, that's what I -- I'm like,
25 okay, I got to keep this story, I know what happened

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1 that night. And I know, okay, I'm gonna have to sit
2 in court and tell my testimony, whatever, what
3 happened that night. But when it come to dates and
4 stuff like when I talk to this person and all that,
5 to be honest I will prefer to be doing something
6 else.

7 Q Okay.

8 A So I prefer to do something else than be, you
9 know, sitting up there explaining what happened,
10 what date, what day it happened, the time and all
11 this. And how you saying, you asking me about
12 dates. All I'm trying to understand where you're
13 coming off. You said -- go ahead, ask me what, ask
14 me what you, ask me exactly what you're saying
15 'cause you really you throwing me off by asking me
16 about the date that I talked to the Solicitor about
17 it. I told you the night in the hospital that story
18 was not true. When it turned to a murder that's
19 when the truth came. That's when the truth came up.

20 THE COURT: Continue, Mr. Wilson.

21 MR. WILSON: Yes, sir.

22 BY MR. WILSON:

23 Q My question simply was, do you know when it was
24 that you told this new story to the Solicitor?

25 A I don't recall the exact date.

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1 Q Okay, all right.

2 A I know I was straight up front with the

3 Solicitor. I was straight up front with him.

4 Q Okay, all right. Now let's talk for a minute
5 about these guns that you had. Now there's no
6 question you've said that you had a gun, right?

7 A Yes.

8 Q All right. And that gun is 9-millimeter or 380,
9 whatever it was. 380; is that right?

10 A Yes.

11 Q Fair?

12 A Yes, sir.

13 Q All right. And now many bullets did that
14 magazine hold in that 380?

15 A How many bullets? I'm not sure how many.

16 Q Don't know. Well, how many did you fire that
17 night?

18 A One shot.

19 Q Fired one shot. And now you were out there the
20 whole time up until the time you took your brother
21 to the hospital, right?

22 A Yes.

23 Q And so no shots were fired except for one shot
24 that you say you fired in the air, right?

25 A No, it wasn't, it wasn't -- it was only one shot.

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1 It was only one shot fired. People tend to
2 exaggerate things. Like, extra people, they
3 probably heard a shot, was like, oh you heard shots
4 fired? But truth be told, it wasn't nothing but one
5 shot fired.

6 Q All right. So what kind of gun did your brother
7 have?

8 A The -- you saying what kind of gun -- you
9 asking -- exactly what you saying? You saying what
10 kind of gun did he have? I told you ---

11 Q I asked you what kind of gun did your brother
12 have?

13 A But you ain't being specific with what you
14 saying. You -- is you saying that he had, what kind
15 of gun did he have when ---

16 THE COURT: Hold on a minute. Lawyers
17 approach at side bar.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 THE COURT: Mr. Wilson, you may continue.

21 MR. WILSON: Thank you, Your Honor.

22 BY MR. WILSON:

23 Q All right, let's go back. That night,
24 September 29th, 2012, at this house where this
25 incident took place, what kind of gun did your

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1 brother have?

2 A I -- you -- I don't understand like, did -- you
3 saying what gun did he have. You saying, 'cause I
4 told you during the fight, during the fight thing I
5 and seen no gun. But he got the other revolver
6 that's on the paperwork, that's his.

7 Q Okay, so no question ---

8 A That's his.

9 Q No question, there's no question that that
10 revolver belonged to your brother?

11 A Yes, it ain't ---

12 Q All right.

13 A That's his.

14 Q All right. And when y'all ended up at the
15 hospital the revolver ended up in the trunk of the
16 car with your gun, right?

17 A You said when we got to the hospital?

18 Q When you got to the hospital to get out to go
19 into the emergency room ---

20 A From my -- I'll let you.

21 Q The two guns ---

22 A I apologize.

23 Q Go ahead, I'm sorry.

24 THE COURT: No, go ahead, Mr. Wilson. Let
25 him finish his question, then you can answer, okay.

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1 BY MR. WILSON:

2 Q What I'm simply asking you is when you arrived at
3 the hospital with the car, was your gun and your
4 brother's gun in the trunk of that car?

5 A That was my understanding that it was. .

6 Q Okay, all right.

7 A About ---

8 Q Have you gotten your gun back from the police?

9 A No, sir.

10 Q All right. So the police still got your gun?

11 A Yes, sir.

12 Q All right. And what about your brother's gun,
13 did y'all get that back?

14 A No, sir.

15 Q Okay. Now let's go back to the house. Let's
16 talk about what happened that night at that house.
17 Now you said that you were drinking, right?

18 A Yeah, we had a drink or two.

19 Q Okay. Now but you admit you told police that you
20 weren't drinking. When they talked to early on you
21 weren't drinking; but now you say, yeah, you were
22 drinking, right?

23 A Hold up. You got a statement with me saying that
24 I told the police?

25 Q I'm asking you, did you?

SW - R. GAUSE - CROSS

1 A No, I -- I never said that I wasn't drinking.

2 Q You never said you weren't drinking?

3 A I thought -- you told me that I told -- you told
4 me that you read a statement that said we was at
5 Charles Wilson house drinking ---

6 Q Yeah, and I'm ask---

7 A ---if I ain't mistaken.

8 Q And I'm asking you, you're saying that y'all were
9 there drinking?

10 A Yes.

11 Q All right. And when Mr. Woodbury comes up to the
12 house, right, and you say that they at some point
13 Mr. Woodbury and two other guys -- that would have
14 been Mr. Ky Graham and Mr. Lamont Davis -- got back
15 into the vehicle and then they left. Is that your
16 testimony, today anyway?

17 A Yes.

18 Q Now that's not something you told the police
19 either Patrolman Smith or the Chief and the
20 Lieutenant? That is not what you told them, right?

21 A No, sir.

22 Q Okay, so that's a new version. But your story is
23 is that once they left, they were gone for, you said
24 two, three minutes, then they come back, right?

25 A Correct.

SW - R. GAUSE - CROSS

1 Q All right. And now before they left was there
2 any touching, was anybody touch anybody?

3 A Before they -- no, no one was touched.

4 Q So there was no fighting, nobody was injured,
5 nobody was hurt at all, was there?

6 A No, sir.

7 Q Okay. And then you say your story is that then
8 they come back, and when they come back they get out
9 of the car?

10 A Woodbury. He ---

11 Q Woodbury gets out the car. He got out the car.

12 A He was ---

13 Q Everybody else stays in?

14 A I had my focus on him 'cause he was fidgeting
15 with something so I'm not sure who got out.

16 Q Okay. So the only person you cared about at this
17 point is Woodbury so you don't know what everybody
18 else is doing but Woodbury gets out the car in your
19 version of this, these facts, right?

20 A Yes, like, if I just seen a confrontation about
21 to occur and then it didn't occur so we changed the
22 subject.

23 Q Okay.

24 A The subject came back when the car pulled back up
25 and it raised everybody eyebrows like, hold up,

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1 like, why you standing at the car holding, playing
2 with his pants.

3 Q Okay, so he's standing at the car ---

4 A Digging at ---

5 Q ---playing with his pants. And that's when you
6 go and you get your gun out the trunk of the car,
7 right?

8 A It ain't go exactly like that.

9 Q Well, didn't you tell the Solicitor that you saw
10 ---

11 A That's -- oh, I apologize. I apologize.

12 Q Didn't you tell the Solicitor that you saw him
13 standing there fidgeting with his pants and that's
14 when you went and got your gun and fired it in the
15 air?

16 A No, I said my brother first said -- my brother
17 said, oh, so you got something. So he didn't
18 respond, he kept like trying to tuck whatever it was
19 like before he -- it was like he was more focused on
20 what he was doing. So during that process I went to
21 my car and got, and opened the trunk and got the
22 gun.

23 Q Okay.

24 A So I'm sitting watching, but when -- so when it
25 started getting like they about to get in a

SW - R. GAUSE - CROSS

1 confrontation, that's when I shot it in the air to
2 try to kill it, to calm it down.

3 Q So when he comes back and he's standing there
4 fidgeting and your brother makes a comment, then you
5 go get the gun. That's what your story is now,
6 right?

7 A Yes.

8 Q Okay. And you go get your gun, you fired in the
9 air. How many times did you fire?

10 A One shot.

11 Q And were you under the carport or were you out in
12 the yard when you fired the shot?

13 A Out in the yard.

14 Q Okay, so you didn't fire under in the carport?

15 A No.

16 Q You fired it in the ---

17 A No, sir.

18 Q ---out in the air in the yard?

19 A Where the confrontation was going at in the
20 driveway part of like -- it's like, it's kind of
21 hard to explain your, how it's built. It's middle
22 like at the road and then it's a driveway.

23 MR. WILSON: May I approach, Your Honor.

24 THE COURT: Yeah.

25 MR. WILSON:

SW - R. GAUSE - CROSS

1 Q Let me show you what's marked as Defendant's
2 Exhibit Number 1. Show me where Mr. Woodbury was,
3 where your brother was, and where you were when you
4 fired the gun.

5 A I could get -- let me -- when we was right here
6 we were standing right here.

7 Q We who?

8 A Ron Boatwright, me, Charles Wilson. Charles
9 Wilson.

10 THE COURT: Mr. Wilson, I don't know if
11 all the jurors can see.

12 MR. WILSON: You want me to have him step
13 down?

14 THE COURT: He can step down.

15 BY MR. WILSON:

16 Q Step down please, sir.

17 A (Witness complies.)

18 Q Just kind of point out to, if you would now, what
19 I want you to show me is I want you to show me where
20 on exhibit number 20-- I'm sorry, exhibit number 1,
21 State's ---

22 THE COURT: Defense Exhibit Number 1.

23 BY MR. WILSON:

24 Q Defense Exhibit Number 1. Thank you, Judge.

25 Show me on this exhibit where it was that you were

SW - R. GAUSE - CROSS

1 standing when you fired the shot that you say you
2 fired?

3 A (Indicating.) It's a little -- where ever, where
4 my car was parked on the grass that's where the shot
5 was fired.

6 Q And that would have been over here?

7 A Yeah.

8 Q Okay. And where was Mr. -- where was Mr.
9 Woodbury and where was your brother at that time?

10 A It was -- that's where the whole confrontation
11 was where I fired the shot. I shot it in the air
12 before it was like they were trying to meet. It was
13 like they were trying to meet up.

14 Q Okay. Well, where were they meeting? Were they
15 meeting at ---

16 A Each other. It was like Charles Wilson trying to
17 break it up but it was like, it was like they were
18 still trying to get at each other. So I felt, I
19 felt if I shot the gun in the air it will make them
20 all calm so which it did; but like Woodbury, he
21 just, he just, like I say, once again it was like
22 something to prove. He kept fidgeting, looking, he
23 ain't going nowhere. Everybody, everything is going
24 on so fast. Everything going fast, but everybody is
25 pulling him. I remember his friends pulling him by

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1 the shoulder, said man, don't talk to them, you
2 stupid. He said, man, you stupid, get in the car.
3 He said get in the truck, man, let's go. He said
4 let's go, you stupid, man.

5 Q My question was, my question was, where was your
6 brother standing, where was ---

7 A I just told. The confrontation was there right
8 in front of, e.

9 Q So they're standing right there too?

10 A I'm right here. They over here. Charles Wilson
11 between them trying to stop it. I backed up and I
12 shot it in the air.

13 Q Okay. So all of you are standing here at the
14 corner of the house. Is that what you're saying?

15 A Yes.

16 Q Okay. You can take the stand again.

17 A (Witness complies.)

18 Q So if you're standing at the corner of the house
19 then you would have been on the passenger side of
20 the black jeep. Is that correct?

21 A Yeah, that's correct.

22 Q All right. So y'all would have been on the
23 passenger side of the black jeep. So now tell me
24 how y'all got from there out into the road?

25 A We were on the -- we were on the passenger side.

SW - R. GAUSE - CROSS

1 We wasn't at the truck. We were -- from, I thought
2 you were asking like what side of the truck. We
3 were on the passenger side of the truck, but we
4 wasn't on the truck.

5 Q I understand.

6 A We was farther from the truck. We were far out
7 from the truck.

8 Q You were up more towards the back of the van
9 which is pulled up into the ---

10 A No, we were out. We were more out of the, like,
11 at the driveway.

12 Q All right. This might have a little bit better
13 picture. This is Defendant's Exhibit Number 2.

14 Come down again for me please.

15 A (Witness complies.)

16 Q All right. Looking at Defendant's Exhibit Number
17 2, can you see this grass area over here?

18 A Yes, we were over there.

19 Q Is that where you ---

20 A It took place over here in this area.

21 Q All right.

22 A In the grass.

23 Q And the black jeep would have been parked behind
24 this van?

25 A Yes.

SW - R. GAUSE - CROSS

1 Q Okay. And so the passenger door to the black
2 jeep would have been to your side?

3 A The car was parked this way so the passenger side
4 would be over here on my right.

5 Q Okay. Yeah, over here to this side. This would
6 have been the passenger side of the vehicle?

7 A Yes, sir.

8 Q Okay, all right. And that's where y'all were
9 standing. You're saying the three, you, Mr. Wilson,
10 your brother, and Mr. Woodbury were all right here
11 when you fired the shot and you stepped away. Is
12 that what you're saying? You fired?

13 A They were over here. I was —

14 Q Over here, that's what I'm asking you.

15 A They were more on this side. I was right here.
16 I was on the grass right here. They were more like
17 on this side of the grass. We in the same area,
18 like, me and you in the same area; but if you turn
19 this way and somebody and you and somebody like in
20 each other face I'm standing right here.

21 Q Okay.

22 A So before it ever broke up I shot in the air to
23 calm them.

24 Q Okay, have a seat.

25 A (Witness complies.)

SW - R. GAUSE - CROSS

1 Q Now after you fired your shot you then walk away,
2 walk back to the trunk of your car, right?

3 A Correct. When -- correct.

4 Q And you open the trunk of the car and you put
5 back the gun?

6 A I never closed it.

7 Q Right. So you left -- I'm sorry.

8 A Yeah, so I put it in and then I closed.

9 Q So you put the gun back in the trunk of the car
10 and you closed it, all right. And now at this point
11 nobody is injured or hurt, right?

12 A Yes.

13 Q Who is hurt at that point?

14 A No, I'm saying -- you said nobody. I'm agreeing
15 with you. No one was hurt.

16 Q Nobody was injured. Nobody was hurt at this
17 point?

18 A And ---

19 Q Right?

20 A Correct.

21 Q Okay. And after that happens the lights go out,
22 right?

23 A No.

24 Q The lights don't go out?

25 A No, that's not how it happened.

SW - R. GAUSE - CROSS

1 Q Well, then you tell me how it happened.

2 A Okay. Like I told you, his friends was telling
3 him to come on. His friends were telling him to
4 come on, and they pulling him to the truck. Once
5 they get kind of to the truck he turn back around.
6 He's like -- it's a point to prove. That's why I
7 keep saying it was like a point to prove 'cause it
8 was, it wasn't no way that Charles Wilson, you see
9 his size. He half my brother. My brother like, he
10 would just, they were -- when they was going back
11 and forth trying to get into each other truck like,
12 chill. He was like, man, just go ahead, like he had
13 his back to my bro-- he was like, man, just go home.
14 His friends like, man, you stupid man, come on,
15 don't follow up with this, don't do that. He --
16 they are pulling him to the trunk but he'll pull
17 back like, he just go stand right there like he just
18 standing like trying to want my brother to get
19 loose. And that happened like three or four times.
20 And then so like Charles Wilson said, like, he said,
21 he, he said he seen a gun, he got out the way. So
22 that's how the confrontation broke.

