

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

V.

ARMANDO K. CHESTNUT,

APPELLANT

APPELLANT CASE NO. 2013-002123

RECORD ON APPEAL

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SC Court of Appeals

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (JULY 15-19, 2013).....	1
OPENING STATEMENT BY MR. RICHARDSON.....	2
OPENING STATEMENT BY MS. PRATT.....	10
TESTIMONY	
IRA "BIRD" PARNELL	
Direct examination by Mr. Richardson.....	16
Cross examination by Ms. Pratt.....	37
Redirect examination by Mr. Richardson.....	46
Recross examination by Ms. Pratt.....	47
ILA SIMMONS	
Direct examination by Mr. Richardson.....	49
Cross examination by Ms. Pratt.....	66
JOHN WAYNE FEASTER, JR.	
Direct examination by Mr. Richardson.....	70
Cross examination by Ms. Pratt.....	105
Redirect examination by Mr. Richardson.....	132
Recross examination by Ms. Pratt.....	135
COREY MYERS	
Direct examination by Mr. Richardson.....	137
Cross examination by Ms. Pratt.....	162
Redirect examination by Mr. Richardson.....	186
Recross examination by Ms. Pratt.....	192
EVEREST HENRY CARRISON, II	
Direct examination by Mr. Hyman.....	194
Cross examination by Ms. Pratt.....	205
Redirect examination by Mr. Hyman.....	210
Recross examination by Ms. Pratt.....	211

ANNALIESE TESTA

Direct examination by Mr. Hyman.....	212
Cross examination by Ms. Pratt	247
Redirect examination by Mr. Hyman	254
Recross examination by Ms. Pratt.....	255

MICHELLE MCSPADDEN

Direct examination by Mr. Richardson.....	257
Cross examination by Ms. Pratt	306
Redirect examination by Mr. Richardson	321
Recross examination by Ms. Pratt.....	323

TERESA MOORE

Direct examination by Mr. Richardson.....	326
Cross examination by Ms. Pratt	332

MARK EDWARD LANDI

Direct examination by Mr. Richardson.....	334
Cross examination by Ms. Pratt	339

RANDY SCOTT MILLER

Direct examination by Mr. Richardson.....	340
Cross examination by Ms. Pratt	356
Redirect examination by Mr. Richardson	357

JOE GRAHAM

Direct examination by Mr. Hyman.....	358
Cross examination by Ms. Pratt	366

WILLIAM STAIR

Direct examination by Mr. Richardson.....	368
Cross examination by Ms. Pratt	379

MALINDA SHADOAN

Direct examination by Mr. Richardson.....	382
Cross examination by Ms. Pratt	397

MICHELLE MCSPADDEN

Direct examination by Mr. Richardson.....	399
Cross examination by Ms. Pratt	402

DR. EDWARD LEROY PROCTOR	
Direct examination by Mr. Richardson.....	405
Cross examination by Ms. Pratt	418
Redirect examination by Mr. Richardson	424
WILLIAM JOHN KITELINGER	
Direct examination by Mr. Richardson.....	427
Cross examination by Ms. Pratt	461
MOTION FOR A DIRECTED VERDICT BY MS. PRATT	486
RULING BY THE COURT	494
ALLEN GRAHAM	
Direct examination by Ms. Pratt.....	495
Cross examination by Mr. Richardson (Proffered).....	513
Redirect examination by Ms. Pratt.....	535
SUSAN SAFFORD	
Direct examination by Ms. Pratt.....	545
Cross examination by Mr. Richardson.....	553
TAMEKA MASON	
Direct examination by Ms. Pratt.....	558
Cross examination by Mr. Richardson.....	565
Redirect examination by Ms. Pratt.....	572
Recross examination by Mr. Richardson	573
MICHAEL DEWARREN SPIVEY	
Direct examination by Ms. Pratt.....	575
Cross examination by Mr. Richardson.....	586
ARMANDO CHESTNUT	
Direct examination by Ms. Pratt.....	600
Cross examination by Mr. Richardson.....	650
MOTIONS	706
RULING BY THE COURT	711
CLOSING ARGUMENT BY MS. PRATT	713
CLOSING ARGUMENT BY MR. RICHARDSON	739
MOTION FOR A MISTRIAL BY MS. PRATT	765

RULING BY THE COURT	766
MOTION BY MR. RICHARDSON	767
RULING BY THE COURT	767
CHARGE ON THE LAW	769
VERDICT	808
RENEWAL OF ALL MOTIONS BY MS. PRATT	811
RULING BY THE COURT	812
SENTENCING	815
POST-TRIAL HEARING TRANSCRIPT (SEPTEMBER 4, 2013)	822
INDICTMENTS	845
CERTIFICATE OF COUNSEL	853

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 (CD OF VIDEO SURVEILLANCE);
STATE'S EXHIBIT #24 (PHOTOGRAPH);
STATE'S EXHIBIT #25 (PHOTOGRAPH);
STATE'S EXHIBIT #26 (PHOTOGRAPH);
STATE'S EXHIBIT #27 (PHOTOGRAPH);
STATE'S EXHIBIT #88 (PHOTOGRAPH);
STATE'S EXHIBIT #89 (PHOTOGRAPH);
STATE'S EXHIBIT #90 (PHOTOGRAPH);
STATE'S EXHIBIT #91 (PHOTOGRAPH);
STATE'S EXHIBIT #122 (CD – INTERVIEW OF CHESTNUT);
DEFENSE EXHIBIT #4 (CD – SURVEILLANCE VIDEO CLIPS);

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)
2012-GS-26-3115
2012-GS-26-3116
2012-GS-26-3117
2012-GS-26-3118

STATE OF SOUTH CAROLINA,)
Plaintiff,) **Transcript of Record**
vs.)
ARMANDO K. CHESTNUT,) July 15-19, 2013
Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Brad C. Richardson, Esquire
Travis Hyman, Esquire
Attorney for Plaintiff

Barbara W. Pratt, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

State v. Chestnut
OPENING BY RICHARDSON

52

1 matters to the Court, objections, motions, whatever they might
2 be. If I rule on those in your presence, please remember, I'm
3 not making any comments on the facts; that's your job and your
4 responsibility, the facts. It's my job to govern the conduct
5 of the trial and to determine what is proper to be placed
6 before you. So if I make a ruling in your presence, remember
7 I'm doing is telling the lawyers regarding that particular
8 question, how the case will be tried, but I'm not indicating
9 to the credibility, believability, or any opinion about the
10 facts and evidence presented. So with that, I'm gonna turn it
11 over to the lawyers for their opening statements.

12 Solicitor.

13 MR. RICHARDSON: Thank you, Your Honor.

14 OPENING BY MR. RICHARDSON:

15 MR. RICHARDSON: The last word, the final say, that's
16 what the Defendant had to have in the early morning hours of
17 March 6th, 2012. That's what he needed. His pride had been
18 hurt and he needed to have the last word. Some young upstarts
19 out of the county, out of Williamsburg, had come in to Myrtle
20 Beach and they -- they had the audacity to get into an
21 argument with Armando Chestnut and his buddies. The nerve of
22 them.

23 So, as the altercation went from inside the bar to
24 outside the bar, Armando Chestnut decided he was gonna have
25 the last word. He was gonna get in the final say, but he

State v. Chestnut
OPENING BY RICHARDSON

53

1 didn't choose to use his mouth. He went to a vehicle, in
2 which he had arrived at the bar and when he left that vehicle,
3 he had a handgun in his hand. You'll see a video of him and
4 see him looks like he's moving the slide on the gun, and he
5 runs into a fight already in progress and he fires. You can
6 tell when he shoots that first shot because everybody kind of
7 freezes up and starts ducking and moving. You will actually
8 see on the video as he fires that final word into Jamal
9 McFadden and the bullet rips through Jamal's body. You'll see
10 Jamal crumble a little bit and try to run on. You'll see him
11 get the last word as he turns and he fires more shots. And
12 when he's done shooting, he's not done speaking because he
13 puts the gun away and he walks coldly, calmly and deliberately
14 back into the 3rd Avenue Sports Bar. And when he sees that
15 his buddies, his fellows from Myrtle Beach have knocked
16 another young man from Williamsburg down, Damien Canty, he
17 runs over and he stomps on him again and again until Wayne
18 Fester, the bar owner, breaks it up. Yeah, he got the last
19 word that night. A little bit after 1:00 in the morning, he
20 got the last word and left the bar.

21 But you, in this trial, get the last word. You get the
22 final say and when you've heard all the evidence, you're gonna
23 say the Defendant is guilty because that's what he is, guilty
24 of the assault and battery by a mob of Damien Canty, where he
25 stomps on him with the help of his friends; guilty of pointing

State v. Chestnut
OPENING BY RICHARDSON

54

1 and presenting a firearm because that's exactly what he does
2 when he runs into that fight and pulls out his handgun and
3 points it and Jamal McFadden; guilty of attempted murder for
4 stomping David Canty's head into the ground on a cold concrete
5 floor; and guilty of the murder of Jamal McFadden because it's
6 his gun that fires that shot that rips through his body and
7 kills him. That's the final word of this case.

8 During the course of the trial, you're gonna learn about
9 the other events of March 5th, 2012 that lead into those early
10 morning hours of March 6th. You'll find out from Annaliese
11 Testa, she was dating the Defendant at the time. She's
12 actually been charged in this murder with accessory after the
13 fact because she drove the Defendant away from the bar after
14 he killed Jamal McFadden, but she's gonna take the stand.
15 She'll tell you that she had been at work that day. They'd
16 been dating for a short time. She's getting texts throughout
17 the day. The Defendant wants to meet up with her so she
18 agrees to meet him in the local bar, Sam's, it's a
19 neighborhood bar. So she -- she gets off work, she cleans up,
20 she hops in her car and she goes to pick him up over there and
21 they sit down in the bar for a while. You'll hear about that
22 and then the Defendant's in control. He tells her let's go.
23 He takes the keys from her and he drives from that bar to the
24 Jet Age Cafe on Tenth Avenue and they stay there for a while.
25 And I say they, but the Defendant told her, you just wait

State v. Chestnut
OPENING BY RICHARDSON

55

1 right here in the car and she waits there listening to music
2 for fifteen or twenty minutes before he comes back out of that
3 bar and then he drives the car once again to the 3rd Avenue
4 Sports Bar.

5 She'll tell you how they got there, how they went in. It
6 was Reggae Night. And you'll hear from a multitude of
7 witnesses at that bar. You'll hear from Annaliese Testa and
8 you'll hear from Corey Myers -- he's been charged in this
9 crime -- his Codefendant, he's gonna take the stand and
10 testify. And you'll hear from Wayne Feaster; he's the owner
11 of the 3rd Avenue Sports Bar. But you'll also see evidence
12 because that bar's got an excellent security system, a video
13 system, and you will see what transpired that night. You will
14 hear and see that there was a pool game between some young men
15 from Williamsburg County, Hemingway, Kingstree and there was
16 some money on the table and they had been playing pool against
17 some young men from Myrtle Beach and there was a disagreement.
18 It happened about 1:10 in the morning. I can tell you pretty
19 much the specific time because we had it on camera. For two
20 or three minutes the argument escalates and escalates and
21 there's pushing and shoving. There's no audio and you can't
22 tell what was said. We'll have to depend on Annaliese Testa
23 and Corey Myers for that. But you'll see the shoving back and
24 forth. You'll see our victim, Jamal McFadden, actually picked
25 up a pool cue at one point. I guess he feels threatened

State v. Chestnut
OPENING BY RICHARDSON

56

1 before that pool cue is yanked out of his hand.

2 Then about 1:13 in the morning, you'll see everyone start
3 to exit the bar. And we have a couple of different angles
4 outside, we'll see some of the fellows from Myrtle Beach exit
5 and go down and we'll see some of the fellows from
6 Williamsburg County come out and we'll see a fight begin at
7 about 1:14. It's a fist fight, a fist fight. But in a
8 separate video, you'll see the Defendant, shortly before 1:14
9 in the morning go out to that vehicle and you'll see him walk
10 to that vehicle, open the door, get inside, and he's there for
11 a couple of seconds and when he gets back out, you'll see he's
12 got something in his hand and you'll see as he moves around
13 the car and you'll see some action that he does and you'll see
14 him take off and run, run to this fight that's in progress
15 because he's gonna have the last word. You'll see him as he
16 runs in and points that gun. You'll see him as Jamal McFadden
17 tries to escape when he realizes the gun's there and you'll
18 see Jamal McFadden get hit in the left side and crumple down
19 toward the car, get up and run off. You'll see the Defendant
20 as he turns and he fires out into the parking lot. You'll see
21 when he's done, he walks back inside, cold, calm and
22 deliberate, he's getting exactly what he wants; he getting the
23 last word.

24 We flip back to a camera inside the bar we'll see a fight
25 start again inside the bar. Damien Canty, big old fellow,

State v. Chestnut
OPENING BY RICHARDSON

57

1 comes in and gets knocked down by one of the Defendant's
2 friends. And then we'll see the Defendant, Armando Chestnut,
3 come in that bar. You'll be able to tell it's him because of
4 the very distinctive jacket he's got on, white-and-black
5 striped and you'll see him run in, run over and hit Damien
6 Canty and stomp him again and again into a hard concrete
7 floor. So, as I said, Wayne Feaster backs them off and then
8 you'll see him calmly get up and walk out.

9 And you'll hear Annaliese Testa and she'll tell you how
10 they walked out to the car and they drove to her home. And at
11 some point, when they get to her home, and in that drive
12 period, he tells her he shot at the boy with the dreads. She
13 understands that to be Jamal McFadden, the fellow who grabbed
14 the pool stick before, but I guess he got the last word.
15 She'll tell you they go inside the house and the Defendant's
16 concerned with washing his hands, getting the powder off, how
17 he takes that handgun that he has, she's seen it before, and
18 he puts it away in a cabinet drawer. She'll tell you at that
19 point, how he settles in, smokes some marijuana, watches T.V.,
20 go on to sleep. He just shot at a man but gonna go on to
21 sleep.

22 She'll tell you how they wake up the next day and upon
23 waking up, the Defendant's on the phone calling his friends
24 and she goes and looks online to see if there's anything in
25 the news about what happened last night and she's shocked at

State v. Chestnut
OPENING BY RICHARDSON

58

1 what she finds, but she agrees to take the Defendant back to
2 his home in Myrtle Beach. And so they get ready to go and the
3 Defendant asked her to borrow a t-shirt and she finds it odd,
4 he's never done that before. And the clothes that he had on
5 the night before, that black-and-white jacket, he takes that
6 off and the t-shirt and puts them in the back seat and they
7 drive off. And while they're driving, they notice they're
8 being followed. Well, of course they are. Myrtle Beach
9 Police Department has asked for assistance in this and they've
10 got some other law enforcement officers watching the house.
11 The Defendant's already been identified and they're looking
12 for him. And so they follow Annaliese Testa. And those
13 agents are following Annaliese Testa, they notice the
14 Defendant throws something out the car. Lo and behold it ends
15 up being a gun. And that's important, folks, they see him
16 throw out the gun. You'll actually hear a statement from
17 where he says he threw the gun out and that gun is very
18 important because it was sent off to SLED.

19 And I forgot to tell you, when the Myrtle Beach Police
20 Department showed up at the crime scene, they found three and
21 only three shell casings in that entire parking lot. Three
22 shell casings and every one of those shell casings .380
23 caliber matched to that handgun. They also find a projectile.
24 I told you and Dr. Proctor will tell you that the shot that
25 killed Jamal McFadden ripped through his body and came out.

State v. Chestnut
OPENING BY RICHARDSON

59

1 And about where the location is where it could've come out,
2 they find a projectile on the ground and they have that
3 analyzed. Lo and behold, that .380 caliber Diamondback
4 handgun the Defendant threw out the car is the gun that fired
5 that round.

6 And the Defendant's taken into custody and he goes back
7 to Myrtle Beach Police Annex and when he's there he agrees to
8 give a statement. He's given his Miranda Rights and you'll
9 see the statement. Once again, a video, you'll hear the
10 statement -- I think what we have is about an hour long -- and
11 he admits that, yeah, I kicked and I stomped that big ole boy
12 on the ground; yep, he's right up front about that. But it
13 starts off I ain't shot nobody; I ain't had no gun. And as
14 he's confronted with more and more evidence, he has to change
15 up his story a little bit. He said, well, I fired one time.
16 He says I fired at the boy with the dreads.

17 But here's the key point, I think it's about 16:42 in
18 that video, about thirty to forty minutes into that, he tells,
19 yeah, if that boy with the dreads I shot died, that's on me.
20 Doggone right it is. Yes, it is on him. Yes, it is on him
21 because his pride couldn't take it that night and he felt he
22 had to go get his handgun. He felt he had to come back,
23 salvage his pride and get the last word. That word's murder,
24 folks.

25 So, I know that when you speak one voice, you will get

State v. Chestnut
OPENING BY PRATT

60

1 the last word and that word will be guilty, guilty of assault
2 and battery by a mob for that vicious beating Damien Canty
3 took on the ground. You'll get attempted murder once again
4 for that vicious beating that he took on the ground; guilty of
5 pointing and presenting a firearm because you'll see him do it
6 and guilty of murder. The boy with the dreads died, that's on
7 him. He's guilty, folks. Your last word should be guilty.

8 THE COURT: All right. Ms. Pratt.

9 MS. PRATT: Thank you, Your Honor. May it please the
10 Court?

11 THE COURT: Yes, ma'am.

12 OPENING BY MS. PRATT:

13 MS. PRATT: You know, ladies and gentlemen, in a space of
14 three minutes, lives can completely change and that's what
15 happened in the bar that night, lives completely changed.

16 The State has presented to you their side of what they
17 think happened but there are two sides to this story. And
18 when the State investigated this case, they had blinkers on
19 total tunnel vision about what they believed happened. They
20 never looked at what the other side was doing and what was
21 going on, what really was going on in the bar that night.

22 You will see a video. You know you're blessed because
23 it's very rare that we have a video of an entire situation
24 like that. But Mr. Feaster has a surveillance system that has
25 ten different cameras and the cameras have two outside views

State v. Chestnut
OPENING BY PRATT

61

1 and eight inside views that pretty much show everything that's
2 going on, including one of course right over his register and
3 one in the kitchen. You're not gonna worry about those. But
4 there are other views that will show you what was actually
5 happening in that bar that night.

6 At approximately 1:12 that night a fight began inside the
7 bar over a pool game. They were arguing over money. Mr.
8 McFadden grabs a pool cue. The Solicitor would like you to
9 believe that that happened because he might have felt
10 threatened. You'll see the video. This man grabs a pool cue
11 and starts the ball rolling, starts the chain of events. Then
12 Mr. Feaster has -- who is the bar owner, has all of these
13 people inside and he'll tell you that there are at least ten
14 people from Hemingway/Kingstree area, Williamsburg County and
15 there are less of the group from Myrtle Beach that are hanging
16 together and involved in this mess. You'll see him throw
17 everybody out. You'll see one lone Myrtle Beach fellow walk
18 down the sidewalk; his name is Thoro. And you will see three
19 or four, maybe five, big guys from Kingstree follow him and
20 hit him with a bottle. And you know who the person is who
21 hits him with the bottle, Mr. Canty, the other person in this
22 situation that kept this attack going. Mr. Canty attacked
23 Thoro and then they viciously beat him and you'll see it all
24 on video and it goes on for many, many, many seconds. Then
25 you see other people from Kingstree area come down to where

State v. Chestnut
OPENING BY PRATT

62

1 the fight is going on. It's going on in a parking lot so
2 you'll see that. You'll see Mr. McFadden, the one with the
3 pool cue and with the dreads, come and go in between the cars
4 near where the fight is. And you'll see the attack that's
5 going on against Thoro and you'll see Canty then stop, he's a
6 big guy, stop fighting with Thoro and turn and start fighting
7 with Corey Myers, who is a codefendant in this case. They
8 charged the Myrtle Beach people; they didn't charge the
9 Kingstree people. They left them alone. You see Canty start
10 fighting with Corey and then what you see is McFadden come up
11 and he's looking and then because my client, Armando Chestnut,
12 believes that his friends are being harmed to the point that
13 they could be killed, he comes with his gun, he fires a shot
14 and it stops the attack on Thoro and Canty.

15 Now there's a legal theory and I have given you the
16 elements of it, of self-defense and defense of others. Now
17 the Judge is gonna give you the law and so if anything I say
18 is different what he says, he is the one that you listen to,
19 but this is what self-defense is about. First of all, the
20 Defendant has to be without fault in bringing on the
21 difficulty. We have an attack by McFadden and an attack by
22 Canty. The Defendant has to believe he's in imminent danger
23 of losing his life or sustaining serious bodily injury or he's
24 in such imminent danger. This element will apply to Thoro and
25 Corey because as you can see on the defense of others, if

State v. Chestnut
OPENING BY PRATT

63

1 either Thoro or Corey had the right to use self-defense, then
2 Armando could come in and protect them. Those were his
3 friends. They were being beaten; they were being attacked;
4 they were being hit with bottles; they were being jumped on by
5 several more people. So it's not a situation of my client
6 having pride or the last word.

7 The third element, if the Defendant's belief was based on
8 imminent danger, it was a belief, excuse me, the Defendant's
9 actual belief of imminent danger, a reasonable, prudent,
10 person of ordinary firmness and courage would also entertain
11 the same belief. Would other people in Thoro's and Corey's
12 position believe that they were about to sustain either
13 serious bodily injury or be killed.

14 And then the fourth, the Defendant had no other probable
15 means of avoiding the danger. Thoro and Corey couldn't get
16 away. They're both on the ground, prior to Armando coming up
17 and shooting the shot. Now I take issue with what the
18 Solicitor says about the bullets and you're gonna hear the
19 ballistics experts to find out which bullets match. And while
20 there may have been only three casings, we all know that there
21 are guns that don't have eject casings. We all know that
22 those exist. So that isn't all that relevant either.

23 The important thing to remember in this case is that the
24 only thing that stopped the attack on Thoro and on Corey was
25 Armando's first shot. That's the only thing that stopped it.

State v. Chestnut
OPENING BY PRATT

64

1 I want to make clear that the State didn't do the other
2 half of the picture. They had tunnel vision. They
3 investigated as far as they wanted to; they didn't go further.
4 They didn't look into what was really going on with the other
5 people from Kingstree and what they were trying to do that
6 night. I'm asking you to be that conscience, to be those
7 people to do that watching and investigating. Look at the
8 video, make up your mind yourself. Please care about this
9 case. This is an important case. It's important that people
10 are allowed to defend themselves and to defend others wherever
11 they are if they meet these elements. That's an important
12 right that we have. And so I believe that once you look at
13 all these things and evaluate them for yourself, you're not
14 going to find, as the State thinks, that Armando was trying to
15 have the last word or do anything else. He was stopping an
16 attack on his friends.

17 The State has the burden of disproving self-defense. Self-
18 defense is an absolute defense. It is a not guilty if you
19 find that Armando was acting in either self-defense or defense
20 of others then it is not guilty because we have that right to
21 defend ourselves and to defend others in situations of mortal
22 danger and it's a right that we don't want to give up in this
23 country. So all I can ask you to do is to please listen
24 carefully, watch the video, and please care about what happens
25 in this case. Thank you.

State v. Chestnut
BY THE COURT

65

1 THE COURT: All right. Solicitor, your first witness
2 please.

3 MR. RICHARDSON: Wayne Feaster.

4 THE COURT: Mr. Richardson, Ms. Pratt, y'all come up here
5 please?

6 (REPORTER'S NOTE: A bench conference was held off the record
7 in the presence of the jury but out of hearing of the jury.)

8 MR. RICHARDSON: Would you get Agent Ira Parnell, please?

9 THE COURT: All right. Ladies and gentlemen, just so you
10 know regarding that, it is not the Solicitor's choice, but
11 looking at the time and the length of that particular witness
12 and there being some other witnesses that cannot be here
13 tomorrow, I instructed the State to call those other two
14 witnesses so that y'all will not be here for an extended
15 period of time today. It might not be true tomorrow; we'll
16 talk about that. But I know y'all didn't expect to be here
17 late today. So that was the Court's choice, not the
18 Solicitor's choice so you'll understand that.

19 All right. Sir, come up here and meet the Clerk right at
20 the corner and be sworn, sir.

21 AGENT IRA BIRD PARNELL, JR., HAVING
22 BEEN SWORN TESTIFIES AS FOLLOWS:

23 CLERK: Please state your full name and spell your last?

24 MR. PARNELL: My name is Ira Bird Parnell, Jr., P-A-R-N-
25 E-L-L.

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

66

1 THE COURT: All right, Solicitor.

2 DIRECT EXAMINATION AGENT IRA BIRD PARNELL, JR. BY MR.

3 RICHARDSON:

4 Q: Good afternoon, Agent?

5 A: Good afternoon.

6 Q: Agent Parnell -- one moment. I've got to resituate. Tell
7 us a little bit about yourself, where you're employed, how
8 long and in what capacity?

9 A: I'm employed by the South Carolina Law Enforcement
10 Division, also known as SLED, as a firearm and toolmark
11 examiner and I've been so employed for forty-one years.

12 Q: And you say that your duties with SLED are firearms and
13 toolmark identification?

14 A: Yes, sir.

15 Q: And that's forensic firearm identifications though?

16 A: Correct. Yes, sir.

17 Q: Could you educate us a little bit about the field of
18 forensic firearm identification?

19 A: Basically when we say we're a firearm and toolmark
20 examiner, firearms is a subset of toolmark comparison,
21 firearm being the tool and fired bullet or a fired cartridge
22 case being the object on which toolmarks are placed. Firearms
23 is just a little more specialized part of toolmark examination
24 and it involves the microscopic comparison of individual
25 markings left on fired bullets and fired cartridge casings by

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

67

1 the firearms which fired them.

2 Q: And is there a term more commonly used on T.V. and books
3 with regard to firearms identification?

4 A: Most of the time they refer to it as ballistics, but that
5 really has nothing to do with what I do. It's just what it's
6 called.

7 Q: I just want to make sure we're all on the same page; we
8 understand where we're going?

9 A: Yes, sir.

10 Q: So you're saying that you're looking for particular
11 markings on cartridge casings and projectiles?

12 A: Correct.

13 Q: Fired bullets?

14 A: Yes, sir.

15 Q: Tell us how that works.

16 A: During the manufacture of firearms, machining happens,
17 barrels are made, surfaces are machined with various cutters
18 and files. During this process, there are minute
19 imperfections that are left on the surfaces of the inside of
20 the gun barrel as well as on the area around where the firing
21 pin protrudes, which we call a breech face, and other surfaces
22 of the firearms. When a firearm is shot, when a fired bullet
23 comes out of the barrel, the markings that are left on the
24 outside of that fired bullet are actually the signature of the
25 inside of the gun barrel. So these imperfections are

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

68

1 transferred to the outer surface of the bullet and can be
2 viewed microscopically by a trained examiner. A fired
3 cartridge case also has the mirror image of the breech face of
4 the area around the firing pin impressed. If any of you have
5 ever fired a firearm or seen one fired, the term recoil comes
6 into play, the kick of the gun. This is caused by the, the
7 firing pin striking the primer and making the gun powder
8 inside the cartridge go off, which expels the bullet out the
9 front. The cartridge case in a pistol usually is expelled out
10 of the side or the back. During this recoil, that slapping
11 back of the cartridge case impressed the signature of the
12 breech face on the case head, which can also be
13 microscopically compared and identified to a particular
14 firearm.

15 Q: Okay. So, so just the marks that all modern firearms
16 make, you can tell if certain round is fired by a certain gun?

17 A: Yes, sir. These are random and unintentional marks that
18 are left inside the gun barrel and on various surfaces in the
19 gun during the manufacture process.

20 Q: Thank you. Now with regard to the field of forensic
21 firearm identification, can you tell us what kind of training
22 and experience you've had?

23 A: Yes, sir. When I started training there was, there was no
24 school that was offered to attend to be a firearms examiner.
25 So all my training was on-the-job training or apprenticeship

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

69

- 1 training under three Court qualified firearm and toolmark
2 examiners. This training lasts anywhere from two to three
3 years and in my case it was about two and a half years.
4 During which time, I read a lot of books, studied a lot of
5 articles, assisted these examiners in preparation of a case,
6 cases, actually watched what they were doing and actually
7 participated in the microscopic portion of the, the
8 comparisons. During that time, I shot many hundreds of
9 firearms, examined many thousands of specimen and since that
10 time, I've examined a lot more.
- 11 Q: And you said you've been involved in the field of forensic
12 firearm identification how long?
- 13 A: Almost forty-one years.
- 14 Q: Almost forty-one years. How many analysis of firearms and
15 projectiles and casings have you done?
- 16 A: It would be in the millions. I've testified approximately
17 six hundred and forty-two times as firearm and toolmark
18 examiner in most every county in our state that I can recall
19 and in Federal District Court, Virginia, North Carolina State
20 Court.
- 21 Q: Well, that was my next question I had too.
- 22 Your Honor, at this time, the State would submit Agent
23 Ira Parnell as an expert in the field of forensic firearms
24 analysis and ask that he be allowed to give his opinion
25 testimony, Your Honor?

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

70

1 THE COURT: Do you wish to voir dire the witness as to
2 his qualifications or challenge the offer by the State?

3 MS. PRATT: No, Your Honor, we would not challenge the
4 offer by the State.

5 THE COURT: All right. He is qualified to give his
6 opinion then. You may proceed.

7 BY MR. RICHARDSON:

8 Q: Agent Parnell, now that we have all the background in
9 about what, what we're looking at, educate us a little bit
10 about SLED. How and from whom does SLED receive items for
11 testing and analysis?

12 A: SLED, the State Law Enforcement Division for South
13 Carolina is basically the investigative branch of the South
14 Carolina State Police; the Highway Patrol or Department of
15 Public Safety being the traffic enforcement arm. Our
16 laboratory conducts examinations and comparisons for any bona
17 fide law enforcement agency within the State as well as the
18 FBI, Secret Service, Railroad Police. And we, we perform
19 analysis for all of these entities and provide reports and
20 testimony when required.

21 Q: Okay. So some of the other police agencies that request
22 analysis?

23 A: Correct, yes, sir. Some, some departments have their own
24 laboratories which perform various analysis. We generally
25 offer pretty much anything that is required within the field

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

71

1 of forensics.

2 Q: And how does SLED get evidence up to SLED; it's in
3 Columbia, correct?

4 A: Yes, sir. There's -- our laboratories on Broad River Road
5 in Columbia and our crime scene personnel either respond to a
6 request for help from a department in the State or the various
7 departments bring the evidence to us for analysis.

8 Q: And when, when items of evidence that are, that analysis
9 is being requested upon, when they are received by SLED, what
10 procedure is used to ensure their integrity or safekeeping?

11 A: When the evidence is brought in, is brought into our login
12 area or evidence custodial area. The submitter brings in
13 their package and if it's needing to be repackaged for our
14 stringent policy of, of being sealed up, then, then we will
15 provide a box or a heat-sealed bag, evidence tape and the
16 submitting agency can either repackage or seal with evidence
17 tape in the presence of the evidence custodian. It is then
18 placed on a, a shelf in the back room for retrieval by
19 whatever department is, is requested. In this case, it would
20 be firearms, which would be me, and we go down and retrieve
21 that evidence from the evidence custodian.

22 Q: And is there any paperwork or documentation that's done
23 associated with the, the evidence?

24 A: Yes, sir, take-in documents are filled out and signed by
25 both the submitting person and the evidence custodian who

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

72

1 receives it.

2 Q: Okay. Is that entered -- how are those records kept?

3 A: It's all computerized. It's entered in the computer and
4 there's a record of it there electronically, which can be
5 printed out for a paper trail.

6 Q: Used to be all carbon copies when you first started,
7 right?

8 A: That's right.

9 MR. RICHARDSON: May I have that marked for
10 identification purposes please, ma'am?

11 STATE'S EXHIBIT NUMBER THIRTY-ONE

12 MARKED FOR IDENTIFICATION

13 MS. PRATT: Your Honor, I'd like the record to reflect
14 that we've just received this document and had not received it
15 before. However, we have reviewed it at this time.

16 THE COURT: All right, ma'am.

17 MR. RICHARDSON: Your Honor, if I may approach the
18 witness?

19 THE COURT: Certainly.

20 BY MR. RICHARDSON:

21 Q: For identification purposes, Item Number Thirty-one, can
22 you tell us if you recognize that item, Agent Parnell?

23 A: Yes, sir. State Exhibit Thirty-one is the printed paper
24 copy of the chain of custody on the items which I received in
25 this case as well as the other items received in this case.

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

73

1 Q: And how can we tell it's with regard to this case; what
2 kind of ---

3 A: It has an individual case number assigned to this case and
4 this case alone, as well as individual item numbers that are
5 assigned to each particular item that's submitted and as well
6 as a description and every person who touched the evidence is
7 indicating here on the chain of custody where the transfer was
8 made.

9 Q: So when items of evidence are taken into SLED, I think you
10 said something about a unique number?

11 A: Yes, sir, each item has its unique number as well as each
12 case a unique number.

13 Q: So State v. John Brown would have a unique number that
14 goes with everything that SLED gets on John Brown?

15 A: Correct.

16 Q: On that particular case?

17 A: Yes, sir.

18 Q: And you're saying that that is the certified copy of the
19 -- what's in your computer?

20 A: Yes, sir; it is.

21 Q: And what type -- and you stated that it contains
22 information about who took in the evidence and where it went?

23 A: Yes, sir. Each person who touched the evidence has to
24 scan it with their own individual scan card number and it's
25 reflected here in the chain of custody. Each time the

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

74

- 1 evidence moves, it's transferred.
- 2 Q: Thank you.
- 3 A: Yes, sir.
- 4 Q: Beyond, beyond tracking the evidence with a certified
- 5 chain of custody, are there any additional safeguards that are
- 6 taken with regard to maintaining the integrity of, of that; I
- 7 believe you described something about tape earlier?
- 8 A: Yes, each container is sealed and initialed by the sealing
- 9 person, that is the person who brings it into SLED will seal
- 10 it up and initial it and date it stating that what's indicated
- 11 on this chain of custody is contained in the container and
- 12 they're sealing it and initialing it and putting the date on
- 13 it and everything is recorded to that person is correct at
- 14 that time.
- 15 Q: If those steps are not taken, for instance, you end up
- 16 with a package on your desk with just an open box; what
- 17 happens?
- 18 A: It goes back to login and, goes back to the submitter.
- 19 Q: And you won't take another step at that point?
- 20 A: No, sir.
- 21 Q: Agent Parnell, in your capacity as a forensic firearms
- 22 identification expert or an analyst for SLED, did you receive
- 23 items in this particular case, State of South Carolina v.
- 24 Armando Chestnut?
- 25 A: I did.

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

75

1 Q: And that was received from Myrtle Beach Police Department?

2 A: Yes, it was.

3 Q: Allow me to show you -- if I can have these marked?

4 Thirty-two, Thirty-three and Thirty-four.

5 STATE'S EXHIBIT NUMBER THIRTY-TWO, THIRTY-THREE

6 AND THIRTY-FOUR MARKED FOR IDENTIFICATION

7 BY MR. RICHARDSON:

8 Q: Agent Parnell, I'm gonna approach you with State's, for
9 identification purposes at this time, Thirty-two, Thirty-three
10 and Thirty-four, if you can tell me -- just take a moment and
11 take a look at that and see if you recognize those items?

12 A: Yes, sir, I do. State's Exhibits Thirty-two, Thirty-three
13 and Thirty-four for identification, all bear my case numbers,
14 special number and initial on the packaging as well as the
15 individual item indicating that I did examine these items in
16 connection with this case.

17 Q: And can you tell us when you received those items?

18 A: These items were submitted to the laboratory on March 28th
19 of 2012. I'm referring to the document here, State's Exhibit
20 Thirty-one, the chain of custody and I would have received all
21 these items at one time, by the way, in connection with this
22 case number. Container A, which also contained what we're
23 calling -- well, State's Exhibits Thirty-two, Thirty-three and
24 Thirty-four for identification. They were received by me on
25 May the 1st of 2012. They were submitted to the laboratory,

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

76

1 put in the evidence storage area and received by me in a batch
2 of evidence at that time on May 1st.

3 Q: And upon your receipt of these items, how were they
4 packaged?

5 A: They were in evidence sealed containers under the initial
6 of the submitter from Myrtle Beach area.

7 Q: And they were secured in your department until analysis?

8 A: They were secured in the evidence room until I got them
9 and they were secured in my evidence locker until I opened
10 them up to begin my examination.

11 STATE'S EXHIBIT NUMBER THIRTY-SIX

12 MARKED FOR IDENTIFICATION

13 Q: Agent Parnell, I'm gonna approach with State's Number,
14 let's go with Thirty-six first. Tell us if you recognize
15 that item, please, sir?

16 A: I do, sir. State's Exhibit Thirty-six for identification
17 is also part of the evidence submitted in this case and bears
18 my case number, specimen number and initial and I have
19 examined this item.

20 Q: And you tell that by your initials and everything?

21 A: Yes, sir, it's on the fired bullet specimen, on the outer
22 container as well as the outer container here in the original
23 package.

24 Q: And that was received at the same time as the shell
25 casings?

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

77

1 A: Yes, sir.

2 STATE'S EXHIBIT NUMBER THIRTY-FIVE

3 MARKED FOR IDENTIFICATION

4 Q: Now I approach you with State's Thirty-five?

5 A: I have examined State's Exhibit Thirty-five for
6 identification. It also bears my case numbers, specimen
7 number and initials and was examined in connection with the
8 rest of the evidence in this case.

9 Q: So, it was received at the same time as everything else?

10 A: Yes, sir.

11 Q: And the condition of both of those, Thirty-five and
12 Thirty-six, what was that when they arrived?

13 A: They were sealed in their individual boxes here under
14 evidence tape seal and further sealed in outer packages.

15 Q: And Thirty-five, can you just tell us what type of items
16 Thirty-five is?

17 A: It's fired .380 auto-caliber bullet.

18 Q: And how about Thirty-six?

19 A: It's also a fired .380 auto-caliber bullet.

20 Q: And Thirty-four, Thirty-three and Thirty-two, I can't
21 remember if I asked you, can you tell us what those items are?

22 A: Those are fired .380 auto-caliber cartridge cases.

23 MR. RICHARDSON: Your Honor, for the record, I have this
24 weapon in the lock.

25 STATE'S EXHIBIT NUMBER THIRTY-SEVEN

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

78

MARKED FOR IDENTIFICATION

BY MR. RICHARDSON:

Q: Let me show you what has been marked as State's Thirty-seven. State's Thirty-seven, can you tell us if you can identify that, Agent Parnell?

A: Yes, sir, State's Exhibit Thirty-seven for identification is a Diamondback brand .380 auto-caliber semiautomatic pistol. It bears my case number, specimen number and initials, both on the firearm in the outer packaging and it was also received and examined as part of the evidence. This before me on the bench.

Q: Other than your marking on I assume the box it was in ---

A: Yes, sir.

Q: --- are there other particular markings to that gun that help identify that gun?

A: The serial number ---

Q: Yes, sir.

A: --- is also on here; it's Z, Zulu, A, Alpha, 5327.

Q: That serial number will be unique to that firearm?

A: Yes, sir.

STATE'S EXHIBIT NUMBER THIRTY-EIGHT

MARKED FOR IDENTIFICATION

Q: And finally, I'm gonna hand to you State's Thirty-eight -- it's got a lock on it, Your Honor. Tell us if you recognize State's Thirty-eight for identification purposes?

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

79

- 1 A: Yes, sir. State's Thirty-eight for identification is a
2 Taurus Model PT140PRO. The serial number indicated on the gun
3 is S, Sierra, C, Charlie, U, Uncle, 60771; it also bears my
4 case number, specimen number and initials described on the gun
5 itself and was also examined with connection to this case.
- 6 Q: Now, all these items were received at one time by SLED?
- 7 A: Yes, sir.
- 8 Q: All of them were sealed when you got them?
- 9 A: They were.
- 10 Q: And that certified chain, you can tell who touched it in
11 between?
- 12 A: Yes, sir.
- 13 Q: And they -- they were sealed when you got them?
- 14 A: They were.
- 15 Q: Looking back at the certified chain, you can you tell who
16 had touched them at SLED?
- 17 A: Each time it changed hands it has to be scanned and each
18 person has their own barcode card and they're scanned at that
19 time and you can tell exactly where it went and when.
- 20 Q: And can you identify for the Court who, who touched these
21 between -- or after they got to SLED?
- 22 A: As submitted, they were submitted and received by Ms.
23 Nikki Hughes, who's on maternity leave at this time. She put
24 them on the evidence storage locker shelf; she retrieved them
25 at my request; I picked them up; I turned them back in to Ms.

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

80

1 Patricia Crooks; upon completion of my examination, she re-put
2 them back, restocked them on the shelf in the backroom there
3 and one of the other ladies, Ms. Yarborough, retrieved it off
4 the shelf and returned it Myrtle Beach personnel.

5 Q: And these items, after you are through with them, is this
6 the same condition in which you sent them back?

7 A: Yes, sir, they are. They're still sealed and under my
8 initial and everything.

9 Q: Good. Now we can hopefully get into the good stuff.

10 With regard to State's Thirty-two, Thirty-three, Thirty-
11 four, Thirty-five, Thirty-six and Thirty-seven, can you tell
12 us if you performed any type of analysis on those?

13 A: I did, sir. I examined all these items, determined that
14 State's Exhibit Thirty-seven for identification, this
15 Diamondback .380 auto firearm was the correct caliber to have
16 fired State's Exhibits Thirty-two, Thirty-three, Thirty-four,
17 Thirty-five and Thirty-six for identification. I test fired
18 State's Exhibit Thirty-seven for identification, this .380
19 semi-automatic pistol and I test-fired it -- let me explain to
20 you that process just real quickly. We use a water tank, a
21 large vertical water tank to test-fire bullets into. The
22 reason we use water, is that it neither takes away from nor
23 adds to any markings that are already on the bullet left there
24 by the gun from which they were fired. In other words, water
25 slows the bullet down very slowly. It trickles to the bottom

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

81

1 of the tank, we recover that and a little old cup with a chain
2 on it. I microscopically compare the tests and I did that in
3 this case from State's Number Thirty-seven for identification,
4 this .380 pistol. I microscopically compared the tests with
5 each other.

6 First of all to determine whether or not they are
7 consistently marked. In other words, did State's Exhibit
8 Thirty-seven for identification mark each test that I fired
9 out in the same fashion microscopically speaking. I
10 determined they were microscopically consistent with each
11 other and then I microscopically compared individually State's
12 Exhibits Thirty-two, Thirty-three and Thirty-four that fired
13 cartridge cases in this case, with my test cartridge cases
14 from State's Exhibit Thirty-seven. And in each case, I found
15 sufficient microscopic agreement to conclude that in my
16 opinion, State's Thirty-two and Thirty-three and Thirty-four
17 for identification, these three cartridge cases submitted by
18 Myrtle Beach, were in fact fired in State's Exhibit Thirty-
19 seven.

20 Further, I examined and compared the fired test bullets
21 that I fired out of State's Exhibit Thirty-seven for
22 identification this .380 pistol and compared those
23 microscopically with State's Exhibits Thirty-five and Thirty-
24 six, the two fired .380 auto caliber bullets in this case.
25 Again I found sufficient microscopic agreement to conclude

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

82

1 that in my opinion, State's exhibit Thirty-five and Thirty-six
2 were fired in State's Exhibit Thirty-seven.

3 BY MR. RICHARDSON:

4 Q: Now I noticed twice there you said sufficient?

5 A: Yes, sir.

6 Q: Tell us what's sufficient.

7 A: Sufficient is, based on my experience and training, they
8 are better than any case that I've looked at or heard of that
9 was not fired in the particular firearm involved.

10 The agreement was so overwhelming that in my opinion, they
11 were fired in that gun and no other gun.

12 Q: Thank you. And after you reached your results of your
13 analysis ---

14 A: Yes, I did.

15 Q: Is it just your word and nobody else's?

16 A: No, sir, we have a hundred percent micro-verification and
17 our laboratory, which is part of our accreditation process,
18 which means that after I microscopically compared all these
19 items. Then, I called a fellow examiner and said, okay, this
20 is what I have to look at, you look at them and give me your
21 opinion. And based on the opinion of my micro-verifying
22 examiner, they agreed with my analysis and we both agreed that
23 these items were fired in State's Exhibit Thirty-seven.

24 Q: And you stated this is a .40 caliber?

25 A: Yes, I did.

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

83

1 Q: Agent Parnell, any way this .40 caliber, State's Thirty-
2 eight, could have fired State's Thirty-two, Thirty-three or
3 Thirty-four?

4 A: No, sir.

5 Q: Why not?

6 A: The chamber, or the area of the barrel in which the
7 unfired cartridge sits prior to firing, is so much larger than
8 the .380 auto that a .380 auto will actually fall down with
9 too far for the firing pin to reach.

10 Q: And how about with regard to Thirty-five and Thirty-six,
11 any way that particular firearm, State's Thirty-eight, .40
12 caliber, fired either one of those projectiles?

13 A: No, sir. The diameter of the bullet is, is much smaller
14 than the .380 auto-caliber bullet as compared to the .40
15 caliber, a .40 Smith and Wesson caliber firearm that's State's
16 Exhibit Thirty-eight. Again the bullet would -- the cartridge
17 will not sit in such a position it could be fired. And in
18 addition to that, the markings left on State's Exhibits
19 Thirty-five and Thirty-six for identification, these fired
20 bullets were consistent with the bullets having been fired in
21 a proper caliber barrel or a .380 auto-caliber barrel.

22 Q: And in case anyone's confused, describe how a bullet
23 works. I don't know if we went over that; I mean the
24 projectile, what part of the bullet is that?

25 A: Projectile is just that. It's a projectile that, that --

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

84

1 a cartridge consists of cartridge case, a primer underneath
2 the bottom side of it, powder inside, and sitting on top of
3 all of it is an unfired bullet, all total making a cartridge.
4 When the primer is struck by the firing pin, it ignites the
5 powder which in turn creates force and pushes the fired bullet
6 out of the barrel creating a projectile.

7 Q: Okay. So these shell casings would have had a projectile
8 in them at some point?

9 A: Yes, sir.

10 Q: And your testimony was that if you would've have tried to
11 put one of these .380 projectiles or bullets in that handgun,
12 it would have fallen down the barrel?

13 A: It would have fallen through the chamber or partially
14 through the chamber and would not have been able to be fired.

15 Q: I just want to make sure we go through this one more time.
16 It is your opinion, someone who's been doing this for forty-
17 some years, this handgun, State's Number Thirty-seven, fired
18 these three shell casings?

19 A: That's correct.

20 Q: And again, it's your opinion that State's Number Thirty-
21 seven fired these two projectiles?

22 A: That's correct.

23 Q: And not that .40 caliber?

24 A: Yes, sir. In fact, I compared State's Exhibit Thirty-
25 seven, this firearm here, with State's Exhibits Thirty-two,

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

85

1 Thirty-three and Thirty-four fired cartridge casings and
2 Thirty-five and Thirty-six fired bullets, identified all those
3 to State's Exhibit Thirty-seven, I didn't even do anything but
4 test-fire State's Exhibit Thirty-eight, just for entry into
5 our IBIS System.

6 Q: And by firing it, it was in working condition?

7 A: It was, yes, sir.

8 Q: After you're done with your analysis of these weapons and
9 projectiles, what was done?

10 A: Excuse me, sir?

11 Q: After you were done with this evidence, what was done?

12 A: I sealed everything back up, initialed it and placed it
13 back into evidence login to be picked up by the submitter.

14 Q: Can you tell this is the same handgun by the serial
15 number?

16 A: It, it in addition to the serial number, it has my
17 individual case numbers, specimen number and initials scribed
18 on it.

19 Q: Everything else is still exactly as it was when it left
20 your desk?

21 A: Except for the gun lock, yes, sir.

22 Q: The gun lock. Yes, sir, on both of them?

23 A: Correct.

24 Q: Question for you, you say you fired a lot of rounds in a
25 water tank, correct?

State v. Chestnut
IRA PARNELL - DIRECT BY RICHARDSON

86

- 1 A: Yes, sir.
- 2 Q: And that's to maintain the pristiness of a projectile?
- 3 A: Yes, sir. It doesn't cause any damage to the bullet; it
- 4 doesn't abrade the bullet in any way. The water slows it down
- 5 gradually.
- 6 Q: Hypothetically, if one were to fire a bullet into asphalt,
- 7 what would happen to that bullet?
- 8 A: It would flatten out due to the hardness of the surface.
- 9 Q: And your opinion of whether or not -- your opinion with
- 10 regard to State's Thirty-five and Thirty-six in regard to --
- 11 when they into the ground?
- 12 A: State's Thirty-five and Thirty-six, these two fired
- 13 bullets both indicate minor nose damage or a slight flattening
- 14 of the nose if they encountered the ground or asphalt or
- 15 anything, in my opinion, it would have been after having gone
- 16 through something else to slow them down.
- 17 Q: Something softer?
- 18 A: Yes, sir, something that didn't, didn't damage their outer
- 19 surface that much. In my opinion, they did not hit asphalt or
- 20 something that hard, initially out of the gun barrel.
- 21 Q: And hypothetically once again, you examined the
- 22 projectiles that passed through human flesh before?
- 23 A: Yes, sir.
- 24 Q: Hypothetically, could those rounds have gone through human
- 25 flesh.

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

87

1 A: Yes, sir.

2 MR. RICHARDSON: Thank you, Your Honor. I have no
3 further questions of Agent Parnell.

4 THE COURT: Cross examination?

5 CROSS EXAMINATION OF AGENT IRA BIRD PARNELL BY MS. PRATT:

6 Q: Agent Parnell, you said you've been doing this for forty-
7 one years?

8 A: Yes, ma'am.

9 Q: And you've tested millions of projectiles against weapons;
10 is that correct?

11 A: It would be very close to a million anyway.

12 Q: Okay.

13 A: Quite a lot.

14 Q: A long, long time.

15 A: Yes, ma'am.

16 Q: And this is all you do day in and day out is to testify
17 and test these kinds of weapons and projectiles; is that
18 correct?

19 A: Basically, yes, ma'am.

20 Q: Okay. I want you to refer to -- I believe you should
21 still have it there, Number Thirty-one, which is the chain of
22 custody; do you have that?

23 A: No, ma'am, I don't.

24 Q: In case you need to refer to it, I just want you to have
25 that. Did you have submitted to you a .9 millimeter, slightly

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

88

- 1 flat with shell casings for testing?
- 2 A: I'm, I'm looking now at my case file here. The ---
- 3 Q: Certainly, that's no problem.
- 4 A: I don't indicate one having been certainly not examined,
5 and I think if it had been submitted, I would have probably
6 examined it, but I don't see where I have received one.
- 7 Q: All right. So you have not received a .9 millimeter
8 flatten shell casing and tested ---
- 9 A: Not to my knowledge, no, ma'am.
- 10 Q: And that's, that's fair. Now in the answer to the
11 Solicitor's hypothetical, you don't know that these bullets,
12 of your own personal knowledge that they went through flesh.
13 That's simply something that you're thinking of in looking at
14 the nose damage, I believe is what you described?
- 15 A: Yes, ma'am, just looking at their current condition. They
16 could have gone through flesh.
- 17 Q: That's okay. That's fair. Now you've examined lots of
18 weapons?
- 19 A: Yes, ma'am.
- 20 Q: And the weapons have been in the context of criminal
21 investigations, correct?
- 22 A: In most cases, yes.
- 23 Q: All right. Are there weapons which are typically used in
24 criminal situations that you have examined that do not eject
25 shell casings.

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

89

1 A: Yes, ma'am.

2 Q: Tell me a little bit about that and tell the jury a little
3 bit about that. What would that -- how would you describe
4 those and can you name some, tell us ---

5 A: All revolvers, a different action type of both State's
6 Thirty-seven and Thirty-eight or what we call pistols or semi-
7 automatic pistols, and their method of operation is a magazine
8 clip, as a lot of you know it, is loaded with cartridges. The
9 magazine or the clip is introduced into the clip, the gun is
10 charged and closed on an unfired cartridge. The trigger is
11 pulled and if the gun's operating properly, we have extracted
12 and ejected cartridge cases such as we have here.

13 Revolvers do not extract or eject cartridges. The
14 cartridge cases must -- must be manually removed by someone.
15 There are a whole different type of action type and they don't
16 extract or eject cartridge cases.

17 Q: All right. And in this particular case, were any
18 revolvers submitted to you?

19 A: No, ma'am.

20 Q: Okay. And so you wouldn't -- would have no personal
21 knowledge as to whether any revolvers might have been involved
22 in this crime, correct?

23 A: I don't have any knowledge of that but I did not receive
24 any evidence consistent with revolvers having been involved.

25 Q: Certainly, I understand that. But you wouldn't -- you

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

90

1 would -- you didn't test any and none were submitted to you is
2 what you're able to say?

3 A: Correct.

4 Q: All right. And out of revolvers, what would be the most
5 common revolver that you've tested in criminal situations,
6 criminal cases?

7 A: .38 usually.

8 Q: Okay.

9 A: Which is a .38 special caliber, a very common caliber.
10 One of the more popular calibers followed closely by a .22.

11 Q: And in say the last year, how many .38's or .22's would
12 you have examined in context of criminal cases?

13 A: Me personally?

14 Q: Yeah.

15 A: Probably twenty to twenty-five.

16 Q: So it's a fairly common weapon to be used?

17 A: Yes, ma'am.

18 Q: And the hallmark, if I understand it, is the difference
19 between a revolver and the -- these types of weapons, which
20 are the semi-automatics?

21 A: Uh-huh (affirmative response). Yes, ma'am.

22 Q: Is that they do not eject any casings, correct?

23 A: That and the bullet construction is generally different.

24 Q: Okay.

25 A: But yes, that's one of the more common differences.

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

91

1 Q: Do you have, do you have -- have you, I should say, let me
2 rephrase that. Have you in the past, come in contact with the
3 PT140 Taurus Millennium?

4 A: I have.

5 Q: Are you pretty familiar with that gun?

6 A: To the extent I've examined probably five or six during
7 the past year and, you know, more than that in past years, but
8 I'm reasonably familiar with them.

9 Q: All right. And you tested this particular weapon and I
10 believe you told the Solicitor it was in working condition; is
11 that right?

12 A: Yes, ma'am.

13 Q: All right. Are you familiar with a defect in the PT 140
14 Millennium?

15 A: In every one of them or just individual ones?

16 Q: Generally?

17 A: No, ma'am.

18 Q: So you are not familiar with a defect that has to do with
19 the safety and whether or not a bullet can still be fired when
20 the thumb safety is on?

21 A: Is this a common recall type of a problem that they've
22 encountered?

23 Q: I would asking you what you know about ---

24 A: I'm not aware of one. So I couldn't speak to something
25 that I'm not aware of, but I mean, I'm not saying that it

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

92

1 couldn't happen. So ---

2 Q: All right. Did you try to fire this weapon, do you
3 remember, with the thumb safety on?

4 A: No, ma'am, I had no fired evidence to compare with State's
5 Exhibit Thirty-eight. So my only concern was with State's
6 Exhibit Thirty-eight was to test-fire it and put test
7 specimens into our bullet data base and to our IBIS system.
8 Past that and noting that I did not find any noticeable
9 defects, I did not do an in-depth comparison or examination of
10 this firearm.

11 Q: All right. Your Honor, at this time, may the Solicitor
12 and I approach on the matter we discussed?

13 THE COURT: Yes, ma'am. Ladies and gentlemen of the
14 jury, I need to discuss a matter outside your presence. If
15 you would please go to the jury room for a few moments,
16 please? Thank you.

17 Everyone else remain seated.

18 (REPORTER'S NOTE: The jury exits the courtroom. 4:47 P.M.
19 The following takes place outside the presence of the jury.)

20 THE COURT: All right, Ms. Pratt, I'll be glad to hear
21 from you, ma'am.

22 MS. PRATT: Thank you, Your Honor. At this time, I would
23 ask that the Court allow the gun lock to be removed from the
24 Taurus 140, which I believe is Exhibit Thirty-eight for the
25 State, for the purposes of examination by this witness and a

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

96

1 tested in such manner such that it is not pointed at anyone.

2 You may proceed, Ms. Pratt.

3 MS. PRATT: Thank you, Your Honor.

4 BY MS. PRATT:

5 Q: Agent Parnell, this particular Taurus that you're looking
6 at that is State's Exhibit, I think, Thirty ---

7 A: Thirty-eight.

8 Q: --- eight. It's designed for a right-handed person, is
9 it not?

10 A: Yes, ma'am, the manipulating leavers and side release and
11 so forth are on the left-hand side of the gun as you're
12 holding it in the firing position, which is more conducive to
13 a right-hand person's thumb reaching it. Yes, ma'am, it's
14 basically set up for a right-handed shooter.

15 Q: All right. And that particular weapon can hold one in the
16 chamber and ten in the magazine; is that right?

17 A: Yes, ma'am.

18 Q: All right. So a fully loaded or fully chambered weapon
19 would have eleven bullets in ---

20 A: Correct.

21 Q: --- that particular weapon?

22 A: Yes, ma'am.

23 Q: The safety on that weapon is a thumb safety; is that
24 right?

25 A: Yes, ma'am.

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

97

1 Q: And what is the purpose of the safety?

2 A: To prevent accidental discharge.

3 Q: All right. That sounds so self-evident, doesn't it,
4 Agent?

5 A: Yes, ma'am.

6 Q: And in this particular weapon, if the safety is, it gets
7 pushed up so that it's at like, what is that, about a twenty-
8 five degree angle or so, pushed up usually by the right thumb;
9 is that right?

10 A: Yes, ma'am.

11 Q: Okay. And if that is pushed up, that weapon should not
12 fire; is that right?

13 A: Yes, ma'am.

14 Q: Now when you pull the trigger there with the safety up,
15 are you able to make it fire?

16 A: No, ma'am.

17 Q: All right. Now would you please take the safety off? Now
18 would you depress the trigger about halfway, the trigger with
19 your finger and put the safety on please? All right. Now
20 would you please pull the trigger? So in this particular
21 weapon, it can fire with the safety on if the safety is put on
22 with the trigger depressed; is that right?

23 A: I can state the obvious here that the, the striker appears
24 to fall and I cannot tell you because I did not test for this
25 whether or not it would cause it to fire, but it did make the

State v. Chestnut
IRA PARNELL - CROSS BY PRATT

98

- 1 firing pin fall from that position..
- 2 Q: And typically, if the firing pin falls and hits the
- 3 cartridge that causes the projectile to eject, it fires the
- 4 weapon, right?
- 5 A: Not in all cases.
- 6 Q: But in the majority of cases?
- 7 A: In some cases and it could be in this case.
- 8 Q: Okay.
- 9 A: I just don't know.
- 10 Q: So it is very possible that this weapon, even if the
- 11 safety is on, if it was put on while the trigger was slightly
- 12 depressed, it could fire, correct?
- 13 A: Apparently so.
- 14 Q: Okay. And you're not familiar with that particular defect
- 15 in the Millennium Taurus PT140?
- 16 A: No, ma'am. I've not read anything or come into contact
- 17 with that information.
- 18 Q: Okay. Now, if it fires like that in that situation, that
- 19 means that the slide is locked forward, correct?
- 20 A: Correct.
- 21 Q: When you are firing?
- 22 A: Uh-huh (affirmative response).
- 23 Q: And if the slide is locked forward, what does that mean as
- 24 far as being able to rack back and eject a casing?
- 25 A: Potentially ---

State v. Chestnut
IRA PARNELL - REDIRECT BY RICHARDSON

99

1 Q: Potentially, I know ---

2 A: Potentially, in that situation, the, the safety might
3 prevent the slide from coming back and, and actually lock the
4 cartridge case in the chamber.

5 Q: So what you're telling me is that, potentially, if the
6 safety is up at the time that the trigger -- well, I should
7 back that up. If the trigger is slightly depressed when the
8 thumb safety goes up and the rack is locked in place already
9 ---

10 A: Yes, ma'am.

11 Q: That if the trigger is depressed, a bullet could fire and
12 a shell casing may not eject?

13 A: That could be the case, yes.

14 Q: Thank you very much. I have nothing further of this
15 witness.

16 THE COURT: Anything in redirect, Solicitor?

17 REDIRECT EXAMINATION OF AGENT IRA BIRD PARNELL BY MR.

18 RICHARDSON:

19 Q: You had to manually manipulate that weapon around a little
20 bit to get it to lock -- to get it in that position?

21 A: Correct.

22 Q: A lot of steps you had to take?

23 A: Correct, yes, sir.

24 Q: Agent, if you could just put that lock back on, please,
25 sir, to make that weapon safe.

State v. Chestnut
IRA PARNELL - RECROSS BY PRATT

100

1 Your Honor, I have no further questions.

2 THE COURT: All right.

3 MS. PRATT: If I may ask one in follow-up?

4 THE COURT: Yes, ma'am.

5 RECROSS EXAMINATION OF AGENT IRA BIRD PARNELL BY MS. PRATT:

6 Q: Agent Parnell, he said a lot of steps; wasn't it actually
7 just two?

8 A: I can only performed one thing at a time here.

9 Q: Sorry.

10 A: Need the lock on.

11 THE COURT: You go ahead and get the lock off first and
12 then you can answer the question.

13 Q: And that's certainly more important. I understand that.

14 A: Let me answer the question and then I'll get that worked
15 on. Yes, there were a minimum of two steps; pulling the
16 trigger back after -- assuming the gun was loaded, pulling the
17 trigger slightly back, engaging the safety and pulling the
18 trigger back again, which would be actually three steps.

19 Q: Three steps. Not a lot, correct, but three?

20 A: Three.

21 Q: Thank you.

22 THE COURT: Anything else?

23 MR. RICHARDSON: No, sir, Your Honor.

24 THE COURT: Go ahead and work on putting the lock back on
25 there. Thank you.

State v. Chestnut
IRA PARNELL - RECROSS BY PRATT

101

1 Are you gonna want to have this witness excused?

2 MR. RICHARDSON: I do, Your Honor.

3 THE COURT: Any objection to that?

4 MS. PRATT: None at all, Your Honor. Thank you.

5 THE COURT: After you get the lock on, you're excused.

6 A: Thank you, sir.

7 THE COURT: All right.

8 MR. RICHARDSON: Thank you, sir. Thank you, Agent.

9 THE COURT: Thank you, sir. You are excused to go back
10 to your regular activities.

11 A: Thank you, Judge.

12 THE COURT: Yes, sir.

13 MR. RICHARDSON: Special Agent Ila Simmons, please,
14 sir.

15 THE COURT: Please meet the Clerk there first?

16 CLERK: Please raise your hand and put your left hand on
17 the Bible?

18 AGENT ILA SIMMONS, HAVING BEEN

19 SWORN TESTIFIES AS FOLLOWS:

20 CLERK: State your full name and spell your last name?

21 MS. SIMMINS: My name is Ila Simmons. My last name is
22 spelled S-I-M-M-O-N-S.

23 THE COURT: Could you spell your first name please,
24 ma'am?

25 MS. SIMMONS: I-L-A.

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

102

1 THE COURT: Thank you, ma'am. You may proceed,
2 Solicitor.

3 MR. RICHARDSON: Thank you, Your Honor.

4 DIRECT EXAMINATION OF AGENT ILA SIMMONS BY MR. RICHARDSON:

5 Q: Agent Simmons, for the record, can you tell us where
6 you're employed, for how long and in what capacity?

7 A: I'm employed with the South Carolina Law Enforcement
8 Division. I've been there for fourteen years. I work in the
9 Trace Evidence Department, which is the forensic services
10 laboratory and I work as a forensic scientist there.

11 Q: And as a forensic scientist in the Trace Department for
12 the State Law Enforcement Division, what type of duties do you
13 regularly perform?

14 A: We analyze gunshot residue, gunpowder residues, we perform
15 comparisons of fibers, paints and glass as well as analyzing
16 fire debris from possible arson scenes.

17 Q: Agent Simmons, you just discussed gunpowder and gunshot
18 residue analysis. Could you tell us about the field of
19 gunshot residue analysis?

20 A: Yes, sir. Gunshot residue is a mixture of microscopic
21 particles that come out of the gun when it's discharged. If
22 you've seen any old west movies, there's a big puff of smoke
23 inside of the gun, the gunshot residue is mixed up in that.
24 You can't see it with your naked eye but it can get on
25 anything in close proximity to that gun when it's discharged

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

103

1 including the hands of the person holding the gun or the
2 clothing that that person is wearing.

3 Q: Okay. So there's a puff now but -- we have smokeless
4 powder now so it's just a puff.

5 A: Yes, sir. There's not as much smoke.

6 Q: Now in GSR, gunshot residue analysis, is there any
7 particular or specialized equipment you use?

8 A: Yes, sir, we do.

9 Q: What is that?

10 A: We analyze gunshot residue using a scanning electron
11 microscope, which can see down hundredths of thousandths of
12 times farther than the human eye can see. Basically, what we
13 look for, you can fit about a hundred of them across a human
14 hair; that's how small they are. But this microscope can see
15 them without any problem. The microscope will also tell us
16 what chemical elements are present in each particle. And with
17 gunshot residue, it's specific because it has lead, barium and
18 antimony in a round particle. When you find that, it is
19 consistent with being from a gun and from nothing else. It
20 has never been found in nature or manmade in any other
21 capacity in these round droplets other than from a gun.

22 Q: Now could you tell us a little bit about your education
23 and training with regard to gunshot residue analysis?

24 A: Yes, sir. I have a Bachelors of Science Degree in
25 Chemistry. Once I completed that and came to work with SLED,

State v. Chestnut

104

ILA SIMMONS - DIRECT BY RICHARDSON

1 the first three years there, I worked with a court qualified
2 SLED certified Trace Evidence Examiner. I had to take written
3 and practical examinations and pass them all with one hundred
4 percent efficiency. Each year I have to take another
5 examination to remain proficient in every area of trace
6 evidence. I am also a member of the FBI's gunshot residue
7 symposium, where every five years the FBI invites us to come
8 to Quantico to discuss the standards and practices that
9 everyone else will be using to analyze gunshot residue around
10 the world.

11 Q: And how long have you been doing gunshot residue analysis?

12 A: For the fourteen years I've been at SLED.

13 Q: Now have you been previously been admitted to testifying
14 and give your opinion testimony with regard to gunshot residue
15 analysis?

16 A: Yes, sir, I have.

17 Q: How many times?

18 A: Over two hundred times.

19 Q: Over two hundred times?

20 Your Honor, at this time, the State would seek to
21 introduce Agent Simmons as an expert in the field of gunshot
22 residue analysis and gunpowder residue analysis to allow her
23 to give her opinion testimony?

24 THE COURT: All right. Do you wish to voir dire the
25 witness as to her qualifications or challenge the offer by the

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

105

1 State?

2 MS. PRATT: No, Your Honor, we would find this witness
3 qualified.

4 THE COURT: All right. I will qualify her to give her
5 opinion. You may proceed.

6 BY MR. RICHARDSON:

7 Q: Agent Simmons, we just heard just a little while ago, but
8 could you just summarize how SLED gets evidence in for
9 analysis and how that occurs?

10 A: Yes, sir. An agency will collect the evidence and bring
11 it in to SLED. When they bring it into our laboratory, it
12 comes into our central login area, where we have the evidence
13 login technicians and that's all they do is take the evidence
14 in. At that time, the agency that's submitting it, the
15 officer from that agency, will seal the evidence with tamper
16 resistant tape. It's not like just regular Scotch tape. It's
17 taped that if anyone were to mess with it, it would be plainly
18 evident and everyone could tell it had been tampered with.
19 Once they have submitted that, it's given a unique
20 identification number that starts with L and has the two digit
21 year. So in this case it would be an L12 because it was 2012
22 and then the chronological number as how it came in that year
23 and each piece of evidence in that case is given an item
24 number. They're each given a barcode so that it follows --
25 they can follow it in our computer system throughout the

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

106

1 entire time that it's in our laboratory. I would scan my
2 barcode, scan the evidence and it would be in my custody in
3 the computer and we keep up with it all the way down the line.

4 Q: And prior to it getting to you for analysis, you said
5 there's some tamper resistant or tamper evident tape?

6 A: Yes, sir.

7 Q: What happens if it hits your desk and that tape is broken
8 or just not there?

9 A: We would not analyze it. We would call our evidence login
10 technician and find out what was going on with it and why it
11 wasn't there and depending upon the circumstances, it may not
12 be analyzed at all.

13 Q: I'm gonna show you what's been previously marked for
14 identification purposes as State's Number Thirty-one. See if
15 you recognize State's Thirty-one?

16 A: Yes, sir.

17 Q: And what do you recognize State's Thirty-one to be?

18 A: This is a certified chain of custody. This is our computer
19 system logs in every time an evidence changes custody and this
20 is a printout that is distributed to the Solicitor's Office
21 upon their request by our laboratory.

22 Q: And so this follows each piece of evidence by barcode?

23 A: Yes, sir.

24 Q: So we can tell who touched this evidence prior to it
25 getting to your desk?

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

107

- 1 A: Yes, sir.
- 2 Q: And in the present case, did you receive items from the
- 3 Myrtle Beach Police Department?
- 4 A: Yes, sir, we did.
- 5 Q: And specifically did you receive items from the Myrtle
- 6 Beach Police Department?
- 7 A: Yes, sir.
- 8 Q: And can you tell us what those items were?
- 9 A: Yes, sir. I received a black-and-white striped hooded
- 10 jacket. I also received a blue t-shirt, two gunshot residue
- 11 collection kits, a pair of jeans and a red hooded jacket.
- 12 Q: Now those items, can you tell when those items, did they
- 13 all come in at once or piecemeal?
- 14 A: They came in separate containers but I received them into
- 15 my custody all at the same time.
- 16 Q: How about SLED; did SLED get them all?
- 17 A: Yes, sir.
- 18 Q: And what was the date which SLED received all the items?
- 19 A: That would have been March 28th of 2012.
- 20 Q: And prior to your receiving them -- when did you receive
- 21 them?
- 22 A: I received them on March 30th of 2012.
- 23 Q: Okay. How would they have been stored prior to that?
- 24 A: They would have been stored in our evidence intake area
- 25 for trace. The only -- it is a locked room. The only people

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

108

1 that have a key to it would be our evidence login technicians
2 and the Major who is over our entire laboratory, the head of
3 our lab.

4 Q: And when you received these items, you stated that they
5 were sealed still?

6 A: Yes, sir, they were.

7 Q: If I can have these items marked; one, two, three, four,
8 five, six and seven.

9 STATE'S EXHIBIT NUMBER THIRTY-NINE, FORTY, FORTY-ONE

10 FORTY-TWO AND FORTY-THREE MARKED FOR IDENTIFICATION

11 Q: Agent Simmons, I'm gonna show you what's been previously
12 marked as State's Forty-three and Forty-one, see if you
13 recognize those items and tell us how you recognize them if
14 you do?

15 A: Yes, sir, I do. They are marked with my unique
16 identification from our laboratory. The item number, my
17 initials and the date they were opened to begin my analysis.
18 Both of them, both Exhibit Forty-one and Forty-three are
19 marked.

20 Q: So these would be items that you analyzed, correct?

21 A: Yes, sir.

22 Q: The same questions with regard to Thirty-nine and Forty?

23 A: Yes, sir. State's Exhibit Thirty-nine is also marked with
24 my laboratory identification number. The evidence item
25 number, my initials and the date that it was opened for

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

109

1 analysis. And State's Exhibit Forty is also marked with the
2 identification number and my initials and the date that it was
3 opened for analysis.

4 Q: And finally Forty-two?

5 A: Sir, State's Exhibit Forty-two also has my unique
6 identification number, the container number and my initials.

7 Q: Okay. Now that we've identified, Your Honor, subject to
8 completion of the chain, the State would seek to introduce
9 these?

10 THE COURT: Any objection?

11 MS. PRATT: Subject to the completion of the chain, Your
12 Honor, obviously.

13 THE COURT: They'll remain for identification then ---

14 MS. PRATT: Thank you.

15 THE COURT: --- at this point in time. Thank you.

16 BY MR. RICHARDSON:

17 Q: Well, let's talk about these items. Now these items you
18 actually analyzed, correct?

19 A: Yes, sir.

20 Q: And I present you with a knife because I know you said it
21 was tamper resistant tape; I'm hoping that knife will cut
22 through them?

23 A: It will.

24 Q: Let's talk about, first, did you receive a black-and-white
25 jacket?

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

110

1 A: Yes, sir, I did.

2 Q: And which one is that?

3 A: That is going to be this. That would be State's Exhibit
4 Thirty-nine.

5 Q: State's Exhibit Thirty-nine and I believe that it has
6 another small bag right here?

7 A: Uh-huh (affirmative response). That is gonna be -- and
8 that will be another item. That would be a t-shirt that we
9 also received.

10 Q: And you can tell both of those particular items by those
11 particular numbers ---

12 A: Yes, sir. The barcodes that I have placed on them and my
13 initials and the dates.

14 Q: Could you open State's Thirty-nine and ---

15 A: Forty-one ---

16 MS. PRATT: Your Honor, I'm gonna object to those being
17 opened. That's equivalent to publishing to the jury.

18 THE COURT: I'm going to -- because of the problems the
19 South Carolina Law Enforcement Division officers are
20 encountering with being in court elsewhere in the State
21 tomorrow, the Court required the Solicitor to call them out of
22 -- out of turn, so to speak. Because of that, I am going to
23 allow the testimony to proceed and the witness to be able to
24 open them up and examine them subject to the chain being
25 properly connected later. Obviously, if for some reason the

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

111

1 Court does not allow them into evidence, a proper instruction
2 will be made to the jury at that point in time, but assuming,
3 based on the State's projected witnesses that that won't
4 become necessary. However, mindful of that problem, I'm going
5 to allow it to be opened and examined by the witness at this
6 time. Thank you very much.