23 Q Okay, seen a gun where?

24 A You said ---

25 Q You said Charles Wilson said he saw a gun?

SW - R. GAUSE - CROSS

1 A Yeah. You said he said from my understanding he
2 said he seen one. I don't recall ever seeing one.

3 Q He said he saw a gun. Where did Charles Wilson
4 said he saw a gun?

5 A You don't remember where he said it?

6 Q I'm asking you. You the one who said it?

7 A What you mean? I said Charles Wilson said he
8 seen a gun. I told you ---

9 Q Where did Charles Wilson say he saw the gun?

10 MR. CLEMENTS: Objection, Your Honor, that
11 testimony is in the record.

12 THE WITNESS: I don't, I don't understand.

13 THE COURT: If you recall where he saw the
14 gun you can tell him where that you recall and where
15 it was if you don't recall. Answer it that way.

16 THE WITNESS: I don't recall ---

17 BY MR. WILSON:

18 Q You don't recall?

19 A ---where he seen it.

20 Q Okay, good enough. Let's go on. At some point
21 in time you say that Mr -- well, let me back up
22 'cause we still hadn't got past the lights yet. At
23 what point in all of this did the lights go off?

24 A When -- okay, I'm gonna say this. Charles Wilson
25 was trying to stop, stop them.

SW - R. GAUSE - CROSS

1 Q But that wasn't my question. My question was ---

2 A No, I want to make sure you understand how I'm
3 saying ---

4 THE COURT: Let him answer it, Mr. Wilson.

5 THE WITNESS: ---how it broke out.

6 Charles Wilson was between both of them. They
7 trying to get to each other. Okay, now Charles
8 Wilson, he, he had my brother. His friend, I mean
9 Woodbury, his friends had him, was pulling talking
10 you crazy, stupid, let's go man, let's go. They'll
11 get to the truck. He'll pull back like, naw, I
12 ain't about to go, like, naw, my pride won't let me,
13 I'm going back. So it kept going like that until,
14 like I say, Charles Wilson, I guess he broke --
15 he -- well, he had to move out the way and he said
16 he seen a gun. So that's when the confrontation,
17 that's when the confrontation like, that's when the
18 whole brawl came. That's how the whole brawl came
19 when he came back. That last time when they pulled
20 him, they him kept trying to pull him away. That
21 last time he came back and he was like, okay, I see
22 what I'm missing, the part where I'm missing up.
23 The point where I'm missing out is when he said he
24 will fight. He said I will fight you. He said I'll
25 fight. He said I ain't got no weapon, I will fight.

SW - R. GAUSE - CROSS

1 So when, so that's when his friend, his friend, like
2 I'm saying, they steady pulling him. He coming back
3 like, but he, it just, everything happened so fast
4 it so crazy 'cause words being exchanged, words
5 being exchanged but everybody trying to calm it
6 down. They pulling -- we, he calm, my brother calm.
7 They get, they got him over there. He calm. Then
8 the next thing I know he breaking back loose. Now
9 my brother trying to break loose like nobody ain't
10 wanting each other, nobody -- basically it was like
11 they wanting to get into it. When he said, when he
12 told my brother he'll fight, that, like he said,
13 I'll fight. He said, I ain't got nothing. So
14 that's when -- I guess that's -- well I know that's
15 when the fighting occurred. They started tangling.
16 It led over, it led farther back to the garage, the
17 lights went out. I can't tell you who cut them off.
18 I know for sure I didn't.

19 Q Did you tell, did you tell the police that when
20 Ian first learned that he had been cut that he then
21 broke away from you and went back to attack Mr.
22 Woodbury?

23 A Yeah, that's where I come in when I went over
24 there to the fight. When I went over there trying
25 to break them up, when I told you, when I went over

SW - R. GAUSE - CROSS

1 there trying to break them up, like, it's a fight so
2 everybody pulling. So he like, oh, you -- he said,
3 you, oh man, he said he cut me. He said, he cut me.
4 That when the dude took off. It was like he was
5 trying to go back at him but he took off running.
6 He took off full speed ruining behind the house.

7 Q All right. Did you also tell him that Ian and
8 the defendant got into it and that you came in and
9 that you hit the defendant to help your brother, as
10 you said, you were trying to break them up, but that
11 you had to hit him because he was swinging wildly
12 did you say that?

13 A We talking about the hospital again?

14 Q Yes, sir.

15 A Oh, I thought I had said a lot that happened at
16 the hospital was -- if we talking about the hospital
17 a lot, it was just a lot said, like I said, that I
18 wasn't truthful about because I wanted to take
19 revenge in my own hands if my brother did die.

20 Q Yeah.

21 A But I started thinking smarter.

22 Q Okay. And that's kind of what we're doing today.
23 You're just doing it a different way, right? You're
24 trying to get revenge, and you're going to say,
25 aren't you, whatever is necessary --

SW - R. GAUSE - CROSS

1 MR. CLEMENTS: Objection, Your Honor.

2 THE WITNESS: I can speak?

3 THE COURT: Hold on a minute. Can I see
4 lawyers up at side bar a second.

5 (WHEREUPON, counsel approached the Bench
6 for an off-the-record discussion.)

7 THE COURT: All right, you may continue.

8 MR. WILSON: Thank you very much, Your
9 Honor.

10 BY MR. WILSON:

11 Q Okay, let's go back and we're going to try to get
12 through this as quick as we can. Let's go back.

13 Can you tell me where it was at what point did the
14 light come on during the incident?

15 A The light come on?

16 Q Go off. I apologize, it's been a long day. At
17 what point did it go off on the porch?

18 A When the con -- when they started brawling,
19 getting in the fight, I realized the light was off.

20 I realized the light was off. It's wasn't no, it
21 wasn't a -- it's not really like a certain point
22 that I'm like in the middle of them brawl. It
23 wasn't, I was more paying attention to what was
24 going on than the light so I can't tell you no exact
25 time.

SW - R. GAUSE - CROSS

1 Q Okay, thank you. Now the two guns that were in
2 the trunk of that car, let me show you what's marked
3 as Defendant's Exhibit 13, 12 and 11. I'm not sure
4 if they're for identification or ---

5 THE COURT: They're not in. They're
6 marked for identification purposes only.

7 MR. WILSON: Okay, that's good.

8 THE COURT: 6 through 13.

9 BY MR. WILSON:

10 Q Let me show you these two objects. Take a look
11 at them for me please, sir. You recognize them?

12 A Yeah, I recognize them.

13 Q Okay.

14 A I mean, if that's the revolver that was in the
15 trunk I recognize it. This my gun.

16 Q Okay.

17 MR. CLEMENTS: No objection, Your Honor.

18 THE COURT: You moving them into evidence?

19 MR. WILSON: Yes, sir.

20 THE COURT: All right, without objection
21 exhibits 12 and 13 admitted without objection.

22 BY MR. WILSON:

23 Q Now let me show you Exhibit Number 12 -- 13
24 actually, which is the revolver handgun, a
25 photograph of the revolver handgun; is it not?

SW - R. GAUSE - CROSS

1 A Yes.

2 Q All right. And any question that that's your
3 brother's gun?

4 A No.

5 Q Okay. And is there -- did you see it that night
6 at all?

7 A In the trunk.

8 Q You saw it in the trunk?

9 A Yeah.

10 Q So when you opened the trunk to put your gun --
11 let me go back. When you opened the trunk to get
12 your gun out to fire the shot you saw that gun in
13 the trunk, right?

14 A It's dark. It was -- it's dark. I can't say, I,
15 no, I can't recall just seeing. I can't recall just
16 seeing it in there.

17 Q Okay. So you don't recall seeing it in there.
18 So when you -- when is the last time you recall
19 seeing that revolver in the trunk before you got to
20 the hospital?

21 A Can you say that again.

22 Q When is the last time you recall seeing the
23 revolver that you say your brother owned in the
24 trunk of the car before you got to the hospital?

25 A Before I got to -- if we carry a gun, if we, it's

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1 gonna be in the trunk. I don't understand what
2 you're saying when was the last time I recall seeing
3 it in there. The last time I recall seeing it was
4 when the police had questioned after the hospital
5 after I found out what had happened and everything
6 they, that's my last time seeing it in the trunk.

7 Q What I asked -- and I'll repeat it again and then
8 I'll move on to something else. What I simply asked
9 was, when was the last time you saw the revolver in
10 the trunk of the car before you went to the
11 hospital?

12 A I can't recall.

13 Q Okay, all right. Now did you put any blood on
14 that gun, that revolver?

15 A I -- how could I put blood on it?

16 THE COURT: Answer his question please.

17 MR. WILSON: I don't recall putting no
18 blood on it.

19 BY MR. WILSON:

20 Q Okay, all right. You know whether or not your
21 brother put any on there?

22 A No, sir.

23 Q Okay.

24 A I don't recall him putting any on there.

25 Q Okay. Let me ask you this, this gun, this

SW - R. GAUSE - CROSS

1 9-millimeter gun that the Solicitor says you legally
2 own.

3 MR. CLEMENTS: Objection, Your Honor, I
4 didn't say anything about him owning a 9-millimeter.

5 THE COURT: It's 380.

6 MR. WILSON: I apologize. He's absolutely
7 correct, and I thank you, Your Honor.

8 BY MR. WILSON:

9 Q Let me show you Exhibit Number 12. Take a look
10 at that?

11 THE COURT: Defendant's Exhibit Number 12.

12 BY MR. WILSON:

13 Q Defendant's Exhibit Number 12. Now that's your
14 gun, right?

15 A Yes.

16 Q Where did you purchase that gun from?

17 A Low Country Pawn.

18 Q Who?

19 A It's in Marion. Low Country Pawn I believe
20 that's the name of the pawnshop.

21 Q When was that?

22 A It wasn't too more longer than a month or two
23 before. I only had it for like two months or a
24 month.

25 Q So you had -- you bought the gun two months ago

SW - R. GAUSE - CROSS

1 from Low Country Pawn. That's your testimony,
2 right?

3 A If that's the name of the pawnshop.

4 Q If that's the name of it, okay.

5 A It's located in front of the Burger King or
6 somewhere out there.

7 Q Where did the other gun come from?

8 A I'm not sure; it's not mine.

9 Q Now so you generally carry your gun around with
10 you in the trunk? Is that what you do?

11 A Do I generally? Like I said, if I take the clip
12 out in the glove compartment, if I don't -- even if
13 I have take the clip off I got it in I have it in
14 the trunk.

15 Q Okay. Is your brother's gun always in the trunk
16 with your gun when y'all are riding around?

17 A It could be.

18 Q Okay. So you don't leave home without it in the
19 trunk of the car, you and your brother, right?

20 A I can't speak for my brother behalf, but I only
21 have my gun for like a month or two, and I was
22 trying to get more familiar with it 'cause I was
23 supposed to be getting, taking the classes for it.
24 I was supposed to take classes with it so that's why
25 I kept mine.

SW - R. GAUSE - CROSS

1 Q You have a concealed carry permit for that
2 weapon?

3 A No, I don't got no -- that's why I was saying
4 they tell me at the pawnshop I could take classes.

5 Q Okay.

6 MR. WILSON: Court bear with me one
7 second.

8 THE COURT: Yes, sir.

9 MR. WILSON: I don't have any other
10 questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. CLEMENTS: Your Honor, we have no
13 redirect at this point in time. The State would
14 rest.

15 THE COURT: Sir, you may step down. Thank
16 you.

17 MR. CLEMENTS: Your Honor, I'd ask Mr.
18 Gause be released from his subpoena.

19 MR. WILSON: No objection.

20 THE COURT: You have no further
21 responsibilities under your subpoena. Thank you for
22 being here.

23 Ladies and gentlemen of the jury, the
24 State has rested its case. I am going to have to
25 ask you to step to the jury room for a matter of law

1 THE COURT: All right, bring me the jury
2 please, sir.

3 (WHEREUPON, counsel approached the Bench
4 for an off-the-record discussion.)

5 THE COURT: Madam forelady, ladies and
6 gentlemen of the jury, I appreciate your patience
7 bank there. At this time, or previously, you heard
8 the State rested its case. I have heard the matters
9 dealt with legal issues that I need to deal with.
10 At this time I'm gonna recognize Mr. Wilson, defense
11 counsel.

12 Call your first witness please, sir.

13 MR. WILSON: Thank you very much, Your
14 Honor. I call Robert Woodbury.

15 THE CLERK OF COURT: Mr. Woodbury, if
16 you'd come around. Place your left hand on the
17 Bible and raise your right hand.

18 WHEREUPON,

19 **ROBERT WOODBURY,**
20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 THE CLERK OF COURT: Take a seat in the
23 witness box.

24 **DIRECT EXAMINATION**

25 BY MR. WILSON:

DW - R. WOODBURY - DIRECT

1 Q Mr. Woodbury, if you would state your full name
2 for the record please?

3 A Robert L. Woodbury.

4 Q And where do you live?

5 A I live in Marion.

6 Q All right. Are you employed there?

7 A Yes, sir.

8 Q And where do you work?

9 A McLeod health.

10 Q Okay. And how long have you worked there?

11 A About four years.

12 Q All right. Now, and are you related Mr. Richard
13 Woodbury?

14 A Yes, sir.

15 Q And what is that relationship?

16 A He's my uncle.

17 Q He's your uncle. And now did y'all grow up
18 together or is he much older than you?

19 A Yes, sir, he's much older than me.

20 Q He's much older than you, all right.

21 A But we've grown up together. He's been in the
22 house with me all of my life.

23 Q Lived in the house with you some?

24 A Yes, sir.

25 Q Now do -- y'all don't live together now or hadn't

DW - R. WOODBURY - DIRECT

1 lived together in a while?

2 A No, sir, we ---

3 Q It's been a number of years?

4 A That's correct.

5 Q Okay. Now let me ask you if -- let me show you
6 what's marked as State's Exhibit Number 23 and ask
7 you if you've ever seen this before.

8 A Yes, sir.

9 Q Okay. And where did you see it?

10 A At one time it belonged to me.

11 Q Okay. And where did you get it from?

12 A I purchased it probably three, four years ago.

13 Q Okay. Where did you purchase it from?

14 A From a fellow collector who used to live in
15 Mullins.

16 Q All right. You said a fellow collector. Do you
17 collect these things?

18 A Yes, sir.

19 Q What are other items do you collect other than
20 this?

21 A I have collected samurai swords, medieval swords,
22 ninja swords, things of that type.

23 Q And did you take some pictures of some of the
24 other things in your collection and bring them here
25 with you today?

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1 A Yes, sir, I did.

2 Q All right.

3 MR. CLEMENTS: Your Honor, may we
4 approach.

5 (WHEREUPON, counsel approached the Bench
6 for an off-the-record discussion.)

7 BY MR. WILSON:

8 Q Did you take some pictures of some of the other
9 things in your collection?

10 MR. CLEMENTS: I object, Your Honor.

11 THE WITNESS: Yes, sir.

12 MR. CLEMENTS: On the basis of relevance.

13 THE COURT: Hold on a minute. He's not --
14 I hadn't seen any pictures yet. I understand your
15 objection.

16 MR. WILSON: I'm not gonna ask him to show
17 me the pictures. I just want to know that he has
18 them and he has them in his, on his person.

19 THE WITNESS: Yes, sir, I do.

20 BY MR. WILSON:

21 Q All right, thank you so much. Let me ask you one
22 other question. How did Mr. Richard Woodbury get
23 this item?

24 A A little over two years ago we were spending some
25 time together at my current location, residence.

SW - R. WOODBURY - CROSS

1 He was getting ready to move into a new apartment.
2 He seen my collection; we were talking. He inquired
3 about them. He'd liked it so I was getting rid of a
4 few things. I no longer purchased them since I'd
5 been married, and I gave it to him and he was gonna
6 use it as decoration or whatever.

7 Q Thank you so much. No other questions.

8 **CROSS-EXAMINATION**

9 BY MR. CLEMENTS:

10 Q I'm just curious, Mr. Woodbury, what do you call
11 this, a Ninja sword or what do you call it?

12 A Yes, sir, it can be referred to as that, as a
13 ninja sword. It's used in martial arts.

14 Q It's used in martial arts? And you would have
15 it, you collect it. You display it---

16 A Yes, sir.

17 Q ---in your home or on some kind of case or
18 something; is that right?

19 A Yes, sir, I have them displayed in my home on
20 shelves and specialty racks.

21 Q All right. I want to show you what's been marked
22 as State's Exhibit Number 4. You wouldn't display
23 it like that, would you?

24 A Personally, no.

25 Q Okay. So carrying it around in the back of your

DW - R. CARMICHAEL - DIRECT

1 vehicle would not be something you think would be of
2 display use?

3 A To display, no; but to carry, I can't speak to
4 that.

5 Q Okay, thank you. No further questions.

6 THE COURT: Any redirect?

7 MR. WILSON: No questions.

8 THE COURT: You may step down. Thank you.

9 MR. WILSON: We call Rosa Carmichael.

10 THE CLERK OF COURT: If you'd place your
11 left hand on the Bible and raise your right hand.
12 WHEREUPON,

13 **ROSA R. CARMICHAEL,**
14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK OF COURT: Thank you.

17 **DIRECT EXAMINATION**

18 BY MR. WILSON:

19 Q Ms. Carmichael, if you would state your full name
20 for the Court.

21 A Rosa Robinson Carmichael.

22 Q And where do you live, Ms. Carmichael?

23 A I live at [REDACTED] extension in Marion?

24 Q Now is that close to Withlacoochee?

25 A Withlacoochee is directly behind me.

DW - R. CARMICHAEL - DIRECT

1 Q Directly behind you, okay. And do you know --
2 let me ask you first, on the night of September 29th
3 of 2012 were you at home?

4 A Yes, I was.

5 Q Okay. And did you happen to have a occasion to
6 call 9-1-1 that night?

7 A Yes, I did.

8 Q All right. And what was the purpose of your
9 calling 9-1-1 that night?

10 A Because someone behind my house was getting beat
11 up and there were gun shots.

12 Q Gun shots. How many gun shots did you hear that
13 night?

14 A I heard four shots.

15 Q Four shots. Any question in your mind you heard
16 four shots?

17 A I'm positive.

18 Q And now you said something about you heard
19 somebody get beat up. Kind of describe to us what
20 you heard. Did you see anything or did you just
21 hear?

22 A Well, the only thing what I saw was like shadows
23 when they were coming back up towards the carport,
24 okay, because all of a sudden the light went out.
25 As soon as the argument really got started it went

DW - R. CARMICHAEL - DIRECT

1 dark.

2 Q Okay.

3 A And I could see some shadows but it was -- the
4 closer they got back toward the house the less I
5 could see. And I heard somebody say, well man, what
6 you doing, I don't have a knife. Then so I heard
7 him getting all beat up and I heard somebody say,
8 well how you like that now, how you like that now,
9 then I heard something go pow, pow, pow. So I just
10 put the window down and called 9-1-1.

11 Q Okay, all right. Did the police ever come out
12 and talk to you?

13 A No.

14 Q And when you called 9-1-1 didn't you give them
15 your name and your --

16 MR. CLEMENTS: Objection to leading, Your
17 Honor.

18 THE COURT: Rephrase your question please.

19 BY MR. WILSON:

20 Q Did you give your name to 9-1-1?

21 A Yes, I did.

22 Q All right. Did you give 9-1-1 your address?

23 A Yes, I did.

24 Q Did police come to see you?

25 A No, they didn't.

DW - R. CARMICHAEL - CROSS

1 Q Till this day have the police come to see you?

2 A No.

3 Q No other questions.

4 THE COURT: Cross-examination.

5 **CROSS-EXAMINATION**

6 BY MR. CLEMENTS:

7 Q You were inside your home?

8 A Uh-huh.

9 THE COURT: Is that a yes or a no?

10 THE WITNESS: Oh, I apologize.

11 THE COURT: That's okay.

12 THE WITNESS: Yes, I was.

13 BY MR. CLEMENTS:

14 Q And it was dark?

15 A Yes, it was.

16 Q It was dark wasn't it this time of night?

17 A Yeah, it was dark.

18 Q All right. How old are you, Ms. Carmichael?

19 A 56.

20 Q Okay. And you know who lives in that house or
21 know any of those people?

22 A I know who live there. I know of them. I don't
23 really socialize but I speak when we speak to one
24 another but as far as us socializing we don't.

25 Q Do you know the Woodburys?

1 A Yes, I do.

2 Q You do? Okay. That's what I thought.

3 THE COURT: Any redirect?

4 MR. WILSON: Nothing further.

5 THE COURT: Ma'am, you may step down.

6 Thank you.

7 MR. WILSON: Defense would rest.

8 THE COURT: Let me speak to you all over
9 here.

10 (WHEREUPON, counsel approached the Bench
11 for an off-the-record discussion.)

12 THE COURT: Ladies and gentlemen, Defense
13 counsel has rested. You have heard all the
14 testimony that you're gonna hear in this case and
15 all items of evidence that have been introduced that
16 are going to be introduced. That which remains at
17 this time are closing arguments by counsel and my
18 charge on the law to you. In light of the fact of
19 what time it is today I am not going to do that.
20 We're not gonna do that today. We're going to do
21 that first thing in the morning. I'm gonna ask that
22 you all be back here 9:00 in the morning, 9:00 in
23 the morning, and we will resume this case, continue
24 this case, conclude this case with closing arguments
25 and my charge on the law to you and then the case

1 will be submitted to you all for deliberation.
2 During your overnight break my instructions remain
3 the same. Do not, do not discuss this case with
4 anyone. Do not do anything, independent
5 investigations. You're to decide this case based
6 solely on the evidence and testimony that's been
7 presented in this courtroom, nowhere else.

8 Anything from the State before I release
9 the jury for the balance of today?

10 MR. CLEMENTS: No, Your Honor.

11 THE COURT: Defense counsel?

12 MR. WILSON: Nothing, Your Honor.

13 THE COURT: All right, see you all at 9:00
14 in the morning. Thank you.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 4:00 p.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Yes, sir.

19 MR. CLEMENTS: Your Honor, as you consider
20 your charge I would submit, Your Honor, that you
21 look at State v. Jones, 113 South Carolina 134. As
22 a general rule plea of self-defense is not available
23 to one who kills another in mutual combat. To
24 constitute mutual combat there must exist a mutual
25 intent and willingness to fight which is a statement

1 from Nauful versus Milligram, 258 SC 129. So I
2 would just ask you look at those when you get your
3 charge, and if I can give your law clerk my personal
4 email rather than my office email so I can look at
5 the charge tonight.

6 THE COURT: What was the name of the case
7 again? State v. what?

8 MR. CLEMENTS: State v. Jones is the first
9 case, 113 SC 134, and Nauful versus Milligan, 258 SC
10 139. And those cases are cited also in State v.
11 Douglas McArthur Graham, which is 196 Southeastern
12 Second 495, 260 SC 449.

13 THE COURT: All right. Anything from
14 Defense counsel?

15 MR. WILSON: Do I have any objections to
16 his?

17 THE COURT: You have anything you want to
18 put on the record before we break for today?

19 MR. WILSON: Well, I submitted to you
20 earlier in chambers and gave the solicitor a copy of
21 the charges that I would request. The only thing
22 that I did not give you as far as requests to charge
23 would have been the, I think I had a charge on
24 attempted murder and I didn't give you that. I
25 think I left it and but I will bring that give it to

1 you or even ---

2 THE COURT: Email it to my clerk.

3 MR. WILSON: To your clerk, yes, sir.

4 MR. CLEMENTS: Also, Your Honor, we would
5 ask you consider the lesser included offense of
6 voluntary manslaughter. We think there's factual
7 situation that the jury could look at and say that
8 there was heat of passion, there was legal
9 provocation, and there was not a sufficient cooling
10 off period. Or they could say there was a cooling
11 off period. Also Your Honor, we would submit you
12 look at lesser included offense of assault and
13 battery.

14 THE COURT: High and aggravated.

15 MR. CLEMENTS: High and aggravated nature.
16 Your Honor -- I'm sorry, were you finished?

17 THE COURT: I'm ---

18 MR. WILSON: In addition to that, and
19 especially think in light of the fact if the Court
20 is going to consider ABHAN that involuntary should
21 also be considered. The reason for that is if
22 you'll remember the testimony there was -- and I'll
23 try to remember which of the witnesses testified
24 that, that he was swinging wildly and that he thinks
25 that's when he got -- I think it was Mr. Rishawn

1 Gause who actually testified that when he
2 approached the defendant was swinging the sword
3 wildly and that that must be when he got cut. Well,
4 if that's true on the attempted, which would be
5 ABHAN, then it certainly have to be true for murder
6 which would be involuntary because it would be
7 reckless conduct on the part of the defendant which
8 caused the death of the person. And so I would
9 submit that that would be an appropriate charge as
10 well.

11 THE COURT: Mr. Clements?

12 MR. CLEMENTS: Your Honor, I don't think
13 involuntary is an appropriate charge because when he
14 talked about him swinging wildly and he demonstrated
15 he said he didn't know he had swords. He thought he
16 was punching like this. And then he realized after
17 that when they where cut that, oh, he was stabbed.
18 That's why he was -- and he demonstrated like this
19 because if you're fighting you'd be swinging in a
20 different manner and he just thought it was wild
21 because of the punching was actually stabbing. Now
22 the lesser included of ABHAN to the attempted murder
23 I don't think translates into a, also a involuntary
24 manslaughter being reckless. They may, a jury could
25 conclude that in regard to Rishawn Gause he wasn't

1 trying to kill him, and they may not accept the
2 argument of transfer intent, may think oh, he just
3 cut him.

4 MR. WILSON: Judge ---

5 THE COURT: I'll take a look at it.

6 MR. WILSON: Thank you, sir.

7 THE COURT: I'll take a look at it.

8 Anything else?

9 MR. CLEMENTS: No, sir, there is not from
10 the state?

11 MR. WILSON: Nothing from Defense.

12 THE COURT: Let me ask you this, Mr.
13 Wilson. Mr. Clements, I guess, in essence objected
14 to self-defense.

15 Is that right, Mr. Clements?

16 MR. CLEMENTS: Your Honor, I just think
17 that it's something we all need to think about
18 tonight, and I think mutual combat aspect will
19 certainly play into self-defense, whether that
20 charge is admissible or not, and I'm still looking
21 at that. I just ask that you look at that too
22 knowing, I'm pretty sure, Mr. Wilson will also be
23 looking at that as well.

24 THE COURT: You have anything to add at
25 this time on that, Mr. Wilson?

1 MR. WILSON: No, sir, except that even if,
2 even if the Court were charging mutual combat,
3 unless the Court find as a matter of law that it's
4 mutual combat then I would submit that self-defense
5 would still be submitted to the jury and the Court
6 would then read the instructions to them on both
7 mutual combat and on self-defense and then the jury
8 would decide whether or not if there's a case made
9 out for mutual combat, whether or not it can go to
10 self defense. So I mean, that's how I would see it.

11 THE COURT: All right. I'll take a look
12 at it.

13 MR. CLEMENTS: And I don't have much
14 argument with what Mr. Wilson just said. If you
15 charge them on mutual combat, as long as you charge
16 them that what if you find it was mutual combat then
17 self-defense does not apply.

18 MR. WILSON: But I'm not agreeing that
19 mutual combat should be charged. That's not what
20 I'm agreeing to, I'm just saying.

21 THE COURT: If I charge it you want
22 self-defense charge?

23 MR. WILSON: Yes, sir.

24 THE COURT: Got you. Anything else?

25 MR. CLEMENTS: No, Your Honor.

1 MR. WILSON: No, sir.

2 MR. CLEMENTS: Your Honor, in the morning
3 will we be able to object to any charges if we find
4 something we disagree with?

5 THE COURT: Absolutely.

6 (WHEREUPON, the proceedings were concluded
7 for the day to be reconvened on February
8 21, 2012.)

9 THE COURT: State ready to proceed?

10 MR. CLEMENTS: We're ready, Your Honor.

11 THE COURT: Defense counsel ready to
12 proceed?

13 MR. WILSON: I am, your Honor.

14 THE COURT: Prior, or last night,
15 yesterday evening I had forwarded -- well, what were
16 you going to say?

17 MR. CLEMENTS: I was going to ask if we
18 can have our Ipad to look at your jury charge while
19 we're doing our closing argument, or if you have a
20 copy. I remember in your charge you said you were
21 going to provide a red copy to the jury.

22 THE COURT: I'm going to get into the
23 charge. Let me say this, I forwarded a copy of the
24 charge, my law clerk forwarded a copy of the charge
25 to the State last night as well as Defense counsel.

1 Well, Mr. Wilson informed me prior to the Solicitor
2 getting here that what was forwarded to him went to
3 his office and they got it this morning, but it was
4 sent last night.

5 MR. WILSON: Yes, sir, it was.

6 THE COURT: Any objection or exception to
7 the charge by the State?

8 MR. CLEMENTS: None by the State, Your
9 Honor.

10 THE COURT: By Defense counsel?

11 Mr. Wilson didn't go any specifics but he did tell
12 me back before Mr. Clements got here he had some
13 exceptions or objections to it and I'll give him an
14 opportunity. I'll give you both an opportunity at
15 the conclusion of my charge to the jury, if
16 something comes up, you got any objection, certainly
17 give you an opportunity to make any at that time as
18 well.