7 MR. RICHARDSON: Thank you, Your Honor.

8 BY MR. RICHARDSON:

9 Q: Agent Simmons, if you could open those. Please be
10 careful.

11 A: Yes, sir. Would you like me to remove them from the bag?

12 Q: Well, let's go ahead and open all of them.

13 A: Okay.

14 Q: Let's do this all of them up. Let's do this all at one
15 time so we can hopefully expedite this. And the same with
16 regard to State's Forty-three and Forty, please, Forty-two.

17 A: All right. They're open but they're still in the white
18 paper that I packaged them in.

19 Q: All right. With regard to these items, did you perform
20 any type of analysis?

21 A: Yes, sir, I did.

22 Q: And what type of analysis was that?

23 A: I analyzed them for the presence of gunshot residue.

24 Q: Let's go through each one individually?

25 A: Okay. All right.

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

112

1 MR. RICHARDSON: Your Honor, if I may approach the
2 witness?

3 THE COURT: Yes, sir.

4 BY MR. RICHARDSON:

5 Q: State's Thirty-nine, what did you say was in State's
6 Thirty-nine?

7 A: It is going to be a black-and-white hooded type jacket.
8 And it's in the paper that I wrapped it in. This doesn't have
9 the tamper-resistant tape on it, I---

10 Q: How would you have conducted an analysis on this jacket?

11 A: I would have taken a small double-sided sticky tape on a
12 handle and dabbed it across the sleeves of the garment.

13 Q: And upon doing that, what did you do?

14 A: I would have then placed the double-sided sticky tape on
15 the scanning electron microscope and allowed it to analyze for
16 elements that contained lead, barium and antimony.

17 STATE'S EXHIBIT NUMBER FORTY-FIVE

18 MARKED FOR IDENTIFICATION

19 Q: Let me show you State's Forty-five. Tell me if you
20 recognize that?

21 A: Yes, sir, this would have been the double-sided sticky
22 tape with the handles that came from this item; the black-and-
23 white striped jacket as well as the blue t-shirt.

24 Q: Your results with regard to the -- so you used those
25 little dots there in the State's Forty-five?

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

113

- 1 A: Yes, sir, they're called particle lifts.
- 2 Q: They're called what?
- 3 A: Particle lifts.
- 4 Q: Particle lifts. Okay. You used those particle lifts and
- 5 you just basically stuck it to there and pulled it back out?
- 6 A: Yes, sir.
- 7 Q: And then you examined that under an electron microscope?
- 8 A: Yes, sir.
- 9 Q: Upon doing that, what did you find?
- 10 A: I found that gunshot residue was present on the black-and-
- 11 white jacket.
- 12 Q: Could you tell us to what degree you found gunshot residue
- 13 on that black-and-white jacket?
- 14 A: I found it on both sleeves of the jacket.
- 15 Q: Both sleeves, right and left?
- 16 A: Yes, sir.
- 17 Q: And no doubt about it, it was gunshot residue?
- 18 A: Yes, sir. It's a round component -- round particle
- 19 containing three components; lead, barium and antimony, which
- 20 is specific to gunshot residue.
- 21 Q: Let's go on to that blue t-shirt. That's State's ---
- 22 A: State's Exhibit Forty-one.
- 23 Q: And did you analyze State's Forty-one?
- 24 A: Yes, sir, for the presence of gunshot residue, I did.
- 25 Q: Same procedure used this time, particle lifts again?

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

114

1 A: Yes, sir.

2 Q: And after that you examined them under the microscope?

3 A: Yes, sir.

4 Q: What were your results regarding State's Forty-one?

5 A: I found particles containing lead, barium and antimony,
6 but they were non-round, but they had all three elements.

7 Generally gunshot residue is a round particle, but it has the
8 consistency of flour, so if you were to touch you could break
9 down the fact that it's round; it would no longer be round
10 anymore. So a particle containing all three elements that is
11 not round, it's also consistent with gunshot residue. It can
12 be associated with it.

13 Q: So hypothetically if the jacket is pressing up against the
14 t-shirt that can kind of flatten it out some?

15 A: Yes, sir, it can.

16 Q: And if a jacket is over a t-shirt, would you expect more
17 gunshot residue on the jacket or the t-shirt?

18 A: On the jacket.

19 Q: On the jacket. Let's move on to I believe there was a
20 red-and-grey sweater?

21 A: Yes, sir.

22 THE COURT: How about before we go on to something, why
23 don't you put the one, the bags back in the first bag?

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

25 BY MR. RICHARDSON:

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

115

1 Q: State's Forty-one was the t-shirt?

2 A: Thirty-nine was.

3 Q: Thirty-nine was.

4 A: Thirty-nine was the sweatshirt. Yes, that's the t-shirt,
5 correct.

6 THE COURT: So you're putting the blue t-shirt in Forty-
7 one?

8 A: Yes, sir, Forty-one.

9 MR. RICHARDSON: In Forty-one, yes, sir, Your Honor.

10 THE COURT: All right. Very good.

11 MR. RICHARDSON: Thank you, Your Honor.

12 THE COURT: All right.

13 BY MR. RICHARDSON:

14 Q: And the black-and-white jacket is going into Thirty-nine?

15 A: Yes, sir.

16 Q: And I'll put these particle lists along with that.

17 A: Now State's Exhibit Forty is a red-and-grey hooded jacket.

18 Q: An analysis was conducted on this?

19 A: Yes, sir, it was; the same type of analysis.

20 Q: Same type of analysis?

21 A: Yes, sir.

22 STATE'S EXHIBIT NUMBER FORTY-FOUR

23 MARKED FOR IDENTIFICATION

24 Q: Let me see. I have this marked as State's Forty-four, do
25 you recognize Forty-four?

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

116

- 1 A: Yes, sir, these are the particle lifts taken from this
2 jacket as well as the jeans that haven't been opened yet.
3 Q: And let's go ahead and put State's ---
4 A: State's Forty.
5 Q: State's Forty, the red-and-grey sweatshirt, that's what we
6 called it, red-and-grey sweatshirt, you've already identified
7 this State's Forty-Two?
8 A: Forty-three.
9 Q: Forty-three, that's got some jeans in it, correct?
10 A: Yes, sir.
11 Q: And you just looked through some jeans in there?
12 A: That's what we -- yes, these are the jeans and the belt.
13 Q: Those are the jeans you analyzed?
14 A: Yes, sir.
15 Q: And jeans you have these particle lists from?
16 A: Yes, sir.
17 Q: Now in your analysis of the red-and-grey sweatshirt,
18 State's Forty, what were your findings?
19 A: I found one round lead particle on that particular
20 sweatshirt.
21 Q: One round lead particle on the whole sweatshirt?
22 A: Yes, sir.
23 Q: And could you tell us anything about with regard to what
24 that is consistent with?
25 A: It's most consistent with the particle being transferred

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

117

- 1 onto the garment from some other source.
- 2 Q: So it would be inconsistent with firing a firearm?
- 3 A: It would be inconsistent with being in close proximity to
- 4 a firearm when it was discharged, yes.
- 5 Q: Okay. So your -- your testimony would be that, that he
- 6 should have more gunshot residue on it if it was in close
- 7 proximity to firing a firearm?
- 8 A: Yes, sir.
- 9 Q: And if a firearm is fired above, what happens to the
- 10 gunshot residue?
- 11 A: It will fall down; the gravity will pull it down.
- 12 Q: So you'd find some round particles on it, on the clothing?
- 13 A: You would expect to.
- 14 Q: How about on the jeans; did you find anything?
- 15 A: No, sir. No gunshot residue was found on the jeans of any
- 16 kind.
- 17 Q: All right. And finally State's ---
- 18 A: Forty-two.
- 19 Q: Forty-two. Can you tell us what's in State's Forty-two?
- 20 A: Yes, sir, these are two gunshot residue collection kits.
- 21 Gunshot residue can also be collected from hands of the person
- 22 suspected to be in the vicinity of a gun when it was
- 23 discharged and they were being labeled as being collected from
- 24 Jamal McFadden and a Damien Canty.
- 25 Q: Did you analyze these?

State v. Chestnut
ILA SIMMONS - DIRECT BY RICHARDSON

118

- 1 A: Yes, sir.
- 2 Q: Now, have you conducted a gunshot residue kit on someone
- 3 before?
- 4 A: Yes, sir, I have.
- 5 Q: How is that done?
- 6 A: It is a two-part kit that has the same double-sided sticky
- 7 tape that I had used on the garments. It's dabbed across the
- 8 hands and then swabs are also swabbed across the hands and
- 9 both parts are analyzed.
- 10 Q: And so you analyzed it?
- 11 A: Yes, sir.
- 12 Q: And you're looking for the same thing?
- 13 A: Yes, sir.
- 14 Q: What were your findings with regards to those gunshot
- 15 residue kits?
- 16 A: The quantities of metals that I found did not indicate the
- 17 presence of gunshot residue on either kit.
- 18 Q: And in layman's terms, what does that mean?
- 19 A: That would mean that most likely they were not in close
- 20 proximity to a gun when it was discharged or the gunshot
- 21 residue was removed in some way before the kits were
- 22 collected.
- 23 Q: So it would be more likely than not, they didn't fire a
- 24 firearm?
- 25 A: That's -- yes, sir, that's a possibility or that it was

State v. Chestnut
ILA SIMMONS - CROSS BY PRATT

119

1 removed.

2 Q: Well, if I understand you -- hypothetically, one round of
3 that particle on the sweater, could that be from someone
4 handling a firearm?

5 A: Yes, sir, that's possible.

6 Q: But one and only one particle is inconsistent with that
7 person or persons who wore this clothing having fired a
8 firearm?

9 A: Yes, sir, unless the garment was washed in between the
10 time I received it and it didn't appear to be.

11 Q: And your testimony is that black-and-white striped sweater
12 is covered with gunshot residue?

13 A: Yes, both sleeves had gunshot residue.

14 Q: Both sleeves?

15 A: Yes, sir.

16 MR. RICHARDSON: Your Honor, that is it, subject to the
17 chain again.

18 THE COURT: All right.

19 MR. RICHARDSON: No further questions?

20 THE COURT: All right. Cross examination.

21 MS. PRATT: Thank you, Your Honor.

22 CROSS EXAMINATION OF AGENT ILA SIMMONS BY MS. PRATT:

23 Q: Agent Simmons, did you test any other clothes, clothing
24 either than the items that have been entered into evidence?

25 A: No, ma'am.

State v. Chestnut
ILA SIMMONS - CROSS BY PRATT

120

1 Q: If you were to look at item Thirty-one, which is the
2 certified chain, you would know that you, you would be able to
3 say you did not test any other clothing; is that right?

4 A: Yes, ma'am, I did not test any other clothes.

5 Q: So, if I show you an item marked group Thirty-three, item
6 one, can you tell me if you tested this item without opening
7 it?

8 A: No, ma'am; it is not marked with my identification. I did
9 not test that.

10 Q: It's certainly something that Myrtle Beach P.D. ---

11 A: Collected.

12 Q: --- collected? But it wasn't sent to SLED, was it?

13 A: I did not analyze it.

14 Q: Okay. And I'm going to show you an item that says group
15 Thirty-two, item one, and ask if you analyzed that?

16 A: No, ma'am; I did not.

17 Q: And it's also something that Myrtle Beach Police
18 Department collected?

19 A: Yes, ma'am.

20 Q: But it was not sent to SLED, correct?

21 A: Yes, ma'am.

22 DEFENDANT'S EXHIBIT NUMBER ONE

23 MARKED FOR IDENTIFICATION

24 Q: Okay. Now, I'm gonna show you a photo of the jacket,
25 which is marked Defense Exhibit One for identification and ask

State v. Chestnut
ILA SIMMONS - CROSS BY PRATT

121

- 1 if you examined anything that looked like that in this case?
- 2 A: No, ma'am, I did not.
- 3 Q: You did not?
- 4 A: No, ma'am.
- 5 Q: All right. Now how do you get GSR off clothing?
- 6 A: We take double-sided tape ---
- 7 Q: Oh, I don't mean you. I mean, if I had -- let's say I
- 8 just fired a weapon; how do I get it off of my coat?
- 9 A: You can wash it.
- 10 Q: I can wash it?
- 11 A: Yes, ma'am.
- 12 Q: Can I brush it?
- 13 A: You can brush some of it off, but because of the fibers,
- 14 generally it needs to be laundered in some way to remove it.
- 15 Q: All right. So, I can't take a clothes brush and take most
- 16 of the GSR off or some of it off?
- 17 A: If something were sticky, if you were using something like
- 18 you use to remove hair from clothing, it could possibly take
- 19 gunshot residue off.
- 20 Q: So, if I had a sticky buddy that I used to get my cat hair
- 21 off of my furniture, that would take GSR off?
- 22 A: Yes, ma'am, it can.
- 23 Q: And masking tape?
- 24 A: Yes.
- 25 Q: And whatever kind of packing tape, that would also take

State v. Chestnut
ILA SIMMONS - CROSS BY PRATT

122

1 GSR off?

2 A: It would.

3 Q: All right. So the fact that you tested these items and
4 didn't find GSR on them does not mean that at some point in
5 time there wasn't GSR on them, correct?

6 A: That's correct. At the time that I collected the samples,
7 there was none on there.

8 Q: And when did you get the samples and test them?

9 A: I received them on the 30th of March of last year.

10 Q: Okay. So shortly after the incident?

11 A: Yes.

12 Q: Okay. But you don't know whether any of the items were
13 collected immediately, collected a week later, collected just
14 before you received them; do you?

15 A: No, ma'am.

16 Q: Okay. All right. Did you test a black-and-white jacket
17 that had white sleeves?

18 A: No, ma'am; the only items I tested were the ones that were
19 shown up here.

20 MS. PRATT: That would be all I have for this witness.

21 THE COURT: All right. Any redirect?

22 MR. RICHARDSON: No, sir, Your Honor.

23 THE COURT: All right. Do you wish the witness to be
24 excused?

25 MR. RICHARDSON: I do, Your Honor.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

127

1 Jr.

2 THE COURT: All right. Please come around and meet the
3 Clerk right here at the corner, please, sir.

4 JOHN WAYNE FEASTER, JR., HAVING
5 BEEN SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Speak into the microphone and state your full
7 name and spell your last name?

8 MR. FEASTER: John Feaster, Jr. Last name is F-E-A-S-T-
9 E-R.

10 DIRECT EXAMINATION OF JOHN WAYNE FEASTER, JR. BY MR.

11 RICHARDSON:

12 Q: Good morning, Mr. Feaster, how you doing today?

13 A: I'm all right.

14 Q: And you said your name was John Feaster, Jr.?

15 A: Right.

16 Q: Do you more commonly -- are you more commonly known as
17 another name?

18 A: Wayne.

19 Q: Wayne. And if you could, if you'll introduce yourself to
20 the jury; tell them where you're from; what your line of work
21 is, that, that sort of thing?

22 A: Born and raised in Myrtle Beach. I run a nightclub, 3rd
23 Avenue; I own a nightclub on Third Avenue, Myrtle Beach.

24 Q: And that's the 3rd Avenue Sports Bar?

25 A: Yes.

State v. Chestnut

128

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

- 1 Q: And I know this seems like a very simple question, but the
2 3rd Avenue Sports Bar, what county is it?
3 A: Horry.
4 Q: Your bar at 3rd Avenue Sports or -- your bar, the 3rd
5 Sports Bar, what type of establishment is it; you said it's a
6 nightclub?
7 A: Yes.
8 Q: Tell us a little bit about what kind of business it is?
9 A: A night club/sports bar.
10 Q: So you serve drinks?
11 A: Yes.
12 Q: Food?
13 A: Yes.
14 Q: How long have you owned that bar?
15 A: Three years.
16 Q: Three years. So you owned it last year in March of 2012?
17 A: Yes.
18 Q: And could you tell us where it's located?
19 A: Third Avenue, Suite 1102.
20 Q: Third Avenue South?
21 A: Yes.
22 Q: So you stated you owned it back in March 2012; so you were
23 the owner on March 5th through the morning hours of March 6th,
24 2012?
25 A: Yes.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

129

1 Q: That night in particular, March 5th leading into the
2 morning of March 6th, 2012, tell us if that sticks out in your
3 mind for any particular reason?

4 A: Yes, we had a murder in the parking lot.

5 Q: You had a murder, a shooting?

6 A: Yes.

7 Q: So that's pretty stuck in your memory. Do you recall the
8 events of that night?

9 A: Yes.

10 Q: And prior to the shooting that night -- let's go back to
11 that day, March 5th, that was a Monday, correct?

12 A: Right.

13 Q: Could you tell us what time did you open that day?

14 A: I don't remember we opened. We usually open at 12:00 at
15 noon.

16 Q: 12:00 in the afternoon?

17 A: Yes.

18 Q: And you just stay on through the evening?

19 A: Yes.

20 Q: And that night, Monday, March 5th, 2012, was there any
21 special occasion that night?

22 A: Yeah, that's the night we have Jamaica Night; that's how I
23 remember it was Jamaica Night.

24 Q: Well, tell us a little bit about what Jamaica Night is?

25 A: It's a lot of people come for Jamaica, just we celebrate

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

130

- 1 the culture and stuff that night.
- 2 Q: So you play like Reggae music?
- 3 A: Yes.
- 4 Q: Now the crowd, do you get the typical crowd at your bar?
- 5 A: Yes.
- 6 Q: Is it more, could you describe it more as a local's place,
- 7 a tourist attraction?
- 8 A: More of a local place, but that night all the Jamaicans
- 9 used to come out that Monday night and just gather round when
- 10 they here in the summertime.
- 11 Q: Okay. And these Jamaicans, where were they living?
- 12 A: Excuse me?
- 13 Q: The Jamaicans, were they living here?
- 14 A: No, they're from Jamaica, but they come down here and
- 15 every summer year.
- 16 Q: Now you stated that you get a lot of locals in your club?
- 17 A: Oh yeah, but not that night though, but you know, they do
- 18 comes you know different nights.
- 19 Q: And these locals that show up, how familiar are you with
- 20 them?
- 21 A: I'm familiar with them.
- 22 Q: You know their names?
- 23 A: Yeah.
- 24 Q: The crowd that was in there that night, did you recognize
- 25 any of them?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

131

1 A: Yes.

2 Q: In the course of the evening of March 5th, 2012, leading
3 into that morning. At any point, could you describe any type
4 of altercation that was inside the club?

5 A: Yeah, there was an argument about a pool game on the pool
6 table, a pool game or something.

7 Q: And you said that they was arguing about something over
8 the pool table?

9 A: Right.

10 Q: Who do you mean by they?

11 A: Myrtle Beach crowd against Hemingway crowd.

12 Q: Myrtle Beach crowd and the Hemingway crowd?

13 A: Yes.

14 Q: Hemingway is over in Williamsburg?

15 A: Correct.

16 Q: Right. So they weren't -- you had young men that were
17 from Myrtle Beach?

18 A: Right.

19 Q: Born and raised Myrtle Beach fellows?

20 A: Right.

21 Q: And they were playing pool against some fellows from
22 Williamsburg and Hemingway?

23 A: Right.

24 Q: And you say there was an altercation around the pool
25 table. Could you describe for us how that transpired; just

State v. Chestnut

132

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

1 take us through it; help us understand what went on?

2 A: Well I seen them over arguing at a pool table and then
3 they start fighting, pushing and stuff. I went over there and
4 escorted them outside.

5 Q: And so you escorted them outside?

6 A: Yeah, me and one ---

7 Q: Okay. You got to go.

8 A: Yeah.

9 Q: You didn't want any trouble inside the club?

10 MS. PRATT: Objection; leading, Your Honor.

11 THE COURT: Please let the witness tell the story. Thank
12 you.

13 MR. RICHARDSON: Yes, sir.

14 BY MR. RICHARDSON:

15 Q: Why did you escort them out the club?

16 A: Because they was arguing.

17 Q: Tell us about the security at your bar; what type of
18 security do you have?

19 A: I got three or four bouncers cause -- we usually have
20 armed security at night, but Jamaica Night wasn't doing too
21 good at the time, we ain't usually have that type of crowd and
22 I had me three bouncers there that night.

23 Q: Describe any measures you take to, to keep weapons out of
24 the bar?

25 A: Everybody is searched coming in.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

133

- 1 Q: So everybody that comes in there is searched?
- 2 A: Everybody come in be searched.
- 3 Q: Now how are they searched?
- 4 A: Hand searched, patdown.
- 5 Q: Patdown?
- 6 A: Yes and we got a wand, too.
- 7 Q: Okay. So everybody that comes in the club is patted down.
- 8 Do you do anything to record the club?
- 9 A: Yes.
- 10 Q: How's that accomplished?
- 11 A: Videos, video cameras.
- 12 Q: How many video cameras do you have?
- 13 A: Twelve.
- 14 Q: And how are they activated?
- 15 A: The monitor in my office, I can see everything out of my
- 16 office and record.
- 17 Q: 24/7?
- 18 A: 24/7.
- 19 Q: And this video recording, is it by VCR machine or
- 20 computer?
- 21 A: Hard drive.
- 22 Q: A hard drive?
- 23 A: Yes.
- 24 Q: You said you had twelve cameras back in March?
- 25 A: Yes, sir.

State v. Chestnut

134

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

- 1 Q: And they're continuously recording?
- 2 A: Yes, sir.
- 3 Q: And they're stored on your hard drive?
- 4 A: Yeah.
- 5 Q: Now after this altercation occurs inside the club and you
- 6 escort the people out ---
- 7 A: Right.
- 8 Q: --- do you remember about the time of the night or morning
- 9 that was?
- 10 A: Not exactly but it was after 12 o'clock.
- 11 Q: After 12 o'clock. And your recordings do they record the
- 12 date, the time or anything?
- 13 A: Date and the time.
- 14 Q: And to your knowledge, how accurate is that date and time?
- 15 A: I don't know about the date, but the time off; I know the
- 16 time off.
- 17 Q: By how much?
- 18 A: Probably about an hour.
- 19 Q: Maybe an hour or so?
- 20 A: Yeah.
- 21 Q: Okay. But if we see the times off on one camera, is just
- 22 off of one camera?
- 23 A: No, sir, it's off on all of them because when the time
- 24 changes, I haven't -- I didn't go back and change the time
- 25 when it changed at the time of the year.

State v. Chestnut

135

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

1 Q: But the same, for instance, you had the same twelve
2 cameras. If you had footage from one camera, Camera 1 and
3 Camera 12, do they have different times on them?

4 A: No, sir. They all have the same time.

5 Q: Now when you escorted everybody outside the club, do you
6 remember anything else that happened?

7 A: Yep, one dude hit Dewayne with a bottle.

8 Q: And Dewayne, does he have any other name?

9 A: Thoro.

10 Q: Okay. Thoro or Dewayne, was he involved in the
11 altercation inside?

12 A: Yes, sir.

13 Q: And the altercation inside, was it one-sided, mutual or
14 what?

15 A: Excuse me?

16 Q: Did it seem like -- I'll move on. I'll move on. Now once
17 Dewayne gets hit outside or Thoro ---

18 A: Right.

19 Q: What, if anything, happens?

20 A: Everybody start fighting. I seen a gun go up in the air.

21 Q: And that gun you saw go up in the air, could you describe
22 that?

23 A: It was a silver-and-black gun.

24 Q: Okay. When that gun goes up in the air, do you hear
25 anything?

State v. Chestnut

136

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

- 1 A: I thought I did, but after I watched the camera again, I
2 must haven't, but I thought I did hear a gunshot. At the time
3 I give the police report and said I did.
- 4 Q: Did you see any flame or anything come out of that gun?
- 5 A: No, huh-uh (negative response).
- 6 Q: Okay.
- 7 A: I thought I did at the time, but I watched the film over
8 and over and over again.
- 9 Q: Now the video, you said your video system was recording,
10 you said -- was anybody injured during this fight?
- 11 A: Yes, two people were.
- 12 Q: Okay. And could you describe the people that were
13 injured?
- 14 A: It was a dude, I don't know him, the first time I ever
15 seen him in there. He had dreadlocks coming down to his
16 shoulders.
- 17 Q: So he had dreadlocks?
- 18 A: Yes.
- 19 Q: Big dude, skinny dude?
- 20 A: Skinny dude.
- 21 Q: Skinny little dude?
- 22 A: Yeah.
- 23 Q: And you said there were two people, so what did the other
24 person look like?
- 25 A: He probably 5'10" like 220.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

137

- 1 Q: So kind of thick?
- 2 A: Yeah.
- 3 Q: And definitely a difference between the two of them?
- 4 A: Yes.
- 5 Q: Now the, these two fellows, had they been involved in the
- 6 altercation inside?
- 7 A: They was -- nothing but one of them was with the pool
- 8 stick, I mean the one that got killed, he was arguing.
- 9 Q: And you said one of them got killed?
- 10 A: Yes.
- 11 Q: You just described two different dudes. Which one got
- 12 killed?
- 13 A: The skinny one with dreadlocks.
- 14 Q: Did you see any types of injuries on him that night?
- 15 A: No.
- 16 Q: How about the other fellow, did you witness any, any types
- 17 of injuries on him?
- 18 A: Well, yes, uh-huh (affirmative response).
- 19 Q: What types of injuries did you witness?
- 20 A: He was bleeding. His mouth was bleeding.
- 21 Q: And when did you witness this?
- 22 A: When he came back in the club.
- 23 Q: When he came back in the club?
- 24 A: Yes.
- 25 Q: Did he approach you or ---

State v. Chestnut

138

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

- 1 A: No, he came back in there swinging and the boys got in a
2 altercation and I stopped it again.
- 3 Q: And where was he whenever you stopped it?
- 4 A: Right there by the front door, right by the cash register,
5 the counter.
- 6 Q: Was he standing up, down or what?
- 7 A: He was standing up when he came in, but when I stopped him
8 he was down.
- 9 Q: Was he talking or anything?
- 10 A: No, he wasn't talking.
- 11 Q: Unconscious?
- 12 A: Yeah, he was unconscious, yes.
- 13 Q: Now you said two people got injured at the club that
14 night?
- 15 A: Right.
- 16 Q: Did they ever leave the club in any manner after they were
17 injured?
- 18 A: I know one left in the rescue squad.
- 19 Q: Which one was that?
- 20 A: The one with the dreadlocks.
- 21 Q: The dreadlocks left with the rescue squad?
- 22 A: Right.
- 23 Q: How about the bigger fellow?
- 24 A: I don't know how he left. I think he got in the car with
25 somebody and left, but I didn't see when he left.

State v. Chestnut

139

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

1 Q: Okay. We talked a little bit about that video. Did the
2 police ever arrive that night?

3 A: Oh yeah.

4 Q: Did you talk with them?

5 A: Oh yeah.

6 Q: Now were they aware of your video?

7 A: Yes.

8 Q: At any point, did they make any request with regard to
9 that video?

10 A: Yes, asked me if they could record it or make copies.

11 Q: And did you allow them to do that?

12 A: Yes.

13 Q: When did you provide those copies?

14 A: The same night.

15 Q: That night?

16 A: That morning. Well, you know, it took till the morning to
17 get them.

18 Q: They started recording it that night?

19 A: Yeah.

20 Q: Now prior to them recording, did you do anything to alter
21 the video?

22 A: No.

23 Q: And there was a lot of video, correct?

24 A: Oh yeah.

25 Q: Was there video before and after the events?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

140

- 1 A: Video 24/7.
- 2 Q: Now we met previously, correct, Mr. Feaster?
- 3 A: Yes, sir.
- 4 Q: And at that point, when we met, did I ask you to review
- 5 anything?
- 6 A: Yes, sir.
- 7 Q: And what was that?
- 8 A: Something on your laptop, copy of a tape of ---
- 9 STATE'S EXHIBIT NUMBER ONE
- 10 MARKED FOR IDENTIFICATION
- 11 Q: I'm gonna show you what's been marked -- I'm gonna show
- 12 you what's been marked as State's Exhibit One for purposes of
- 13 identification. Do you recognize State's Exhibit One?
- 14 A: Yes, sir.
- 15 Q: And how do you recognize State's Exhibit One?
- 16 A: My initials are on it.
- 17 Q: Okay. So you wrote on your initials after you viewed it?
- 18 A: Yes.
- 19 Q: And can you recall what is contained on State's Number
- 20 One?
- 21 A: That's the video of the club; that's the night that that
- 22 happened.
- 23 Q: It's not all twelve cameras?
- 24 A: No.
- 25 Q: About six clips, correct?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

141

1 A: Yes.

2 Q: Is it a true and exact copy of the videos from what
3 transpired that night?

4 A: Yes.

5 Q: And it fairly and accurately depicts what occurred?

6 A: Yes.

7 Q: Okay. Your Honor, at this time the State would seek to
8 introduce and publish State's One?

9 THE COURT: Any objection?

10 MS. PRATT: No objection, Your Honor.

11 THE COURT: All right. It's in evidence. You may
12 publish.

13 STATE'S EXHIBIT NUMBER ONE

14 ADMITTED INTO EVIDENCE

15 BY MR. RICHARDSON:

16 Q: Mr. Feaster, as I pull this up, there's six video clips,
17 correct?

18 A: Yes.

19 Q: Okay. You count six and I know there might be a little
20 CH02, 04, 08 and 10. What does -- what does that mean, CH?

21 A: That mean I'm recording, that's my ---

22 Q: Does that, what I'm asking does that denote different
23 cameras?

24 A: Yes. Yes, it does, a different camera, yeah.

25 Q: CH01 would be Camera Number 1?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

142

- 1 A: Right.
- 2 Q: And so on and so forth?
- 3 A: Right.
- 4 Q: And these are the time stamps?
- 5 A: Right.
- 6 Q: Okay. For instance, we had CH 10, do you know where
- 7 Camera Number 10 is?
- 8 A: Yes.
- 9 Q: Where would that be?
- 10 A: That'd be 10th camera -- that would be number 10.
- 11 Q: What I'm asking is it over near the pool table; is it
- 12 inside the club?
- 13 A: It's over next the pool table, yeah.
- 14 Q: It's inside the club?
- 15 A: Oh I thought you meant ---
- 16 Q: I understand. Sometimes I confuse myself. We previously
- 17 viewed these videos, correct?
- 18 A: Excuse me?
- 19 Q: We previously viewed these videos, correct?
- 20 A: Yes, we did.
- 21 Q: And we talked about them?
- 22 A: Yes, we did.
- 23 Q: That altercation, on the video it occurred shortly after 1
- 24 o'clock, about 1:10, does that sound about right?
- 25 A: Give or take, yes.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

143

1 Q: All right. Your Honor, for the record, I'm gonna be
2 playing from State's Number One, CH 10-12-03-06-00-48-15?

3 THE COURT: All right, sir.

4 BY MR. RICHARDSON:

5 Q: Mr. Feaster, if I may, I'm gonna skip ahead a little bit,
6 okay?

7 A: Yes, sir.

8 Q: Prior to proceeding any further, I just want to make sure
9 this is a camera shot -- can you tell us where the camera is
10 located in you club, looking at this?

11 A: I can't see it ---

12 THE COURT: Do you need to step down, sir?

13 A: Yes, sir.

14 MR. RICHARDSON: Your Honor, if Mr. Feaster may step down
15 to see it?

16 THE COURT: Yes, sir. Now you need to come somewhere
17 where there's a microphone. You can come right here next to
18 the Court Reporter if you want to, if that'll help, but right
19 next to the microphone. Does that help or you need to get
20 closer?

21 A: I see it from here.

22 THE COURT: All right, sir. Can you move that microphone
23 over closer to him. All right. Go ahead.

24 A: This camera here is shot from the front door.

25 BY MR. RICHARDSON:

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

144

1 Q: The front door facing back towards the bar?

2 A: Yes.

3 Q: Or back towards the restroom?

4 A: Back toward the restroom and my office is back there.

5 Q: And those are your two pool tables?

6 A: Yes, sir.

7 Q: Thank you, Mr. Feaster. I'll let you sit down while we
8 play this clip okay?

9 A: All right.

10 Q: Before we go any further, there's a pool game going on at
11 this point; you stated that there was an altercation about a
12 pool game, correct?

13 A: Yes, sir.

14 MR. RICHARDSON: For the record, Your Honor, I started
15 back about -- on this particular clip, 01:08:028 A.M.?

16 THE COURT: All right, sir.

17 (REPORTER'S NOTE: State's Exhibit Number One played for
18 Jury.)

19 BY MR. RICHARDSON:

20 Q: And your video, does it record in just one long stream or
21 does it cut up in blocks or how does that happen?

22 A: It cut up in blocks; I got it, you know, so it's certain
23 -- different cameras for different areas.

24 Q: And so all the cameras continuously record and
25 continuously dumping down to your hard drive, correct?

1 A: Right.

2 Q: So, if the video cuts off here, it starts another clip --
3 say it stops at 12:01 the next one will be at 12:02?

4 A: No all of it records -- it continues. All of records all
5 night.

6 Q: Okay. We saw some -- you've seen this video before,
7 correct?

8 A: Yes.

9 Q: And you stated previously that you, you recognized some of
10 the people in the bar that night?

11 A: Yes, sir.

12 Q: You saw somebody in a black-and-white, it appeared to be a
13 black-and-white striped shirt or jacket; did you recognize
14 that person that night?

15 A: Yes, sir.

16 Q: And who did you recognize that to be?

17 A: Barney.

18 Q: And do you know Barney; you know him by sight?

19 A: Oh, yeah.

20 Q: Do you see Barney in the courtroom today?

21 A: Yes, sir.

22 Q: Where is he?

23 A: Barney right there.

24 Q: Sitting at Defense table?

25 A: Yes, sir.

State v. Chestnut

146

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

1 Q: Mr. Feaster, I'm gonna continue on.

2 Your Honor, for the record, the next clip will be CH 10-
3 12-03-06-01-11-52?

4 THE COURT: All right, sir.

5 BY MR. RICHARDSON:

6 Q: Now, Mr. Feaster, prior to playing that next clip, you
7 said you -- you had a decent crowd that night, correct?

8 A: Yes, sir.

9 Q: And you said there was some boys from Hemingway, I believe
10 you stated?

11 A: Yes, sir.

12 Q: And there were some locals from Myrtle Beach?

13 A: Yes, sir.

14 Q: Were there more of one than the other, were they equal?

15 A: It's about the same; it's about the same.

16 Q: So it was about equal, equal Myrtle Beach and equal
17 Hemingway?

18 A: Give or take one or two, yeah.

19 MR. RICHARDSON: Your Honor, I'm now playing the clip.

20 THE COURT: Yes, sir.

21 BY MR. RICHARDSON:

22 Q: Mr. Feaster, I'm gonna stop right there at 1:13:52 for the
23 record, Your Honor.

24 THE COURT: All right, sir.

25 Q: Now, Mr. Feaster, we just saw a pool cue, a pool cue get

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

147

- 1 grabbed; do you recognize that person that grabbed the pool
2 cue?
3 A: The pool cue, the pool stick?
4 Q: Yes, sir.
5 A: Yeah.
6 Q: And how do you recognize that young man?
7 A: By his shirt.
8 Q: Did anything occur to that young man that night; anything
9 happen to that fellow that night?
10 A: What fellow?
11 Q: The fellow that grabbed the pool cue, pool stick?
12 A: I -- I didn't recognize the other fellow.
13 Q: Okay. After the pool stick was grabbed, where were you
14 when this was going on?
15 A: I was right there. I took the stick and put it back on
16 the wall. That was me taking the stick and putting it back on
17 the wall.
18 Q: And you previously stated that you told them that they had
19 get out?
20 A: Yeah.
21 Q: You have exterior cameras as well?
22 A: Yes, sir.
23 Q: Right off hand, do you know where camera CH01 is located?
24 A: CH01; could you show it to me?
25 Q: Sure.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

148

1 A: That camera right there?

2 Q: This camera?

3 A: Parking lot on the side.

4 MR. RICHARDSON: Your Honor, for, for the record, State's
5 gonna be playing CH01-12-03-06-00-07-47?

6 THE COURT: All right, sir.

7 MR. RICHARDSON: All in State's One, Your Honor.

8 THE COURT: All right, sir.

9 BY MR. RICHARDSON:

10 Q: And you stated this camera is located where?

11 A: On the side, side of the parking lot.

12 Q: Okay. So if I go out the doors of, of your, your bar ---

13 A: Right.

14 Q: --- where is it facing, to my right, to my left?

15 A: It would be to your right.

16 Q: Right, there on the side?

17 A: Right.

18 Q: Okay. And, Mr. Feaster, we just ended up, I think I said
19 01:13:52 so I'll start about 1:13 on this, okay?

20 A: All right.

21 MR. RICHARDSON: For the record, Your Honor, I'm starting
22 at 1:13E?

23 THE COURT: All right, sir.

24 BY MR. RICHARDSON:

25 Q: Mr. Feaster, I'm gonna attempt to slow this down a little

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

149

1 bit. I just want you to watch this particular part and I'm
2 gonna ask you some questions after you watch this part, okay?

3 A: Right.

4 Q: Mr. Feaster, that person we just saw getting in the
5 vehicle and then it had a video of him running, do you
6 recognize that person?

7 A: Yes, sir.

8 Q: Who do you recognize that as being?

9 A: Barney.

10 Q: And the direction you just saw him run, in relation to
11 your bar, what direction was he running?

12 A: Going back towards the front door, the entry door.

13 Q: Back towards the front door?

14 A: Yeah.

15 Q: Mr. Feaster, the next I show -- Your Honor, for the
16 record, the State is playing CH02-2012-03-06-00-19-28.

17 Mr. Feaster, prior to playing this for the jury, could
18 you tell us where this camera is located?

19 A: That camera at the front of the building.

20 Q: Actually Camera 1 and Camera 2 kind of sit in a L-shape,
21 correct?

22 A: Right.

23 Q: Camera 1 faces away from the building down the side?

24 A: Right.

25 Q: And Camera 2 faces back towards Third Avenue, correct?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

150

1 A: Right.

2 Q: And if you don't mind, Mr. Feaster, I'm gonna skip ahead
3 to about I think -- once again, I'm gonna skip ahead to about
4 1:13.

5 Your Honor, for the record, it appears we're starting at
6 01 -- 01:12:54?

7 THE COURT: All right, sir.

8 BY MR. RICHARDSON:

9 Q: Mr. Feaster, I'm gonna stop at 1:15, if I can.

10 Mr. Feaster, it's my attempt to play a clip again
11 starting at, for the record, 1:13:40, I'll slow it down just a
12 little bit so you can watch it and see if you can identify
13 anybody and I'll ask you those questions afterwards, okay?

14 A: Okay.

15 Q: I'm gonna stop right there for a second, Mr. Feaster.

16 A: Yes, sir.

17 Q: Back it up just a hair. This fellow right here?

18 A: Uh-huh (affirmative response).

19 Q: Do you recognize him?

20 A: Yes, sir.

21 Q: Who is that?

22 A: That's Dewayne, the one we call Thoro.

23 Q: Thoro?

24 A: Yes.

25 Q: And I've been confused. Is it Thorough like I'm thorough

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

151

- 1 with some task or is it Thorell?
- 2 A: Thoro. Thoro; that's all I know.
- 3 Q: Okay. That's Thoro and right now what direction is he
- 4 walking towards; away from the bar or back towards your bar?
- 5 A: I think he come back towards the bar. Yeah, he came back
- 6 towards the bar.
- 7 Q: I'm just letting it play right now.
- 8 Mr. Feaster, do you recognize this fellow?
- 9 A: That's me.
- 10 Q: Okay. Okay. Now it's a little bit grainy, but there's a
- 11 fellow right here; it looks like he's got his arm up in the
- 12 air; do you recognize him?
- 13 A: Yeah.
- 14 Q: Who's that?
- 15 A: That's the other fellow that got shot in the elbow. I
- 16 mean, I know him when I see him.
- 17 Q: That's far, I know, but there's a guy behind him, correct?
- 18 A: That fellow, Dewayne, Dewayne.
- 19 Q: If you can't see him, I understand that. We'll move on.
- 20 (Continues video.)
- 21 How about now, this guy with his arm extended; do you
- 22 recognize him?
- 23 A: I can't see it.
- 24 Q: That's fair.
- 25 A: Yeah, I can see him.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

152

- 1 Q: You can recognize him now?
- 2 A: Yeah.
- 3 Q: Who is that?
- 4 A: Barney.
- 5 Q: That's Barney. (Continues video.)
- 6 How about this fellow right here?
- 7 A: Barney.
- 8 Q: That's Barney?
- 9 A: Yeah.
- 10 Q: That's the Defendant, Mr. Chestnut?
- 11 A: Yes. (Continued video.)
- 12 Q: Last thing I'm gonna ask you about this clip; who you see
- 13 right here?
- 14 A: That's Barney.
- 15 MR. RICHARDSON: Your Honor, that ends it at 01:14:55.
- 16 THE COURT: All right, sir.
- 17 BY MR. RICHARDSON:
- 18 Q: Mr. Feaster, next I'm gonna take you to Channel 4. Can
- 19 you tell us from looking at this where that camera is located,
- 20 what direction it faces?
- 21 A: That camera point towards the bar.
- 22 Q: Back from the wall?
- 23 A: Right.
- 24 Q: Back where the pool tables are?
- 25 A: No, about where the pool table is, in the ceiling not on

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

153

1 the wall.

2 Q: And it's back towards the bar?

3 A: Right, towards the pool tables.

4 Q: All right. I think we've been going from 1:13.

5 Your Honor, for the record, we'll be playing CH04-2012-

6 03-06-00-55-12 and we'll start at 01:12:59. (Continued video.)

7 Stop at 01:15:20. Mr. Feaster, could you tell us what we're

8 seeing here? Could you tell us what we're seeing here?

9 A: That's the bar.

10 Q: That's the bar but the action we just saw.

11 A: That's right.

12 Q: That's right. Did you see any of the other victims in

13 that; were they hard to see?

14 A: Going behind the bar, I can see that girl, I mean ---

15 Q: You described earlier a secondary victim that was a little

16 bit thicker, about 5'10", 220 or so?

17 A: I didn't see him in that picture.

18 Q: Okay. Let's back up just a little bit.

19 Your Honor, there appears to be a little bit of glare in

20 this bottom corner. If you willing to drop --

21 THE COURT: The only way you can do it is make the whole

22 room dark.

23 MR. RICHARDSON: Well, let's don't do that. Maybe if we

24 -- we'll try -- I'm going to restart, Your Honor, at 01:14:46.

25 BY MR. RICHARDSON:

State v. Chestnut

154

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

1 Q: Mr. Feaster, I'm gonna ask you to pay attention now to the
2 bottom left of the screen please, sir.

3 Stop it right there at 1:15:11. (Continues video.)

4 Could you see that a little bit better, Mr. Feaster?

5 A: Yes, sir.

6 Q: Okay. Could you tell us what was going on right there?

7 A: The other fellow fell on the floor, they was beating him.

8 Q: The other fellow was on the floor and he was getting beat?

9 A: Yeah.

10 Q: Now your floor down there by the bar, is it, what type of
11 floor is it, carpeted?

12 A: Carpet.

13 Q: Carpet?

14 A: Yes.

15 Q: Is it big thick carpet; is it ---

16 A: No, it wasn't -- it was carpet at the time. Now we got
17 tile; it was carpet during that time.

18 Q: And underneath carpet is that ---

19 A: Concrete.

20 Q: It's concrete?

21 A: Yes.

22 Q: Is that floor pretty hard?

23 A: Yes, sir.

24 Q: If you dropped a beer mug on it what would happen?

25 A: It'll break.

State v. Chestnut

155

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

1 Q: It'll break; it's that hard? Down in the corner, we see
2 somebody in the middle; is that you?

3 A: Yes, sir.

4 MR. RICHARDSON: For the record, Your Honor, the next
5 clip I'll play the CH08-2012-03-06-01-06-38.

6 BY MR. RICHARDSON:

7 Q: Mr. Feaster, this will be the last clip I'm showing you.
8 Can you tell us where Camera 8 is located?

9 A: That's coming out the wall, coming out the wall shooting
10 towards the bar.

11 Q: Shooting towards the bar?

12 A: Right.

13 Q: I'm gonna jump ahead to -- I'm starting at 01:14:53, okay,
14 Mr. Feaster?

15 A: Yes, sir.

16 (Continues video.)

17 Q: Okay, Mr. Feaster, I'm blow this up and play it from
18 01:14:58, slow it down a little bit. I want you to watch and
19 see if you can identify anybody, okay?

20 A: Yes, sir.

21 Q: The big fellow with the white shirt on, do you recognize
22 him?

23 A: Yes, sir.

24 Q: And who do you recognize him to be?

25 A: That's one of them fellows from Hemingway.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

156

- 1 Q: Is it the other victim?
- 2 A: Yes.
- 3 Q: All right. This fellow, do you recognize him?
- 4 A: Yes, sir.
- 5 Q: And who is that?
- 6 A: That's Barney.
- 7 Q: That's the Defendant. And this fellow?
- 8 A: That's me.
- 9 Q: That's you. And what are you doing right now?
- 10 A: I'm pushing him back off.
- 11 Q: And why is that?
- 12 A: Because he was down.
- 13 Q: He was down and he was out?
- 14 A: Yep.
- 15 Q: Now who are these other fellows that were around; do you
- 16 recognize them?
- 17 A: I recognize everybody.
- 18 Q: The other fellows that were around the victim on the
- 19 floor, were they Hemingway fellows or Myrtle Beach fellows?
- 20 A: Some of them from both places.
- 21 Q: Some from both places. You saw someone actually knock
- 22 the victim down. Did you recognize him as being a Myrtle
- 23 Beach person or a Hemingway person?
- 24 A: Myrtle Beach.
- 25 Q: Myrtle Beach.

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

157

1 MR. RICHARDSON: Your Honor, I'm stopping it at 01:15:09.

2 THE COURT: All right, sir.

3 STATE'S EXHIBITS NUMBER TWO THROUGH THIRTY

4 MARKED FOR IDENTIFICATION

5 BY MR. RICHARDSON:

6 Q: Mr. Feaster, I'm gonna show you what's been marked for
7 identification, State's Two through Thirty. If you can just
8 tell me if you recognize those, look through them real quick?
9 Thank you, Mr. Feaster. Do you recognize these photographs?

10 A: Yes, sir.

11 Q: And what do you recognize these photographs to be?

12 A: From the club.

13 Q: Okay. These are stills taken from the video?

14 A: Yes, sir.

15 Q: They appear to be accurate and correct?

16 A: Yes, sir.

17 Q: And, and accurately depict everything from the video?

18 A: Yes, sir.

19 Q: All right.

20 Your Honor, the State would seek to introduce and publish
21 at the appropriate time, State's Two through Thirty?

22 THE COURT: Any objection?

23 MS. PRATT: No objection, Your Honor.

24 THE COURT: You may do so. They're in evidence.

25 STATE'S EXHIBIT NUMBER TWO THROUGH THIRTY

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

158

1 ADMITTED INTO EVIDENCE

2 MR. RICHARDSON: Thank you, Your Honor.

3 BY MR. RICHARDSON:

4 Q: Mr. Feaster, I think you stated earlier you called the
5 police, correct?

6 A: Yes, sir.

7 Q: And when they arrived, you spoke with them?

8 A: Yes, sir.

9 Q: Did you give a statement that night?

10 A: Yes, sir.

11 Q: What did you tell them with regard to seeing a handgun;
12 did you tell them anything about any handguns you saw?

13 A: Excuse me?

14 Q: Did you tell the police about any type of handgun you saw?

15 A: Yes.

16 Q: And what, what did you tell them?

17 A: I said a gun, a fellow had it in the air.

18 Q: Okay. And did you identify him in that?

19 A: Yes.

20 Q: And who did you identify him as being?

21 A: Corey, Corey Myers.

22 Q: Corey Myers. And you told them you saw him with the gun
23 in the air?

24 A: Yes, sir.

25 Q: Was he pointing it at anybody?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

159

- 1 A: No, sir, in the air.
- 2 Q: Just in the air. And you described that gun, didn't you?
- 3 A: Yes, sir.
- 4 Q: And once again, how did you describe it?
- 5 A: Silver-and-black handgun.
- 6 Q: Silver-and-black. Now we just watched the video, did you
- 7 see that other person; can you see Corey Myers?
- 8 A: Yes, sir.
- 9 Q: And in that video, did you see him fire a handgun?
- 10 A: No, sir.
- 11 Q: Did you see him point a handgun at anybody?
- 12 A: No, sir.
- 13 Q: And you know Corey Myers?
- 14 A: Yes, sir.
- 15 Q: When you saw Corey Myers with a handgun up in the air,
- 16 where was he located?
- 17 A: Down there where they was fighting at.
- 18 Q: Right up against the building?
- 19 A: Yes, sir.
- 20 Q: And Corey, is he Hemingway or Myrtle Beach?
- 21 A: Myrtle Beach.
- 22 Q: Myrtle Beach. Now when you first -- did you hear gunshots
- 23 that night?
- 24 A: I thought I did, but I looked at the camera -- I thought I
- 25 did heard a gunshot that night back at the time when I seen

State v. Chestnut

160

JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

- 1 Corey with the gun up. I looked at the camera, I mean I
2 thought I heard a gunshot though.
- 3 Q: It all happened pretty quick?
- 4 A: Yes, sir.
- 5 Q: At some point, you did hear a gunshot?
- 6 A: Yes, sir.
- 7 Q: And what was your reaction when you heard a gunshot?
- 8 A: I broke and run.
- 9 Q: Broke and run?
- 10 A: Yeah.
- 11 Q: I mean you stopped ---
- 12 A: Yeah.
- 13 Q: --- pretty quick?
- 14 A: Oh yeah.
- 15 Q: And then retreated?
- 16 A: Yes, sir.
- 17 Q: A little scared?
- 18 A: Yes, sir.
- 19 Q: Whenever -- after you heard gunshots and you stated you
20 ran; did you run inside, stay outside or what?
- 21 A: I stayed outside.
- 22 Q: And what did you do outside?
- 23 A: I stayed there just looking and telling everybody to go
24 home quick.
- 25 Q: Did you -- did you try to assist anybody or help anybody?

State v. Chestnut
JOHN WAYNE FEASTER - DIRECT BY RICHARDSON

161

1 A: I tried to assist -- when I went outside, I tried to
2 assist to help the fellow who got knocked down.

3 Q: The big fellow?

4 A: Yeah, the big fellow.

5 Q: And did you know him?

6 A: I seen him a couple of times. I don't know him, but you
7 know, I seen him a few times.

8 Q: And he was a Hemingway fellow?

9 A: Yes, sir.

10 Q: No doubt about it, your video captured everything,
11 correct?

12 A: Yes, sir.

13 Q: And that fellow that we saw getting stomped in the club,
14 you stated you don't know what exactly happened to him; you
15 don't know if he went with the EMS or a car ---

16 A: I think it was a car.

17 Q: Okay. That's fair. And did you see Barney anymore that
18 night?

19 A: I seen Barney; I seen Barney when he left.

20 Q: You saw him leave?

21 A: Yes.

22 Q: And how soon after that did he leave?

23 A: About like two or three minutes.

24 Q: Two or three minutes?

25 A: Yeah.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

162

1 Q: He didn't stick around long?

2 A: No, sir.

3 Q: And you were concerned with the care for the victim on the
4 ground?

5 A: Yes, sir.

6 Q: Thank you, Mr. Feaster. If you'll just answer any
7 questions Ms. Pratt may have.

8 A: All right.

9 THE COURT: Cross examination.

10 MS. PRATT: Thank you, Your Honor.

11 CROSS EXAMINATION OF JOHN WAYNE FEASTER, JR. BY MS. PRATT:

12 Q: How you doing, Mr. Feaster?

13 A: Fine, how you doing?

14 Q: Not too bad, sir. Mr. Feaster, you remember when I came
15 to your club a couple of weeks ago, do you?

16 A: Yes, ma'am.

17 DEFENDANT'S EXHIBIT NUMBER TWO

18 MARKED FOR IDENTIFICATION

19 Q: Mr. Fester, do you remember when I came to your club a
20 couple of weeks ago, do you?

21 A: Yes, ma'am.

22 Q: And you and I met and looked at where the cameras were and
23 kind of talked about your video system; is that right?

24 A: Yes, ma'am.

25 Q: I want to show you what has been marked as Defense Number

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

163

- 1 Two and there's a copy that's been given to the Solicitor and
2 ask if that diagram looks accurate to you as far as your club
3 and the placement of the cameras and so on?
4 A: Yes, ma'am.
5 Q: All right. And you have -- I think there's ten cameras on
6 there; is that right?
7 A: Yeah -- yeah, we got ten -- we got twelve cameras though.
8 Q: Okay. But those are the ten that we've looked at clips on
9 some of today; is that right?
10 A: Yes, ma'am.
11 Q: Okay. And it shows Camera 1 pointing over to the back
12 parking lot, correct?
13 A: Yes, ma'am.
14 Q: And Camera 2 looking down the front?
15 A: Yes, ma'am.
16 Q: Now, Camera 2 that you have, it actually points towards
17 where the other businesses are and that parking area, correct?
18 A: Yes, ma'am.
19 Q: And is there another parking area?
20 A: On the side.
21 Q: Okay. So there's actually parking spaces that face each
22 other going down in front of your building, correct?
23 A: Right.
24 Q: And kind of a driveway in between them?
25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

164

- 1 Q: On the video that we've been looking at, that video area,
2 excuse me, that drive area, you don't see the other parking
3 spaces; is that right?
- 4 A: That's right.
- 5 Q: Do you have a camera that goes down there?
- 6 A: No, ma'am.
- 7 Q: Okay. And then Camera Number 10 is from the front door
8 and faces back towards your office and the restrooms, correct?
- 9 A: Yes, ma'am.
- 10 Q: And Camera Number 8 faces from about where your office is
11 forward to the front door; so they kind of cross each other;
12 is that right?
- 13 A: Yes, ma'am.
- 14 Q: All right. And Camera 4 looks over the bar?
- 15 A: Yes, ma'am.
- 16 Q: Like towards the side wall I guess we would call it,
17 correct?
- 18 A: Yes, ma'am.
- 19 Q: Okay. And then Camera 3 comes back towards it, doesn't
20 it, from the back wall of ---
- 21 A: Yes, ma'am.
- 22 Q: Okay.
- 23 A: Yes, ma'am.
- 24 Q: And there's other cameras, 5 and 6 that we're not worried
25 about today, the kitchen and the register; nothing happened in

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

165

- 1 those places, did it?
- 2 A: No, ma'am.
- 3 Q: Okay. All right. Now you had told the Solicitor that you
4 had a fairly good crowd because it was Jamaican night; is that
5 right?
- 6 A: Well, we usually have a fairly good night but we ain't
7 used to having that many fellows in there so perhaps a bunch
8 of fellows came in that night.
- 9 Q: All right. About how many people do you think came from
10 Hemingway area?
- 11 A: Between ten and twelve.
- 12 Q: All right. And about what time did they arrive?
- 13 A: 11:00, 11:30.
- 14 Q: Okay. Ten or twelve from Hemingway. Now the Myrtle Beach
15 guys that were there, would all of those have been friends or
16 would there have been different groups of friends in the count
17 that you gave the Solicitor?
- 18 A: All of them know each other.
- 19 Q: They know each other?
- 20 A: Yes, ma'am.
- 21 Q: All right. Are there some that are closer friends than
22 others; for example, you mentioned Thoro and you mentioned ---
- 23 A: Barney.
- 24 Q: Barney.
- 25 A: Uh-huh (affirmative response).

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

166

- 1 Q: And you mentioned Corey?
- 2 A: Uh-huh (affirmative response).
- 3 Q: And you've got other people that were there, a big guy
- 4 that was shooting pool; do you remember what his name was?
- 5 A: That was Gucci.
- 6 Q: Gucci. Okay. And any, any other people that you met --
- 7 that you noticed that were there that you know their names of
- 8 from Myrtle Beach?
- 9 A: I mean I didn't know all of them.
- 10 Q: Okay. And the group that were talking to the Hemingway
- 11 boys at the pool table, that was basically Gucci and Thoro and
- 12 Barney and a couple of other guys; is that right?
- 13 A: Right.
- 14 Q: Okay. All right. In the -- is it -- is it true to say
- 15 that right about say between 1:11 and 1:12 everything was
- 16 still cool at the bar, wasn't it?
- 17 A: Yes, ma'am.
- 18 Q: They had actually finished a game?
- 19 A: Yes, ma'am.
- 20 Q: And I think if I'm correct and we can put -- play the
- 21 video again, but didn't you see Gucci and the second victim,
- 22 who I believes name is Damien Canty, the one that got shot in
- 23 the elbow, didn't they hug ---
- 24 A: Yeah.
- 25 Q: --- at one point on the video?

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

167

- 1 A: I mean Gucci considers equal partner. He from Georgetown
2 area too, so he know everybody.
- 3 Q: All right. So they're hugging and people are, you know,
4 batting hands and doing all kinds of stuff; there's no fight
5 at that point, correct?
- 6 A: Right.
- 7 Q: All right. And then when the fight started and I believe
8 we showed it -- the Solicitor showed it first on the Camera 10
9 clip; who was it that grabbed that pool cue?
- 10 A: That one of the Hemingway boys; I don't know his name, but
11 one of the Hemingway boys.
- 12 Q: All right. And he had dreads, didn't he, in the picture?
- 13 A: Yes, ma'am.
- 14 Q: And he grabbed the pool cue?
- 15 A: Yes, ma'am.
- 16 Q: And in fact he tussles with somebody over the pool cue,
17 doesn't he?
- 18 A: Yes, ma'am.
- 19 Q: Now isn't that the first thing that happened that was
20 actually ---
- 21 A: That's when I came in.
- 22 Q: --- big that started you to come in?
- 23 A: Yes, ma'am.
- 24 Q: Okay. All right. So he grabs the pool cue?
- 25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

168

- 1 Q: And who grabbed it from him?
- 2 A: I think it was Mike. I think it was Mike.
- 3 Q: Mack?
- 4 A: Mike. I think it was Michael Spivey.
- 5 Q: Okay. Somebody on the back side of the pool tables
- 6 grabbed it, correct?
- 7 A: Right. Yes, ma'am.
- 8 Q: All right. And then, then you started to have to get the
- 9 people out because of the argument, correct?
- 10 A: Yes, ma'am.
- 11 Q: Had any blows been exchanged?
- 12 A: No, ma'am.
- 13 Q: Okay. So about thirteen, about thirteen, 1:13, I guess,
- 14 from the 1:12 when the fight and the pool stick started about
- 15 1:13, you started having to get people out of the bar; is that
- 16 right?
- 17 A: Yes, ma'am.
- 18 Q: All right. And Thoro leaves the bar; is that right?
- 19 A: Yes, ma'am.
- 20 Q: And you saw the video where Thoro walks all the way down
- 21 to his car, correct?
- 22 A: Yes, ma'am.
- 23 Q: Clicks the clicker?
- 24 A: Yes, ma'am.
- 25 Q: Gets his -- his headlights go on because he's opening the

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

169

- 1 doors in his car?
- 2 A: Yes, ma'am.
- 3 Q: Turns around to come back.
- 4 A: Yes, ma'am.
- 5 Q: And who do you see coming towards him?
- 6 A: Canty. That's what he say his name is Canty.
- 7 Q: Canty. And what does Canty have in his hands?
- 8 A: A bottle.
- 9 Q: Just one or two?
- 10 A: One bottle.
- 11 Q: Okay. At least one anyway, correct?
- 12 A: Yes, ma'am.
- 13 Q: And then what did you see Canty do?
- 14 A: Hit Thoro with the bottle.
- 15 Q: He comes down like that and hits him right over the head,
- 16 doesn't he?
- 17 A: Yes, ma'am.
- 18 Q: Okay. And Thoro goes down pretty hard, doesn't he?
- 19 A: Yes, ma'am.
- 20 Q: When the Solicitor asked you, of course, cause he was
- 21 telling his half of the story, he asked you ---
- 22 MR. RICHARDSON: Objection, Your Honor.
- 23 THE COURT: Sustained.
- 24 MS. PRATT: I apologize.
- 25 THE COURT: Ms. Pratt, you do not need to make comments.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

170

1 Thank you. Continue on.

2 MS. PRATT: I apologize, Your Honor.

3 BY MS. PRATT:

4 Q: When the Solicitor asked you, you said two injured, but
5 there was actually someone else being injured, wasn't there,
6 besides the guy with the dreads and the guy that hit with the
7 bottle, Canty, who else was injured that night?

8 A: Dewayne was injured.

9 Q: Sure he was. Thoro was hit with a bottle, wasn't he?

10 A: Yes, ma'am.

11 Q: So there was another injury right there, wasn't there?

12 A: Yes, ma'am.

13 Q: Okay. And now we've got Thoro being jumped on by how many
14 guys?

15 A: I can't say how many it was. It was a bunch of them down
16 there.

17 Q: Two, three, four?

18 A: Something like that.

19 Q: Okay. At least more than, than a couple, correct?

20 A: Yes.

21 Q: Okay. And everybody is still coming down towards that
22 area between the cars, correct?

23 A: Yes, ma'am.

24 Q: And Corey is between the cars, correct?

25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

171

1 Q: Who gets into a fight with Corey; who turns and gets into
2 a fight with Corey?

3 A: I don't know who he -- I don't know, I don't know them
4 people.

5 Q: Okay.

6 A: I don't know them other fellows.

7 Q: Did -- but it was a Hemingway guy?

8 A: Yes.

9 Q: All right. And he gets into a fight with Corey and what
10 happens to Corey?

11 A: I can't recollect at the moment.

12 Q: Okay. Does Corey stay standing or does he go down?

13 A: He went down.

14 Q: He went down when the other guy came at him?

15 A: Right.

16 Q: Do you think Corey was injured at all, hurt in any way?

17 A: I can't answer that question.

18 Q: Okay. All right. And you saw Corey with the weapon?

19 A: Yes, ma'am.

20 Q: Okay. And you told the police at the time that you gave
21 your statement that you thought you heard a gunshot; is that
22 right?

23 A: Yes, ma'am.

24 Q: In fact you thought that Corey had shot into the air?

25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

172

- 1 Q: Do you think it's fair to say that your recollection then
2 would be more accurate than what you'd think of later after
3 watching a video?
- 4 A: I would say it was but I watched the video and I didn't
5 see the gun fire, but I thought that night I heard the gun
6 fire.
- 7 Q: Okay. So you thought you heard a gunshot?
- 8 A: Yes, ma'am.
- 9 Q: That night?
- 10 A: Yes, ma'am.
- 11 Q: And you told the police that?
- 12 A: Yes, ma'am.
- 13 Q: And that was before Barney even comes running into the
14 picture, wasn't it?
- 15 A: Yes, ma'am.
- 16 Q: All right. And before Barney comes running into the
17 picture, do other people come from that parking lot area down
18 in between the cars where the fights going on?
- 19 A: Yes, ma'am.
- 20 Q: Okay. And would one of them be the fellow with the
21 dreads?
- 22 A: I'd have to look at the video to see.
- 23 Q: Okay. And other people, and you were down that way,
24 weren't you?
- 25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

173

- 1 Q: I mean you were right there in the action?
- 2 A: Yes, ma'am.
- 3 Q: The cars are like this and you're back about here and
- 4 there's some people here, correct?
- 5 A: Yes, ma'am.
- 6 Q: And there is Corey and another fellow here, correct?
- 7 A: Yes, ma'am.
- 8 Q: And then somewhere over here Thoro is getting himself beat
- 9 still, correct?
- 10 A: Yes, ma'am.
- 11 Q: Okay. So you're watching from there and there's a couple
- 12 of other people that come in. Do you know if they're from
- 13 Hemingway or Myrtle Beach?
- 14 A: They're from both places, Hemingway and Myrtle Beach.
- 15 Q: All right. And were they getting into the fight or were
- 16 they watching or what were they doing?
- 17 A: They was getting into it. They was arguing and getting
- 18 into it.
- 19 Q: All right. So basically a huge number of folks in a pile
- 20 fighting at that point.
- 21 A: Yes.
- 22 Q: All right. As Barney comes up, do you remember if the
- 23 focus was for the people that were around you, was still on
- 24 Canty, Corey, Thoro and that group; were they still looking
- 25 all there?

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

174

- 1 A: Yes.
- 2 Q: All right. When Barney shot the gun ---
- 3 A: I didn't never see Barney shoot a gun that night.
- 4 Q: Okay. You didn't see it?
- 5 A: Not till I seen the video.
- 6 Q: Okay. When the gunshot happened that came from that area
- 7 behind you or beside you, what happened to the fight?
- 8 A: They kept going. They didn't broke up. I mean, after
- 9 while they broke up when I told them I called Myrtle Beach.
- 10 Q: Okay. When the gunshot went, people started to move,
- 11 didn't they?
- 12 A: Yes, ma'am.
- 13 Q: And they fight broke up?
- 14 A: Yes, ma'am.
- 15 Q: People ran in other directions?
- 16 A: Yes, ma'am.
- 17 Q: We see in the video, the fellow with the dreads comes
- 18 running towards your Camera Number 2, correct?
- 19 A: Yes, ma'am.
- 20 Q: And where did we see him go?
- 21 A: He went over to the parking lot where I got -- right
- 22 across from where the cars at right straight across.
- 23 Q: So he is one of the people in Camera Number 1 running to
- 24 the back of the parking lot, isn't he?
- 25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

175

1 Q: And what did he do in the back of that parking lot?

2 A: I couldn't answer that.

3 Q: Did he stay there for a while; was that him standing there
4 in the video?

5 A: I thought he ran all the way around, came all the way
6 around to the front.

7 Q: Okay. So he goes to the back and then he comes all the
8 way around to the front, doesn't he?

9 A: Yes, ma'am.

10 Q: Okay. You were -- before I do that ---

11 MS. PRATT: Your Honor, at this time, I would ask that
12 the diagram be entered into evidence as Defense Two?

13 THE COURT: Any objection?

14 MR. RICHARDSON: No, sir, Your Honor, I've seen the
15 document.

16 THE COURT: All right. Defendant's Two, the diagram, is
17 in evidence without objection.

18 DEFENDANT'S EXHIBIT NUMBER TWO

19 ADMITTED INTO EVIDENCE

20 MS. PRATT: May I publish it to the jury, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. PRATT:

23 Q: Mr. Feaster, you said that you usually have three or four
24 bouncers around; is that right?

25 A: Yes, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

176

- 1 Q: How many did you actually have that night?
- 2 A: We had, we had three, but one left early; he had to go
3 work so there was two of us.
- 4 Q: Two of you meaning yourself and who else?
- 5 A: Allen, Allen G. there.
- 6 Q: Allen. So there was yourself and Allen Graham; is that
7 right?
- 8 A: Yes, ma'am.
- 9 Q: And that's two people. Now you said that you don't allow
10 guns in your club?
- 11 A: No, ma'am.
- 12 Q: When there's only two of you, how do you arrange to make
13 sure that you're patting down each person as they're going in
14 and out of the club or wandng each person?
- 15 A: We have somebody to the door do it.
- 16 Q: All right. And so if, if Allen's not at the door and
17 you're doing something else are people coming in and out?
- 18 A: Yes.
- 19 Q: Okay. So it would be ---
- 20 A: Somebody, somebody always be at that door.
- 21 Q: Is supposed to be?
- 22 A: Yes, ma'am.
- 23 Q: It would be possible, wouldn't it, for a gun to get into
24 your club with the people that are coming in and out; you hope
25 it doesn't happen, but is it possible?

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

177

- 1 A: Yes, ma'am.
- 2 Q: Okay. And it could be possible from either side, correct?
- 3 A: Yes, ma'am.
- 4 Q: All right. You were present when the police searched the
- 5 area; is that right?
- 6 A: Yes, ma'am.
- 7 Q: And at the time that the police searched, they got there
- 8 somewhere three or four minutes after all of this happened,
- 9 didn't they?
- 10 A: Yes, ma'am.
- 11 Q: Were the same number of people there when the police got
- 12 there that had been there when the fight was going on?
- 13 A: No, ma'am.
- 14 Q: All right. Lots of people left in their cars?
- 15 A: Yes, ma'am.
- 16 Q: Drove straight through the area with the, the, where the
- 17 fight had happened and where the shootings had happened?
- 18 A: Yes, ma'am.
- 19 Q: Okay. And did the police search the back perimeter area
- 20 of the parking lot?
- 21 A: I don't remember. I don't think so.
- 22 Q: You didn't see them doing that?
- 23 A: No, ma'am.
- 24 Q: And you were out when they were doing all of this, weren't
- 25 you?

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

178

1 A: Yes, ma'am.

2 Q: Okay.

3 DEFENDANT'S EXHIBIT NUMBER THREE

4 MARKED FOR IDENTIFICATION

5 Q: Mr. Feaster, I'm gonna show you what has been marked as
6 Defense Exhibit Three for identification. It is at the top
7 says Camera 9 and at the bottom says 1:13:38 A.M. and ask if
8 you recognize that photo?

9 A: Yes, ma'am.

10 Q: Is that a photo from the cameras in your club?

11 A: Yes, ma'am.

12 Q: Does it appear to be taken from the video that you
13 provided to the Solicitor who provided it to me in discovery?

14 A: Yes, ma'am.

15 Q: And that is Camera 9 looking from over the pool tables
16 towards the front door; is that right?

17 A: Yes, ma'am.

18 Q: What is this big white thing here? It looks like some
19 kind of banner; do you know what it is?

20 A: I'm trying to think, it's a banner, I'm trying to think
21 what we had it up there for.

22 Q: But it's some kind of banner; is that right?

23 A: Yes, ma'am.

24 Q: So you're not trying to block anything with that in your
25 video?

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

179

1 A: No, ma'am.

2 Q: When you look at the people that are gathered at the front
3 door looking at what you can see and I know blown up it kind
4 of makes them fuzzy.

5 THE COURT: First, Ms. Pratt, do you want to introduce
6 that one into evidence?

7 MS. PRATT: Certainly, Your Honor, I'll introduce it now
8 if the Court wishes me to.

9 MR. RICHARDSON: I've seen it, Your Honor, without
10 objection.

11 THE COURT: In evidence without objection.

12 DEFENDANT'S EXHIBIT NUMBER THREE

13 ADMITTED INTO EVIDENCE

14 MS. PRATT: Thank you, Your Honor.

15 THE COURT: Now, he can fully describe it, go ahead.

16 BY MS. PRATT:

17 Q: As you look these individuals, first of all, how many
18 individuals do you see in the picture?

19 A: Six, seven, about seven.

20 Q: Seven of them. And can you tell how many of them are from
21 Hemingway?

22 A: I can't see. I can't see.

23 Q: All right. You've got a fellow in a black shirt with
24 writing on the back, do you know if he was from Hemingway?

25 A: I don't think so; I'm not sure. I got to see a picture

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

180

1 better than that. I can't ---

2 Q: Okay. All right. That's fair to say. Maybe we can look
3 at the video and see how it looks from there.

4 A: Yes, ma'am.

5 MS. PRATT: Your Honor, for the record, at this time, I
6 would like to play some video clips from what has been marked
7 as Defense Exhibit Four. I'd like to move it into evidence.
8 The Solicitor has been provided a copy of this disk prior to
9 today.

10 THE COURT: Any objection?

11 MR. RICHARDSON: No, sir, Your Honor. I reviewed the
12 video.

13 THE COURT: All right. Very good. It's in evidence
14 without objection. You may publish.

15 DEFENDANT'S EXHIBIT NUMBER FOUR

16 ADMITTED INTO EVIDENCE

17 (REPORTER'S NOTE: Defendant's Exhibit Number Four played for
18 the jury.)

19 BY MS. PRATT:

20 Q: All right. Mr. Feaster, this is then coming from Camera 9
21 and looking towards your front door; is that correct?

22 A: Yes, ma'am.

23 Q: And can you tell me who is seated there at the front door;
24 can you tell?

25 A: No, ma'am.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

181

1 Q: Is that any easier?

2 A: No, ma'am.

3 Q: Okay. All right. Now this a -- for the record, 1:12:33
4 so it is just about when the fight is going on -- is that
5 right -- inside the bar with your pool stick and all of that;
6 is that right?

7 A: Yes, ma'am.

8 Q: Okay.

9 A: I think that was a background and we was taking pictures
10 of it; I remember now.

11 Q: I'm sorry?

12 A: That's a background and we're taking pictures, that thing
13 hanging down.

14 Q: Right.

15 A: That's a background and we're taking pictures.

16 Q: Oh, okay. So you were taking pictures of people that
17 night?

18 A: No, ma'am, but we had it up, you know.

19 Q: All right. That makes sense. All right. So at this
20 point, what do you see happening; who is gathering and going
21 outside? Can you tell -- for example, the fellow here with
22 his boggan on, is he from Myrtle Beach or from Hemingway?