19 I'll be happy to hear from you,
20 Mr. Wilson.

21 MR. WILSON: Your Honor, there are some
22 things that I know that are not, that — for
23 instance, prior inconsistent statements are not in
24 the Court's charge, at least I don't recall seeing
25 it.

1 THE COURT: Okay.

2 MR. WILSON: And I would ask the Court to
3 consider charging prior inconsistent statement.

4 THE COURT: What says the State?

5 MR. CLEMENTS: Your Honor, I can't think
6 of any prior inconsistent statements that were made
7 other than Rishawn Gause who said from the getgo
8 that he did not tell the truth to law enforcement at
9 the beginning because he was mad and was going to
10 seek his own revenge, didn't want the State to get a
11 hold of the guy.

12 MR. WILSON: There was also Ky Graham who
13 testified that he never told the police about the
14 guns in his first statement.

15 THE COURT: Well, I think it's a
16 legitimate request, and I mean, I think, and I think
17 it certainly complies with the evidence that's been
18 presented in this courtroom during the course of
19 this trial. My responsibility is to charge the law
20 that based upon the evidence and testimony that's
21 presented in this case. I agree with Mr. Wilson it
22 ought to be in there. That was overlooked by my ---

23 MR. CLEMENTS: I agree as far as to
24 Rishawn Gause; but as far as Ky Graham, I don't
25 believe anybody ever asked him.

1 THE COURT: Well, y'all can argue that to
2 the jury in your closings. Y'all can argue that to
3 the jury. It's certainly prior inconsistent
4 statement which Rishawn Gause acknowledged and
5 admitted to on this witness stand.

6 MR. WILSON: Yes, sir.

7 THE COURT: And I believe Mr. Wilson is
8 absolutely right on that so that will be added in
9 there.

10 MR. WILSON: Your Honor, the other issue
11 is, and I know the Court's actually ruled on this
12 and I apologize. I'm not trying to belabor the
13 point. The issue of spoliations of evidence and let
14 me tell you what my reasoning is and I'm not going
15 back necessarily to the issue of the, of the
16 statement of the defendant. We had requested
17 discovery from the State in this case, and the State
18 indicated that they given us everything that they
19 had. The testimony from the SLED agent who did the
20 collection of evidence indicated that all of these
21 tests, including his swabs of blood from the gun,
22 had been sent to SLED for testing. At no time have
23 I received a report from SLED or from the
24 Solicitor's office regarding any of that. So if
25 they ever got those reports and they certainly were

1 requested because that's what the officer testified
2 to, and I was entitled to it. I should have gotten
3 it; they didn't give it to me. And it could have
4 been very favorable to this defendant because one of
5 the issues is, and I asked about the blood or
6 possible red stain or whatever it was that was on
7 the gun, because my concern was whether or not that
8 gun was used to assault the defendant, and I wanted
9 to know whether that blood matched the defendant.
10 But we never received any of that, and I think that
11 that's -- it's unfair to the defendant because it
12 puts him, we don't have access; we would not have
13 had access to that except through the State.
14 There's no way for us to get it because they're the
15 ones who took the swabs. They're the ones who sent
16 it to SLED, and SLED is the one who would have
17 analyzed it. And so I think that that's -- that is
18 a spoliation issue. First of all, but second of all
19 I think it's also a fundamental unfairness issue;
20 and as far as the defendant is concerned because
21 he's on trial for very, very serious crimes and the
22 State has an obligation to be fair with the
23 defendant, not just with the victims and I don't
24 think that that's very fair. And I would ask the
25 Court, my point was -- I'm asking the Court to get

1 off my soapbox, Judge. My point was that I think
2 it's a spoliation issue and that I would ask the
3 Court to charge that as a spoliations issue. I'm
4 also gonna ask the Court to consider a mistrial as a
5 result of that.

6 THE COURT: Mr. Clements.

7 MR. CLEMENTS: Your Honor, what he's
8 talking about, the only test that was done was done
9 on gunshot residue and that was done late, later on,
10 I can tell you because I requested it. They
11 normally, they do not normally do gunshot residue
12 analysis on any test from a victim. We late in the
13 game said there's some allegation when Mr. Anderson
14 and Mr. Floyd and Mr. Meetze were representing the
15 defendant that there were possibly shots fired by
16 the victim Ian Gause so then I called the SLED and
17 asked him to do the gunshot residue test. The other
18 tests that were doing, that were not done, the
19 reason they were not done, Your Honor, is because
20 they were not necessary for the investigation of
21 this case. If the gun that Mr. Wilson thinks had
22 blood on it which we think was just rust, if it was
23 on Ian Gause which that was what was submitted that
24 it was on Ian Gause, Ian Gause was stabbed and bled,
25 then we assume if any blood on there would have been

1 from Ian Gause. There was no allegations. There
2 were no wounds from on Mr. Woodbury when he was
3 taken into custody, taken into jail. There was no
4 wounds, no evidence of him ever having bled.
5 There's no evidence any -- nobody said Ian Gause
6 ever shot a gun. As a matter of fact, they said
7 he -- everybody said they ever saw him shoot a gun.
8 That was evidence we had so it made no sense with
9 SLED saying we're only gonna test what we need to
10 test, what is necessary. It wasn't necessary. This
11 is a red herring thrown up here now; and it doesn't,
12 it has no probative value to the case whatsoever.

13 THE COURT: All right. Well, this is ---

14 MR. CLEMENTS: No tests were done. We
15 didn't have anything to give to them. And I would
16 submit he knew that when he met with me in my office
17 and went through my entire file and I told him the
18 only tests that were done was gunshot residue.

19 THE COURT: Mr. Wilson, you got anything
20 else?

21 MR. WILSON: Yes, sir.

22 THE COURT: It needs to be new. I don't
23 want you to rehash what you've already argued to me.

24 MR. WILSON: Well, I don't know that
25 it's -- I don't know that it's new and so I won't

1 rehash it but ---

2 THE COURT: All right.

3 MR. WILSON: I just...

4 THE COURT: Well, I'm denying your request
5 for mistrial. This is certainly the first time it's
6 been brought to the Court's attention and certainly
7 something I think you can argue in the closing to
8 the jury if you so desire as to I'll let you make
9 that call. But there's nothing that I've heard to
10 this point that is so grievous in conduct by State,
11 law enforcement, that would warrant a mistrial in
12 this case; so therefore, I am going to respectfully
13 deny your request for mistrial. And I guess assume
14 you're requesting your charge on spoliation which
15 I'm denying that as well.

16 MR. WILSON: Yes, sir.

17 THE COURT: Respectfully denying that.
18 And we talked about that some on the record
19 yesterday.

20 MR. WILSON: Yes, sir, we did.

21 THE COURT: But I want you to, and you
22 have, make sure that the record is clear on your
23 objection to that, noting your objection to it to
24 insure that your client's interest. I've made an
25 error on it; it's on there. Also you indicated when

1 we spoke in the hall prior to Mr. Clements getting
2 here, you just wanted to renew your motions for
3 directed verdict.

4 MR. WILSON: Yes, sir.

5 THE COURT: And that all prior motions
6 which I think you need to do, certainly go ahead and
7 do that.

8 MR. WILSON: Your Honor, before I finish
9 with the charge let me go ahead and renew the
10 motions that I made at the end of the State's case.
11 I move for directed verdict as to the issue of
12 murder and as to attempted murder in this particular
13 case, and I will do that obviously on the same
14 grounds that I proffered at that time.

15 THE COURT: All right. And the Court's
16 rulings remain the same but your objections are so
17 noted for the record.

18 MR. WILSON: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. WILSON: Yes, sir. Your Honor, I also
21 noticed that in the charge you did not include
22 involuntary manslaughter in the charge.

23 THE COURT: Right, you had requested that

24 ---

25 MR. WILSON: Yes, sir.

1 THE COURT: ---yesterday. Based upon the
2 testimony of your client -- and I'm paraphrasing
3 here -- and I know that Mr. Gause during his
4 testimony stood up and showed the jury in a manner
5 which he says your client was stabbing, so to speak,
6 kind of wildly.

7 MR. WILSON: Yes, sir.

8 THE COURT: I did look at that. I did
9 take that into consideration. I do not believe that
10 it's appropriate to charge in this case.

11 MR. WILSON: Yes, sir.

12 THE COURT: Self-defense has been raised.
13 And there is a case that just came out, that just
14 came out. It's actually not released for
15 publication yet, but it was a case that came out --
16 hold on just a second. But it indicates, and I
17 understand the case has not been released for
18 publication, but it's pretty on target to this case
19 we have here. State v. Scott, which is 2014 Westlaw
20 631-2-67. It cites obviously other cases within
21 that case that said that invol-- self-defense and
22 involuntary essentially couldn't be charged
23 together. It was either self-defense or it was
24 negligent type conduct that you stated that your
25 client engaged it would warrant involuntary; it's

1 not both.

2 MR. WILSON: Yes, sir.

3 THE COURT: So that's, I think it would be
4 improper, but your objection is so noted for the
5 record.

6 MR. WILSON: Thank you, Your Honor. Your
7 Honor, the next objection -- not objection, the next
8 issue is I notice that you did not include the right
9 to act on appearances.

10 THE COURT: I thought that was in there.
11 What says the State on this?

12 MR. CLEMENTS: Your Honor, I thought it
13 was included in some of the other verbiage.

14 THE COURT: Hold on.

15 MR. CLEMENTS: But I think both the victim
16 and the defense is entitled to that charge.

17 THE COURT: Hold on a minute. I'm gonna
18 add that in there.

19 MR. WILSON: Thank you, Your Honor.

20 MR. CLEMENTS: Your Honor, one thing just
21 to make the record clear, earlier you were talking
22 to Mr. Wilson about what he had asked for, and you
23 said based on the testimony of his client -- and I'm
24 sure that's not what you meant to say. You said
25 that's clear that up on the record or the testimony

1 of the defendant and the defendant didn't testify so
2 I want to be sure we cleared that up.

3 THE COURT: I don't dispute what you said;
4 but yeah, I want to make -- if I did say that and I
5 want to clear it up. I think I said based upon the
6 testimony of Rishawn Gause. If I said defendant
7 that was a misstatement on my part 'cause the
8 defendant did not testify, okay. Thank you.
9 Anything else?

10 MR. WILSON: Yes, sir. Your Honor, we
11 also asked that you include a charge on size and
12 age.

13 THE COURT: Mr. Clements.

14 MR. CLEMENTS: Your Honor, I don't think
15 that would be relevant. There was testimony as to
16 the victim Ian Gause's height which was 6'7" and
17 weight which was 186 pounds which I don't think he
18 outweighed the defendant. But there was no
19 testimony as to the defendant's weight or to the
20 defendant's age, and also there was testimony that
21 Mr. Ian Gause was 25 years old at the time of his
22 death. But there's no testimony as to the weight or
23 age of the defendant so there's nothing to compare
24 so I don't think that charge would be proper.

25 THE COURT: I'm gonna respectfully deny

1 your request on that. I certainly understand that
2 he -- there was testimony as to the height of the
3 victim being 6'7" ---

4 MR. CLEMENTS: Yes, sir.

5 THE COURT: ---186 pounds, which is a very
6 thin individual at 6'7" I can say that. But there
7 was no testimony as to any size differential or
8 anything as to that issue.

9 MR. WILSON: No, sir, the only issue, Your
10 Honor, is that in my mind is that the defendant is
11 present. The jury obviously can see him and judge
12 for themselves. But without that charge I don't
13 know that they will make that consideration, and I
14 think that they could certainly look at because they
15 can see the defendant. And he has been in this
16 courtroom the entire week and they have been able to
17 observe him and they -- now they also know the
18 information about the victim so they can compare
19 those two. And so I would submit that it would be
20 appropriate but I understand the Court's ruling.

21 THE COURT: All right. Mr. Clements,
22 anything else?

23 MR. CLEMENTS: Your Honor, he's been
24 seated the whole time and also ---

25 THE COURT: Well, he may have been

1 standing. I'm not going to get into that issue.

2 MR. CLEMENTS: He's a lot thinner than he
3 was at that date too.

4 THE COURT: Anything else, Mr. Wilson?

5 MR. WILSON: Yes, sir. I would also ask
6 the Court to charge on involuntary intoxication or
7 voluntary intoxication. As I understand it the
8 victim had his amount of alcohol and/or drugs in his
9 system. Now, and what I want the jury to understand
10 that that's not a defense on his part, on the
11 victim's part, that, or that they been drinking
12 because there was testimony that they'd all been
13 drinking at this house before this incident occurred
14 and so I would ask the Court to charge that.

15 THE COURT: Mr. Clements.

16 MR. CLEMENTS: Your Honor, there was
17 witnesses said they had a drink. There's been no
18 testimony whatsoever anybody being intoxicated. As
19 a matter of fact, according to the autopsy
20 Mr. Gause's blood alcohol level was a .04; and also,
21 the pathologist testified to negligent amount of
22 marijuana which was not very much marijuana in his
23 system. The other drugs were in his system he said
24 probably came as a result of resuscitation efforts
25 and hospital treatment. But no one testified at all

1 that anybody was intoxicated, the defendant, the
2 victim, anyone else, only that there was some
3 drinking.

4 THE COURT: All right. I'm gonna
5 respectfully deny your request on that. There has
6 been no testimony -- certainly testimony that there
7 was some drinking out there, but there was
8 absolutely no testimony that the victim in this case
9 was intoxicated to any degree, to any degree;
10 therefore, I am going to respectfully deny your
11 request on that.

12 MR. WILSON: Your Honor, I understand the
13 Court's ruling but if I could just put something in
14 the record for ---

15 THE COURT: Yes, sir.

16 MR. WILSON: The -- my position is that
17 not only was the defendant partaking in -- I'm
18 sorry, the victim partaking in alcohol, the victim
19 also partook in marijuana immediately prior to
20 according to the autopsy and from the testimony of
21 the pathologist, had to have been within hours prior
22 to his death. And so my position is that the
23 combined effect of the two is what gives rise to the
24 issue of intoxication, and that's why I raise that
25 issue.

1 THE COURT: I don't recall the expert or
2 the doctor saying that the marijuana based upon what
3 was in his system was taken within hours of this. I
4 don't recall him saying that. I think his general
5 knowledge that marijuana can stay in one's system
6 for several days, several days. I do recall the
7 doctor saying that it would not rise to level of
8 intoxication so I am going to respectfully deny your
9 request but it is so noted for the record.

10 MR. WILSON: Thank you, Your Honor. Your
11 Honor, my next issue is I'd ask the Court to charge
12 increased risk of harm that defendant and that the
13 defendant had no duty if by doing so the danger of
14 being killed or suffering serious bodily injury
15 would increase.

16 THE COURT: Mr. Clements.

17 MR. CLEMENTS: I'd like to see the charge
18 he's talking about.

19 THE COURT: It's one sentence. It says
20 the defendant has no duty to retreat if by doing so
21 the danger of being killed or suffering serious
22 bodily injury would increase.