23 A: I think it was Hemingway.

24 Q: Okay. And that was Thoro walking across?

25 A: Uh-huh (affirmative response).

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

182

- 1 THE COURT: Is that a yes?
- 2 A: Yes.
- 3 Q: And he goes out and then the boggan guy goes out; is that
- 4 right?
- 5 A: Yes.
- 6 Q: Now who, who is that -- I gotta back that up a pinch. Who
- 7 is the fellow with the white hat on and the black sleeves down
- 8 his jacket?
- 9 A: He had to be from Hemingway but I don't know.
- 10 Q: All right. So another Hemingway guys out there and the
- 11 boggan is still out there, isn't he?
- 12 A: Yes, ma'am.
- 13 Q: Okay. And at this point, we see the group of them all
- 14 together, don't we, going out?
- 15 A: Yes, ma'am.
- 16 Q: All right. We have the fellow in the black shirt with the
- 17 writing on it and the face on the front; he's Hemingway, isn't
- 18 he?
- 19 A: Yes, ma'am.
- 20 Q: And he's talking to the fellow in the white cap that's
- 21 Hemingway?
- 22 A: Yes, ma'am.
- 23 Q: And Toboggan is there; he's Hemingway?
- 24 A: Yes, ma'am.
- 25 Q: Are there anymore there that you see that you think are

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

183

- 1 Hemingway people?
- 2 A: I can't -- I'd have to get a better view.
- 3 Q: All right. And at this point, you're pretty much putting
- 4 everybody out?
- 5 A: Yes, ma'am.
- 6 Q: On the video, do you see from here where these people are
- 7 walking, the group of them?
- 8 A: They walking down the, down the sidewalk.
- 9 Q: Down the sidewalk and who's down at the end of the
- 10 sidewalk?
- 11 A: Thoro.
- 12 Q: Okay. All right. And for the record, this is Camera 2,
- 13 which is the one that looks down the parking lot, correct?
- 14 A: Yes, ma'am.
- 15 Q: And from 1:13:19 A.M., correct?
- 16 A: Yes, ma'am.
- 17 Q: Okay. Who is that walking?
- 18 A: That's Thoro.
- 19 Q: That's Thoro. He's from Myrtle Beach?
- 20 A: Yes, ma'am.
- 21 Q: He's alone, correct?
- 22 A: Yes, ma'am.
- 23 Q: Okay. All right. The man with the white baseball cap and
- 24 the white sleeves on his jacket; who is that?
- 25 A: That's Canty.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

184

- 1 Q: And he's from Hemingway?
- 2 A: Yes, ma'am.
- 3 Q: And what does he appear to be doing; is he talking with
- 4 somebody behind him?
- 5 A: Yes, ma'am.
- 6 Q: Okay. And there's a fellow in the forefront here, black
- 7 shirt and some writing on the back of it; where's he from?
- 8 A: Had to be Hemingway because I didn't know him.
- 9 Q: Was he one of the ones that was playing pool?
- 10 A: He was in the crowd; I don't know.
- 11 Q: Okay. All right. And then he appears to point towards
- 12 something, doesn't he, the fellow in black? Just a second
- 13 ago?
- 14 A: Yes, ma'am.
- 15 Q: All right. Now the person that entered the picture at
- 16 that point, not a group here, but right there in the center;
- 17 do you know who that is?
- 18 A: No, ma'am.
- 19 Q: Okay. And there's two more coming down the sidewalk here
- 20 too, aren't they, close to where the barber shop is?
- 21 A: It look like it.
- 22 Q: All right. So at this point outside, we have one, two,
- 23 three, four, five, six, plus Thoro, is that about right? Now
- 24 the last one that just came in, that fellow, can you tell who
- 25 that is?

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

185

- 1 A: No, ma'am.
- 2 Q: Okay. And what just happened there?
- 3 A: He hit Thoro with the bottle.
- 4 Q: Canty hit Thoro with the bottle?
- 5 A: Yes, ma'am.
- 6 Q: Okay. And that's at 1:14:01, correct?
- 7 A: Yes, ma'am.
- 8 Q: For the record at 1:14:01. Something flew up into the air
- 9 there, do you know what that was?
- 10 A: No, ma'am.
- 11 Q: Okay. This person here, do you know who that is; can you
- 12 tell from the big emblem on the back of his jacket who that
- 13 is?
- 14 A: No, ma'am.
- 15 Q: All right. And there's still at 14:08, seven seconds
- 16 later, a fight going on with several people on top of Thoro;
- 17 is that right?
- 18 A: Yes, ma'am.
- 19 Q: All right. And at 1:14, thirteen seconds after the bottle
- 20 hit, the fight's still going on, isn't it?
- 21 A: Yes, ma'am.
- 22 Q: Do you see any struggling going on or anything going on
- 23 between these cars? That's you right there, isn't it?
- 24 A: In front, yes, that's me with the orange shirt on.
- 25 Q: Okay. And there's a fight going on right in there; is

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

186

1 that correct?

2 A: Yes, ma'am.

3 Q: And that would be who, do you know?

4 A: That'd be Cauty taking care of Thoro.

5 Q: Okay. So at 14:16, fifteen seconds after the bottle hit,
6 we still have a fight going on, don't we?

7 A: Yes, ma'am.

8 Q: And now at 14 -- I'm backing this up a pinch. I'm back to
9 14:18. Do you see Barney in that picture against the car,
10 right side?

11 A: I can't make it out.

12 Q: Okay. And you said to the -- earlier in response to one
13 of my questions that you didn't actually see any of those
14 shots, correct?

15 A: No, ma'am.

16 Q: So you don't know that whether anyone was turning and
17 advancing on him when he shot or what happened when he
18 actually shot?

19 A: No, ma'am.

20 Q: All right. And for the record, Mr. Feaster, this is from
21 Camera 8, which comes from right at the corner of your office
22 area, in that cutout where the restrooms and the office is
23 looking towards the front door; is that correct?

24 A: Yes, ma'am.

25 Q: Okay. And this is at 1:14:31. So that's after the

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

187

- 1 gunfire; is that right?
- 2 A: Yes, ma'am.
- 3 Q: Could you see at that point what was going on outside the
- 4 door right there; could you just see what was going on on the
- 5 video?
- 6 A: I see it, but I don't know what was going on at that
- 7 moment.
- 8 Q: Okay. And then right there, who is that?
- 9 A: That's Canty.
- 10 Q: All right. And he is -- what has he got in his hand; can
- 11 you tell?
- 12 A: It looks like his jacket.
- 13 Q: All right. And he is facing or advancing towards this
- 14 other person here; is that correct?
- 15 A: Yes, ma'am.
- 16 Q: So he's not -- is he -- is it your opinion or can you tell
- 17 from this, you were there -- I shouldn't ask you your opinion
- 18 -- is he advancing or is he retreating?
- 19 A: He advancing.
- 20 Q: He's advancing, isn't he? And then he gets knocked down
- 21 by the person he was advancing on, correct?
- 22 A: Yes, ma'am.
- 23 Q: And who was that?
- 24 A: That was Michael Spivey.
- 25 Q: Michael Spivey. Okay. Just a couple more questions, Mr.

State v. Chestnut
JOHN WAYNE FEASTER - CROSS BY PRATT

188

1 Feaster. Just one second, excuse me.

2 THE COURT: Just one second, ma'am. Just one second
3 please.

4 MS. PRATT: Sorry.

5 THE COURT: All right. Go ahead.

6 MS. PRATT: Thank you, Your Honor.

7 BY MS. PRATT:

8 Q: Just a couple more and I'm done and I know you're tired.
9 How often is the parking area and sidewalk area swept of
10 debris?

11 A: About every day.

12 Q: Every day?

13 A: Yes, ma'am.

14 Q: So it would be fair to say that debris that's there that
15 was found by the crime scene people would have been from that
16 evening; is that right?

17 A: Yes, ma'am.

18 Q: Okay. And I believe I asked you, but I want to make sure
19 that I ask the question the right way. In the diagram that we
20 have, it shows that there's two parking areas. Are there two
21 exits for driving out from your club area?

22 A: Yes, ma'am.

23 Q: They can drive out from the area where we see on Camera 2?

24 A: Yes, ma'am.

25 Q: And then on the backside between a little berm area and

State v. Chestnut
JOHN WAYNE FEASTER - REDIRECT BY RICHARDSON

189

1 the parking area and a restaurant called Victoria's; is that
2 right?

3 A: Yes, ma'am.

4 Q: All right. And that night as people were leaving, which
5 way -- were they driving out of both exits?

6 A: Yes, ma'am.

7 Q: So they were coming around through this way as well as
8 going straight through?

9 A: Yes, ma'am.

10 Q: All right. And most of them had driven through and gotten
11 out before the police got there; is that right?

12 A: Yes, ma'am.

13 MS. PRATT: Thank you, Your Honor. That's all I have.

14 THE COURT: Redirect?

15 MR. RICHARDSON: Court's indulgence, Your Honor.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION OF JOHN WAYNE FEASTER, JR. BY MR.

18 RICHARDSON:

19 Q: Once you told the people to leave, were they gonna be free
20 to come back inside?

21 A: Excuse me?

22 Q: Once you -- after the fight broke out inside?

23 A: Yes, sir.

24 Q: And you said y'all got to go?

25 A: Yeah.

State v. Chestnut
JOHN WAYNE FEASTER - REDIRECT BY RICHARDSON

190

1 Q: Were they gonna be free to come back inside?

2 A: They shouldn't have been, but we didn't have nobody at the
3 door because we tried to break everything up.

4 Q: So had Thoro, Dewayne, walked down to his car, he would've
5 had no reason to come back towards the club?

6 A: No reason.

7 MS. PRATT: Objection, it calls for speculation on the
8 part of the witness, Your Honor.

9 THE COURT: Ask the witness to answer questions that he
10 knows of his own knowledge please. Thank you very much.

11 BY MR. RICHARDSON:

12 Q: Would you have allowed Thoro back in the club?

13 A: No, sir.

14 Q: And with regard to that action, we all saw the fight,
15 Thoro and Canty are facing off at first, right?

16 A: Yes, sir.

17 Q: And Thoro is walking back. Back in what direction?

18 A: Back towards the club.

19 Q: Back towards the club and the group that are coming out?

20 A: Yes, sir.

21 Q: And Ms. Pratt asked you was it Myrtle Beach boys or a
22 whole lot of Hemingway boys; what did you say it was ---

23 A: Hemingway.

24 Q: --- fighting?

25 A: It was Hemingway boys.

State v. Chestnut
JOHN WAYNE FEASTER - REDIRECT BY RICHARDSON

191

- 1 Q: You said there was some Myrtle Beach boys out there too?
- 2 A: Yeah, but as far as she -- that was Hemingway boys.
- 3 Q: You indicated the other Myrtle Beach boys jumped in the
- 4 fight, correct?
- 5 A: Right.
- 6 Q: Did you see who else was involved in that fight?
- 7 A: It was -- I seen Corey, I know Corey was in it; Thoro; I
- 8 think Michael was in it; Michael was down there too.
- 9 Q: There were a few of them?
- 10 A: Yes.
- 11 Q: And whenever the fight's going on outside, do you walk
- 12 towards the fight, away from the fight, which direction?
- 13 A: I walked towards the fight.
- 14 Q: And you're wearing all white as well?
- 15 A: I had on an orange shirt and blue jeans.
- 16 Q: It looked kind of white on the video, right?
- 17 A: Yes, sir.
- 18 Q: Okay. Now, if you would've heard gunshots, what would you
- 19 have done; you wouldn't have kept on walking towards the
- 20 fight?
- 21 A: No, sir.
- 22 Q: And did you ever get close enough to the fight to see the
- 23 tussling?
- 24 A: Yes, sir.
- 25 Q: And was Thoro fighting back?

State v. Chestnut
JOHN WAYNE FEASTER - RECROSS BY PRATT

192

1 A: Yeah, he was trying to fight back, yeah.

2 Q: Okay. So he was fighting back; it was mutual combat?

3 A: Yeah.

4 MR. RICHARDSON: Your Honor, no further questions.

5 THE COURT: Anything on those questions, ma'am?

6 MS. PRATT: Yes, Your Honor.

7 RECROSS EXAMINATION OF JOHN WAYNE FEASTER, JR. BY MS. PRATT:

8 Q: I believe the Solicitor asked you about whether Thoro was
9 fighting back and you said trying to fight back and then the
10 Solicitor said mutual combat or something. When you said
11 trying to fight back; what did you mean by that?

12 A: I mean he was wounded, he was wounded when the man hit him
13 with the bottle, but he was trying, he was trying to scrap,
14 trying to ---

15 Q: Okay. And once he got hit with the bottle, was he
16 standing up or laying down?

17 A: He fell when he got hit with the bottle.

18 Q: He fell?

19 A: Yeah.

20 Q: So he's on the ground?

21 A: He got back up though. He got back up.

22 Q: And did he get back up in the fight itself or after the
23 gunshot?

24 A: He got back up before the gunshot.

25 Q: All right.

State v. Chestnut
JOHN WAYNE FEASTER - RECROSS BY PRATT

193

1 A: I mean, I know how far, but he was on his knees I know.

2 Q: He was on his knees?

3 A: Yes.

4 Q: Did he get up before the gunshot; did he get any further?

5 A: I don't remember. I don't remember..

6 Q: That's fair. Thank you very much.

7 THE COURT: All right. Do you wish to excuse the
8 witness, Solicitor?

9 MR. RICHARDSON: I do, Your Honor, so he can return to
10 his work.

11 THE COURT: Any objection?

12 MS. PRATT: None, Your Honor. Thank you.

13 THE COURT: All right, sir. You are released from your
14 subpoena. You may go back to your regular activities, sir.

15 A: Thank you, sir.

16 THE COURT: Thank you.

17 All right. We're gonna take a short break Ladies and
18 gentlemen. We'll resume in a little bit. Y'all go to the
19 jury room; everyone else remain seated please.

20 (REPORTER'S NOTE: The jury exits the courtroom. 11:22 A.M.)

21 THE COURT: All right. We'll take a short break for
22 about five or ten minutes. Thank you very much.

23 (RECESS - 11:23 A.M.)

24 *****OFF THE RECORD*****

25 (On the Record. 11:33 A.M.)

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

194

1 THE COURT: Please be seated. Thank you. All right.
2 Solicitor, you ready to proceed?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: Defense? You ready, Ms. Pratt?

5 MS. PRATT: I am ready, Your Honor.

6 THE COURT: Ask the jury to come in please.

7 (REPORTER'S NOTE: The jury returns to the courtroom. 11:35
8 A.M.)

9 THE COURT: All right. Solicitor, your next witness
10 please?

11 MR. RICHARDSON: Yes, sir, Your Honor. The State would
12 call Corey Myers.

13 THE COURT: All right, sir. Please come around and meet
14 the Clerk right in the corner there please, sir.

15 CLERK: Please raise your right hand; place your left
16 hand on the Bible.

17 COREY MYERS, HAVING BEEN SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK: Please state your full name and spell your last?

20 MR. MYERS: Corey Myers, M-Y-E-R-S.

21 THE COURT: All right, sir.

22 DIRECT EXAMINATION OF COREY MYERS BY MR. RICHARDSON:

23 Q: Good morning still, Mr. Myers, how are you doing today?

24 A: All right.

25 Q: Let's go ahead and straighten a few things out. You've

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

195

- 1 got pending charges at the present, correct?
- 2 A: Yes, sir.
- 3 Q: Do you know what those charges are?
- 4 A: Yes, sir.
- 5 Q: What are they?
- 6 A: Murder, attempted murder and I believe pointing and
7 presenting a firearm.
- 8 Q: And when were you arrested?
- 9 A: March 6th.
- 10 Q: And those, those charges, they stem from the incidents of
11 what happened at 3rd Avenue Sports Bar?
- 12 A: Yes, sir.
- 13 Q: Now you stated you were arrested on March 6th, 2012,
14 correct?
- 15 A: Yes.
- 16 Q: How did that occur; the police come to your house and pick
17 you up or what?
- 18 A: No, I turned myself in at the jail in Myrtle Beach.
- 19 Q: That's the one on Oak Street?
- 20 A: Yes, sir.
- 21 Q: And, Mr. Myers, I know it's probably a little nerve
22 wracking. Can you scoot up a little bit just so you can speak
23 in the microphone? We need to hear you and I believe Ms.
24 Richardson needs to take everything down, okay? You stated
25 you turned yourself in?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

196

- 1 A: Yes, sir.
- 2 Q: What caused you to turn yourself in?
- 3 A: I received a call from my grandfather that the police had
4 surrounded his house based on the incident that happened that
5 night and I just turned myself in.
- 6 Q: What time of day did you turn yourself in?
- 7 A: It was a little around after 5 o'clock.
- 8 Q: After 5 o'clock. And what time did you get the call from
9 your grandfather?
- 10 A: Around 3:00, 4:00 maybe.
- 11 Q: Where were you whenever you got this call?
- 12 A: At my girlfriend's brother's house.
- 13 Q: And was that where you were living?
- 14 A: No.
- 15 Q: Was that in Myrtle Beach, or in the county or where?
- 16 A: It was in the county.
- 17 Q: What part of the county did your girlfriend live or your
18 girlfriend's brother I believe you said?
- 19 A: He lived in like the complex next to mine.
- 20 Q: And where were you living?
- 21 A: [REDACTED] Halyard, I mean not Halyard, but [REDACTED]
22 Lane.
- 23 Q: That's out near where the Waccamaw Pottery used to be,
24 correct?
- 25 A: Yes.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

197

1 Q: Or I guess now we call it Hard Rock Park or whatever. Now
2 you turned yourself in; you get a call sometime between, I
3 think you said between three and four and turned yourself in
4 sometime a little bit after five. In those two or three hours
5 in between, what did you do, if anything?

6 A: I called my lawyer because he was helping me with some,
7 some other Family Court issues, so I just asked his advice and
8 he -- after he called the Sheriff's Office or whatever, he
9 immediately advised me to turn myself in and I talked to my
10 stepfather and then I headed up there.

11 Q: And this lawyer, what was the lawyer's name?

12 A: M.J. Schwartz.

13 Q: Now, Mr. Schwartz, is he in the courtroom today?

14 A: Yes, sir.

15 Q: Y'all went to high school together, right?

16 A: All through grade school.

17 Q: And he was representing you at that point on some Family
18 Court issues?

19 A: We was getting ready to but I had to hold off because of
20 this whole incident on some visitation rights in Family Court.

21 Q: So, he wasn't representing you on any criminal charges at
22 the time?

23 A: No.

24 Q: And you called him. Whenever your granddaddy called you,
25 did he tell you what kind of charges were out there for you?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

198

1 MS. PRATT: Objection, Your Honor ---

2 A: No.

3 MS. PRATT: --- that would call for hearsay.

4 THE COURT: Sustained.

5 MR. RICHARDSON: And, Your Honor, I'm not asking the
6 specifics of what he told him, just whether or not he did tell
7 him?

8 THE COURT: All right. Don't say what the grandfather
9 said, just whether or not y'all had a conversation.

10 BY MR. RICHARDSON:

11 Q: Did y'all have a conversation of what kind of charges were
12 out there?

13 A: No, sir.

14 Q: And when you spoke with, with Mr. Schwartz, what, if
15 anything, did you tell him?

16 A: I told him that we got into a fight and I didn't really
17 know like what I was being charged with, but I wanted to kinda
18 have some kind of an idea and he said, okay, well, he'd call
19 and ---

20 Q: You can talk about what he told you. What was your
21 understanding of any actions he was gonna take after your
22 conversation?

23 A: What you mean?

24 Q: I mean was he gonna make any calls; was he gonna go down
25 to the police department?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

199

1 MS. PRATT: Objection, leading, Your Honor.

2 THE COURT: All right. Don't suggest the answers in the
3 questions, Solicitor.

4 MR. RICHARDSON: Yes, sir.

5 BY MR. RICHARDSON:

6 Q: But you spoke with Mr. Schwartz, correct?

7 A: Yes.

8 Q: And did you call Myrtle Beach to find out what kind of
9 charges you had?

10 A: No.

11 Q: Prior to arriving at the Myrtle Beach Police Department,
12 were you aware of what type of charges you had?

13 A: Yes.

14 Q: At some point, you stated you were living at [REDACTED]
15 Village?

16 A: Uh-huh (affirmative response).

17 THE COURT: Was that a yes or a no?

18 A: Yes, sir.

19 THE COURT: All right. Very good.

20 BY MR. RICHARDSON:

21 Q: Now when you, you turned yourself in on March 6th at
22 Myrtle Beach Police Annex, do you remember what officers were
23 present when you turned yourself in?

24 A: I believe his name was Detective Kitelinger and Truex or
25 something.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

200

- 1 Q: Truex?
- 2 A: Something like that.
- 3 Q: And they came out to meet you or ---
- 4 A: No, I was in the actual station in an office.
- 5 Q: And whenever you met these, these officers, was Mr.
- 6 Schwartz there?
- 7 A: Yes, sir.
- 8 Q: And at that point, did you make any statements to the
- 9 police?
- 10 A: No, sir.
- 11 Q: And why not?
- 12 A: Because earlier that morning, I went to the emergency room
- 13 and they put me under heavy narcotics and M.J. advised me that
- 14 now wasn't the right time.
- 15 Q: And why, why did the hospital put you under heavy
- 16 narcotics?
- 17 A: Because I broke my left thumb.
- 18 Q: You broke your left thumb. Are you right handed or left
- 19 handed?
- 20 A: Left handed.
- 21 Q: Left handed. Now when you turned yourself in, where did
- 22 you go from there?
- 23 A: Jail.
- 24 Q: Did they take you to J. Reuben?
- 25 A: Yes, sir.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

201

1 Q: And how long were you there?

2 A: Approximately three months.

3 Q: So, from March 6th until three months down the line or so,
4 you were at J. Reuben. At any point, did you give any kind of
5 authorization to Myrtle Beach Police Department in regard to
6 searching your apartment?

7 A: Yes, sir.

8 Q: What did you tell them about it?

9 A: That they could go search my apartment.

10 Q: Did you sign any kind of documentation?

11 A: Yes, sir.

12 Q: And what was that?

13 A: To search my house and remove a .40 caliber handgun and
14 the clothes I was wearing that night.

15 Q: Now you've been charged with murder at this point,
16 correct?

17 A: Uh-huh (affirmative response). Yes, sir.

18 Q: Did you sign this consent before or after you were
19 arrested?

20 A: After.

21 Q: And where were you when you signed this consent?

22 A: J. Reuben.

23 Q: J. Reuben. And were you under pain medication at that
24 point?

25 A: No, sir.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

202

- 1 Q: So you were of clear mind. And you've been charged with
2 murder; why in the world would you allow Myrtle Beach Police
3 Department to search your apartment?
4 A: Because I know I didn't do it.
5 Q: You know you didn't do what?
6 A: I didn't shoot or kill anyone.
7 Q: Now at some point, did you agree to speak with the Myrtle
8 Beach Police Department?
9 A: Yes, sir.
10 Q: And when was that?
11 A: A few days after being in J. Reuben.
12 Q: And was that at J. Reuben or at Myrtle Beach or ---
13 A: J. Reuben.
14 Q: J. Reuben Long. Now you couldn't make a statement on
15 March 6th, but you could a few days later. What was the
16 change at that point?
17 A: I was always gonna make a statement, it's just I was
18 advised not to under the medications.
19 Q: Do you remember what kind of medication you were on?
20 A: I can't recall the exact name.
21 Q: But you stated previously it was some kind of narcotic?
22 A: Yeah.
23 Q: How did that make you feel when you were on that?
24 A: Just real light-headed and woozy.
25 Q: Kinda drunk?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

203

- 1 A: Sorta.
- 2 Q: Whenever you did agree to make a statement, was your
3 attorney present?
- 4 A: Yes, sir.
- 5 Q: And do you remember what officer was there taking the
6 statement from you?
- 7 A: It was Kitelinger.
- 8 Q: What, if anything, did Detective Kitelinger tell you with
9 regard to your rights?
- 10 A: He told me I could or couldn't at any given time and that
11 M.J. had to be present.
- 12 Q: And what did you tell him with regard to your willingness
13 to make a statement?
- 14 A: What you mean?
- 15 Q: Did you tell him you wanted to or didn't want to?
- 16 A: Yeah, I wanted to.
- 17 Q: That was your choice?
- 18 A: Yes, sir.
- 19 Q: At that point then and now, do you recall what happened in
20 the early morning hours of March 6th, 2012?
- 21 A: Yes, sir.
- 22 Q: You recall what you were wearing that day?
- 23 A: Yes, sir.
- 24 Q: What were you wearing that night?
- 25 A: Red-and-grey Aeropostle hoodie with blue jeans.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

204

1 Q: And take us through that night from the time you arrived
2 -- immediately before you arrived at the 3rd Avenue Sports
3 Bar, just take us through that night. What time did you get
4 there? What did you do and what not?

5 A: I can't really recall the exact times, but me and my
6 friend, it was his girl's birthday on the 5th and the 6th was
7 my girlfriend's birthday. So we just went to Third Avenue to
8 have a few drinks. After drinking maybe one or two beers, I
9 go to the cigarette machine to buy some cigarettes and it
10 wouldn't take my dollar bill. So on the way back from the
11 cigarette machine, I seen an argument and I kind of knew both
12 the guys that was in the argument, I tried to diffuse it; it
13 got out of hand. We go outside, get into a big brawl, shots
14 fired and we -- I left.

15 Q: Let's go back inside to that initial fight, you stated
16 you'd had a couple of drinks, two or three drinks?

17 A: Yes, sir.

18 Q: And you'd gone to the cigarette machine. With relation to
19 the restroom, where was the cigarette machine?

20 A: The restroom like right -- it's kind of in the same area
21 but in the far corner.

22 Q: But back in that doorway?

23 A: Yes, sir.

24 Q: And so you left the bar and walked towards the cigarette
25 machine?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

205

- 1 A: Yes, sir.
- 2 Q: And you stated on the way back, you saw some kind of fight
3 or altercation, or argument or something?
- 4 A: Yeah, just a argument.
- 5 Q: And you stated you knew both parties involved?
- 6 A: I knew one guy from the other party and pretty much
7 everybody else.
- 8 Q: And the two parties, were they from the same area,
9 different areas or what?
- 10 A: No, sir. I heard they were from Kingstree. Everybody
11 else was from Myrtle Beach.
- 12 Q: Okay. So some of the guys arguing were from Kingstree or
13 Hemingway and some were from Myrtle Beach?
- 14 A: Yes, sir.
- 15 Q: With regard to the numbers of people from Kingstree and
16 the people from Myrtle Beach, was one-sided to ether way?
- 17 MS. PRATT: Objection, leading, Your Honor.
- 18 THE COURT: I'll allow that one. You may continue.
- 19 BY MR. RICHARDSON:
- 20 Q: Were there more fellows from Myrtle Beach or more fellows
21 from Kingstree or what?
- 22 MS. PRATT: Again, Your Honor, objection.
- 23 THE COURT: I don't believe it's leading. Leaves it to
24 the witness to answer, if he can.
- 25 A: It was pretty much even.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

206

1 BY MR. RICHARDSON:

2 Q: So pretty even. Now did you get involved in the
3 altercation inside?

4 A: Just trying to like diffuse it, but it, it really didn't.

5 Q: The fellow you recognized that you knew ---

6 A: Uh-huh (affirmative response).

7 Q: --- the two guys you recognized, did you know their names?

8 A: I, I just kind of knew the one guy from Kingstree because
9 he was like back and forth at my neighbor's house and all the
10 way in '09. I didn't never really knew his name; I just knew
11 his face. The other guy from Myrtle Beach, I don't really
12 know his name either; it's -- I mean, we called him Thoro.

13 Q: So you don't know Thoro real well?

14 A: I mean he grew up around me a local, not really hung out
15 with him or nothing like that.

16 Q: And you're a Myrtle Beach guy, right?

17 A: Yes, sir.

18 Q: Now, what, if anything, did you witness happening during
19 this altercation inside?

20 A: What do you mean?

21 Q: Well, just describe for us, if you will, I mean was it
22 just calm, get real heated? Take us through the argument.

23 A: It's sort of like a, like a, basically like a fight, but
24 it gets broke up, then like I say, it go outside.

25 Q: Did you witness anybody grab anything during that fight?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

207

- 1 A: Inside, not really.
- 2 Q: And did you hear anything that was being said during this
3 argument?
- 4 A: I mean, it was basically a bunch of trash talk from both
5 sides, but the one guy that I kind of knew, he was like I'll
6 kill you too and we're going to get our guns. That's the only
7 reason I went to my car anyway.
- 8 Q: Did -- was that a Kingstree fellow ---
- 9 A: Yes, sir.
- 10 Q: --- or Thoro? And at some point, this breaks up, correct?
- 11 A: Yes, sir.
- 12 Q: At some point, did you go outside?
- 13 A: Yes, sir.
- 14 Q: For what purpose?
- 15 A: To get my gun because they said they were going to their
16 cars to get their guns too.
- 17 Q: And they're just talking?
- 18 A: Yes, sir.
- 19 Q: Now, whenever you go outside, do you see anybody you know
20 outside?
- 21 A: Thoro.
- 22 Q: You see Thoro?
- 23 A: Yes.
- 24 Q: And where is Thoro when you see him?
- 25 A: Like a couple of cars down from mine.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

208

- 1 Q: And I think we've all seen some videos, a big long stretch
2 of cars from the front of that shopping strip.
3 A: Uh-huh (affirmative response).
4 Q: How far down was your car?
5 A: Maybe three, four cars outside the entrance.
6 Q: And how about Thoro's car; do you know where it was?
7 A: I'm guessing another three or four down.
8 Q: Down from yours, back towards the road?
9 A: Yes.
10 Q: Now whenever you go outside and you say you go outside to
11 get your gun, correct?
12 A: Yes, sir.
13 Q: You don't have it on you?
14 A: No, sir.
15 Q: Why?
16 A: Because we're not allowed to have a gun in a bar.
17 Q: Do you get checked out when you go in Mr. Feaster's club?
18 A: Yes.
19 Q: But he doesn't allow guns?
20 A: No, sir.
21 Q: Now, do you ever get to your car?
22 A: Yes, sir.
23 Q: And you stated your purpose was to get your gun; what kind
24 of gun was it?
25 A: A .40 caliber.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

209

- 1 Q: And how do you get that gun?
- 2 A: I reached in the -- oh, I bought it at Dick's Pawn Shop.
- 3 Q: So you bought it in the store?
- 4 A: Yeah.
- 5 Q: And where was it located in the car?
- 6 A: In the glove box.
- 7 Q: Okay. And when you reached in your glove box and you got
- 8 the gun, what did you do?
- 9 A: I turned around and by that time, the guys had already
- 10 like swarmed Thoro, fighting or whatever and I just ran over
- 11 there to help.
- 12 Q: Was there anybody else from Myrtle Beach around this area
- 13 at this point?
- 14 A: Not that I can recall.
- 15 Q: You said they were swarming Thoro. How many?
- 16 A: I say maybe four to six.
- 17 Q: And were you concentrating more on Thoro or what everybody
- 18 else ---
- 19 A: Say it again?
- 20 Q: Who were you concentrating more on Thoro, the fellow you
- 21 know or everybody else around him?
- 22 A: This, this one big guy that kind of like hit him first.
- 23 Q: So you saw Thoro get hit first?
- 24 A: Yes.
- 25 Q: Now at that point, when you approached this group, is

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

210

- 1 Thoro fighting back at this point?
- 2 A: No, sir.
- 3 Q: When you approached the group that was fighting, what, if
- 4 anything, do you do?
- 5 A: I tried to hit the guy with the gun I had in my hand.
- 6 Q: Can you show the jury how you did that; I mean not having
- 7 a gun in your hand?
- 8 A: Like ---
- 9 Q: With your left hand?
- 10 A: Yes, sir.
- 11 Q: And how many times?
- 12 A: Two to three.
- 13 Q: And were you trying to hit them?
- 14 A: Like in the head.
- 15 Q: In the head. Did you go in front of him, behind him, to
- 16 the side, what?
- 17 A: Like the first time he wasn't facing me. Then he turned
- 18 around and I tried to hit him again, but my gun fell to the
- 19 ground and we just began fist fighting.
- 20 Q: And that was the big guy?
- 21 A: Yeah.
- 22 Q: And at this point, did you see any weapons?
- 23 A: No, sir.
- 24 Q: And your gun was on the ground?
- 25 A: Yes, sir.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

211

- 1 Q: Now how does the fight end; how does it break up?
- 2 A: We're fighting in between two cars and I just hear a
- 3 gunshot and then it just -- everybody just starts scattering.
- 4 Q: So the first gunshot, everybody started scattering?
- 5 A: Yes, sir.
- 6 Q: And up until that point no gunshots?
- 7 A: No, sir.
- 8 Q: Did you fire your gun?
- 9 A: No, sir.
- 10 Q: Not even one time?
- 11 A: No, sir.
- 12 Q: Could you tell where the rest of those shots were coming
- 13 from?
- 14 A: No, sir, I was in between two cars.
- 15 Q: Okay. So it was pretty tight in between two cars?
- 16 A: Yes, sir.
- 17 Q: And do you know if you and Thoro are the only Myrtle Beach
- 18 boys there or was there anybody else?
- 19 A: I don't know who shot the gun.
- 20 Q: It was kinda ---
- 21 A: Yes.
- 22 Q: Just tight knot?
- 23 A: We was in one place and they were -- it was like a brawl.
- 24 Q: It was a brawl?
- 25 A: Yes.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

212

1 Q: And by brawl, what do you mean; everybody's fighting?

2 A: Yeah, a fist fight.

3 Q: Now after you hear those shots fired, you said people
4 scattered. What do you do?

5 A: I turned around to see if it was my gun that was being
6 fired like at me, but my gun was still on the ground.

7 Q: What, if anything, did you do with your gun?

8 A: Pick it up.

9 Q: Now after you picked it up, what happened?

10 A: Dewayne picked the guy up or kind of like leading the dude
11 that I was fighting to, to like leave or whatever because he
12 was still trying to fight. He goes around a couple of cars
13 down, more shots go off; I'm kind of like dunking and then he
14 goes back down in the lane or whatever still talking trash and
15 he -- I ran up and tried to hit him again and he goes into the
16 bar and then I guess he gets in a fight in there and I go back
17 in the club to see where my girlfriend was, but she was -- she
18 wasn't in there so when I come back out, she was coming from
19 around the building; I got in my car and left.

20 Q: Now when you leave or try to leave, you're saying the
21 shots fired scattered everybody and I -- and I know when your
22 head it probably took -- seems like it takes forever, but
23 could you give us an estimation of how long it occurred from
24 the first shot until you heard some more shots.

25 A: Maybe twenty, thirty seconds, forty-five-second period.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

213

- 1 Q: How many shots did you hear total?
- 2 A: One single and then maybe two to four.
- 3 Q: And the shots, did they all sound similar, did they sound
- 4 different or what?
- 5 MS. PRATT: Objection to the leading again, Your Honor.
- 6 THE COURT: I don't think it suggests the answer; he can
- 7 describe it if he can.
- 8 A: It sounded like gunshots.
- 9 BY MR. RICHARDSON:
- 10 Q: And that's a fair statement. What were you concentrating
- 11 on there when you were hearing these gunshots?
- 12 A: Me not getting shot.
- 13 Q: Now after you hear gunshots and then you're scrambling,
- 14 you got your gun and you go back and check on your girlfriend.
- 15 The big fellow that you were scuffling with, where is he; did
- 16 you see him?
- 17 A: He was unconscious on the floor in the bar.
- 18 Q: Right by the bar?
- 19 A: Yes, sir.
- 20 Q: You get your girlfriend and where do y'all go?
- 21 A: We go home.
- 22 Q: You don't stick around for the police?
- 23 A: No, sir.
- 24 Q: Why?
- 25 A: Because I knew we were fighting and that -- gunshots and I

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

214

- 1 had a gun and just scared.
- 2 Q: Now at that point in time, were you legally allowed to
- 3 have a gun?
- 4 A: Yes, sir.
- 5 Q: And you indicated earlier, you injured your left thumb?
- 6 A: Yes, sir.
- 7 Q: How did you injure your left thumb?
- 8 A: I'm assuming when I hit the guy with the gun.
- 9 Q: And I think when you demonstrated, you came down like
- 10 this?
- 11 A: Yes, sir.
- 12 Q: And so your thumb would have been face down towards him
- 13 when you struck?
- 14 A: Yes, sir.
- 15 Q: I am going to show you what has been previously marked and
- 16 identified as State's Number Thirty-eight I believe; it's got
- 17 a safety on it; see if you recognize State's Thirty-eight?
- 18 A: Yes, sir.
- 19 Q: And how do you recognize State's Thirty-eight?
- 20 A: My gun.
- 21 Q: And that's the gun you allowed Myrtle Beach to go collect?
- 22 A: Yes, sir.
- 23 Q: Was it this gun or a different one that you had on the
- 24 night of March 6th, 2012?
- 25 A: It's definitely that one.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

215

1 MR. RICHARDSON: The State would seek to introduce
2 State's Thirty-eight at this time, Your Honor?

3 THE COURT: Any objection.

4 MS. PRATT: I'm sorry, I didn't hear what the Solicitor
5 said.

6 THE COURT: He wants to introduce State's Thirty-eight
7 into evidence, ma'am.

8 MS. PRATT: No objection.

9 THE COURT: All right. So, State's Thirty-eight is in
10 evidence without objection. You may proceed.

11 STATE'S EXHIBIT NUMBER THIRTY-EIGHT

12 ADMITTED INTO EVIDENCE

13 BY MR. RICHARDSON:

14 Q: And this is State's Number Forty-three for the record.
15 This has been previously marked and identified as State's
16 Forty-three. I'll withdraw that Your Honor. I'm actually
17 looking for -- And for the record, Your Honor, State's Forty,
18 I apologize for the confusion, State's Forty, do you recognize
19 State's Forty?

20 A: Yes, sir.

21 Q: And what do you recognize State's Forty to be? I'm
22 showing you --

23 A: My jacket.

24 Q: Your jacket. And when was the last time you wore that
25 jacket?

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

216

1 A: March 6th.

2 Q: March 6th, early morning hours?

3 A: Yes, sir.

4 MR. RICHARDSON: The State would seek to introduce
5 State's Number Forty?

6 THE COURT: Any objection?

7 MS. PRATT: No objection, Your Honor.

8 THE COURT: All right. State's Forty is in evidence
9 without objection.

10 STATE'S EXHIBIT NUMBER FORTY

11 ADMITTED INTO EVIDENCE

12 MR. BY RICHARDSON:

13 Q: Both those items are items you allowed Myrtle Beach Police
14 Department to come and retrieve them from your house?