23 MR. CLEMENTS: Just give us a second, Your
24 Honor. Judge, we had testimony from several
25 witnesses, Your Honor, that said that Mr. Woodbury

1 had multiple opportunities to leave. As a matter of
2 fact, everybody was trying to get him to leave
3 including his own passengers so I don't think that
4 fits the factual scenario, but whatever you decide
5 I'm okay with.

6 THE COURT: Mr. Wilson, any reply to that?

7 MR. WILSON: No, sir.

8 THE COURT: There were several witnesses
9 that testified he had multiple opportunities to
10 leave.

11 MR. WILSON: The whole issue though, Your
12 Honor, is a factual issue. It's a factual issue and
13 there's testimony all over the place in this case
14 who did what and when and how, and so it's gonna be
15 a factual issue for the jury to make a determination
16 as to whether or not they believed he had an
17 opportunity, a reasonable opportunity to leave
18 because -- and that's my whole point in asking for
19 this charge. Is that if he could have left but
20 yeah, to have left would have increased the risk of
21 danger then how could he possibly leave. For
22 instance ---

23 THE COURT: You don't need to say anymore;
24 I've made up my mind. Based upon the testimony --
25 and it is all over the board here -- and I am gonna

1 include it on the charge. I think it would be
2 appropriate here. And I wasn't trying to be rude to
3 you, Mr. Wilson, putting up my hand. There wasn't
4 no need for you to say anything else. I'd already
5 made my mind up, okay?

6 MR. WILSON: Yes, sir.

7 THE COURT: Anything else.

8 MR. WILSON: I think this is my last one,
9 Judge. Continue until the threat of harm has ended,
10 I would ask the Court the charge if the defendant is
11 justified in defending himself or others and in
12 firing the first shot, then defendant is also
13 justified in continuing to shoot until it is
14 apparent that the danger of death or serious bodily
15 injury has completely ended.

16 THE COURT: You said shoot?

17 MR. WILSON: I'm sorry?

18 THE COURT: You said shoot? No testimony
19 your client had a gun.

20 MR. WILSON: Himself, I apologize, if I
21 said shoot. Yeah, I said shoot because that was
22 what the ---

23 THE COURT: Can I see what you have there.

24 MR. WILSON: Yes, sir.

25 (Pause.)

1 THE COURT: All right. What I will charge
2 is the defendant is justified in defending himself
3 and the defendant is also justified in continuing to
4 defend himself until it is apparent that the danger
5 of death or serious bodily injury is completely
6 ended.

7 MR. CLEMENTS: Your Honor, this is very
8 minor but it's very powerful. I would submit that
9 the jury charge just say a person is, not the
10 defendant, 'cause that's making a comment on the
11 facts in this case.

12 THE COURT: Okay, I agree. I'm gonna put
13 if a defendant is justified instead of the
14 defendant. Is that sufficient?

15 MR. CLEMENTS: Yes, sir.

16 THE COURT: Anything else, Mr. Wilson?

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

18 THE COURT: All right. How long -- can
19 the lawyers approach. Did y'all see the -- well,
20 you don't have to approach. Did y'all get the
21 verdict form last night as well?

22 MR. WILSON: Yes, sir.

23 THE COURT: This morning. I understand
24 you got it this morning but it was sent last night.

25 MR. CLEMENTS: We did, Your Honor, have no

1 objection.

2 THE COURT: Mr. Wilson, any objection to
3 the verdict form?

4 MR. WILSON: Judge, I don't have any
5 objection to the form. As I said, we had asked the
6 Court to consider charging involuntary; but other
7 than that, no, sir, I don't have on abjection.

8 THE COURT: Okay, all right. How long
9 does the State anticipate closing argument?

10 MR. CLEMENTS: It's kind of hard to say,
11 Your Honor, 'cause I'm gonna be responding a lot to
12 what Mr. Wilson has to say, but I don't think it's
13 gonna be extremely long.

14 THE COURT: Mr. Wilson.

15 MR. WILSON: I try to usually stay under
16 30 minutes so.

17 THE COURT: I would highly encourage so,
18 all right, both of you. And I don't interject when
19 lawyers are engaged in the closing arguments. I
20 understand this is a very serious case for both
21 sides. Certainly, once if I believe that the
22 lawyers are beginning to repeat themselves I will
23 interject a little bit. Defense counsel is going to
24 open in closing and the State will conclude.
25 Anything else before I bring the jury in?

1 courtroom at approximately 9:57 a.m., and
2 the following proceedings commenced in
3 open court.)

4 THE COURT: Madam forelady, ladies and
5 gentlemen of the jury, I hope you all had a good
6 night last night. I apologize for you all having to
7 sit back there for a while before you were brought
8 out here this morning. I appreciate your patience
9 back there. As I told you yesterday, that which
10 remained were closing arguments in this case and my
11 charge on the law to you, and then you would be sent
12 back to the jury room to begin your deliberations.
13 Therefore, at this time what we're going to go, I'm
14 gonna recognize Mr. Wilson. He is going to go first
15 followed by Mr. Clements in their close arguments.
16 I will remind you all, ladies and gentlemen, I
17 remind you, closing arguments, what the lawyers tell
18 you is not evidence in this case, is not evidence in
19 this case.

20 Mr. Wilson, you're recognized for closing
21 argument.

22 MR. WILSON: Thank you very much, Your
23 Honor.

24 THE COURT: Yes, sir.

25 MR. WILSON: Ladies and gentlemen, we've

1 been here now, what, almost four days, about the
2 fourth day. And I think when I first approached you
3 I said to you that, you know, we were happy for you
4 to be here serving as jurors and what a service that
5 is to this community and to this country. And that
6 our judicial system is based on the jury system and
7 you are the jury which makes you the backbone of the
8 system. Let me say that whenever we're in this
9 house or any courthouse -- this is not really a
10 courthouse -- but when we're in court it is always
11 serious. It is always serious and there's always
12 somebody who is in jeopardy. But being here is a
13 good thing too because it gives the citizens of the
14 community an opportunity to decide what they want in
15 their community and what they can tolerate in their
16 community and what they're gonna allow in their
17 community. You sit home sometimes and you hear on
18 TV or you see on, hear on the radio or you see on
19 TV, oh this happened, that happened. Well, you
20 don't have to do that today. You are justice in
21 Marion County; you're it. Nobody on TV, Nancy Grace
22 or nobody else, you are it, you are justice. And
23 justice is only as alive as it is in your hearts and
24 your minds as you sit here this day.

25 If you recall I said to you if you make up

1 your minds before the end of this trial then you
2 will have created a travesty. I paid close
3 attention to you during the course of this trial.
4 You paid very close attention. You listened. You
5 were paying attention to the witnesses as they
6 testified. I want you to know that on behalf of the
7 Defendant and I'm sure on behalf of the State too, I
8 appreciate that. We all appreciate that. We know
9 that you've given up your time and your energy and
10 your effort which you could have used for something
11 else probably a lot more valuable to you. But there
12 is no day more valuable than this day in the life of
13 this defendant, Richard Woodbury. I told you at the
14 outset that this is his day. This is his time in
15 court. The State gets to do everything else. They
16 get to decide who's gonna get arrested. They get to
17 decide who's going to get out on bond. They get to
18 decide what you're gonna get charged with. They get
19 to decide what you're gonna get indicted for. They
20 get to decide when you're going to go to trial.
21 This is the only opportunity you get.

22 But the State also has the responsibility
23 to be fair, to be fair to everybody, not just to the
24 victim or to the victim's family. They have the
25 responsibility to be fair to the defendant. My job

1 as a lawyer is simply to represent my client; that's
2 all my job is. I'm not a prosecutor, not a judge,
3 I'm a lawyer. My job is to represent my client.
4 The Solicitor represents the State of South
5 Carolina. Because he represents the State of South
6 Carolina, or his office does, then he has a greater
7 obligation to be fair. He has a duty to be fair.
8 He has a duty to protect the innocent and to punish
9 the guilty, and that is a weighty responsibility
10 which cannot, should not, be taken lightly because
11 it is almost impossible for a defendant to ever
12 prove that he or she did not do something. So the
13 State, the law places the burden of proof upon the
14 State of South Carolina. The law says when the
15 State of South Carolina decides that they want to
16 indict somebody, then they got to create, come up
17 with the evidence and the proof beyond a reasonable
18 doubt to support that indictment. And therein lies
19 the rub.

20 The State of South Carolina elected to
21 charge Richard Woodbury with the offense of murder.
22 Murder, the killing of one human being by another
23 with what we call malice aforethought. Malice is
24 defined as ill will, hatred, a heart devoid of
25 social duty and responsibility. That's what they

1 charged him with. That's what the State of South
2 Carolina elected to charge this defendant with, and
3 when they did then they always assumed the
4 responsibility to come into this court and prove to
5 you beyond a reasonable doubt that every element of
6 that crime exists. Show me the malice in this case
7 on the part of this defendant. Show me the heart
8 devoid of social duty and responsibility on the part
9 of this defendant.

10 Now let's talk for a minute about what
11 their burden is. As I've said, well, they have the
12 burden of proof. What does that mean? That means
13 that they got to come into this court, prove to you
14 beyond what we call a reasonable doubt. Well say,
15 what is that, what are you talking about, what is a
16 reasonable doubt? And His Honor is going to explain
17 to you what a reasonable doubt is; and if I say
18 something that's inconsistent with what he says, you
19 disregard what I say. His job is to tell you what
20 the law is, and son you're to take it as he tells
21 you. I would not intentionally mislead you; but a
22 lot of times when we're over there, I'm trying to
23 listen to a witness. I'm trying to think of what my
24 next question is going to be and I'm trying to see
25 what the Solicitor is doing and I can't always keep

1 everything in place. But a reasonable doubt, ladies
2 and gentlemen, is simply this, a doubt for which you
3 as an honest juror who's trying to find the truth
4 tend to hesitate to act. And boy do we have
5 reasonable doubt in this case. You don't have to go
6 any farther than the cast of characters who testify.
7 And you can take your pick. You can take your pick.

8 Let's start, let's start with who? It
9 doesn't really matter. Charles Wilson testified.
10 Criminal history, distribution of crack.
11 Boatwright, what does he have? Boatwright,
12 safecracking, giving false information to the
13 police, B&E auto, possession of controlled
14 substance, drugs. You got Ky Graham, burglary,
15 criminal conspiracy. Let's just start there 'cause
16 those are your witnesses. Those are the people that
17 the State South Carolina has brought to you and say,
18 well, here are these people that we want you to
19 believe. We want you to accept their word for what
20 happened. That's what they brought you, and that's
21 what they're asking you to do. They're asking you
22 to take the word of these individuals and to find
23 him guilty based on their word. People who they
24 knew, who the State knew, have previously given
25 false information, who previously given statements

1 that weren't true. Rishawn Gause gave two different
2 false statements to the police. He gave one to
3 Detective Smith, then he gives another one to the
4 Chief and Lieutenant Flowers. He admits it. What
5 do they do in spite of that? They bring him in here
6 and put him on the witness stand and have him
7 testify, and they want you to believe him. You have
8 to decide what you're going to tolerate in your
9 community when you start talking about what's fair.

10 Rishawn Gause is not charged with
11 anything. He admitted that he gave two false
12 statements to the police. He didn't get charged
13 with that. He admitted that he fired a gun in
14 Marion city. He didn't get charged with that
15 either. Is there some fairness going on in here?
16 Is it so important to convict this defendant of
17 something that he didn't do that we're willing to
18 bring people like that in here and have them testify
19 and have them knowing, knowing that they have lied,
20 knowing that they have given information. And you
21 know, I'm not gonna stand here and go over every
22 word that every witness said. You heard the
23 testimony just like I did. You heard Rishawn Gause
24 get up there and ramble on and on and on about
25 nothing, never said anything, and his story didn't

1 agree with nobody's story. You heard Ky Graham when
2 he testified. What'd he say? Oh, yeah, well, I
3 tell police about them guns back when I first talked
4 to them, but I remember now, I remember, yeah, I
5 remember they had them guns. You know, probably,
6 and I know he's got a distribution of crack cocaine,
7 but Charles Wilson probably -- no relationship to
8 me. But he's probably the only witness that told
9 65, 70 percent of the truth.

10 But now, let's talk about this environment
11 where we are 'cause this is what the problem is.
12 Remember when I asked Ky Graham, why did y'all go
13 there? Well, he was real hesitant at first. They
14 went there to buy drugs; that's why they went there.
15 Ky Graham wanted to go get some drugs, and he went
16 there. He said I went to my boy Junior's house.
17 Now Ky Graham was with Richard Woodbury, but he
18 wasn't Richard Woodbury's friend. No, he was
19 Junior's friend who he had known for nine years. He
20 says he'd only known Richard Woodbury for a shorter
21 while. So what does he do? He takes them over
22 there. They go buy drugs. And you know that's what
23 goes on over there. That's what was going on. They
24 were selling drugs. That's a crime. I didn't see
25 nobody get arrested and charged with that either.

1 But Richard Woodbury, who is there fighting for his
2 life with two folk who got a gun chasing him all
3 over the place, and he's on trial. Well, there's
4 something wrong with that picture. And the two guys
5 with the guns, well, one of them is dead but the
6 other one he ain't charged with nothing. And
7 there's no question, there's testimony all over the
8 place from his own witnesses, from the State's own
9 witnesses, that they saw him chasing this man with a
10 gun. Did they charge him? No. No, they didn't
11 charge him. Fairness, justice, then we wonder why
12 people question the justice system, why people don't
13 trust it?

14 Let me tell you something else. You
15 remember my asking about these blood swabs that they
16 took where they swabbed the gun that Ian was
17 supposed to have had, that they swabbed that gun the
18 detective from SLED testified that, yeah, we had
19 these swabs and we took them back to SLED to have
20 them tested so that we could try to make a
21 determination of what's going on. You hear of any
22 testimony about what those results were? Me either.
23 The State didn't bring it. Why? Maybe they don't
24 want you to know what the results were. Maybe
25 that's why they didn't bring it. Fairness to this

1 defendant? What if it was his blood on that gun
2 where they beat him across the head with it. Maybe
3 they don't want you to know that if that's what
4 happened. The criminal justice system is supposed
5 to be fair for everybody.

6 Now let's talk for a minute about what
7 happened that night 'cause you've heard testimony,
8 oh well, you know, he could have run, he could have
9 left, he could have left, he could have left. Well,
10 you try leaving when two folk got a gun chasing you.
11 But he did try to leave. Remember the testimony of
12 Charles Wilson, Boatwright? Both of them said what
13 did he do, he ran out into the road. What happened
14 when he ran out into the road. He left his car and
15 ran into the road. You know, you got to be scared
16 you run off, leave your car, run out into the road
17 to try to leave. And what happened? Rishawn Gause
18 and Ian Gause chased him down with guns. They ain't
19 charged with nothing. They chased him down with
20 guns and chased him back into the carport and what
21 happens then? The lights go off. The lights go
22 off. They chase him back under the carport. He's
23 running for his life. At no point at that time, at
24 no point does anybody say he stabbed anybody, he cut
25 anybody, he did anything other than run. He runs

1 back up under the carport and what do they do? They
2 chase him, chase him from the street when he's
3 trying to leave.