15 A: Yes, sir.

16 Q: And last, but not least, is State's Forty-three. Do you
17 recognize State's Forty-three?

18 A: Yes, sir.

19 Q: And what do you recognize Forty-three to be?

20 A: The pants I was wearing.

21 Q: These are the blue jeans you were wearing on that night,
22 March 6th, 2012.

23 MR. RICHARDSON: The State would seek to introduce
24 State's Forty-three into evidence at this time?

25 MS. PRATT: No objection, Your Honor.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

217

1 THE COURT: All right. State's Forty-three is in
2 evidence without objection.

3 STATE'S EXHIBIT NUMBER FORTY-THREE

4 ADMITTED INTO EVIDENCE

5 BY MR. RICHARDSON:

6 Q: Now, Corey, these items Myrtle Beach came and collected
7 from your house or you allowed them to do that. When you get
8 to the house, what do you do with your clothes?

9 A: I just take it off in the bedroom and try to go get some
10 sleep, but I couldn't because my thumb was throbbing.

11 Q: And you just dropped them on the floor or in the hamper?

12 A: Yes, sir.

13 Q: In any way did you attempt to launder, wash, clean or
14 brush those clothes in any way?

15 A: No, sir.

16 Q: Did you see any other handguns that night?

17 A: No, sir.

18 Q: So this group in this fight, you didn't see any handguns
19 in this fight?

20 A: Not that I can recall.

21 Q: Did you see anybody with any type of revolver?

22 A: No, sir.

23 Q: Have you ever shot your handgun before, not that night,
24 but ever before?

25 A: Yes, sir.

State v. Chestnut
COREY MYERS - DIRECT BY RICHARDSON

218

1 Q: And tell us about any times it's ever gone off by
2 accident?

3 A: Never.

4 Q: When you grabbed your handgun that night, did you do
5 anything to manipulate the safety or do anything unusual with
6 the gun?

7 A: No, I keep it on safety and not cocked or anything.

8 Q: At any point during that evening, did you take it off
9 safety?

10 A: No, sir.

11 Q: And that handgun, you left it at your house too?

12 A: Yes, sir.

13 Q: Was it loaded or unloaded when you left it in the house?

14 A: I believe it was unloaded.

15 Q: Prior to giving your statement to police and them
16 collecting these items from you, were you given any
17 information whatsoever regarding what caliber firearm,
18 projectiles, shell casings, anything that were used?

19 A: No, sir.

20 Q: Tell us about anybody you shot at?

21 A: I never fired a shot.

22 Q: Never fired a shot. And why are you testifying here
23 today; did we make any kind of deals?

24 A: No, sir.

25 Q: Have there been any promises made to you whatsoever?

State v. Chestnut
COREY MYERS - CROSS BY PRATT

219

1 A: No, sir.

2 Q: And you don't want to go to jail?

3 A: No, sir.

4 Q: And you're hoping the best works out?

5 A: Yes.

6 Q: But no deals?

7 A: No deals.

8 Q: Thank you. If you'll answer any questions Ms. Pratt may
9 have.

10 THE COURT: Cross examination.

11 MS. PRATT: May it please the Court?

12 THE COURT: Yes, ma'am.

13 CROSS EXAMINATION OF COREY MYERS BY MS. PRATT:

14 Q: Good afternoon, Mr. Myers. We haven't met. I'm Barbara
15 Pratt and I represent Barney, Armando Chestnut.

16 A: Okay.

17 Q: And as I understand it, you are a codefendant in this
18 case, correct?

19 A: Yes, ma'am.

20 Q: And you are charged right now with murder and attempted
21 murder and pointing and presenting a firearm; is that right?

22 A: That's right.

23 Q: And you just answered with the State that there have been
24 no promises or deals made with you; is that right?

25 A: Yes, ma'am.

State v. Chestnut
COREY MYERS - CROSS BY PRATT

220

1 Q: Did you sign a Proffer Agreement with them, something like
2 a two-page letter that says that you're gonna testify and
3 they'll consider your cooperation in whatever they do with
4 your charges?

5 A: No, ma'am.

6 Q: Did anybody discuss that -- certainly, I can't ask you
7 about what your attorney said so please don't answer that, but
8 did the Solicitor or Mr. Kitelinger, Detective Kitelinger say
9 to you that they would consider your cooperation in regards to
10 your charges?

11 A: No, ma'am.

12 Q: Are you hoping that because of your testimony today that
13 good things will come out of this?

14 A: No, ma'am.

15 Q: No? Are you expecting to go to jail?

16 A: No, ma'am.

17 Q: So that's a good thing if you don't go to jail; is that
18 right?

19 A: Yes, ma'am.

20 Q: All right. So if I say you're expecting a good thing to
21 happen, that's that you don't expect to go to jail if you can
22 help it?

23 A: Yes, ma'am.

24 Q: Okay. All right. Now, Mr. Myers, you testified that you
25 saw the argument in the bar; is that right; the first

State v. Chestnut
COREY MYERS - CROSS BY PRATT

221

1 argument?

2 A: Yes, ma'am.

3 Q: Okay. And you said that there was a fellow, okay. You
4 were trying to diffuse a fight between Thoro and someone else.
5 Where was that guy from?

6 A: I knew him from he said he was from Kingstree, but he was
7 kinda like my neighbor. I just, I never really knew, I just
8 knew his face.

9 Q: Can you describe him for me?

10 A: He was brown-skinned guy, short haircut.

11 Q: Okay. Do you remember if he was wearing -- what he was
12 wearing, perhaps a black shirt with a face on it or a hoodie
13 or something?

14 A: No, ma'am.

15 Q: Okay. But no question he was from Kingstree, correct?

16 A: I mean, I ---

17 Q: Or with the Kingstree boys, excuse me, let me rephrase it.

18 A: Yeah.

19 Q: All right. So Thoro and a fellow of the Kingstree group
20 were arguing first inside the bar; is that right?

21 A: Yes, ma'am.

22 Q: Okay. And did Mr. Feaster break up the fight?

23 A: Yes, ma'am.

24 Q: Do you remember seeing anybody grab a pool cue?

25 A: No, ma'am.

State v. Chestnut
COREY MYERS - CROSS BY PRATT

222

- 1 Q: Okay. All right. And you told the Solicitor that you
2 heard somebody from the Kingstree group or maybe more than one
3 say I'll kill you, let's go get our guns, trash talk like
4 that; is that right?
- 5 A: The same guy that I kind of like knew, that's why I was
6 shocked by the whole thing.
- 7 Q: And he definitely said, made a threat that was he would
8 kill someone and he was gonna get his gun; is that right?
- 9 A: He was stating that to me. He said I'll kill you.
- 10 Q: To you?
- 11 A: And he -- they was like we going to get our guns.
- 12 Q: And this was a fellow you knew?
- 13 A: I never really knew him, he just kind of stay -- and I'd
14 seen him, you know, in passing and spoke. I don't really know
15 him.
- 16 Q: But you wouldn't have expected him to ---
- 17 A: No, ma'am.
- 18 Q: Do you think he was serious?
- 19 A: I don't know.
- 20 Q: Okay. But he certainly said I'll kill you; we're gonna go
21 get our guns?
- 22 A: Yes, ma'am.
- 23 Q: And were there other people that he was talking to?
- 24 A: A girl.
- 25 Q: Do you remember seeing the people that were from the

State v. Chestnut
COREY MYERS - CROSS BY PRATT

223

- 1 Hemingway area gather together in a clump near the front door
2 on the way out?
3 A: No, ma'am.
4 Q: You don't remember that?
5 A: A clump?
6 Q: A bunch of them talking together.
7 A: In the parking lot?
8 Q: Yes.
9 A: Yes, ma'am.
10 Q: Okay. So there's a group of them that are talking. How
11 many of them do you think you saw?
12 A: I don't know, maybe seven.
13 Q: Six or seven and certainly from that group -- I know you
14 don't know where they live, but from that group of the
15 Hemingway/Kingsway -- tree, kind of people, right?
16 A: Yes, ma'am.
17 Q: Okay. And you saw Thoro go outside?
18 A: Yes, ma'am.
19 Q: Thoro was alone?
20 A: Yes, ma'am.
21 Q: Okay. And Thoro went out and isn't it true that the
22 Hemingway/Kingstree group followed him?
23 A: Yes, ma'am.
24 Q: All right. And there was a particularly big guy with a
25 maybe a blue or black jacket, white sleeves?

State v. Chestnut
COREY MYERS - CROSS BY PRATT

224

- 1 A: I can't really remember like what everybody had on.
- 2 Q: Okay. But you remember a big guy following him?
- 3 A: Yes, ma'am.
- 4 Q: Did you see Thoro get hit with the bottle?
- 5 A: I seen the guy swing at him and then they just like rushed
- 6 him.
- 7 Q: And when you say they rushed him, how many?
- 8 A: Maybe like, I guess the group of guys that was in the
- 9 club.
- 10 Q: All right.
- 11 A: But everything kinda just scattered out.
- 12 Q: And they -- this group of guys attacked Thoro first?
- 13 A: Yes, ma'am.
- 14 Q: Did you see Thoro attack them?
- 15 A: What do you mean, fighting with them?
- 16 Q: Did he attack them first?
- 17 A: No, ma'am.
- 18 Q: Okay. No question they threw the first bottle?
- 19 A: Yes, ma'am.
- 20 Q: Okay. And so you got your gun?
- 21 A: Yes, ma'am.
- 22 Q: And what was your intent when you got your gun?
- 23 A: Just to have it in case somebody was gonna try to shoot
- 24 me.
- 25 Q: All right. So you were defending yourself?

State v. Chestnut
COREY MYERS - CROSS BY PRATT

225

1 A: Yes, ma'am.

2 Q: Were you intending to defend Thoro?

3 A: I mean, I didn't want to see him get like jumped.

4 Q: Well, when you hit Mr. Canty on the back of the, you know
5 from behind, were you trying to help Thoro?

6 A: Yes, ma'am.

7 Q: Okay. And where was Thoro at that point?

8 A: Fighting.

9 Q: Was he standing up, laying down, on his knees?

10 A: It was like they was kinda on the ground.

11 Q: So he's in a, in a defensive laying down on the ground
12 trying to fight back, correct?

13 MR. RICHARDSON: Mischaracterization, Your Honor, saying
14 defensive.

15 THE COURT: All right. Let him describe the position
16 please, ma'am.

17 MS. PRATT: Certainly, Your Honor, I apologize.

18 BY MS. PRATT:

19 Q: What do you think, what was Thoro trying to do while he's
20 laying on the ground and these guys are hitting him?

21 A: Fighting.

22 Q: Okay. All right. And he is fighting how many?

23 A: Like I say, it kind of scattered out by then, I mean I
24 don't know where everybody went. I was fighting also.

25 Q: Okay. And you have hit Mr. Canty at this point, correct?

State v. Chestnut
COREY MYERS - CROSS BY PRATT

226

- 1 A: I don't know his name.
- 2 Q: Well, the big guy with the -- that you hit; let's just
- 3 call him the big guy then, maybe that'll help, okay? So you
- 4 hit him?
- 5 A: Yes, ma'am.
- 6 Q: Okay. And what did he do?
- 7 A: Turned around.
- 8 Q: Turned around and did he start fighting with you?
- 9 A: Yes, ma'am.
- 10 Q: And where did you end up?
- 11 A: We was on the ground.
- 12 Q: You were both on the ground?
- 13 A: Yes, ma'am.
- 14 Q: Was he over you?
- 15 A: No, ma'am.
- 16 Q: Were you over him?
- 17 A: Yes, ma'am.
- 18 Q: Okay. So you're both fighting on the ground; is that
- 19 right?
- 20 A: Yes, ma'am.
- 21 Q: And are you trying to protect yourself?
- 22 A: Yes, ma'am.
- 23 Q: Did you feel threatened?
- 24 A: Yes, ma'am.
- 25 Q: Did you believe that you could have been seriously harmed

State v. Chestnut
COREY MYERS - CROSS BY PRATT

227

- 1 at that point?
- 2 A: Yes, ma'am.
- 3 Q: Did you believe that Thoro was being seriously harmed
- 4 during that fight?
- 5 A: Yes, ma'am.
- 6 Q: Okay. And you used the word swarmed Thoro in your answer
- 7 to the Solicitor's questions. Do you -- when you say swarmed,
- 8 do you mean like a bunch of bees coming into a hive kind of
- 9 thing?
- 10 A: They just like rushed up.
- 11 Q: And at that point, I think you told the Solicitor there
- 12 was no one else there from Myrtle Beach; is that right?
- 13 A: I mean everybody kind of left the club.
- 14 Q: But as far as being right in the middle of Thoro and the
- 15 Kingstree guys?
- 16 A: Once it all happened, I don't really know where anybody
- 17 was.
- 18 Q: I can imagine that that was a lot of people all at once
- 19 and a lot of things happening at the same time; is that right?
- 20 A: Yes, ma'am.
- 21 Q: Okay. And when you heard the first gunshot, you told the
- 22 Solicitor people started scattering; is that right?
- 23 A: Yes, ma'am.
- 24 Q: Is that when the fight or the attacks were going on
- 25 between the Kingstree boys and you and Thoro, is that when it

State v. Chestnut
COREY MYERS - CROSS BY PRATT

228

- 1 started to break up?
- 2 A: Yes, ma'am.
- 3 Q: Okay. Do you feel that it would have broken up without
- 4 the gunshot as quickly?
- 5 A: I don't know about as quickly.
- 6 Q: You said that Mr. Feaster was trying to pick up the big
- 7 guy; is that right?
- 8 A: Kind of like just escort him from -- like he was breaking
- 9 it up too because he was still trying to fight.
- 10 Q: Okay. So the big guy was still fighting; he's still
- 11 swinging; is that right?
- 12 A: That's right.
- 13 Q: So the big guy has swung at Thoro and he's turned on you
- 14 and you're fighting with him and when Mr. Feaster takes him
- 15 away, he's still swinging; is that what you're saying?
- 16 A: No, I mean he kind of walks away.
- 17 Q: But he's still ---
- 18 A: No, he -- he just like, I guess, mad or whatever, but he
- 19 walks around the car and then I don't see him until he's
- 20 coming back towards the entrance of the club.
- 21 Q: All right. And in the second line of parked cars and you
- 22 -- I'm gonna show you a drawing which is Defense Exhibit
- 23 Number 2 and ask if that looks to you like a diagram of what
- 24 the club and the parking lot area looks like; is that correct?
- 25 A: Yes, ma'am.

State v. Chestnut
COREY MYERS - CROSS BY PRATT

229

- 1 Q: Okay. Now you see two lines, on that drawing you see two
2 lines of parking spaces; is that right?
- 3 A: Yes, ma'am.
- 4 Q: And at the club itself, there's actually a line of parking
5 spaces that go down by the barber shop and in front of the
6 club, correct?
- 7 A: Yes, ma'am.
- 8 Q: Okay. And there's another line opposite it with a little
9 kind of driveway area in between, correct?
- 10 A: Yes, ma'am.
- 11 Q: Was there a fight going on in that other line of cars?
- 12 A: What do you mean?
- 13 Q: Well, did you see anything, were you looking and did you
14 see anything going on in the middle of all of this brawl in
15 this -- and I'm pointing to the second line of cars that's
16 kind of away from the barber shop, in that area, do you
17 remember anything there?
- 18 A: The only fight I know was the initial contact and I never
19 really seen no other fights. I was ducking.
- 20 Q: You were ducking. Okay. Now you have a Taurus PT140
21 Millennium, is that right?
- 22 A: Yes, ma'am.
- 23 Q: And that's a .40 caliber?
- 24 A: Yes, ma'am.
- 25 Q: Do you have other guns or do you like to use other guns as

State v. Chestnut
COREY MYERS - CROSS BY PRATT

230

- 1 well?
- 2 A: No, ma'am.
- 3 Q: Okay. That's the one gun that you have?
- 4 A: Yes, ma'am.
- 5 Q: Okay. Are you aware of a defect in the PT140 Millennium?
- 6 A: No, ma'am.
- 7 Q: You ever had any problems with it actually locking up when
- 8 you've had the safety on and, and you're messing with the
- 9 trigger?
- 10 A: What you mean?
- 11 Q: Where you can't rack it?
- 12 A: No, ma'am.
- 13 Q: That particular night as you come back from the area of
- 14 the second line of cars back into the video, are you -- are
- 15 you trying to rack your gun; do you remember?
- 16 A: No, ma'am.
- 17 Q: Okay. With the Court's permission, I would like show him
- 18 a video clip from Defendant's Exhibit Number Four?
- 19 THE COURT: All right.
- 20 MR. RICHARDSON: Your Honor, it'll take just a moment to
- 21 warm the camera up.
- 22 THE COURT: All right. Very good.
- 23 BY MS. PRATT:
- 24 Q: I think I'm gonna back up with these two. The first video
- 25 clip -- have you seen these videos?

State v. Chestnut
COREY MYERS - CROSS BY PRATT

231

1 A: No, ma'am.

2 Q: You've never seen the videos with your lawyer?

3 A: No, ma'am.

4 Q: Okay. Did you know there were cameras at the club?

5 A: Yes, ma'am.

6 Q: And you were aware that there were cameras that went down
7 the parking lot and inside the club and so on?

8 A: I don't know where they were pointing; I knew he had
9 surveillance.

10 Q: Okay. He actually has that painted on his door, doesn't
11 he, that there are cameras, correct?

12 A: On the windows.

13 Q: On the windows, yeah. Okay. All right.

14 MS. PRATT: And for the record, Your Honor, I'm playing
15 the clip from Camera 2, which begins at 1:13:21.

16 THE COURT: All right.

17 BY MS. PRATT:

18 Q: Who is that?

19 A: I can't really tell.

20 Q: You can't tell who that is walking down the sidewalk?

21 A: I can't tell.

22 Q: Okay. Can you see it any better now? All right. And who
23 do you see here?

24 A: I can't really see.

25 Q: May I ask the witness to step down, Your Honor, to be able

State v. Chestnut
COREY MYERS - CROSS BY PRATT

232

1 to see the video better?

2 THE COURT: You want to step down if it will help. Why
3 don't you go right next to this microphone here and see if
4 that will help, right here.

5 BY MS. PRATT:

6 Q: Mr. Myers, can you, can you tell who that is or at least
7 whether he's from Myrtle Beach or from the Hemingway/Kingstree
8 group?

9 A: No, ma'am.

10 Q: You're not sure?

11 A: (Indicates negatively.)

12 Q: Okay. Now the fellow that just opened -- that came in and
13 turned on the lights, the headlights of the car by clicking;
14 do you know who that is?

15 A: I'm assuming it's Thoro.

16 Q: So, you don't know who that is either? Would you be
17 surprised to know that that might be you?

18 A: It could be because like I said, my car is three or four
19 cars down and that's where I went at when I left the club.

20 Q: And now do you see -- what did you just see on the video?

21 A: What do you mean?

22 Q: Do you -- where are you in this picture or can you tell?

23 A: Can I do what?

24 Q: Can you tell where you are in that video?

25 A: Not really.

State v. Chestnut
COREY MYERS - CROSS BY PRATT

233

1 Q: Okay. Where the shades are that are between, that are the
2 furthest out against the white wall, is that where the fight
3 was going on?

4 A: Yes, ma'am.

5 Q: And your car, your car is a couple of cars over with the
6 headlights on; is that your car?

7 A: I believe I was back then.

8 Q: Okay. I'm gonna show you another clip also from Camera 2
9 from 1:14:45 -- and for the record, Your Honor, this is from
10 Camera 2 and it started back at the beginning. It begins at
11 1:14:44.

12 Corey, do you recognize who is right -- do you recognize
13 who that is?

14 A: I can't really see it.

15 Q: You can't tell who that is? Would you be surprised to
16 know that that might be you?

17 A: Like I said, once -- if it's -- once the guy came back
18 toward the club, yes.

19 Q: Okay. And what is in your hand?

20 A: My gun.

21 Q: All right. And you continue to walk, correct? And where
22 are you going from there?

23 A: To look for my girlfriend.

24 Q: All right. So that's you that just went off of the
25 picture; is that right?

State v. Chestnut
COREY MYERS - CROSS BY PRATT

234

1 A: I can't ---

2 Q: Now in that, in that picture clip, do you -- were you
3 trying to rack your gun?

4 A: No, ma'am.

5 Q: I'm now going to show you a clip, which is also from
6 Camera 2 and it starts at 1:15:11. Do you see yourself in
7 that picture; can you tell that that is you?

8 A: In between the cars?

9 Q: Yes, sir?

10 A: It looks like it. I can't really ---

11 THE COURT: I'm sorry. Speak up and tell me what was the
12 answer? Can you answer the question or not?

13 A: I can't really see. I mean, I need glasses, but --

14 THE COURT: That's fine. Just needed your answer to be
15 out loud; that's all. Thank you.

16 BY MS. PRATT:

17 Q: And this is at 1:15:16 a.m. is that right; that's what the
18 timing shows here?

19 A: Yes, ma'am.

20 Q: All right. And what are you -- what is the person doing
21 right here; can you tell? No?

22 A: Huh-uh (negative response).

23 Q: You can take your seat again. Mr. Myers, did you go back
24 to your car area at about 1:15 there looking for shells?

25 A: No, ma'am, I had dropped my keys out of my hoodie pocket.

State v. Chestnut
COREY MYERS - CROSS BY PRATT

235

1 Q: So you're not trying to find any shells or look for
2 anything like that?

3 A: No, ma'am.

4 Q: Okay. Now you actually turned yourself in on March the
5 6th, correct?

6 A: Yes, ma'am.

7 Q: But you weren't interviewed and you didn't sign a consent
8 to search until two days later; isn't that right, on the 8th?

9 A: I don't know the exact amount of days.

10 Q: Was it a couple of days?

11 A: Yes, ma'am.

12 Q: Okay. And you were in J. Reuben Long during that time?

13 A: Yes, ma'am.

14 Q: You had a broken thumb?

15 A: Yes, ma'am.

16 Q: So you had an injury from the fight as well, didn't you?

17 A: Yes, ma'am.

18 Q: Okay. And as far as you know, Thoro was injured, correct?

19 MR. RICHARDSON: Your Honor, objection.

20 MS. PRATT: I'll withdraw.

21 THE COURT: All right.

22 BY MS. PRATT:

23 Q: Now on the 8th when you gave your statement and you gave
24 them permission to search your apartment, correct?

25 A: I don't know the exact dates, but I know I gave them

State v. Chestnut
COREY MYERS - CROSS BY PRATT

236

1 permission.

2 MS. PRATT: I beg the Court's indulgence a moment.

3 THE COURT: Just a second.

4 BY MS. PRATT:

5 Q: Mr. Myers, I'm going to show you a document, which has
6 been marked as Defense Exhibit Number Five for identification
7 and ask if you recognize the document?

8 A: Yes, ma'am.

9 Q: Is that your signature?

10 A: Yes, ma'am.

11 Q: And is that actually a consent to search?

12 A: I'm assuming that's what it was for.

13 Q: Well, you can read and write, correct?

14 A: Yes, ma'am.

15 Q: What does it say at the top?

16 A: Consent to Search.

17 Q: Okay. All right.

18 MS. PRATT: Your Honor, I would ask that this be entered
19 into evidence as Defense Number Five.

20 THE COURT: Any objection.

21 MR. RICHARDSON: No objection, Your Honor.

22 THE COURT: It's in evidence without objection.

23 DEFENDANT'S EXHIBIT NUMBER FIVE

24 ADMITTED INTO EVIDENCE

25 BY MS. PRATT:

State v. Chestnut
COREY MYERS - CROSS BY PRATT

237

- 1 Q: And, Mr. Myers, you gave this to Officer or Detective
2 Kitelinger and Truex, correct?
3 A: Yes, ma'am.
4 Q: And you gave them very specific instructions as to what
5 consent you were giving; isn't that right?
6 A: No, ma'am.
7 Q: Well, you listed specific things on here, didn't you?
8 A: No, ma'am.
9 Q: Would you please look at the middle of the document and
10 tell me what is written by hand in that document?
11 A: 140 Taurus Millennium, bedroom clothing, jeans and red-
12 and-grey Aeropostle hoodie.
13 Q: All right. So that was exactly what you told them that
14 they could take from your house, wasn't it?
15 A: That's right.
16 Q: You didn't give them consent to say search the kitchen or
17 anyplace else, right?
18 A: I didn't mind if they did.
19 Q: But you didn't give them that specific consent.
20 A: No, ma'am.
21 Q: Those were the items that you expected them to get?
22 A: Yes, ma'am.
23 Q: And those items you actually placed on a bed in a bedroom,
24 didn't you?
25 A: Yes, ma'am.

State v. Chestnut
COREY MYERS - CROSS BY PRATT

238

1 Q: So you had it set out from them to get, correct?

2 A: No, ma'am.

3 Q: Well, you placed them there, didn't you?

4 A: Yes, ma'am.

5 Q: Okay. Mr. Myers, I'm going to show you two photos, which
6 have been marked as Defense Exhibit Six and Defense Exhibit
7 Seven and ask if you recognize what is depicted in the
8 pictures without, without telling me what's in it; just tell
9 me if you recognize this first?

10 A: A gun.

11 Q: All right. These are -- are these photos of the bedroom
12 in your house?

13 A: Yes, ma'am.

14 Q: All right. Is this the way that you had things laid out
15 at the time that you left to turn yourself in?

16 A: Yes, ma'am.

17 Q: All right.

18 MS. PRATT: Your Honor, I would ask that these be entered
19 as Defendant's Six and Seven?

20 THE COURT: Any objection?

21 MR. RICHARDSON: No objection, Your Honor.

22 THE COURT: In evidence without objection.

23 DEFENDANT'S EXHIBIT NUMBER SIX AND SEVEN

24 ADMITTED INTO EVIDENCE

25 BY MS. PRATT:

State v. Chestnut
COREY MYERS - CROSS BY PRATT

239

1 Q: So, Mr. Myers, then you actually laid out on the bed
2 before you left to turn yourself in, the gun, some clothes and
3 some bullets; is that right?

4 A: No, I just laid the gun there with the bullets that was in
5 it.

6 Q: All right. And on Number Six, the bullets that are set
7 out; is that where you placed them?

8 A: Yes, ma'am.

9 Q: All right. So you placed the bullets there, took them out
10 of the gun and placed them there?

11 A: Yes, ma'am.

12 Q: May I publish to the jury, Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. PRATT: And may I publish the Consent to Search to
15 the jury please?

16 THE COURT: Yes, ma'am.

17 BY MS. PRATT:

18 Q: So when the police got there, you had already left, but
19 you had laid out the items on the bed, correct, when you left?

20 A: No, ma'am.

21 Q: You set them out like that in the photo, didn't you,
22 before you left?

23 A: Yes, ma'am.

24 Q: Okay. All right.

25 A: Because I wanted to make sure I had ten bullets and that

State v. Chestnut
COREY MYERS - CROSS BY PRATT

240

- 1 my gun wasn't fired.
- 2 Q: Well, and your gun actually holds ten plus one in the
- 3 chamber, correct?
- 4 A: But I never keep it, keep one in the chamber.
- 5 Q: Did you tell Detective Kitelinger that you usually keep
- 6 one in the chamber?
- 7 A: I can't recall.
- 8 Q: All right. No question that you had the gun? Ad you're
- 9 left-handed, correct?
- 10 A: Yes, ma'am.
- 11 Q: All right. And that gun is actually better for a right
- 12 handed person, isn't it?
- 13 A: I don't know.
- 14 Q: Well I'm gonna show you what's been entered into evidence
- 15 as State's Thirty-eight, which is the PT140 with a gunlock on
- 16 it and ask if that is your weapon?
- 17 A: Yes, ma'am.
- 18 Q: Okay. And you're looking at what would be the right side
- 19 of the weapon here; I mean if we're looking at it left/right?
- 20 A: Yes, ma'am.
- 21 Q: Are there any switches, buttons or otherwise on that side?
- 22 A: No, ma'am.
- 23 Q: All right. And on the left-hand side you have the safety,
- 24 correct?
- 25 A: Uh-huh (affirmative response).

State v. Chestnut
COREY MYERS - CROSS BY PRATT

241

1 Q: So would you say that this particular weapon would be more
2 likely to be used by a right-handed person with the buttons on
3 the left-hand side?

4 A: I never really paid attention to that.

5 Q: Okay. And when you hold it, you hold it in your left
6 hand, correct?

7 A: Yes, ma'am.

8 Q: And so your safety is actually away from where you would
9 be looking; is that right?

10 A: Yes, ma'am.

11 Q: Okay. And you broke your left thumb?

12 A: Yes, ma'am.

13 Q: You were very adamant when you talked to the police that
14 you didn't fire the gun. Were you worried that they might try
15 to put one of these shots on you; one of these bullet
16 injuries?

17 A: No, ma'am.

18 Q: I mean at that point, you knew that there had been two
19 guys that had been shot, correct?

20 A: Yes, ma'am.

21 Q: And you figured if you had a gun, you might have that put
22 on you, right?

23 A: I mean that's what I was being charged with.

24 Q: And that was your -- when you talked to the police, that
25 was your concern, wasn't it, that you were gonna be placed

State v. Chestnut
COREY MYERS - CROSS BY PRATT

242

1 with or have one of these shootings put on you?

2 A: No, ma'am.

3 Q: You weren't concerned about that?

4 A: I don't get what you're asking.

5 Q: I'm just asking if that's what you were worried about?

6 A: Yes.

7 Q: Okay. Now you told the Solicitor that you didn't
8 necessarily see any other guns. Did you believe that the
9 Kingstree boys had access to other weapons?

10 A: They may could have.

11 Q: Probably in their cars like yours was?

12 A: Yes, ma'am.

13 Q: And they were coming out into the parking lot?

14 A: Yes, ma'am.

15 Q: All right. And could they have had revolvers or semi-
16 automatics?

17 MR. RICHARDSON: Your Honor, it calling for speculation.

18 THE COURT: Sustained.

19 MS. PRATT: I'll withdraw it.

20 BY MS. PRATT:

21 Q: One more question. I think I might be done. Who else
22 lives in your apartment on [REDACTED]

23 A: Who else?

24 Q: Lives with you on [REDACTED]

25 A: My girlfriend and my son.

State v. Chestnut
COREY MYERS - REDIRECT BY RICHARDSON

243

1 Q: All right. And after you went to jail on the 6th, they
2 stayed in the apartment, correct?

3 A: Yes, ma'am.

4 Q: All right. With the Court's indulgence?

5 THE COURT: Yes, ma'am.

6 BY MS. PRATT:

7 Q: One last question. When you left the club?

8 A: Yes, ma'am.

9 Q: Was Thoro bleeding; was he leaking in the terms that y'all
10 use?

11 A: I mean when I left I didn't see it with my own eyes. I
12 called him and asked him, you all right, and he said yeah, but
13 they got me bleeding.

14 Q: Okay. Thank you very much. I have nothing further.

15 THE COURT: Redirect?

16 MR. RICHARDSON: I'll try to be as brief as possible,
17 Your Honor.

18 REDIRECT EXAMINATION OF COREY MYERS BY MR. RICHARDSON:

19 Q: Ms. Pratt asked you about could the Kingstree men have
20 been going to their car. Did you actually see any of these
21 people you recognize as being from Kingstree go into a car?

22 A: I seen them fighting.

23 Q: You just saw them fighting. And I believe Defense -- Ms.
24 Pratt, was it Number Two or Number Four?

25 MS. PRATT: Four.

State v. Chestnut
COREY MYERS - REDIRECT BY RICHARDSON

244

1 MR. RICHARDSON: Is it still in there?

2 MS. PRATT: I believe so; I didn't take it out.

3 BY MR. RICHARDSON:

4 Q: And this is Defense Number Four, the D-Camera 02 01:13:18

5 -- Okay.

6 MR. RICHARDSON: Your Honor, for the record, we'll be
7 playing -- it starts 1:13:56 and, Your Honor, I know that Mr.
8 Myers had some difficulty earlier?

9 THE COURT: Yes, sir.

10 MR. RICHARDSON: May Corey take -- come down and come
11 right by my table.

12 THE COURT: All right.

13 BY MR. RICHARDSON:

14 Q: Corey, can you see the screen all right?

15 THE COURT: You need to answer out loud, sir?

16 Q: Answer out loud.

17 A: Yes, sir. Yes, sir.

18 Q: You can see the screen fine from where you're standing?

19 A: Yes, sir.

20 Q: I'm gonna ask you to pay attention to this fellow in the
21 white, okay, and earlier you said you can't identify who it
22 is, correct?

23 A: No, sir.

24 Q: All right. Now what did you just see that guy in the
25 white do?

State v. Chestnut
COREY MYERS - REDIRECT BY RICHARDSON

245

1 A: Hit somebody.

2 Q: So you saw him throw a punch out?

3 A: Swing.

4 Q: Okay. And is that the first swing you see?

5 MS. PRATT: Your Honor, I believe the video speaks for
6 itself.

7 THE COURT: I appreciate that, but ---

8 MS. PRATT: He's asking him to interpret what he didn't
9 see personally, Your Honor.

10 THE COURT: Ask him to see what he sees on the screen.

11 MR. RICHARDSON: Certainly.

12 THE COURT: I'll allow it.

13 BY MR. RICHARDSON:

14 Q: Back it up just a little bit. And, Your Honor, I'll --
15 for the record, slow it down and start at 13:57, actually back
16 it up just a hair to 13:56.

17 Is your answer still the same?

18 A: He swung.

19 Q: He swung. Okay. Go ahead and have your seat back, Corey.

20 MR. RICHARDSON: Your Honor, I think I can probably get
21 through with this without turning the lights back up or down
22 and up.

23 THE COURT: All right.

24 MR. RICHARDSON:

25 Q: Ms. Pratt asked you what that individual on the ground was

State v. Chestnut
COREY MYERS - REDIRECT BY RICHARDSON

246

1 looking for; you said something about your keys; tell us about
2 that?

3 A: They was in the pockets of my hoodie and I guess during
4 the fight, they fell out.

5 Q: Because y'all were all rolling around on the ground?

6 A: Yes, sir.

7 Q: Now Ms. Pratt asked you something about did you feel
8 threatened during the fight?

9 A: Yes, sir.

10 Q: Had you ever been in a fist fight before?

11 A: Yes, sir.

12 Q: Could you describe for us any fist fight in which you
13 didn't feel threatened?

14 A: No, sir.

15 Q: So every time you've been in a fist fight, you felt
16 threatened?

17 A: Yes, sir.

18 Q: And Ms. Pratt asked you about the bullets being out on the
19 bed?

20 A: Yes, sir.

21 Q: You answered her about you took the bullets out; why was
22 that?

23 A: Because I wanted to make sure I had ten bullets and that
24 my gun wasn't fired.

25 Q: Because it was hot and heavy real quick, right?

State v. Chestnut
COREY MYERS - REDIRECT BY RICHARDSON

247

1 MS. PRATT: Objection to leading, Your Honor.

2 THE COURT: Don't lead your witness.

3 MR. RICHARDSON: Yes, sir.

4 BY MR. RICHARDSON:

5 Q: And how many bullets when you unloaded your firearm did
6 you have?

7 A: Ten.

8 Q: And I believe Ms. Pratt asked you is that where you left
9 them?

10 A: Yes, sir.

11 Q: And many bedrooms do you have in that apartment?

12 A: Two.

13 Q: The bed where the gun was, whose bedroom was that?

14 A: It's supposed to be my son, but he sleeps in the room with
15 us.

16 Q: Like a lot of kids, he sleeps in the room with you and
17 your girlfriend?

18 A: Yes, sir.

19 Q: Would your son have had access to that room?

20 A: He don't go in there.

21 Q: And how about your girlfriend?

22 A: She don't even go in there.

23 Q: Now Ms. Pratt -- and I'm not gonna -- we're not gonna
24 watch anymore video right now, but she was talking about the
25 big guy goes back in the club and you were talking back when

State v. Chestnut
COREY MYERS - REDIRECT BY RICHARDSON

248

1 the big guy goes back in the club; which big guy is that?

2 A: That's the same guy I was fighting.

3 Q: And you saw him go back in the club?

4 A: Yes, sir.

5 Q: What happened to him when he tries to go back in the club?

6 A: He get in another fight.

7 Q: Did you see who started it?

8 A: I mean, it was him and Thoro in the doorway.

9 Q: So Thoro -- you said Thoro went back to fight him?

10 A: I mean, they was fighting in the doorway.

11 Q: Again after all this?

12 A: Yes, sir.

13 MR. RICHARDSON: Court's indulgence.

14 THE COURT: Yes, sir.

15 BY MR. RICHARDSON:

16 Q: And the guy that you said -- there was a statement from
17 some guy about he was gonna get his gun, he was gonna kill
18 you; that was said to you?

19 A: Yes.

20 Q: How loud did he say it?

21 A: I mean, we was right in the -- no less than two feet away.

22 Q: And what did that guy look like?

23 A: Short, brown skin, low haircut.

24 Q: Dreads?

25 A: No, sir.

State v. Chestnut
COREY MYERS - RECROSS BY PRATT

249

1 Q: And when you say low haircut, are you talking about like
2 you, right?

3 A: Yes, sir.

4 MR. RICHARDSON: Your Honor, I have no further questions
5 on redirect.

6 THE COURT: On those questions, Ms. Pratt.

7 MS. PRATT: Yes, Your Honor, I have just one or two.

8 RECROSS EXAMINATION OF COREY MYERS BY MS. PRATT:

9 Q: Corey, if you could come back down to where you were with
10 at the Solicitor's table. All right. Corey, I'm gonna ask
11 you to look at this again and I'm gonna try to stop it at the
12 point that the Solicitor was asking you about, okay. All
13 right. And in looking at that, that picture, you told the
14 Solicitor that could be Thoro raising his hand to do something
15 to strike at Mr. Canty?

16 A: No, ma'am, I really didn't know who it was.

17 THE COURT: All right. You got to speak up and I can't
18 hear you and I'm sure the jury can't.

19 A: I said I didn't really know who it was.

20 BY MS. PRATT:

21 Q: But in the answer to the Solicitor's questions you seemed
22 to say that that might be raising a fist in some way.

23 A: I said -- ma'am?

24 Q: Raising a hand in some way or striking; did you say that
25 the fellow in the white was hitting or the fellow with the hat

State v. Chestnut
COREY MYERS - RECROSS BY PRATT

250

1 on was hitting?

2 A: When he showed it earlier, I seen a guy swinging this way.

3 THE COURT: You have to describe which fellow you're
4 talking about. There's one in light and one in dark so
5 describe which one you're talking about, sir.

6 A: The one with the hat.

7 BY MS. PRATT:

8 Q: The one with the hat striking first, correct?

9 A: Yes, ma'am.

10 Q: Okay. Thank you. I have nothing further.

11 THE COURT: All right. Anything else, Solicitor?

12 MR. RICHARDSON: No, sir.

13 THE COURT: All right, sir. You can step down, sir. Do
14 you wish the witness to be excused at this time?

15 MR. RICHARDSON: I do ask that he be excused, Your Honor.

16 THE COURT: Any objection?

17 MS. PRATT: No objection, Your Honor.

18 THE COURT: All right. You're excused from your
19 subpoena, sir.

20 All right. Put the lights up please, ma'am.

21 All right. Ladies and gentlemen of the jury, we're gonna
22 break for lunch. I would ask that you be back in your jury
23 room by 2:20 please. Be back in the jury room by 2:20. Thank
24 you very much.

25 Everyone else remain seated, please.

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

252

1 Honor. Right now I'm just letting the computer warm up.

2 THE COURT: Very good.

3 THE COURT: Defense?

4 MS. PRATT: Defense is ready, Your Honor.

5 THE COURT: All right. Ask the jury to come in please.

6 All right. Solicitor, next witness please?

7 MR. HYMAN: The State would call Officer Hank Carrison to
8 the stand.

9 THE COURT: Please come around and be sworn, sir; meet
10 the Clerk right at the corner.

11 OFFICER EVERETT HENRY CARRISON,
12 HAVING BEEN SWORN TESTIFIES AS FOLLOWS:

13 CLERK: State your full name and spell your last name?

14 MR. CARRISON: Officer Everest Henry Carrison, II.
15 Carrison is C-A-R-R-I-S-O-N.

16 DIRECT EXAMINATION OF OFFICER EVEREST HENRY CARRISON, II, BY
17 MR. HYMAN:

18 Q: Mr. Carrison, what name do you actually go by?

19 A: I go by Hank.

20 Q: Hank. And where do are you employed?

21 A: City of Myrtle Beach Police Department.

22 Q: And how long have you been working for the City of Myrtle
23 Beach?

24 A: A little over two years. I think hiring date was May 5th
25 or 6th, 2011.

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

253

1 Q: And tell us a little bit about your training and
2 experience in law enforcement?

3 A: Standard six-week pre-service at the City of Myrtle Beach
4 and then a twelve-week course at the South Carolina Criminal
5 Justice Academy followed by three, I believe three week cycles
6 of field training.

7 Q: And what's your position with Myrtle Beach Police
8 Department?

9 A: Now Special Operations Waterfront daytime.

10 Q: What was your position on or about March 6th, 2012?

11 A: Patrol, Night Shift A Bracket.

12 Q: And as a Patrol Officer, explain what your typical duties
13 would be?

14 A: General patrol, see and be seen, call responsiveness,
15 answering calls and take reports and just general crime
16 deterrents.

17 Q: And what kind of hours would you work? Would you work a
18 set number of hours or some nights, some days?

19 A: I -- at that point in time, I worked all nights. I'd work
20 from 6:00 P.M. until 6:00 A.M.

21 Q: Okay. Let's, let's go forward to March 5th and March 6th,
22 2012. Do you recall what you were doing on those days?

23 A: Yes, sir.

24 Q: And what were your duties on those days?

25 A: Still Night Shift Patrol, A Bracket. I believe I was

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

254

- 1 assigned to either Short South or Long South Patrol Division,
2 somewhere on the south end.
- 3 Q: And about what time did you go on shift?
- 4 A: Just a hair before 6 o'clock in the evening.
- 5 Q: 6 o'clock in the evening?
- 6 A: Yes, sir.
- 7 Q: Okay. Did you have an occasion to respond to 3rd Avenue
8 Sports Bar?
- 9 A: Yes, sir.
- 10 Q: What brought you to that location?
- 11 A: If I recall correctly, I believe we responded for a shots
12 fired call.
- 13 Q: And do you recall what time you responded to the bar?
- 14 A: It was after dark.
- 15 Q: After dark?
- 16 A: Yes, sir.
- 17 Q: Do you remember was it shortly after you came on shift?
- 18 A: I believe it was at least midway through the shift if not
19 later; I want to say it was past midnight.
- 20 Q: Okay. And where, for the record, where is that bar
21 located?
- 22 A: The bar is located on a little shopping center near the
23 intersection of Third Avenue South and Highway 15 or Broadway
24 Street, depending on which side you're -- which direction
25 you're headed.

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

255

1 Q: And what, if anything, did you observe when you arrived on
2 the scene?

3 A: When I first arrived on the scene, I believe there might
4 have been one other officer there. There was a bunch of
5 people tending to one male that appeared to have some type of
6 injury. He was, I believe, in the passenger seat of a
7 vehicle. A quick description for a possible suspect vehicle
8 was given out and I left the scene, attempted to locate the
9 suspect vehicle and then came back.

10 Q: Okay. Let's just back up. When you arrived on the scene,
11 I think you said one officer was on scene at that time?

12 A: If I recall correctly.

13 Q: Were people still standing around that were patrons of the
14 bar?

15 A: Yes, sir.

16 Q: There were still patrons standing around?

17 A: Yes, sir.

18 Q: At that time, had the scene been secured?

19 A: No, sir. It was in the process of being secured.

20 Q: It was in the process?

21 A: Yes, sir.

22 Q: Is it fair to say it was shortly after the shooting?

23 A: Absolutely, sir.

24 Q: Okay. And you said that you got a description of a
25 vehicle?

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

256

- 1 A: Yes, sir.
- 2 Q: And what was that description?
- 3 A: If I recall correctly, the description was either a dark
4 blue, possibly black, four-door sedan, left headed westbound
5 on Third Avenue South toward 501.
- 6 Q: Okay. And Officer Carrison, what is a BOLO?
- 7 A: Be on the lookout. It's a basically a quick broadcast
8 that's given over the radio and mobile data terminals inside
9 our vehicle letting us know person, thing, vehicle, et cetera
10 that we're to be looking for a variety of reasons.
- 11 Q: And when you arrived on the scene, were victims still on
12 the scene?
- 13 A: Yes, sir.
- 14 Q: And how many victims were there on the scene?
- 15 A: At the time, I thought there was only one.
- 16 Q: And where was he located?
- 17 A: He was -- that was the gentleman inside the vehicle that
18 was being treated to by some bystanders.
- 19 Q: And did you, did you ever come in contact with that
20 gentleman?
- 21 A: I did not.
- 22 Q: So you never observed his injuries?
- 23 A: At -- before I went to attempt to locate the suspect
24 vehicle, I did not. I did later on in the incident when I
25 came back.

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN.

257

1 Q: Okay. So, we'll talk about that. When you attempted to
2 locate the suspect vehicle, were you successful?

3 A: I thought I was.

4 Q: Tell the jury -- tell us a little bit about that.

5 A: I observed a very, very dark red four-door sedan headed
6 westbound on Third Avenue South and then turning westbound on
7 Highway 501 as if it was to head out of the city toward Conway
8 and it was traveling approximately seven to eight miles per
9 hour over the speed limit, so that was our probable cause for
10 the stop. I stopped the vehicle and I waited for an
11 additional officer to back me up before I made contact with
12 the driver. The driver in fact was an elderly Caucasian
13 female who had just gotten off work at Bojangles and was in no
14 way or shape related to the incident.

15 Q: Okay. So I assume you let her go?

16 A: I did.

17 Q: And did what did you do after?

18 A: I went back to the scene.

19 Q: And what did you do to assist in this investigation and
20 what, if anything, did you do once you returned to the crime
21 scene?

22 A: I assisted in hanging up crime scene tape and maintaining
23 a crime scene log of persons coming and going that were
24 entering the crime scene, taking photographs of any shells or
25 anything that I could find nearby and take photographs of the

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

258

- 1 license plates of the cars that were still in the parking lot.
- 2 Q: Were there other officers with the scene when you left?
- 3 A: Yes, sir. Yes, sir.
- 4 Q: And approximately how many officers were investigating the
- 5 crime scene at that time?
- 6 A: At the time I left or the time I came back?
- 7 Q: Both.
- 8 A: Okay. I think there were two at the time I left and by
- 9 the time I got back, at least five.
- 10 Q: Okay. And do you recall who all was on the scene?
- 11 A: Roughly, yes, sir.
- 12 Q: And what is the crime scene log?
- 13 A: The crime scene log is basically a listing of people that
- 14 are coming and going after we establish the crime scene and
- 15 manage to secure. We can't be responsible for what happened
- 16 before that but after we establish and secure the crime scene,
- 17 it's basically a log that maintains who comes in and who goes
- 18 out.
- 19 Q: And was the crime scene log done in this investigation?
- 20 A: Yes, sir.
- 21 Q: Okay. And the people on the crime scene log, you just
- 22 testified that that would begin after the crime scene was
- 23 secure?
- 24 A: Yes, sir.
- 25 Q: So it wouldn't have the people that were present at the

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

259

1 crime scene before the police arrived ---

2 A: No, sir.

3 Q: --- in that log? And after you did that, what, if
4 anything else, did you do to assist in this investigation?

5 A: To my knowledge, that's it.

6 Q: Officer Carrison, earlier you testified that when you got
7 back, I believe you said you saw some injuries?

8 A: Yes, sir.

9 Q: Could you elaborate on that? What did you see when you
10 arrived back on the scene?

11 A: I saw a black male sitting in what I believe was the
12 passenger side of a vehicle. I don't know if it was his
13 vehicle or whose vehicle it was, with about three bystanders
14 around him that were holding bandages to what appeared to be a
15 wound in his lower chest, upper abdomen area.

16 Q: Was EMT there?

17 A: They had not arrived yet, but they arrived shortly after I
18 arrived back on the scene and then they took over for the
19 bystanders and began the treatment.

20 Q: But at that time, did you go over to assist in treatment?

21 A: I did not assist in any kind of medical treatment
22 whatsoever.

23 Q: Did EMTs actually arrive on the scene?

24 A: I don't know if they were EMT's specifically, they might
25 have been fire/medical personnel at first then followed by the

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

260

- 1 EMTs, I'm not sure what the order or to be honest with you,
2 how to distinguish between the two.
- 3 Q: Okay. But he was treated?
- 4 A: Oh, yes, sir.
- 5 Q: Rather quickly?
- 6 A: Yes, sir.
- 7 Q: Officer Carrison, on March 6th, 2012, did you ever -- do
8 you remember if that second victim -- I think earlier you
9 testified there was only one victim, to your knowledge. Later
10 on did you find out that there were more than one victim?
- 11 A: Yes, sir.
- 12 Q: Do you know the name of the second victim involved?
- 13 A: No, sir.
- 14 Q: Do you have any knowledge of about the injuries sustained
15 to that victim?
- 16 A: There was a bit of confusion in the begin -- in the
17 beginning as to what injuries he sustained from any shots that
18 may have been fired, as to other injuries that I believe that
19 were sustained.
- 20 Q: And the first victim, you said he was sitting in, in a
21 car?
- 22 A: Yes, sir.
- 23 Q: And what did that victim look like?
- 24 A: Black male, taller than average height, I'd say
25 approximately 5'10", 5'11" -- he was sitting down -- slender

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

261

- 1 built, slenderer than me.
- 2 Q: And you said you think Fire and Rescue or EMT or ---
- 3 A: Some manner of first responder medical service was
- 4 present.
- 5 Q: Do you know if the second victim received any medical
- 6 treatment?
- 7 A: Yes, sir, he did as well.
- 8 Q: What kind did he receive?
- 9 A: I'm assuming the same.
- 10 Q: Okay.
- 11 A: It was the same personnel that was doing it.
- 12 Q: Okay. Were both victims -- how were they transported away
- 13 from the crime scene?
- 14 A: I know for a fact victim one was transported via
- 15 ambulance.
- 16 Q: What about victim two?
- 17 A: I can't recall.
- 18 Q: You don't recall?
- 19 A: No, sir.
- 20 Q: Did you make a police report in this case?
- 21 A: Yes, sir.
- 22 Q: Would it help refresh your memory if you took a glance at
- 23 your police report?
- 24 A: Probably.
- 25 MS. PRATT: I have no objection to him refreshing his

State v. Chestnut
EVEREST HENRY CARRISON, II - DIRECT BY HYMAN

262

1 memory with it, Your Honor.

2 THE COURT: I'm sorry?

3 MS. PRATT: I said I have no objection to him refreshing
4 his memory with it.

5 THE COURT: All right. Very good.

6 MR. HYMAN: Permission to approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. HYMAN:

9 Q: I'm handing you a case report from that night.

10 A: Yes, sir.

11 Q: Just please take your time, take a look, and specifically
12 on the last page, talking about the medical treatment?

13 THE COURT: When you've read the report, then you put it
14 down and indicate to the Solicitor you have finished reading
15 it, please, sir?

16 MR. HYMAN: Thank you, Your Honor.

17 A: Yes, sir.

18 BY MR. HYMAN:

19 Q: And after reading your report, was there anything that
20 refreshed your memory as to treatment, the transportation of
21 both victims?

22 A: Yes, sir. The second victim was transported to Grand
23 Strand Regional Medical Center via ambulance as well.

24 Q: And your report, does it have -- now that you've read it,
25 do you know what time you responded on the scene?

State v. Chestnut
EVEREST HENRY CARRISON, II - CROSS BY PRATT

263

1 A: Approximately 1:19 in the morning, sir.

2 Q: So just minutes after the shooting?

3 A: Yes, sir.

4 Q: Please answer any questions Ms. Pratt may have.

5 THE COURT: Cross examination?

6 MS. PRATT: May it please the Court?

7 THE COURT: Yes, ma'am.

8 CROSS EXAMINATION OF OFFICER EVERETT HENRY CARRISON, II, BY

9 MS. PRATT:

10 Q: Officer Carrison, you were the, I believe you said, the
11 second person on the scene?

12 A: Yes, ma'am.

13 Q: There was somebody else there ahead of you. Do you
14 remember who that was?

15 A: If I recall correctly, I want to say it was Kellie
16 Matteson.

17 Q: Kellie Matteson?

18 A: Patrolman First Class Kellie Matteson. I could be
19 mistaken but ---

20 Q: All right. But you were the person that took control of
21 the crime scene; is that right?

22 A: Eventually, yes, ma'am. .

23 Q: You put up the tape?

24 A: Yes, ma'am.

25 Q: Sorry. Started photographing?

State v. Chestnut
EVEREST HENRY CARRISON, II - CROSS BY PRATT

264

1 A: Yes, ma'am.

2 Q: That's right? Okay. When you got there, approximately
3 how many cars were still in the parking lot, to your -- best
4 of your memory?

5 A: I'd say at least a dozen.

6 Q: A dozen cars?

7 A: Uh-huh (affirmative response).

8 Q: Were several of those police cars?

9 A: Not including the police cars.

10 Q: I'm gonna show you a diagram that is -- let me, let me
11 change my question. In talking about cars that are there, as
12 you, you've been to the scene, correct?

13 A: Yes, ma'am.

14 Q: So there are, if I'm accurate in describing it, basically
15 three different lines of where there might be cars -- well,
16 actually four, if you include right in front of the
17 restaurant?

18 A: Yes, ma'am.

19 Q: Okay.

20 A: I think it's Victoria's Country Kitchen.

21 Q: Victoria's; that's right. So you've got one line that's
22 right down by the barber shop, correct?

23 A: Yes, ma'am.

24 Q: And then there's a line opposite from it of parking
25 spaces?

State v. Chestnut
EVEREST HENRY CARRISON, II - CROSS BY PRATT

265

- 1 A: Yes, ma'am.
- 2 Q: And then there's a berm with some street lights or parking
3 lot lights?
- 4 A: Yes, ma'am; in the back, the dirt lot?
- 5 Q: Yes.
- 6 A: Yes, ma'am.
- 7 Q: Well no, I mean between the parking that's directly
8 opposite the parking spaces near the barber shop?
- 9 A: Oh, yes, ma'am.
- 10 Q: And then there's another line of cars there that are kind
11 of the backs are facing towards Victoria's and then there's a
12 line in front of Victoria's?
- 13 A: Yes, ma'am.
- 14 Q: Are you saying that out of all of those areas that there's
15 about twelve; is that correct?
- 16 A: Yes, ma'am, to include the cars in the very back -- I
17 don't know if it's employee parking -- but along the back
18 wooded line I think there's a fence in, in the brush, but
19 including those I'd say there was approximately a dozen.
- 20 Q: Okay. And so the -- knowing what you know about the size
21 of it, would you say the lot was about maybe twenty-five
22 percent full out of what could be there?
- 23 A: That's a fair approximation.
- 24 Q: Okay. All right. And you secured the crime scene and
25 started a crime log, correct?

State v. Chestnut
EVEREST HENRY CARRISON, II - CROSS BY PRATT

266

1 A: I can't recall if I started it or I just assumed control
2 of it for another officer that already started it.

3 Q: And you had that until about 2 o'clock; is that right?

4 A: Until the last units were there to clear; I can't recall
5 what time it cleared. It seemed to be much longer, to be
6 honest with you.

7 Q: All right. Do you remember an Officer Vest, V-E-S-T,
8 being on the scene?

9 A: No, ma'am; I do not.

10 Q: You don't remember him being there?

11 A: No, ma'am.

12 Q: So, it would be safe for me to ask you if you did not
13 receive a shell casing from Officer Vest, did you?

14 A: Now that you mention it, I don't know if I don't know if I
15 received one from him but it's vaguely familiar that he
16 might've pointed out the location of one. I remember another
17 male officer pointing out the location of a shell casing, it
18 might have been Officer Vest.

19 Q: All right. And that would have been a slightly flattened
20 .9 millimeter?

21 MR. HYMAN: Objection, Your Honor, it calls for
22 speculation.

23 MS. PRATT: I withdraw the question then.

24 BY MS. PRATT:

25 Q: Do you know what caliber that what was shown to you was?

State v. Chestnut
EVEREST HENRY CARRISON, II - CROSS BY PRATT

267

1 A: No, ma'am.

2 Q: Okay. Now the people that were outside tending to the
3 person that was in the vehicle, you said I think the passenger
4 side?

5 A: Correct.

6 Q: Did they all appear to be people that were friendly with
7 him; could you tell?

8 A: Yes, ma'am, they appeared to be other patrons of the bar.

9 Q: All right. And friendly with this particular person, do
10 you know?

11 A: They were rendering aid at the time.

12 Q: Okay.

13 A: Yes, ma'am.

14 Q: And about how many people were left at that point?

15 A: Inside the bar or outside the bar?

16 Q: Outside the bar?

17 A: Counting the victim and the people tending to him, maybe
18 five or six.

19 Q: All right.

20 MS. PRATT: With the Court's indulgence?

21 THE COURT: Yes, ma'am.

22 MS. PRATT: That would be all. Thank you, Your Honor.

23 THE COURT: Redirect?

24 MR. HYMAN: Just briefly, Your Honor.

25 REDIRECT EXAMINATION OF OFFICER EVERETT HENRY CARRISON, II BY

State v. Chestnut
EVEREST HENRY CARRISON, II - REDIRECT BY HYMAN

268

1 MR. HYMAN:

2 Q: You said that people were assisting with the victim,
3 providing assistance to the victim?

4 A: Yes, sir.

5 Q: Were those male, female?

6 A: I think a little bit of both. I distinctly remember there
7 being at least one female involved in applying pressure to the
8 wounds.

9 Q: Okay. And earlier you testified you're a patrol officer,
10 correct?

11 A: Yes, sir.

12 Q: So your duties as a patrol officer are what?

13 A: Standard responds to calls for service and try to be a
14 proactive in enforcing the law as I can.

15 Q: With Myrtle Beach there -- are there crime scene
16 specialists?

17 A: Yes, sir.

18 Q: And were those on scene assisting in the investigation?

19 A: Yes, sir, later on that night. Yes, sir.

20 Q: And would it be -- would it fall within the parameter of
21 their duties to deal with the shell casings?

22 A: Absolutely.

23 Q: Nothing further.

24 MS. PRATT: One question.

25 THE COURT: Yes, ma'am.

State v. Chestnut
EVEREST HENRY CARRISON, II - RECROSS BY PRATT

269

1 RECROSS EXAMINATION OF OFFICER EVERETT HENRY CARRISON, II BY

2 MS. PRATT:

3 Q: If you were given a shell casing or pointed out a shell
4 casing, it would be your job to hand it to CSS or pointed out,
5 right, standby and point it out to them?

6 A: Not necessarily standby, but I would probably mark it with
7 a glove or whatever I had available at the time.

8 Q: All right. Thank you. That's all I have.

9 THE COURT: You wish the witness to be excused?

10 MR. HYMAN: I do, Your Honor.

11 THE COURT: Any objection?

12 MS. PRATT: None, Your Honor.

13 THE COURT: All right. Officer you are released from
14 your subpoena. You may go back to your regular duties.

15 A: Thank you, sir.

16 THE COURT: All right. Solicitor, your next witness
17 please?

18 MR. HYMAN: The State calls Annaliese Testa to the stand.

19 THE COURT: All right. Ma'am, if you would come all the
20 way up here and meet the Clerk in the corner up here please,
21 ma'am?

22 ANNALIESE TESTA, HAVING BEEN SWORN

23 TESTIFIES AS FOLLOWS:

24 CLERK: Please be seated. Please state your full name
25 and spell your last?

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

270

1 MS. TESTA: Annaliese Testa; that's T-E-S-T-A.

2 THE COURT: Spell your first name also please, ma'am?

3 MS. TESTA: A-N-N-A-L-I-E-S-E.

4 THE COURT: Very good. All right. Solicitor?

5 DIRECT EXAMINATION OF ANNALIESE TESTA BY MR. HYMAN:

6 Q: Good afternoon, Ms. Testa. Where are you from?

7 A: I'm from Ohio.

8 Q: And tell us a little bit about yourself; how old are you?

9 A: I'm twenty-four years old. I'm currently going to a
10 community college up there for Health Information Management.
11 I went to Horry Georgetown Technical and got a certificate in
12 Applied Science and Phlebotomy.

13 Q: And what do you do presently in Ohio for work? Do you
14 have a job or anything along those lines?

15 A: Not yet. I'm waiting until I move closer to my college.
16 Right now I'm just taking a class.

17 Q: Where does your family live?

18 A: In Ohio.

19 Q: They all live in Ohio? And why did you move back to Ohio?

20 A: To be closer with my family and continue my education.

21 Q: Okay. Just a moment ago, you mentioned something about
22 going to Horry Georgetown Technical College. Was there a time
23 when you lived in Myrtle Beach?

24 A: Yes, from August of -- or from December 2007 until May of
25 2013.

State v. Chestnut

271

ANNALEISE TESTA - DIRECT BY HYMAN

- 1 Q: Okay. And what did you do while you were here in Myrtle
2 Beach?
- 3 A: Just worked and went to school.
- 4 Q: Where did you work at?
- 5 A: I had a number of different jobs, restaurants, hotels,
6 some medical offices.
- 7 Q: Around March 6th of 2012, where were you living?
- 8 A: 240 Osprey Cove Loop, Myrtle Beach.
- 9 Q: I know this is a simple question but -- What county is
10 that located in?
- 11 A: Horry County.
- 12 Q: That's in Horry County?
- 13 A: Uh-huh (affirmative response).
- 14 Q: Now, the Defendant that's here today, Ms. Testa, do you
15 know who that is?
- 16 A: Yes, sir, Armando Chestnut.
- 17 Q: Okay. And please tell us how you know Armando Chestnut?
- 18 A: I met him through a past employer.
- 19 Q: And who was that employer?
- 20 A: It was called Kansas City Steak House in Myrtle Beach.
- 21 Q: Did he work there?
- 22 A: Yes, sir.
- 23 Q: Were you working there?
- 24 A: Uh-huh (affirmative response), yes.
- 25 Q: And explain to us, I assume you met through work?

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

272

1 A: Uh-huh (affirmative response).

2 Q: Okay.

3 THE COURT: You need to answer yes or no please, ma'am.

4 A: Yes.

5 BY MR. HYMAN:

6 Q: Now please describe to the jury how your relationship to
7 the Defendant evolved?

8 A: We eventually started dating.

9 Q: And about what time would you say that you met him?

10 A: I met him in August of 2011.

11 Q: August, 2011. And you eventually started dating. Around
12 when did you start to date?

13 A: February of 2012.

14 Q: And about how long would you say that that dating
15 relationship lasted?

16 A: A couple of weeks.

17 Q: A couple of weeks?

18 A: Uh-huh (affirmative response).

19 Q: And while you were dating, would you stay together at
20 night?

21 A: Yes, sometimes.

22 Q: Was that a normal occurrence?

23 A: Not usually.

24 Q: Where would you stay when you stayed together?

25 A: We'd stay at my house.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

273

- 1 Q: Okay. Would you ever stay at his house?
- 2 A: No.
- 3 Q: And your house was on Osprey Cove Loop?
- 4 A: Yes.
- 5 Q: Okay. Now, just to clarify for the jury, you are charged
- 6 with a crime?
- 7 A: Correct.
- 8 Q: And what crime are you charged with?
- 9 A: Accessory after the fact of murder.
- 10 Q: And March 5th and March 6th, 2012, is that the date that
- 11 that charge arose out of?
- 12 A: Yes.
- 13 Q: It is? I would imagine that's a pretty significant day?
- 14 A: Yes.
- 15 Q: And please explain to the jury what you were doing on the
- 16 evening of March 5th, 2012?
- 17 A: I had just gotten off of work a little bit earlier and met
- 18 up with Armando at a bar in his neighborhood to have a few
- 19 drinks.
- 20 Q: Okay. And, and what bar did you meet him at?
- 21 A: It's referred to as Sam's.
- 22 Q: Sam's?
- 23 A: Uh-huh (affirmative response).
- 24 Q: And generally where is that bar located?
- 25 A: It's located off of Canal Street in Myrtle Beach.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

274

- 1 Q: Myrtle Beach. And you said that's around his
2 neighborhood?
3 A: Yes.
4 Q: Okay. And do you have any idea what time you met at
5 Sam's?
6 A: After 11:00.
7 Q: After 11:00?
8 A: Yes.
9 Q: What time did you get off work?
10 A: I don't remember.
11 Q: But it was that evening?
12 A: Yes.
13 Q: Very good. And while you were at Sam's, do you recall
14 what Armando Chestnut was wearing that night?
15 A: Yes, he was wearing blue jeans, a t-shirt and a zip-up
16 hoodie.
17 Q: And what color was the hoodie?
18 A: It was black-and-white stripes.
19 Q: A lot of stripes, a few stripes?
20 A: A lot of stripes.
21 Q: He have a hat on or anything on his head?
22 A: Yes, he had a hat.
23 Q: Describe for us what that hat looked like if you remember?
24 A: I just remember light blue.
25 Q: Okay. That's fair enough. While you were at Sam's, did

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

275

- 1 anything happen that concerned you?
- 2 A: Yes, he asked me to put his gun in my purse.
- 3 Q: Did you ever see the gun inside of Sam's?
- 4 A: Yes.
- 5 Q: Describe for us what it looked like, please?
- 6 A: It was a small black semi-automatic.
- 7 Q: Small black semi-automatic?
- 8 A: Yes.
- 9 Q: Do you know, I don't know if you're a gun person, but do
- 10 you know what a revolver is?
- 11 A: Yes.
- 12 Q: Explain to us what a revolver is?
- 13 A: It has the circle piece that holds the bullets.
- 14 Q: But you're positive that the gun that he asked you to put
- 15 in your person was a semi-automatic?
- 16 A: Yes.
- 17 Q: With your hand, could you maybe gesture about how big it
- 18 was, to the best of your recollection?
- 19 A: I don't remember, I just know it was small.
- 20 Q: It was small. Okay. Did you put the gun in your purse?
- 21 A: No.
- 22 Q: You didn't? Why not?
- 23 A: Because I didn't want it accidentally going off and shooting
- 24 somebody.
- 25 Q: Had you ever heard of that happening before?

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

276

1 A: Yes.

2 Q: So what did he do with the gun after you denied allowing
3 him to put it in the purse?

4 A: He put it back in his pocket.

5 Q: He put it back in his pocket?

6 A: Yes.

7 Q: Who drove to Sam's? You were by yourself, I think?

8 A: Yes, I drove to Sam's.

9 Q: You drove to Sam's? Did he ever go back to his car or did
10 y'all stay at Sam's all night? Take the jury through what
11 happened from Sam's on.

12 A: I was at Sam's and he went outside for a few minutes and
13 then when we left Sam's he drove to a bar called the Jet Age.

14 Q: Were you with him; did you accompany him leaving Sam's to
15 the Jet Age?

16 A: Yes.

17 Q: Okay. And who drove to the Jet Age?

18 A: He did.

19 Q: And why did y'all go to Jet Age?

20 A: He was wanting to see who was all there.

21 Q: Is the Jet Age -- you said the Jet Age is a bar, I
22 believe?

23 A: Yes.

24 Q: And where that located?

25 A: Off of Tenth Avenue North in Myrtle Beach.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

277

- 1 Q: Did you have any friends at that bar?
- 2 A: No.
- 3 Q: He just wanted to go to that bar?
- 4 A: Yes.
- 5 Q: And who drove there?
- 6 A: He did.
- 7 Q: Did you ever go inside the Jet Age?
- 8 A: No, I waited in my vehicle.
- 9 Q: Were you alone in your vehicle?
- 10 A: I was with his cousin.
- 11 Q: What's his cousin's name?
- 12 A: McKinley.
- 13 Q: And Armando, I think you said he went inside the Jet Age?
- 14 A: Yes.
- 15 Q: And about how long was he inside the Jet Age?
- 16 A: Fifteen, twenty minutes.
- 17 Q: And what did you do during that time?
- 18 A: I just waited in my car listening to music.
- 19 Q: Do you know where the gun was at that time?
- 20 A: I don't remember.
- 21 Q: And that's perfectly fine. That's all I want you to do is
- 22 tell the truth, what you remember. So when he came back to
- 23 the Jet Age about fifteen or twenty minutes later, where, if
- 24 anywhere, did you, did you go then?
- 25 A: After we left the Jet Age, we went over to 3rd Avenue

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

278

1 Sports Bar.

2 Q: Okay. And who drove to 3rd Avenue Sports Bar?

3 A: He did.

4 Q: He did. And you remember what he did with the keys after
5 he arrived at 3rd Avenue Sports Bar?

6 A: He kept on to them.

7 Q: And whose car were you in?

8 A: My car.

9 Q: And what kind of car was it again?

10 A: It's a red Kia Sorento.

11 Q: Red, okay. Now from that time forward, just take us
12 through that time.

13 A: We went inside and saw some of his friends, grabbed some
14 drinks, just started socializing and then watched his friends
15 play a pool game. A fight started to -- an argument started
16 to occur by the pool game and so I moved over to the bar.

17 Q: And I'm just gonna interrupt you right there. Where were
18 you at when this argument started over by the pool table?

19 A: I was sitting down near the window, front window.

20 Q: And did you have a bunch of friends in this bar?

21 A: No.

22 Q: Who all did you know?

23 A: I knew one other co-worker.

24 Q: You knew one other co-worker? And about how far, could
25 you estimate in distance about how far you were from the pool

State v. Chestnut

279

ANNALEISE TESTA - DIRECT BY HYMAN

- 1 table?
- 2 A: I believe from me to that table (indicating).
- 3 Q: Okay. Could you hear anything that was said during this
- 4 argument?
- 5 A: No.
- 6 Q: Why not?
- 7 A: There was music playing. It was loud inside.
- 8 Q: It was Reggae Night?
- 9 A: Yes.
- 10 Q: Or Jamaican Night. Okay. After -- during this argument,
- 11 where was Armando?
- 12 A: He was next to the pool table with the other guys.
- 13 Q: Did anybody, did you ever see anybody throw a punch?
- 14 A: No.
- 15 Q: At that time, you didn't see anybody throw a punch?
- 16 A: No.
- 17 Q: And was Armando arguing with anyone?
- 18 A: He was talking to the other guys.
- 19 Q: And, and you couldn't hear what was being said because of
- 20 the music?
- 21 A: Correct, yes.
- 22 Q: Did you see anybody grab an object or weapon or anything
- 23 of that nature?
- 24 A: Yes, I saw someone grab a pool stick and someone else take
- 25 it away.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

280

1 Q: Did you see anybody get hit by a pool stick?

2 A: No.

3 Q: And describe what happened after the argument inside?

4 A: I moved over to the bar to be kind of out of the way and
5 that group that was arguing had walked out the front door and
6 ---

7 Q: Did they walk out or were they shuffled out?

8 MS. PRATT: Objection, leading, Your Honor.

9 THE COURT: Don't suggest the answer.

10 BY MR. HYMAN:

11 Q: Well ---

12 A: They were kind of hurrying out.

13 Q: The bouncer, was there a bouncer in this bar?

14 A: Yes.

15 Q: Was he involved in the argument?

16 A: I don't remember.

17 Q: You don't remember? Do you remember if anyone was asked
18 to leave the bar after this argument by the pool table?

19 A: I don't remember.

20 Q: Okay. Did Armando leave the bar at that time?

21 A: Yes.

22 Q: Did you leave the bar with him at that time?

23 A: No.

24 Q: You didn't? And why not?

25 A: I didn't know why -- he didn't say that we were leaving.

State v. Chestnut

281

ANNALEISE TESTA - DIRECT BY HYMAN

1 Q: Do you know who had the keys at that time when he left the
2 bar?

3 A: He did.

4 Q: And what did you do after he left the bar?

5 A: I continued talking with my co-worker and a girl near the
6 window said that they are shooting outside.

7 Q: So you, did you go outside?

8 A: No.

9 Q: You did not?

10 A: No.

11 Q: Did you hear any gunshots?

12 A: No.

13 Q: You just heard the girl say that?

14 A: Correct.

15 Q: Did, so did you witness any altercation outside in the
16 parking lot?

17 A: No.

18 Q: You did not. Annaliese, I want to show you some still
19 photos that have already been introduced into evidence. They
20 were taken from a video that was introduced into evidence
21 earlier today of the situation that night at 3rd Avenue Sports
22 Bar. Have you had an opportunity to view that video?

23 A: Yes.

24 MR. HYMAN: Permission to approach the witness, Your
25 Honor.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

282

1 THE COURT: Yes, sir.

2 BY MR. HYMAN:

3 Q: Annaliese, for the record, I'm showing you State's
4 Exhibits Two through Eight. Will you please take a look at
5 those and tell me if you recognize those photographs?

6 A: Yes.

7 Q: And is there a date on those photos?

8 A: Yes.

9 Q: What about a time stamp?

10 A: Yes.

11 Q: And what would the date and time stamp on those be?

12 MS. PRATT: Your Honor, I'm gonna object to this line of
13 questioning as having an improper foundation.

14 THE COURT: Well, they're already in evidence without
15 objection. So I think the time for objecting has come and
16 gone.

17 MS. PRATT: Your Honor, if I may place on the record ---

18 THE COURT: All right. Ladies and Gentlemen, go to your
19 jury room please.

20 (REPORTER'S NOTE: The jury exits the courtroom. 3:00 P.M.)