4 And if you'll remember the testimony there
5 was another fella who was in the car who apparently
6 ran out in the street also and both of them were
7 headed down the street. What happens? They get
8 him. Oh, Rishawn and Ian, they get Richard. They
9 make him come back 'cause they got them guns. And
10 folks, I don't care what kind of knife you got, it
11 don't match to pistols. If I'm gonna be in a fight
12 and the other guy got a knife, give me the pistol
13 any day. If he had left when he ran down that road
14 they would have shot him in the back, which is why
15 he came back. They followed him out there, chased
16 him out there, made him come back. And they ought
17 to be on trial for that. That wasn't enough. That
18 wasn't enough. That wasn't enough for Rishawn in
19 here. That wasn't enough, the fact they made him
20 come back. They chased him back and their friends
21 are saying this. This is not, this is not Ky saying
22 this. This is Charles Wilson and Boatwright.
23 Boatwright is their cousin. That's what their
24 testimony is.

25 They chase him back up under the carport.

1 He runs up into the carport trying to get away from
2 them. They follow him up under the carport.
3 Somebody cuts off the lights. And then for the next
4 three minutes nobody knows what happened. Well, we
5 hear some noises, but not a single living soul can
6 say who struck the first blow or what happened after
7 those lights went out. Nobody knows. Not a single
8 soul can tell you. But he doesn't stop running even
9 after that. He manages somehow to get away from him
10 and he's running so fast he leaves one of the knives
11 that he has. And he runs through the back to try to
12 get -- but there's a huge fence back there that
13 you'll see on the exhibit. And what do they do?
14 They chase him back there.

15 You know what the other thing is? They
16 say, oh well, you know, it wasn't but one shot
17 fired. Phooey. Ain't a word of it true. You
18 heard, remember the officer start talking about
19 Gator, this guy named Gator, some guy named Gator,
20 and that Gator was a neighbor and Gator said there
21 were several shots fired.

22 MR. CLEMENTS: Objection, Your Honor.
23 He's arguing facts not in evidence.

24 MR. WILSON: Those are in evidence, yes,
25 it is.

1 THE COURT: Can the lawyers approach.

2 (WHEREUPON, counsel approached the Bench
3 for an off-the-record discussion.)

4 MR. WILSON: Anyway, that guy Gator that
5 they're talking who is a neighbor, they didn't bring
6 him in here, no. Why? Why? If you're interested
7 in justice, you're interested in fairness, you're
8 interested in what's right, then why not?

9 Not just Gator. Mrs. Carmichael, a little
10 lady who came to testify. What did she say? I live
11 right behind them, on the street right behind them,
12 their house is right behind my house, oh, yeah I
13 heard what went on out there, didn't see it, but I
14 could see some figures moving and I could hear some
15 beating going on and some fighting I could hear it
16 and I heard four shots four. Police say, well, you
17 know, we went out there and looked for them, we went
18 and looked for them cartridges but we didn't find
19 any cartridges. Well now, folks, we know at least
20 one shot was fired; even the defendants admit that.
21 They didn't find that cartridge either.

22 Folks, this case is almost a travesty in
23 and of itself. The fact that this defendant is
24 being brought in here and held up to these charges.
25 It is a travesty, it is wrong, it is unfair. And

1 the only thing that stands between you and the State
2 of South Carolina, only thing that stands between
3 this defendant and the State of South Carolina is
4 you. That's it. There's no appeal, there's no
5 nothing, you're it.

6 Let me say this, after -- and let me go
7 back first and finish up with Ms. Carmichael.

8 Ms. Carmichael, she lived next door. She called

9 9-1-1 that night. Called 9-1-1 from her home,

10 that's her testimony, undisputed in this record.

11 Why didn't they call her? If she called 9-1-1

12 there's a record of it. Easy enough. You think

13 they didn't know that? You think they didn't know?

14 You think for one second that they didn't know that

15 Ms. Carmichael called 9-1-1. Of course they knew.

16 They didn't bring her. Why? Because they can't

17 have four shots being fired out there and somebody

18 getting beat because that doesn't work with their

19 theory of the case. It's the truth but it doesn't

20 work so let's not tell it. And if that's the kind

21 of justice we want in Marion County, then that's

22 fine. Write on the back of the indictment this is

23 justice in Marion County, this is what we want.

24 Let me say this, I learned a long time ago
25 that life is not always fair; it's just not. You

1 know, I would have been born handsome and rich if it
2 were. It's just not always fair. But what we can
3 do, what we can do when we see an injustice, we can
4 correct it. When we see something that's unfair we
5 can correct it. Folks, this is your opportunity to
6 correct the wrong, to right the wrong that has
7 already been done. I was telling you earlier about
8 the blood swabs. And you know, when the police are
9 out gathering information, as a defense lawyer I
10 can't run out there and go and gather my own
11 evidence. I can't. The law just doesn't permit me
12 to do that. Can't interfere in an investigation.
13 So you got to trust law enforcement to do it. But
14 then when they do it they should do it evenhandedly
15 and they should do it in a fair manner. Now not a
16 single soul from law enforcement ever went to see
17 Ms. Carmichael, nobody. Year-and-a-half. This
18 happened September 29th, morning September 30th,
19 2012. We're now in 2014. Not a single person ever
20 went to see her. You know, I was asking them when
21 they were up there, I said, y'all went and looked
22 for these shell casings, did you look? Oh, yeah, we
23 looked for shell casings, yeah. Did y'all look for
24 blood? Yeah, we looked for blood. This lady lives
25 rights next door. Don't you think if shots were

1 fired that the next door neighbor might have heard
2 it? Maybe. Do you think that if there was some
3 fighting and raucous going on out in the yard that
4 maybe the next door neighbor might have heard it. I
5 mean, I'm no genius but that just stands to reason
6 to me. I don't think you have to have a Harvard
7 education to figure that out. Now one of the things
8 that — and if this were a case where not so serious
9 it would actually be laughable. One of the things
10 that they want to tell you is, oh well, you know,
11 this was mutual combat. Mutual combat is where two
12 people agree that they want to let's fight, let's
13 just go and fight. Well, if you're out being chased
14 with two guns and you're running down the street and
15 the person's chasing you back and then you run back
16 up under the carport and they chase you from under
17 the carport and then they cut off the lights on you,
18 that's mutual combat? No, that's running for your
19 life. And what crazy person is going to take a
20 knife to try to fight to guns. No, that is not
21 mutual combat, folks. And if it's mutual combat, if
22 it's mutual combat why aren't they charged with
23 shooting a gun. I mean, if that's what their theory
24 is, say, oh it's mutual combat. Okay, well then,
25 why isn't he charged. They're saying he was in a

1 fight. You can't have it both ways.

2 Now I'm gonna come to a close; but before
3 I do, I just want to -- because one of the things
4 I've learned and I've been doing this a long time,
5 30 plus years. And one of the things I learned, as
6 soon as I sit down I think of ten more things I wish
7 I had told you and that's just always the way it is.
8 And I know that the Solicitor feels the same way.
9 Once he sits down he'll think of ten more things he
10 wished he said. That's just the way it works. But
11 I want you to know that we appreciate your service;
12 we do. And the only thing that anybody has any
13 right to ask you is to render a verdict that speaks
14 the truth; that's all. Nobody can ask any more of
15 you than that. Not the State of South Carolina, not
16 this Defendant. Nobody is entitled to anything more
17 than that or anything less than that. The only, the
18 only reasonable verdict in this case is not guilty.
19 This was pure and simple self-defense. This
20 defendant had no choice but to defend himself
21 because they are chasing him all over the place and
22 they didn't quit. When he tried to leave he left
23 his car and ran in the road. Did that stop him?
24 No, they followed him in the road. His buddy who
25 was with him kept going. He couldn't go, why?

1 'Cause they had two guns, both Ian and Rishawn.
2 Then what happens? They chase him back up under the
3 carport. He runs back into the carport to try to
4 get away from them. They follow him in the carport
5 with the two guns. Then somebody in the game cuts
6 off the lights. They say, well, we didn't want no
7 heat. Now heat used to be referred to the police;
8 but he said, well, I wasn't talking about the
9 police, I was talking about grandma who was in the
10 house. I don't know what -- folks, please, you know
11 exactly what. They ain't want the law out there.
12 This is a drug house. They ain't want the law out
13 there. No. I simply ask you, I urge you, to search
14 your conscience -- I know you will -- search your
15 heart, listen to the law as His Honor gives it to
16 you, and to find verdict that speaks the truth. The
17 true verdict is not guilty, not guilty of murder,
18 not guilty of manslaughter, not guilty of attempted
19 murder, not guilty of assault and battery. He is
20 not guilty because he was defending himself. Thank
21 you so much.

22 THE COURT: Mr. Clements.

23 MR. CLEMENTS: Thank you, Your Honor, if
24 it please the Court. Ladies and gentlemen, when I
25 went to law school I took a course called trial

1 advocacy which is a course I took because I wanted
2 to be a courtroom lawyer. And the professor that
3 was in that class over that class, he was a
4 part-time professor and he was a practicing lawyer.
5 He wasn't just somebody that was academic. He was
6 out in the real world; but yet, he came and taught
7 us young law students how to try a case. He told
8 me, he said, Ed, if you got the facts on the your
9 side you argue the facts. If you got the law on
10 your side you argue the law. And I thought about
11 that thing for a second and I said, well sir, what
12 if you don't have either one. He said, then you
13 blow smoke. Well, I'm not going to be up here and
14 blow smoke out to you. There's enough already in
15 this courtroom. I'm gonna tell you something. You
16 know, it's funny, if you got witnesses and they
17 don't agree with you on everything you want to
18 attack them and say, oh, they're this and the other,
19 they're not telling the truth, they don't agree with
20 my side. You know, they're not fair, they don't
21 agree with my side, that's not true, that's true.
22 But if there's one little thing they said that helps
23 you you want to jump on that and say that. But the
24 rest of it, no, no, no, all that's a lie, you know.
25 And then argue that the State is like we drum up

1 people and bring them up as whoever we want to bring
2 up here. You know, we don't choose our witnesses.
3 The people who are there when something happens, who
4 are there and watch it, see it with their own eyes
5 and ears, that's who we have. That's who we have
6 testify, you know. And Mr. Wilson, he wants to beat
7 them up. He wants to say they're not — we're not
8 fair, that, you know, they're not telling the truth
9 because simply they don't help him. You know, so he
10 wanted to talk about they're liars and they don't
11 tell the truth. Rishawn Gause, he didn't have any
12 criminal history. As a matter of fact, he was able
13 to have a gun registered to himself legally. And he
14 told you, yeah, that night I was at the hospital, my
15 brother was on his death bed, my mind was all
16 confused and messed up and all I knew is that this
17 fella right here, Richard Woodbury, stabbed my
18 brother and he's bleeding and dying and on the
19 hospital table and I want to get revenge so I won't
20 tell them anything, I don't know what all I told
21 them. But I didn't tell them all the truth 'cause I
22 want my revenge till I talk to my family. They
23 said, no, son. Now he came and told the truth. And
24 he told the truth that he wasn't trying to cover
25 anything up. He told, yeah, I fired a gun in the

1 air, you know. I could get in trouble for that,
2 yeah, but I fired a gun in the air. I went to the
3 trunk where it's legally kept, legal gun, and I
4 fired it in the air. And you heard that everybody
5 said it was warning shots. Everybody stopped and
6 chilled back when he did that. And then he said
7 that Richard Woodbury said, I'll fight you, I ain't
8 got nothing -- even though he's holding his pants
9 and grabbing his waste. I ain't got nothing, I'll
10 fight you, I ain't got nothing. He said, oh, you
11 got something, you got something. No, I ain't got
12 nothing, I'll fight you. He fired the gun. He
13 said, okay, he ain't got nothing, he puts his gun in
14 the trunk. And all Mr. Wilson kept saying, they
15 chasing him all down the street, they chasing him
16 for, he's running for his life. And I'm gonna tell
17 you, I'm no rocket scientist, I'm just a country
18 lawyer from the Pee Dee. But I do know one thing,
19 if somebody is chasing me down the road with guns I
20 ain't going to turn around, run back through them to
21 get to the house. They're gonna have to shoot me in
22 the back. I ain't gonna get shot in the front so I
23 want to submit to you that that's all a bunch of
24 baloney. All a bunch of baloney. Rishawn put his
25 gun up. And we know Ian never used his gun.

1 Everybody said, including Mr. Woodbury's buddy Ky
2 Graham, that only one shot was fired. Rosa
3 Carmichael, I don't know about her. You know what
4 she said, people from across the street, other
5 people. You heard, I think it was the captain
6 talked about Gator Speed came out there and Ronnie
7 Sheppard came out there. I think they talked to
8 them. It was nothing they could followup on, no
9 additional information. They were right there.
10 They didn't tell them four shots were fired; They'd
11 have followed up on that. Everything, they pointed
12 to everybody that was there, said there was one shot
13 fired so I'm gonna clear that up for you. Why would
14 Richard Woodbury buddy Kye Graham say there was only
15 one shot fired. You know, he didn't tell law
16 enforcement about the guns earlier. Maybe they
17 didn't ask him. He probably, he got picked up with
18 Richard Woodbury coming back from the club. He
19 probably was pretty nervous; he didn't want to be
20 there in the first place. It was evident he didn't
21 really want to be here, but he was a witness so we
22 subpoenaed him, he's here. And he's not the Gause's
23 buddy. They didn't know him. He's Richard
24 Woodbury's buddy. Now Mr. Wilson said, well, he's
25 Charles Wilson's buddy. He knew Charles Wilson.

1 Charles Wilson ain't on trial.. Charles Wilson is
2 not a victim. Charles Wilson is not anything other
3 than another witness. But Ky Graham was Richard
4 Woodbury's buddy; and after Richard Woodbury stabbed
5 somebody and came back and picked up one part of his
6 sword, what did Ky do? He left with him, went to
7 the club. They went to the club. How concerned
8 were they about who they stabbed? They weren't.
9 They came back. He's still in the car with him,
10 still riding with Richard. Now he was also with
11 Richard outside the front of that house when
12 Bacchuss came up and said, we're out here, heard a
13 call about fights? Oh, that happened down the
14 street. That's what Richard told them. That
15 happened down the street somewhere. They were down
16 there doing something. Is that the actions of a man
17 who was defending himself who was running for his
18 life? And what was he to do, oh my God, I'm so glad
19 you're here, these people were chasing me with guns
20 and all I had to do was defend myself. I think I
21 stabbed some of them, cut them, you better check on
22 it. That would be what a man that was defending
23 himself would have said. That would be what a man
24 who was defending himself would have because he
25 would have said I'm in danger, I defended myself,

1 please help me, this is a bad situation. I'm not
2 guilty; I was defending myself. No, what he said
3 was it happened somewhere down the street. Who is
4 lying?

5 Now I want to talk about the facts of this
6 situation. You heard from the witness stand that
7 they had a car in under the carport, defendant's
8 Exhibit 17. And you could see that yard there. You
9 can see the length of that driveway because it's cut
10 off there. There's room to pull another car in;
11 that's what the testimony was. Room to pull another
12 car in and there wasn't room really to pull another
13 one in. You could pull over to the side on the
14 grass whatever, but y'all can see. Y'all look at
15 that and y'all go back there and see. We're not
16 talking about a large area. We're not talking about
17 people running people down the road. Shoot, how
18 long is a car from this wall. You know, if you got
19 a long vehicle, you know, that's real long vehicle.
20 You know, that's about how long the driveway is from
21 the car shed back to here, maybe a little further.
22 And they get out in the street, we're only talking
23 about this far. Not like the picture Mr. Wilson is
24 trying to paint for you and all this stuff about
25 running down the road and all this. You know, they

1 went out to the road and come back 'cause they were
2 tussling. They were jawing at each other. They
3 were back and forth. He got Rishawn down here to
4 tell you, you know, we're close by, he's just a
5 little bit further away from me, you know. It's not
6 far. He's got one car here, Cherokee which will
7 probably be about here, and then you got the car
8 right over here parked on the grass. He goes over,
9 gets his gun out, fires it in the air to stop
10 things. You heard what the witnesses said, a
11 warning shot, and it stopped everybody for a minute.
12 That's not a very long area. That's not some big
13 area where people chasing everybody around. That's
14 not true, not true, misrepresentation.

15 Now what happened when the shot was fired.
16 Lamont Davis was with them. You heard the testimony
17 that Kye and Lamont were trying to get Richard to
18 go, come on, let's go you heard other witnesses said
19 everybody was holding him back. Charles Wilson was
20 holding back Ian. They were saying let's go. You
21 heard Rishawn say they were telling us this is
22 stupid, let's go, let's go get the car, let's go.
23 He wouldn't go. That shot was fired. What did
24 Lamont Davis do? He walked on off, he left. He had
25 to walk; he didn't have a car. He was riding with

1 Richard. He walked away. Said oh, somebody fired a
2 gun, I'm gone. I imaging that's what was in his
3 mind; we don't know. But we know he was there
4 trying to get Richard in his car, try to get Richard
5 to leave. Richard would not leave. And Lamont said
6 he's gone. So I think common sense will tell us
7 he's like, all right, well I'm done with this, I'm
8 gone. Well, I will tell you this, if Lamont Davis
9 could walk away Richard Woodbury could walk away.
10 Richard Woodbury could have drove away. You heard
11 from witnesses that said he had multiple
12 opportunities to leave. Multiple opportunities,
13 several opportunities. Well, what did Rishawn say
14 he fired the gun in the air, the guy he's there like
15 this, he's bowed up like pride. He's not going
16 anywhere. But then when he says I ain't got
17 nothing, I'll fight you. Rishawn said, well, I
18 thought, okay, they're gonna fight like old times,
19 fair fight. He puts his gun in the trunk, shuts the
20 trunk. Exactly where law enforcement found it.

21 Now what was this -- when I talked to you
22 in my opening statement I said this is not a who
23 done it, this is a what is it. Well, I want to
24 submit to you what it probably is is a testosterone
25 soaked macho male ego travesty that happened. You

1 know, I'm a man and I'm glad I'm a man, you know.
2 But I also know about the male ego and our pride,
3 how somebody don't want to back down and that's what
4 happened here. It could have not been a fight, you
5 know. Was anybody beat up? Was there any evidence
6 submitted that or anybody testifying to that Richard
7 Woodbury was beat up, beat about the head, had any
8 bruises, had any cuts, had any anything? No
9 testimony about that. Nobody said that because he
10 wasn't. Rose Carmichael said she saw somebody
11 getting beat up. I don't think she knows what she
12 saw. I know one thing, I asked her this, do you
13 know the Woodburys? Yes, I do. So she the one
14 called 9-1-1; she said she was. Plenty of people
15 call 9-1-1 they don't want the police to come out
16 their place. We don't know. We know the witnesses
17 there said there was one shot fired, not multiple
18 shots. And if there were shots that could have been
19 fired by Ian Gause I'll here to tell you they
20 weren't fired. It was not possible because he had a
21 revolver. And you heard Scott Hardee testify that
22 it was a five shot revolver and that it had five
23 unfired bullets in the revolver. Now what's he
24 gonna do, get stabbed to death and then say, well, I
25 don't want anybody to think I fired my weapon, I

1 better pull those spent cartridges out and put
2 another bullet in. You think that happened? That's
3 stupid. That ain't happening. That doesn't make
4 sense. He had five unfired bullets in his gun
5 because he never used it. He never used it. He
6 never fired it. Maybe he should have used it, you
7 know, might — he might be on trial, at least he'd
8 been alive. He'd probably be arguing self-defense.
9 But he didn't use it. He got — he was going to
10 fight somebody fair and square. Yeah, he had the
11 gun when he thought, whoa, you went and got
12 something, you got a weapon, huh? No I ain't got no
13 weapon, I'll fight you. He didn't use his gun. If
14 he had wanted to shoot Richard Woodbury he could
15 have shot Richard Woodbury. Is he chasing down the
16 road with a gun? No, he was ya, ya'ing back and
17 forth and they got to scuffling and it was just all
18 over the place. Now Mr. Wilson wants you to think
19 they chased his client into the car shed and cut the
20 lights out on him. Richard Woodbury might be the
21 one that cut the lights out; the switch is right
22 there. Who is the one that's got the secret weapon,
23 a ninja weapon. What are ninjas? They're people
24 that, you know, sneak around and attack in the dark.
25 Who had a Ninja weapon? Richard Woodbury. Maybe he

1 wanted the light off so he could pull this out and
2 Ian didn't see it coming.

3 Now what did the doctor testify to?

4 Doctor testified that Ian's left chest right near
5 his left nipple he had a wound that was
6 five-and-a-half inches long. Five-and-a-half
7 inches. That means right there, five-and-a-half
8 inches. That means that that blade went in this,
9 this deep into Ian's body, right there next to his
10 heart. You know, if somebody is all they're trying
11 to do is defend themselves, they can pull this out
12 and stop whoever is fighting if they wanted to
13 defend themselves and say, whoa, and then say don't
14 grab your gun, I'm gonna stab you, don't grab your
15 gun, go over to the side. And then when it's thrown
16 on the side get the heck out of dodge. That could
17 have happened if somebody's just defending
18 themselves. But no, if somebody's mad 'cause their
19 pride is hurt because somebody been talking smack to
20 them and they're all fired up, they're not trying to
21 defend themselves; they're trying to attack. And
22 I'm gonna tell you, you can't kill somebody with
23 these unless you get close and unless you come at
24 them and attack them. Remember when the doctor
25 stood up here a little bit taller than me, about

1 6'7" and he had one on the right side of his chest
2 where it was not a deep cut and then you got a
3 five-and-a-half inches. He said it went through the
4 bone, by the bone through the muscle. It took a lot
5 of force. Richard Woodbury killed Ian just like
6 this. Mr. Wilson said we charged Ian (sic) with
7 murder and we did. We did because there's a
8 question only you can answer, and that is, whether
9 there was opportunity for Richard to cool off. He
10 didn't talk to you about the law of voluntary
11 manslaughter. He mentioned murder where you kill
12 somebody with malice aforethought. He asked you
13 where is the malice. That's what we're gonna talk
14 about in a minute, but I want to tell you first
15 about voluntary manslaughter. The judge is going to
16 tell you the law so if I don't state it right, you
17 listen to what the judge says. And now also while
18 I'm saying this let me say this to you, Mr. Wilson's
19 memory might be better than mine, okay, but it's not
20 better than the twelve of your memories. So you be
21 sure the facts that we're arguing are actually the
22 facts, me and him. I got the burden of proof; he
23 doesn't. He's got to do whatever he can do to get
24 his client off, but I got to meet the burden of
25 proof. And I'm telling you arguing these facts the

1 way I remember them. If I'm wrong you know what you
2 heard. If he's wrong, you know what you heard, all
3 right.

4 Let me get back to voluntary manslaughter.
5 Voluntary manslaughter I believe the judge will tell
6 you is when you take another person's life in the
7 heat of passion with legal provocation. You got to
8 be provoked legally. I don't believe words are
9 enough to meet legal provocation. But you got to do
10 it in the heat of passion. Well, we know there was
11 passion out there. We know there was arguing going
12 on. We know that they were ya, ya'ing back and
13 forth and Richard went to his truck. Ian -- Rishawn
14 thinks he pulled off and came right back; or maybe
15 he didn't, he maybe just was there and then came
16 back. I don't know. You know, if he -- Rishawn
17 remembered that correctly, if he got it correctly
18 the other people just didn't pay attention to him
19 pulling off, I don't know. But what happened, he
20 went to his truck. And you heard Ky Graham,
21 Richard's buddy say he retrieved his Ninja sword.
22 He went, he armed himself. And at that point nobody
23 had ever said anything about seeing anybody with a
24 gun. All they said they were arguing, they tried to
25 separate them, get them to chill out. Well, there

1 was heat of passion there 'cause they were fighting,
2 they were arguing, they were talking junk, talking
3 smack. And Ky said he got out and he tried to hide
4 this thing. Pretty hard to hide this. You can't
5 just stick this in your pocket unless you got a
6 mighty big pocket. Ky said he stuck it in his
7 pocket.

8 Well, anyway, Ian said, oh, you got
9 something, you got something, and he had his gun on
10 him. He pulled it out. Everybody said he had it
11 down like this. Richard said -- was holding it
12 back. Ky said he had the gun down.

13 The question you got to answer is this
14 murder or is it voluntary manslaughter. Did he have
15 enough time when he went back to cool down his
16 passion when he retrieved this. If he could have
17 gone to his car and say, well, you know, why don't I
18 just get in my car and we just leave, come on Ky,
19 come on Lamont, why don't we just leave, and leave
20 in this the car and get in the car and go somewhere
21 else. If he had opportunity to cool down, that
22 cooling down period for that heat of passion, if you
23 think that was sufficient to cool down but he didn't
24 do that, he got this and he went and he confronted
25 Ian some more and had it, then pulled it out in the

1 process of them going at each other and stabbed Ian,
2 if you don't think that -- if you think that's
3 sufficient cooling off period then this is murder,
4 it is murder. If you don't think it was sufficient
5 cooling off period and he still had his passions
6 inflamed, then it's voluntary manslaughter. It is
7 not self-defense, ladies and gentlemen.

8 The judge, I believe, will charge you on
9 self-defense. If it is mutual combat that he cannot
10 avail himself and say it's self defense. In mutual
11 combat you got to say or act like you have a
12 willingness to fight. And what did Richard say out
13 there? I ain't got nothing, I'll fight you, I'll
14 fight you. This was mutual combat. This was mutual
15 combat. And Ian, how'd he get stabbed? He got
16 stabbed on the backside and on the side. Well, let
17 me to tell you something, if he was going -- Ian,
18 excuse me, got stabbed in front Rishawn got stabbed
19 on the side in the back. If Rishawn was also trying
20 to attack Richard Woodbury would he got stabbed in
21 the back, would he have got stabbed in the side?
22 Might be a chance of the side but not the back.
23 He's going -- he's gonna get stabbed in the front.
24 How is he swinging? What did Rishawn do when he got
25 up on this stand? He said he thought he was

1 punching wildly, but later he knew it wasn't
2 punches, it was stabbing. He was doing it like
3 this, and that's kind of wild. If you're fighting
4 you're gonna be, you know, keep your fist up.
5 You're gonna be fighting like that, but he wasn't
6 doing that. He said he was trying to throw like
7 haymakers, but it's just kind of wild. It didn't
8 make sense to him. He jumps in. He didn't see the
9 knives. He didn't see the ninja swords because it
10 was dark. And that darkness helped Richard
11 Woodbury; it didn't help Ian Gause. Ian Gause might
12 have turned and if he saw those big old swords. But
13 Rishawn jumped in there trying to get between them
14 again and he gets cut on this side here and this
15 back, and he's trying to break them up. By now Ian
16 said, oh he stabbed me, he cut me. And he hadn't
17 got weak yet from loss of blood; he tried to go at
18 him some more. And that is when they got to the
19 shed. I'm telling you, ladies and gentlemen, that
20 is when. You know why he wasn't stabbed in the
21 shed? Where was the blood found, you remember?
22 Officer said they swabbed the blood. Where was that
23 blood found? It wasn't found under the shed. It
24 was found out on the driveway. Let me use Mr.
25 Wilson's -- they told you it was -- this is Defense

1 Exhibit 2. Told you the blood was out here, out
2 here, not in the back under that shed. Where you
3 think the stabbing took place? He sticks that thing
4 five-and-a-half inches in. Ian's body pulls it out
5 and here comes that blood and blood is going to be
6 on the blade too so they got blood right there.
7 There. Not back here, not over here on the
8 passenger side of the car, there. Where was half of
9 the sword? Was it under the shed? No, it was out
10 here right by the driveway they said. That's what
11 the witnesses said. So Richard stabbed him here.
12 Ian tried to follow him back there in the shed.
13 Richard goes. Ian makes his way back with his life
14 bleeding out. Richard eventually comes back around
15 got; he's got one sword with him. Comes around the
16 house, picks up the other one, puts it in his car.
17 The police come, oh, that happened down the street,
18 ain't nothing going on here. And hours later after
19 he's been partying, after he's stabbed somebody,
20 he's dead. What happened? Police come up. They
21 get him to talk to Kye, find the sword in the back
22 of the vehicle. Now Mr. Wilson kept taking about
23 being fair, being fair, being fair, we didn't do
24 this, we didn't do that, we didn't do the other.
25 You know, it's mighty convenient for him to stand up

1 here and attack the State, attack law enforcement
2 about what we did, what we didn't do, and things
3 were gathered and they weren't tested. Well, you
4 know, there's limited resources in this State. Y'all
5 all know that. You don't do things that aren't
6 necessary. He wanted to know why this gun wasn't
7 tested for blood. Did y'all here any testimony that
8 he pistol-whipped anybody? Y'all ever hear any
9 testimony that Mr. Woodbury got hit with this gun?
10 No. You know, look on here, is this rust or is this
11 blood? It looks like rust to me; I don't know. But
12 if he had it on him, had it in his waistband and he
13 was bleeding, put it in the trunk, the blood would
14 have been from Ian, not from Richard. And also, if
15 there was all that blood on, got on him after he got
16 stabbed on this gun, when they threw that gun in the
17 trunk and the SLED agents looked in the trunk and
18 found the gun, don't you think they would have seen
19 blood in there too and taken a swab or potentially
20 blood in that trunk and taken a swab from that
21 trunk? That they didn't. They swabbed the front.
22 By then we knew that was Ian's blood so why test
23 that. That's not being unfair to Mr. Wilson's
24 client. Mr. Wilson is just trying to blow smoke up
25 your leg.

1 The blood out there in the driveway, whose
2 blood was that. We know it was Ians. That's the
3 only person that was injured. That's the only
4 testimony, only evidence anybody injured was Ian.
5 No need to test that. Was anybody stabbed besides
6 Ian and Rishawn? No, no evidence of that. So no
7 need to test any of the swabs; that's redundant,
8 waste of time, waste of resources. You know, hard
9 enough to get SLED to do things that are necessary
10 because they're so backed up. We are being as fair
11 as we can be. We are being as complete as we can
12 be, and we brought these witnesses up here. And we
13 knew they had criminal records but they were there,
14 they saw what happened, they heard what happened.
15 You judge their credibility. You judge their
16 credibility if they're telling the truth. Why would
17 they have any reason to lie? Charles Wilson
18 wouldn't have any reason to lie. Kye Graham had,
19 certainly would have no reason to lie. He's Richard
20 Woodbury's buddy. That's who he was riding with
21 before and after this happened. They are what they
22 are. You know, Mr. Wilson is trying to make it like
23 we're trying to railroad somebody. You know, I
24 would never do that, but if I did I would certainly
25 find witnesses that I could say had no history that

1 could cause them to be in question. I'd do a much
2 better job of that if I was going to make it up. It
3 is what it is, ladies and gentlemen. It's not a who
4 done it. We know Richard Woodbury stabbed Ian to
5 death. We know Richard Woodbury stabbed Rishawn.
6 He's very lucky he didn't even get that sword buried
7 five-and-a-half inches into him as well, but he got
8 severely cut. It's a killing and it was done by
9 Richard Woodbury. And what type of killing is it?
10 Is it self-defense? No way. No way. He had every
11 opportunity to withdraw himself from that situation
12 and leave but he chose not to. And this mess about
13 people chasing him down the road with guns, it's
14 crazy. It's unbelievable because if he was being
15 chased down the road, you were being -- if anybody
16 were being chased down the road, if they got a head
17 start and it's dark, you think that they ain't gonna
18 hit me; I'm gone. You're certainly not gonna turn
19 around and run back through them into a closed area
20 so that makes no sense whatsoever. It was not
21 self-defense. He came, he armed himself before
22 anybody ever said anything about Ian having a gun.
23 According to his own witnesses he stood there and he
24 stood his ground, and he's looking tough. And
25 Rishawn thought, hey, he says he ain't got nothing,

1 you know, I chilled it out for a minute, put my gun
2 away. He didn't back down.. He didn't leave. They
3 went at it when Charles Wilson, when Ian got around
4 that's when they went out. They were jawing,
5 talking smack, and swinging and Mr. Wilson would
6 have you think that Ian and Rishawn chases Richard
7 Woodbury under the shed with guns; that's not what
8 happened. Ian had been stabbed and was probably
9 trying to get away. Richard and Rishawn comes
10 chasing trying to break them apart, still trying to
11 break them apart. Everybody else had given up
12 trying to break them apart. Rishawn had not. He
13 was still trying to keep his brother from being in a
14 fight. It's not self-defense. They were in mutual
15 combat. Mr. Woodbury never tried to leave. Every
16 everybody says he had plenty of opportunity to
17 leave, several opportunities. He didn't. He was at
18 fault. I don't know if it's pride; I don't know if
19 it's ego. I just don't know if it's just, you know,
20 testosterone, you know berserk. People do stupid
21 things when that happens, whatever. I don't know.
22 All I know is he could have walked away; that'd be
23 the end of it. He didn't. He brought out a sword
24 and he killed Ian Gause. The only question I think
25 in my mind that y'all need to answer is was it in

1 the heat of passion or had he cooled off. Was it
2 voluntary manslaughter or was it murder. I can go
3 over a lot of what the other witnesses said and try
4 to bring out those points but y'all collective
5 twelve minds I know remember it, and I know recall
6 it accurately, and not all the smoke. I know y'all
7 can get through that and find the truth and that's
8 what I ask you to do. Listen carefully to the
9 judge's charge of the law because I hope I didn't
10 misstate anything; but if I did, I want you to
11 decide this case on what he tells you the law is,
12 not what I tell you or not what Ralph Wilson tells
13 you or what these witnesses said under oath. And
14 take those facts as you find them. You can believe,
15 the judge will tell you, a part of what a witness
16 says, none of what a witness says, or all of what a
17 witness says. The judge is gonna tell you you can
18 believe one witness against many or you can believe
19 many witnesses against one. But I'm gonna tell you,
20 none of these witnesses contradict themselves who
21 were there. They all say one shot was fired. Mr.
22 Carmichael, friend of the Woodburys, she wasn't
23 there. She said she had a window open. She said
24 somebody was being beat up. Well, there's no
25 evidence anybody is beat up. There was evidence

1 somebody was stabbed to death. She's just wrong.

2 She's just wrong.

3 And you judge the credibility. Rishawn
4 Gause told something that wasn't true. He admitted
5 it. He didn't want law enforcement to do their job.
6 He wanted his passion was inflamed. His brother had
7 been stabbed; he was going to get the guy. And his
8 family said no, son, let the system run its course.
9 And that is why we're before you, let the system run
10 its course. You weigh the credibility of the
11 witnesses. You weigh the facts. You apply the law
12 the way the judge gives it to you and the way those
13 witnesses testify and not what I say, not what Ralph
14 Wilson says, and you make your decision. You reach
15 your verdict. Veredicto, it's a Latin term that
16 says to speak the truth. That is what we want and
17 that's all we want. This is Richard Woodbury's day
18 in court. This is the Gause family's day in court.
19 We all want you to deliver a verdict that speaks the
20 truth. And you're the judge of the facts. You
21 judge them. And apply that law. And I'm gonna tell
22 you, once you do that there's no other verdict you
23 can find that makes sense other than this being
24 either murder or voluntary manslaughter. There's no
25 doubt to cause you to hesitate. You know who did

1 it; now you tell us what it is. Thank you.

2 THE COURT: Ladies and gentlemen,
3 everybody on the jury okay? Anybody need a break?
4 Ladies and gentlemen, it's now my duty as the trial
5 judge under the constitution of this state to charge
6 and instruct you on the law applicable to this case.
7 It is your duty as jurors to accept and apply the
8 law as I will now state it to you. Furthermore, it
9 is your exclusive duty to decide all the issues of
10 fact in this case and to determine the effect,
11 value, weight, and truth of the evidence. Both the
12 State and the Defendant have a right to expect that
13 you will carefully consider and evaluate the
14 evidence and apply the law of this case to it so
15 that in the end both the State of South Carolina and
16 the Defendant will receive a fair and impartial
17 trial.. I want you to understand that when I use the
18 word defendant I refer to Mr. Richard Woodbury. The
19 charge as alleged in the indictment are murder and
20 attempted murder. To these charges the defendant
21 has entered a plea of not guilty. This plea of not
22 guilty places the burden of proof on the State to
23 prove the guilt of the defendant to you, the jury,
24 beyond a reasonable doubt.

25 As I mentioned above, the indictment in

1 this case alleges two separate and distinct offenses
2 against the defendant. You must decide each charge
3 separately on the evidence and the law applicable to
4 it uninfluenced by your decision as to any other
5 charge. The defendant may be convicted or acquitted
6 on any or all of the offenses charged. You will be
7 asked to write a separate verdict of guilty or not
8 guilty for each charge alleged in the indictment. I
9 remind you that the fact that the defendant was
10 arrested, charged, and indicted in this case is not
11 evidence in this case and cannot be considered by
12 you as evidence of guilt in this case, nor does it
13 create any presumption or inference of guilt. The
14 indictment is simply the formal written instrument
15 which contains the charges made against the
16 defendant. It is the formal document by which this
17 case is brought into this court. It is vital to
18 understand that the defendant is presumed under the
19 law to be innocent of these charges. The defendant
20 has no obligation to prove his innocence. It is a
21 fundamental rule of our law that a defendant
22 irrespective of the seriousness of the charges
23 against him is always presumed innocent of the
24 crimes for which he is charged unless and until his
25 guilt has been proven by evidence that satisfies

1 you, the jury, beyond a reasonable doubt.

2 The presumption of innocence is not a mere
3 legal theory or a legal phrase. The presumption of
4 innocence is very important, and you need to
5 understand that this presumption accompanies the
6 defendant from the time of his arrest and appearance
7 in this court and continues with the defendant even
8 after you retire to the jury room to deliberate. In
9 other words, the defendant receives the benefit of
10 the presumption of innocence until the very end of
11 this trial when you, the jury, will deliberate upon
12 the evidence and decide whether the State has proven
13 his guilt beyond a reasonable doubt.

14 Now what is a reasonable doubt in the law.
15 a reasonable doubt is the kind of doubt that would
16 cause a reasonable person to hesitate to act. Proof
17 beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the defendant's guilt. There
19 are very few things in this world that we know with
20 absolute certainty so even in criminal cases the law
21 does not require proof that overcomes every possible
22 doubt. However, if based on your consideration of
23 the evidence you are firmly convinced that the
24 defendant is guilty of the crime charged, you must
25 find him guilty. If on the other hand you think

1 there is a real possibility that he is not guilty,
2 you must give him the benefit of the doubt and find
3 him not guilty.

4 Jurors, please understand that reasonable
5 doubt may arise from evidence which has been
6 presented in the case or from the lack of evidence
7 in the case. It is your responsibility to determine
8 whether or not reasonable doubt exists as to the
9 guilt of this defendant. I charge you that the
10 defendant is entitled to every reasonable doubt
11 arising in the whole case. If upon any issues of
12 fact essential to conviction and a verdict of
13 guilty, you have a reasonable doubt as to how that
14 issue should be resolved, it would be your duty to
15 resolve that reasonable doubt in favor of the
16 defendant.

17 Now during this trial you and I have had
18 separate duties to perform. As the trial judge it
19 is my responsibility to preside over this trial, and
20 I also have the duty to rule upon the admissibility
21 of the evidence offered during the process of this
22 trial. In that regard you are to consider only the
23 competent evidence before you and you are to
24 disregard from your mind any testimony ordered
25 stricken from the report of this case during the

1 progress of the trial if there was any. And you are
2 to consider only the testimony which has been
3 presented from this witness stand together with any
4 exhibits admitted into the record of this case and
5 any stipulations of counsel made into the record.
6 Furthermore, I have the additional duty to charge
7 you on the applicable law of this case; and in that
8 regard, I am the sole judge of the law of this case.
9 It is your duty to accept and apply the law as I
10 state it to you. If you have any preconceived idea
11 as to what the law is or what the law ought to be
12 and it does not agree with what I tell you the law
13 is, you are obligated under your oath to abandon
14 these preconceptions because you are sworn to accept
15 the law precisely as I state it to you.

16 In this trial you, ladies and gentlemen,
17 are the sole and exclusive judge of the facts and I
18 am the judge of the law. Do not infer that I have
19 any opinion about the facts in this case from
20 anything that I have said during the course of this
21 trial in ruling upon the admissibility of evidence
22 or otherwise, or from anything that I say during the
23 course of this charge to you. In this regard, the
24 law simply does not permit me to have an opinion
25 about the facts. As jurors it is your duty alone to

1 determine the effect, value, weight, and truth of
2 the evidence presented during the course of this
3 trial. Now in determining what the facts are in
4 this case, ladies and gentlemen, you must judge the
5 credibility which simply means the believability of
6 the witnesses and the value of weight to be given to
7 their testimony. You alone must decide the force,
8 effect, and truth of the testimony. In making this
9 decision there are many things you may and should
10 take into consideration such as the appearance and
11 manner of the witness on the stand, a characteristic
12 often referred to as the demeanor of the witness.
13 Was the witness forthright or hesitant, was the
14 witness' testimony consistent or did it contain
15 discrepancies. What was the ability of the witness
16 to know the facts about which he or she testified.
17 Did the witness have a cause or reason to be biased
18 and prejudiced in favor of the testimony he or she
19 gave. Was the testimony of the witness corroborated
20 or made stronger by other testimony and evidence, or
21 was it made weaker or impeached by such other
22 testimony and evidence. As jurors please understand
23 you have the right to believe a small portion of a
24 witness' testimony and discard the larger portion or
25 vice versa. You may believe all of a witness'

1 testimony or none. You may believe the testimony of
2 a single witness against that of many witnesses or
3 the other way around. In exercising your mental
4 processes and attempting to decide the truth, the
5 law simply requires that you exercise your good
6 judgment, your common sense, your sense of logic and
7 reason, and your experiences in life. You then
8 apply these attributes to the evidence and apply the
9 law as I state it to you and, thus, arrive at a
10 verdict.

11 Now there are two types of evidence which
12 are generally presented during a trial, direct
13 evidence and circumstantial evidence. Direct
14 evidence is the testimony of a person who claims to
15 have actual knowledge of a fact such as an
16 eyewitness. It is evidence which immediately
17 establishes the main fact to be proved.
18 Circumstantial evidence is proof of a chain of facts
19 and circumstances indicating the existence of a
20 fact. It is evidence which immediately establishes
21 collateral facts from which the main fact may be
22 inferred. Circumstantial evidence is based on
23 inference and not on personal knowledge or
24 observation. The law makes absolutely no
25 distinction between the weight or value to be given

1 to either direct or circumstantial evidence, nor is
2 a greater degree of certainty required of
3 circumstantial evidence than of direct evidence.
4 You should weigh all of the evidence in the case.
5 If after weighing all the evidence you are not
6 convinced of the guilt of the defendant beyond a
7 reasonable doubt, you must find the defendant not
8 guilty.

9 Now there have been evidence -- there's
10 been evidence presented, ladies and gentlemen, that
11 witnesses have made prior statements which are not
12 consistent with the witness' present testimony. You
13 may use this evidence to decide whether to believe
14 the witness. You may also use evidence of the
15 earlier contradictory statements to determine the
16 truth of those statements. It is up to you to
17 decide whether to believe the earlier statements or
18 the testimony given at trial. If a witness is shown
19 to have knowingly testified untruthfully concerning
20 any material matter, you may consider this in
21 determining whether to trust the witness's testimony
22 as to other matters. You may reject all the
23 testimony of that witness or give all or part of the
24 testimony the weight that you think it deserves.

25 Now you heard testimony from individuals

1 who had past or prior criminal records. A person
2 who has a past criminal record is competent to
3 testify during a trial. A past record does not
4 affect the ability of that witness to testify. The
5 past record may only be considered by you, if at
6 all, in determining the witness' believability.
7 Remember, you are the sole judges of the facts in
8 the case and of the believability of any and all of
9 the witnesses.

10 Now during the course of this trial you
11 heard the testimony of police officers. Please
12 understand that the testimony of a police officer is
13 not entitled to more weight than that of any other
14 witness. You are the sole judges of the credibility
15 of a witness, and you are not to give more weight to
16 a police officer's testimony solely because he or
17 she is a police officer. Rather, you should judge
18 an officer's testimony by the same standards that
19 you apply to all other witnesses. In this case you
20 also heard the testimony of someone who was
21 qualified as an expert. The rules of evidence
22 ordinarily do not permit witnesses to testify to
23 opinions or conclusions. An exception to this rule
24 exists for witnesses we call expert witnesses. A
25 witness who by education and experience has become