21 THE COURT: Yes, ma'am, I'll be glad to hear from you.

22 MS. PRATT: I'm sorry, Your Honor, I was waiting until
23 the door closes.

24 THE COURT: That's okay. Go ahead.

25 MS. PRATT: Thank you, Your Honor. Your Honor, I believe

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

286

- 1 MR. HYMAN: Thank you, Your Honor.
- 2 BY MR. HYMAN:
- 3 Q: Now, Ms. Testa, I just showed you some State's exhibits?
- 4 A: Uh-huh (affirmative response).
- 5 Q: Did you have an opportunity to look at these exhibits?
- 6 A: Yes.
- 7 Q: And State's Exhibit Two, do you recognize that photograph
- 8 -- Can you recognize anything about that photograph?
- 9 A: Yes.
- 10 Q: What is that a photograph of?
- 11 A: The video. It's Armando walking to my car.
- 12 Q: It is? And again, the date and time on that photograph?
- 13 A: March 6th at 1:13 A.M.
- 14 Q: And Armando, how are you able to identify Armando from
- 15 that still?
- 16 A: From his jeans and his stripped black-and-white hoodie.
- 17 Q: And whose car or can you identify a vehicle from any of
- 18 these photos, State's Three, State's Four, State's Five, Six,
- 19 Seven and Eight?
- 20 A: Yes, I can identify my vehicle.
- 21 Q: You can? And for the record, what kind of vehicle was
- 22 that again?
- 23 A: A red Kia Sorento, a smaller SUV.
- 24 Q: Do you carry weapons in that vehicle?
- 25 A: No.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

287

1 Q: Did you have weapons -- did you carry weapons in that
2 vehicle that night?

3 A: Yes.

4 Q: Were they your weapons?

5 A: No.

6 Q: What kind of weapon was in there?

7 A: A black handgun.

8 Q: And who drove to the bar again?

9 A: Armando.

10 Q: And State's Exhibit -- State's Exhibit Number Three, who
11 is that getting into your vehicle?

12 A: Armando.

13 Q: And which door is he entering?

14 A: The driver's side.

15 Q: And what is the time on that exhibit?

16 A: 1:14 A.M.

17 Q: Thank you.

18 MR. HYMAN: Permission to publish these to the jury, Your
19 Honor?

20 THE COURT: You may do so.

21 BY MR. HYMAN:

22 Q: Annaliese, now I'm showing you State's Twenty-five through
23 Twenty-seven, which are in evidence. Would you please take a
24 look at those and tell me if you recognize those three photos?

25 A: Yes.

State v. Chestnut

288

ANNALEISE TESTA - DIRECT BY HYMAN

1 Q: And what are the time stamps on those three photos?

2 A: 1:15 A.M.

3 Q: And what, if anything, can you identify in those
4 photographs?

5 A: Myself and Armando.

6 Q: And what is Armando doing in that picture?

7 A: It looks like he's stomping on something on someone?

8 Q: Were you in the bar at 1:15?

9 A: Yes.

10 Q: And where were you standing?

11 A: I was behind the bar.

12 Q: About how far from him stomping on someone?

13 A: Just over the other side of the bar.

14 Q: And again, the black-and-white striped hoodie, who was
15 wearing that?

16 A: Armando.

17 Q: And State's Exhibit Twenty-five, can you identify yourself
18 in that photograph?

19 A: Yes.

20 Q: And where are you located?

21 A: Behind the bar.

22 Q: Okay. Thank you. Permission to publish to the jury, Your
23 Honor?

24 THE COURT: You may do so.

25 BY MR. HYMAN:

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

289

- 1 Q: And State's Exhibits Twenty-nine and Thirty, Annaliese, if
2 you will, just please take a look at those and tell me if you
3 recognize them?
- 4 A: Yes.
- 5 Q: And what are those photos of?
- 6 A: Me and Armando going to my car.
- 7 Q: And what time are those stills taken?
- 8 A: 1:15 A.M.
- 9 Q: And on what date?
- 10 A: March 6th.
- 11 Q: And at that point, who had the keys to the car?
- 12 A: I believe he still had them.
- 13 Q: Okay. After the stomping in the bar, earlier you
14 testified that you didn't stay there all night. Did you call
15 the police?
- 16 A: No.
- 17 Q: And why didn't you call the police?
- 18 A: Because I was scared.
- 19 Q: Okay. And this Kia Sorento, did you drive away from the
20 scene that night?
- 21 A: Yes.
- 22 Q: So at some point, you got the keys back from Armando, I
23 assume?
- 24 A: Yes, in the car.
- 25 Q: You got them back in the car?

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

290

1 A: Yes.

2 Q: Okay.

3 MR. HYMAN: Permission to publish, Your Honor?

4 THE COURT: You may do so.

5 BY MR. HYMAN:

6 Q: Now, Annaliese, prior to getting into your vehicle that
7 night to leave the sports bar, do you have any discussions
8 with Armando?

9 A: Prior to leaving?

10 Q: Prior to leaving.

11 A: No.

12 Q: Did Armando have any injuries on him at that time?

13 A: No.

14 Q: But you got back in your car and you ended up leaving.
15 Where did you go?

16 A: We went back to my house.

17 Q: And about how long did it take for you to get from 3rd
18 Avenue Sports Bar to your house?

19 A: Around twenty, twenty-five minutes.

20 Q: Did you have any discussions inside the car?

21 A: Yes..

22 Q: Did he tell you anything pertaining to the incidents that
23 just took place at the sports bar?

24 A: I had asked him if -- he had told me that they were
25 arguing over the pool game and money and how the shooting

State v. Chestnut

291

ANNALEISE TESTA - DIRECT BY HYMAN

1 happened outside and his friend was getting jumped. And I
2 asked him if he fired his gun and he said yes.

3 Q: He said he did fire his gun?

4 A: Yes.

5 Q: Did he tell you who he fired his gun at?

6 A: He thought that he fired it at the one with dreads.

7 Q: The one with dreads?

8 A: Yes.

9 Q: At that time, did you know who the one with dreads was?

10 A: No.

11 Q: Do you know who the one with dreads is now?

12 A: Yes.

13 Q: Who might that be?

14 A: Jamal McFadden.

15 Q: And he told you that he fired his gun at the one with
16 dreads. Did he tell you how many times he shot?

17 A: He told me he fired once.

18 Q: He told you he fired once. Okay. So twenty, twenty-five
19 minutes later, you get to your house -- and the address is --
20 was what again?

21 A: 240 Osprey Cove Loop.

22 Q: Okay. And from that time, explain to us what happened
23 once you got back to the house?

24 A: When we got to my house, he placed the gun in my kitchen
25 drawer, washed his hands.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

292

- 1 Q: Let's back up to the gun. Was it the same gun you saw
2 earlier that night at Sam's?
- 3 A: Yes.
- 4 Q: And what kind of gun was that again?
- 5 A: A black semi-automatic.
- 6 Q: It was a semi-automatic? He placed that in your kitchen
7 drawer?
- 8 A: Yes.
- 9 Q: And you said he washed his hands?
- 10 A: Yes.
- 11 Q: Do you know -- to your knowledge, why did he wash his
12 hands?
- 13 A: Probably from firing the gun.
- 14 Q: Probably? Did any make any statements about ---
- 15 A: Yes, he needed to wash his hands because of the residue.
- 16 Q: Did he tell you that that's why he was washing his hands?
- 17 A: Yes.
- 18 Q: And his exact words, to the best of your memory, what did
19 he say was the reason for him washing his hands?
- 20 A: I don't remember exact words.
- 21 Q: You don't remember his exact words?
- 22 A: No.
- 23 Q: What about his clothes, did he wash any of the clothes
24 that he was wearing that night?
- 25 A: His jeans.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

293

- 1 Q: He washed his jeans?
- 2 A: Yes.
- 3 Q: Did you notice anything unusual about his clothes that
- 4 night?
- 5 A: I noticed there was some blood on them.
- 6 Q: Where was the blood? Do you remember?
- 7 A: On the jacket and maybe a little on the jeans.
- 8 Q: A lot of blood?
- 9 A: No.
- 10 Q: A small amount?
- 11 A: A very small amount.
- 12 Q: Did you see the weapon on the ride back to your house?
- 13 A: I don't remember.
- 14 Q: You don't remember seeing it? How was he acting that
- 15 night after the shooting in the car and once you got back to
- 16 your house?
- 17 A: Anxious, kind of amped up.
- 18 Q: He was acting amped up? And what else did y'all do that
- 19 night when you got home? Do you remember what time it was
- 20 when you got home?
- 21 A: I don't remember.
- 22 Q: You don't remember? What else did y'all do?
- 23 A: We had a drink, smoked and went to bed.
- 24 Q: What did you smoke?
- 25 A: Marijuana.

State v. Chestnut

294

ANNALEISE TESTA - DIRECT BY HYMAN

- 1 Q: And did you do any other drugs that night?
- 2 A: No.
- 3 Q: What kind -- do you remember what you had to drink when
- 4 you got home?
- 5 A: Wine.
- 6 Q: And you watched a movie?
- 7 A: Yes.
- 8 Q: And earlier you testified that you were working the day
- 9 before, did you have anything to drink at work?
- 10 A: No.
- 11 Q: Were you drinking at the bar?
- 12 A: Yes.
- 13 Q: You were?
- 14 A: Yes.
- 15 Q: Do you remember how much?
- 16 A: Four or five at most.
- 17 Q: But you have -- do you have a good memory of what happened
- 18 that night?
- 19 A: Yes.
- 20 Q: The marijuana, was it laced with anything?
- 21 A: No.
- 22 Q: Okay. And what did you do after that? Did you go to bed?
- 23 A: Yes.
- 24 Q: To your knowledge, did Armando ever leave your house?
- 25 A: Not to my knowledge. I don't remember. I don't know.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

295

- 1 Q: Do you think he stayed at your house that night?
- 2 A: Yes.
- 3 Q: You do. And the next day, do you recall about what time
- 4 you woke up?
- 5 A: Late morning.
- 6 Q: Late morning. What did you do when you woke up? I
- 7 imagine you had a lot going through your head.
- 8 A: Yes. He was on the -- he was trying to charge his cell
- 9 phone to get in touch with people from the night before. I
- 10 went and got in the, to take a shower and get ready for work
- 11 because I had to work later that day.
- 12 Q: You had to work later?
- 13 A: Uh-huh (affirmative response).
- 14 Q: Did you -- he was on the cell phone. Did he make some
- 15 calls to people?
- 16 A: Yes.
- 17 Q: Do you know if ever called the police?
- 18 A: No.
- 19 Q: Did he ever seek medical treatment for any injuries?
- 20 A: No.
- 21 Q: Do you know who he called?
- 22 A: No.
- 23 Q: Now once you woke up and got going, take us through that
- 24 time. You got ready for work I believe you said?
- 25 A: Yes.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

296

- 1 Q: And did you stay at the house all day?
- 2 A: No.
- 3 Q: What did you do?
- 4 A: No, he had found out that two people, he had heard that
- 5 two people were shot so I went to go and check the news and
- 6 had read that two people were shot. And when we leave my
- 7 house, as we leave my house, he notices that we're being
- 8 followed. So I ---
- 9 Q: I'll just back right up. So you left your house?
- 10 A: Yes.
- 11 Q: And what did you leave in?
- 12 A: My red Kia Sorento.
- 13 Q: And where were people situated at that time? Who was
- 14 driving?
- 15 A: I was driving. He was in the passenger seat.
- 16 Q: And what was he wearing?
- 17 A: He was wearing his jeans from the night before and a black
- 18 t-shirt.
- 19 Q: And where was that gun; was the gun still in your kitchen
- 20 drawer?
- 21 A: No. He grabbed it with a towel and it was on his lap.
- 22 Q: He grabbed it with a towel?
- 23 A: Yes.
- 24 Q: Would that be one of your towels?
- 25 A: Yes.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

297

- 1 Q: Did he make any statements why he was grabbing the gun
2 with a towel?
3 A: To wipe off fingerprints.
4 Q: To wipe off fingerprints. And what kind of clothes was he
5 wearing again when he got back in the car that morning?
6 A: A black t-shirt and the jeans from the night before.
7 Q: And you said he washed the jeans?
8 A: Yes.
9 Q: Where did he get the black t-shirt from? Did he keep
10 clothes at your house?
11 A: No, I had given it to him.
12 Q: You gave it to him?
13 A: Yes.
14 Q: Did you find that unusual?
15 A: Yes.
16 Q: Where was this black-and-white hooded sweatshirt that he
17 wore the night before at this time?
18 A: It was still with him. He brought his t-shirt and the
19 black-and-white hoodie from the night before with us.
20 Q: So he just stayed the night; he didn't live with you?
21 A: No.
22 Q: Okay. Annaliese, I'd like to show you a couple more
23 pictures. Could we have these marked please for
24 identification?
25 STATE'S EXHIBIT NUMBER FORTY-SIX AND FORTY-SEVEN

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

298

MARKED FOR IDENTIFICATION

1

2

MR. HYMAN: Permission to approach the witness, Your

3

Honor?

4

THE COURT: Yes, sir.

5

BY MR. HYMAN:

6

Q: Annaliese, I'm handing you State's Exhibits Forty-six and

7

Forty-seven marked for identification purposes only. Would

8

you please take a look at those and tell me if you recognize

9

those?

10

A: Yes.

11

Q: And what do you recognize those photos, photos being?

12

A: My car.

13

Q: That's the exact same car you were in that night?

14

A: Yes.

15

Q: And the license plate number, does that match the license

16

plate number that would be on your car?

17

A: I don't know.

18

Q: But you think that's your car?

19

A: Yes.

20

Q: And you, do you think this is way your car appeared on or

21

about March 6th, 2012? Do you think these are accurate

22

photographs?

23

A: Yes.

24

Q: Do you think these photographs have been tampered or

25

altered in any way?

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

299

1 A: No.

2 MR. HYMAN: Your Honor, at this time, the State would
3 seek to introduce State's Exhibits Forty-six and Forty-seven.

4 THE COURT: Any objection?

5 MS. PRATT: None, Your Honor.

6 THE COURT: They're in evidence without objection.

7 STATE'S EXHIBIT NUMBER FORTY-SIX AND FORTY-SEVEN

8 ADMITTED INTO EVIDENCE

9 MR. HYMAN: Permission to publish to the jury?

10 THE COURT: You may do so.

11 BY MR. HYMAN:

12 Q: So, Annaliese, going back, he gets in the car, you're
13 driving; where were you going?

14 A: I was headed to the gas station.

15 Q: You were headed to the gas station?

16 A: Yes.

17 Q: And did anything unusual happen while you were on the way
18 to the gas station?

19 A: Yes, he noticed that there was some cars trailing behind
20 us.

21 Q: Tell us about that; how far were they behind you?

22 A: Not very far at all. There were just two large black
23 SUV's, looked like unmarked undercover cop cars.

24 Q: And what did you do when these cars, you noticed these
25 cars behind you?

State v. Chestnut

300

ANNALEISE TESTA - DIRECT BY HYMAN

- 1 A: I turned down a road onto to see if that's who it was and
2 if we were being followed.
- 3 Q: What did the cars behind you do?
- 4 A: They just continued to be behind us.
- 5 Q: Okay. How was Armando acting at that time?
- 6 A: Nervous.
- 7 Q: Nervous?
- 8 A: Uh-huh (affirmative response).
- 9 Q: Where was the gun located at that time?
- 10 A: In his lap.
- 11 Q: On his lap?
- 12 A: Yes.
- 13 Q: At any time while you were being followed, did the
14 Defendant make any gestures or take any actions of any sort?
- 15 A: Yes.
- 16 Q: What did he do?
- 17 A: He threw his gun out my car window.
- 18 Q: Out of which window?
- 19 A: The passenger side.
- 20 Q: And do you know what road you were on at that time when he
21 threw the window out -- threw the gun out the window, I'm
22 sorry?
- 23 A: Bay Road.
- 24 Q: Bay Road?
- 25 A: Yes.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

301

- 1 Q: And about how far was that from your house?
- 2 A: Probably a quarter of a mile.
- 3 Q: And what did the cars following you do at that point in
- 4 time?
- 5 A: They just kept following me until I pulled over.
- 6 Q: What did you say; did you say anything about the gun; what
- 7 were you thinking about him throwing this gun out?
- 8 A: I told him not to do it.
- 9 Q: Why did you tell him that?
- 10 A: Because I was sitting right next to him and it's not
- 11 right.
- 12 Q: And the cars that were tailing you, did they in fact turn
- 13 out to be police?
- 14 A: Yes.
- 15 Q: And what did the police do after they stopped you?
- 16 A: They instructed me to get out of the car.
- 17 Q: And about how far, about how far in distance would you
- 18 guess from the point Armando throws the gun out of the window
- 19 to you being stopped? Was it a long time or did they pull you
- 20 over a short time?
- 21 A: It was short time.
- 22 Q: Maybe a mile?
- 23 A: Not even; it could be a half mile, not even.
- 24 Q: So almost immediately sounds like?
- 25 A: Very soon.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

302

1 Q: So they pull you over, what do the police do when they,
2 when they got the car stopped?

3 A: They all surrounded the car -- well, they were quite far
4 from my car, but their guns were drawn and they were
5 instructing me to get out and walk backwards with my hands up
6 towards them and then get on my knees.

7 Q: And I assume you did so?

8 A: Yes.

9 Q: And did they place anyone under arrest?

10 A: Yes.

11 Q: Who did they arrest?

12 A: They arrested me.

13 Q: Arrested you. Did they arrest the Defendant?

14 A: Yes.

15 Q: And where were you transported after being arrested?

16 A: Myrtle Beach Police Annex.

17 Q: Myrtle Beach Annex?

18 A: Uh-huh (affirmative response).

19 Q: Did you ride in the same car to the annex, separate cars?

20 A: Separate cars.

21 Q: And once you got to Myrtle Beach Annex, explain to us what
22 transpired?

23 A: I was then questioned by the police, which I gave a
24 statement.

25 Q: Did the police advise you of any rights?

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

303

- 1 A: No or yes.
- 2 Q: They did?
- 3 A: Uh-huh (affirmative response).
- 4 Q: What kind of rights did they advise you of?
- 5 A: My Miranda Rights.
- 6 Q: Miranda?
- 7 A: Uh-huh (affirmative response).
- 8 Q: Did they threaten you in any way?
- 9 A: No.
- 10 Q: Did they make you any promises or anything to induce you
- 11 to give a statement?
- 12 A: No.
- 13 Q: And you said you did give -- you did speak to police that
- 14 day?
- 15 A: Yes.
- 16 Q: That was the next day I believe that was March 6th. The
- 17 shooting occurred in the early morning hours so it was the
- 18 same exact day. You did give -- provide a statement to
- 19 police?
- 20 A: Yes.
- 21 Q: And when you spoke with police that first time, were you
- 22 completely honest with them, Annaliese?
- 23 A: No.
- 24 Q: What were you not completely honest about?
- 25 A: I lied when I said I didn't see the gun.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

304

1 Q: You told them you didn't see the gun, Annaliese. Why did
2 you tell them that?

3 A: Because I was scared, I didn't have a lawyer or anything.
4 I'd never been in that position before.

5 Q: Was that the first time you'd been in trouble?

6 A: Yes.

7 Q: And after you provided a statement to police, what
8 happened?

9 A: I was then charged with accessory after the fact of murder
10 and taken to the jail.

11 Q: And did there come a time that you spoke with police for a
12 second time?

13 A: Yes.

14 Q: About -- do you recall the date you spoke with the police
15 for a second time?

16 A: I'd say around March 21st.

17 Q: Of what year?

18 A: 2012.

19 Q: Did you reach any sort of agreements with law enforcement
20 in any way, shape or form prior to speaking with police that
21 second time?

22 A: No.

23 Q: You didn't reach any agreements? Did you retain an
24 attorney?

25 A: Oh, yes. The second time, I read and signed a Proffer

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

305

1 Agreement.

2 Q: And did you retain an attorney before speaking to the
3 State a second time?

4 A: Yes.

5 Q: And who is your attorney?

6 A: Fran Humphries.

7 Q: Where is Mr. Humphries located?

8 A: Right behind you.

9 Q: Okay. So there was an agreement that was entered into
10 prior to speaking to the State a second time, correct?

11 A: Yes.

12 Q: And it was a Proffer Agreement?

13 A: Yes.

14 MR. HYMAN: May I have this marked for identification?

15 STATE'S EXHIBIT NUMBER FORTY-EIGHT

16 MARKED FOR IDENTIFICATION

17 MR. HYMAN: Permission to approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 BY MR. HYMAN:

21 Q: Annaliese, do you recognize that document?

22 A: Yes.

23 Q: And what do you recognize that document as being?

24 A: The Proffer Agreement.

25 Q: How are you able to recognize it? Are there any

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

306

- 1 signatures on it?
- 2 A: My signature's on it.
- 3 Q: And what's the date on it?
- 4 A: March 21st of 2012.
- 5 Q: Okay. Annaliese, does that agreement impose any duties on
- 6 you?
- 7 A: Just to be honest and cooperative.
- 8 Q: That agreement, does it require you to be honest and
- 9 cooperative?
- 10 A: Yes.
- 11 Q: And does it require you to testify truthfully?
- 12 A: Yes.
- 13 Q: And if you violate the terms of that agreement, is -- are
- 14 the terms null and void? Is the agreement null and void at
- 15 that time?
- 16 A: Yes.
- 17 Q: Has the State made any promises to you regarding the
- 18 disposition of your case?
- 19 A: No.
- 20 Q: At this time, no promises have been made?
- 21 A: No.
- 22 Q: In your own terms, would you tell -- tell us what you
- 23 understand that agreement as meaning?
- 24 A: To be honest and cooperative and my full cooperation will
- 25 be taken into consideration.

State v. Chestnut
ANNALEISE TESTA - DIRECT BY HYMAN

307

1 Q: So your full cooperation will be taken into consideration
2 when the State elects to go forward on your charges or at
3 sentencing?

4 A: Yes.

5 Q: No promises regarding disposition of this case?

6 A: Correct.

7 Q: Thank you. Now, Annaliese, when you spoke with police
8 that second time, were you completely honest with them that
9 second time around?

10 A: Yes.

11 Q: Did you tell them about the gun at that point?

12 A: Yes.

13 Q: And in fact in both of those statements, you told police
14 that the Defendant admitted to shooting at the one in the
15 dreads?

16 A: Yes.

17 Q: At the one with the dreads. And in both statements, you
18 were consistent that the Defendant was the one stomping the
19 guy in the bar?

20 A: Yes.

21 Q: Please answer any questions Ms. Pratt may have.

22 THE COURT: Cross examination?

23 MS. PRATT: Thank you, Your Honor, may it please the
24 Court?

25 CROSS EXAMINATION OF ANNALIESE TESTA BY MS. PRATT:

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

308

- 1 Q: Ms. Testa, we haven't met. I'm Barbara Pratt and I
2 represent Armando Chestnut in this matter. I want to ask you
3 a few questions about what went on and what you've said to the
4 police in your statements. Is that okay?
- 5 A: Yes.
- 6 Q: All right. And if you don't understand my question,
7 please ask me to rephrase it if there's something that I ask
8 you, okay?
- 9 A: Yes.
- 10 Q: All right. Now you spoke to the police the first time
11 that afternoon of the, the day that it happened. It happened
12 about 1:19, this bar attack fight, whatever you want to call
13 it, altercation; is that right?
- 14 A: Yes.
- 15 Q: Okay. So that afternoon, you spoke to them first,
16 correct?
- 17 A: Yes.
- 18 Q: And it was Detective Kitelinger that was with you?
- 19 A: Yes.
- 20 Q: Was there another officer in there as well?
- 21 A: There was.
- 22 Q: And that would be possibly Detective Truex?
- 23 A: Yes.
- 24 Q: Okay. So you're in an interview room, fairly small room?
- 25 A: Yes.

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

309

1 Q: All right. In between two police officers?

2 A: Yes.

3 Q: And they read you your Miranda Rights?

4 A: Yes.

5 Q: Kind of like something you'd seen on T.V. I imagine and I
6 know you were scared, weren't you?

7 A: Yes.

8 Q: And you didn't tell them the full truth the first time,
9 did you?

10 A: No.

11 Q: But you did tell them things that were the truth the first
12 time, didn't you?

13 A: Yes.

14 Q: All right. And one of the things that you told them in
15 your first interview was that Armando had told you that people
16 were attacking his friend; is that right?

17 A: Yes.

18 MR. RICHARDSON: Objection, Your Honor, calls for
19 hearsay.

20 THE COURT: I believe this was testified to previously
21 and I'll allow it. Thank you.

22 MR. RICHARDSON: Yes, sir. Thank you, Your Honor.

23 BY MS. PRATT:

24 Q: So he told you that people were attacking his friend. Did
25 he say something specific about the fight itself?

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

310

- 1 A: Can you -- what ---
- 2 Q: Like what went on in the fight; who did what with what?
- 3 A: He had told me that somebody hit his friend in the head.
- 4 Q: Okay. And that happened at the beginning of the fight?
- 5 A: That was when they were outside fighting.
- 6 Q: Okay. All right. And he told you that he went because
- 7 his friend was hit; is that right?
- 8 A: Yes.
- 9 Q: Okay. Did he say anything about hearing any gunshots?
- 10 A: Yes.
- 11 Q: What did he say?
- 12 A: He said that people were shooting outside.
- 13 Q: Okay. Did he say how many people were jumping his friend?
- 14 A: No.
- 15 Q: Did he give any impression about who they were or how many
- 16 or anything else about them?
- 17 A: I don't remember.
- 18 Q: Okay. After you were arrested and you bonded out, you
- 19 hired an attorney, who then set up an interview with the
- 20 police again under a Proffer Agreement, correct?
- 21 A: Yes.
- 22 Q: And you hired Fran Humphries, who has been your
- 23 representation since that time, correct?
- 24 A: Yes.
- 25 Q: Okay. And I'm gonna ask you to review this Proffer

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

311

1 Agreement, specifically which is in evidence I believe as
2 State's Exhibit Number Forty-eight?

3 MR. HYMAN: It's not in evidence.

4 MS. PRATT: Not in evidence ---

5 MR. HYMAN: Marked for identification only.

6 MS. PRATT: Okay.

7 BY MS. PRATT:

8 Q: Well, then I will ask you to refresh your memory in
9 regards -- well, let me back that up. I need to ask a
10 foundation question first. You stated in your testimony that
11 all this says is that you are supposed to testify truthfully
12 and cooperate; is that right?

13 A: Yes.

14 Q: Is there any other duty that it places on you?

15 A: I don't remember.

16 Q: Then let me hand you what has been marked as State's
17 Exhibit Number Forty-eight and ask you to review Paragraph
18 Three on Page Two?

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

20 THE COURT: Yes, sir.

21 (REPORTER'S NOTE: A bench conference was held off the record
22 in the presence of the jury but out of hearing of the jury.)

23 THE COURT: After you have read the statement, ma'am, put
24 the statement down and then tell Ms. Pratt that you have
25 finished when you're done.

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

312

1 A: I'm finished.

2 BY MS. PRATT:

3 Q: All right. And just in referring to Paragraph Three, what
4 other duty does it say in there about your statement?

5 THE COURT: Ma'am, you can't read it and testify. You
6 can use the document to refresh your memory, now you need to
7 answer the question without looking at the document.

8 A: It just says to be honest in my statements -- from my
9 prior statements when I testify.

10 BY MS. PRATT:

11 Q: All right. It actually says consistent with your prior
12 statements?

13 A: Yes.

14 Q: So if you testified, if it's your understanding that if
15 you testify differently today than what you've said before,
16 that this agreement would be gone?

17 A: Yes.

18 Q: And you would not have an agreement with the State for
19 them to consider your cooperation; isn't that right?

20 A: Yes.

21 Q: So once you gave a statement on the 21st, that's what you
22 have to stick to; isn't that right?

23 A: Yes.

24 Q: To keep this Proffer, Proffer in place?

25 A: Yes.

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

313

- 1 Q: And they have stated in the Proffer that they will
2 consider the extent and degree of cooperation, correct?
3 A: Yes.
4 Q: So you are expecting a good result out of doing what
5 you're doing today, correct?
6 A: Yes.
7 Q: Hopefully, you're not gonna go to jail?
8 A: Yes.
9 Q: All right. When you first talked to the police, isn't it
10 true that you said that Armando had told you he thought he had
11 shot at or towards one of two people?
12 A: Yes.
13 Q: Okay. And do you remember the descriptions of those two
14 people?
15 A: He said he shot at the one with dreads.
16 Q: Did he say anything about possibly shooting at a slim guy?
17 A: Yeah -- no -- I don't remember.
18 Q: You don't remember if he said anything like that?
19 A: I don't remember.
20 Q: Okay. Did you see any of the incident that happened
21 outside?
22 A: No.
23 Q: Okay. So the, the photos that you identified at the
24 beginning that had anything to do with what went outside, you
25 just identified those photos from the video that you've been

State v. Chestnut
ANNALEISE TESTA - CROSS BY PRATT

314

1 shown; is that right?

2 A: Yes.

3 Q: But you didn't see any of that, correct?

4 A: Yes.

5 Q: So you don't have an opinion about -- or not really, I
6 don't want to say opinion. You don't know what went on in
7 that battle, do you?

8 A: No.

9 Q: Okay. When the people came back into the bar, did you see
10 the people coming back into the bar?

11 A: Yes.

12 Q: Did you see the big guy with the jacket and the white t-
13 shirt come back into the bar?

14 A: Yes.

15 Q: What did you see him doing when he came into the bar, what
16 did he do?

17 A: It looked like he was turning to walk away from someone
18 coming through that door after him.

19 Q: All right. And did he speak to somebody else?

20 A: I don't remember.

21 Q: Okay.

22 MS. PRATT: With the Court's indulgence?

23 THE COURT: Yes, ma'am.

24 BY MS. PRATT:

25 Q: When you said that Armando washed his jeans, do you mean

State v. Chestnut
ANNALEISE TESTA - REDIRECT BY HYMAN

315

- 1 he put them in the washer and the dryer at your place?
- 2 A: Yes.
- 3 Q: He actually put them in the washer and the dryer?
- 4 A: I put them in the washer.
- 5 Q: Okay. With other clothes?
- 6 A: No. I don't remember if put them in with other clothes.
- 7 Q: You don't remember? You didn't tell the police about that
- 8 in either of your statements, did you?
- 9 A: No.
- 10 Q: Thank you. I have nothing further.
- 11 THE COURT: Redirect?
- 12 MR. HYMAN: Yes, Your Honor.
- 13 REDIRECT EXAMINATION OF ANNALIESE TESTA BY MR. HYMAN:
- 14 Q: Annaliese, I think you testified that you were inside at
- 15 the time the altercation was happening in the parking lot?
- 16 A: Yes.
- 17 Q: Is that correct?
- 18 A: Yes.
- 19 Q: So did you witness the altercation in the parking lot?
- 20 A: No.
- 21 Q: Did you witness the shooting?
- 22 A: No.
- 23 Q: Did you have a gun on you ---
- 24 A: No.
- 25 Q: --- that night?

State v. Chestnut
ANNALEISE TESTA - RECROSS BY PRATT

316

1 A: No.

2 Q: And you didn't witness the shooting?

3 A: No.

4 Q: So all you had to go by was what the Defendant told you
5 when you got back in the car and left?

6 A: Yes.

7 Q: And did you know anybody was dead at that point?

8 A: No.

9 Q: And when you got home that night, did you know anybody was
10 dead?

11 A: No.

12 Q: So when you threw these jeans in the washer, you didn't
13 know anybody was dead?

14 A: Correct.

15 MR. HYMAN: Nothing further.

16 THE COURT: Yes, ma'am.

17 RECROSS EXAMINATION OF ANNALIESE TESTA BY MS. PRATT:

18 Q: In regards to that line of questioning, Ms. Testa, what
19 time did y'all get home?

20 A: I don't remember the exact time.

21 Q: Give me a general, 2:30, 3:00 A.M.?

22 A: Probably around 2:00.

23 Q: Okay. So would it surprise you to know that the person
24 who passed away, didn't pass away until 9 o'clock the next
25 morning?

State v. Chestnut
ANNALEISE TESTA - RECROSS BY PRATT

317

1 A: Right. Correct.

2 Q: So he wouldn't have been dead, would he?

3 A: No.

4 Q: In regards to the entire line of the Solicitor's last
5 questions, correct?

6 A: Correct.

7 Q: Thank you.

8 THE COURT: Do you wish the witness to be excused?

9 MR. HYMAN: I do, Your Honor.

10 THE COURT: Any objection?

11 MS. PRATT: None, Your Honor.

12 THE COURT: All right, ma'am. You're released from your
13 subpoenas. You may leave.

14 MR. RICHARDSON: Your Honor, the next witness will be the
15 crime scene officer.

16 THE COURT: That'll be good. We'll get to them shortly.

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: All right. Ladies and gentlemen, we're gonna
19 take short break about five or ten minutes. You go to your
20 seat.

21 Everyone else remain seated please while the jury
22 retires. Everyone else remain seated while the jury retires
23 please.

24 (REPORTER'S NOTE: The jury exits the courtroom. 3:43 P.M.)

25 All right. We'll take a short break for five or ten

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

319

1 TESTIFIES AS FOLLOWS:

2 CLERK: Please state your full name and spell your last?

3 MS. MCSPADDEN: Michelle McSpadden. M as in Michael, C
4 as in Charlie, S-P-A-D-D-E-N.

5 THE COURT: Go ahead.

6 MR. RICHARDSON: Thank you, Your Honor.

7 DIRECT EXAMINATION OF MICHELLE MCSPADDEN BY MR. RICHARDSON:

8 Q: Officer McSpadden, could you please tell us all a little
9 about, a little bit about your place of employment and in what
10 capacity, how long and so forth?

11 A: I'm with the Myrtle Beach Police Department Crime Scene
12 Unit. I've been with the Police Department for twelve and a
13 half years, seven and a half of that in the Crime Scene Unit.

14 Q: And so you've been doing crime scenes for quite a while,
15 correct?

16 A: Yes, sir.

17 Q: And as a Crime Scene Officer or Crime Scene Investigator,
18 what type of duties do you perform?

19 A: Our job is evidence collection and analysis and that may
20 be anything from homicides, as this case, all the way down
21 through car break-ins and things like that.

22 Q: And with collection of analysis, tell us how that goes,
23 the various types of collection analysis you do and what type
24 of case.

25 A: Okay. There are some things we can do in-house and some

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

320

- 1 things that have to go out. So things like fingerprints we
2 can do in-house. So if we take fingerprints at a scene, we
3 can analyze those within the Police Department. Certain
4 things we don't have the equipment for and has to go out to a
5 different lab. We use the State Law Enforcement Division or
6 SLED. Things like ballistics, DNA, those are things that have
7 to go to SLED.
- 8 Q: And I'm sure we've all seen NCIS and CSI and all those
9 shows. Do y'all have all those toys they have on T.V.?
- 10 A: We don't. We don't drive Hummers and we don't have all
11 the little toys, but we're a good unit.
- 12 Q: As far as video editing, can y'all do that, I mean
13 repixelate video and stuff?
- 14 A: No. And in fact, a lot of that stuff is just kind of T.V.
15 So, yeah, a lot of it is not really quite real but we don't do
16 any video analysis in-house.
- 17 Q: Y'all do real police work?
- 18 A: We do real police work.
- 19 Q: So the main purpose of the Crime Scene Unit is the
20 collection of evidence, some analysis and actually arranging
21 for analysis to be done outside ---
- 22 A: Correct.
- 23 Q: --- Myrtle Beach. And you indicated that State Law
24 Enforcement, SLED, does some of that analysis?
- 25 A: Correct.

State v. Chestnut

321

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 Q: Now that we're all up to speed of things on what you do,
2 could you tell us if you were employed with the Myrtle Beach
3 Police Department back on the early morning hours of March
4 6th, 2012?

5 A: I was and I was assigned to the Crime Scene Unit at the
6 time.

7 Q: And as a member of the Crime Scene Unit, did you have the
8 opportunity to respond to the 3rd Avenue Sports Bar?

9 A: I did.

10 Q: And I know we've asked this question a whole lot, but I
11 like to make sure we have jurisdiction. What County is Myrtle
12 -- 3rd Avenue Sports Bar located?

13 A: Horry County.

14 Q: Horry County. Officer McSpadden, what caused you to
15 respond to the 3rd Avenue Sports Bar?

16 A: There was a report of a shooting.

17 Q: Okay. And what time of day was that?

18 A: It was about 1:30 in the morning when I received the call.

19 Q: So you got a call about 1:30 in the morning and I take it
20 you responded?

21 A: Yes, sir.

22 Q: Now when you responded, you got the call at 1:30; what
23 time did you get there?

24 A: It takes about ten or fifteen minutes to drive there.

25 Q: So that puts you there around 1:40, 1:45?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

322

- 1 A: Yes, sir.
- 2 Q: And as you arrived on the scene, describe the scene for
3 us.
- 4 A: There were several police cars. The scene had been taped
5 off with crime scene tape and they were beginning to speak to
6 the witnesses who were still around.
- 7 Q: And you say the witnesses that were still around, so did
8 it appear to you people had left?
- 9 A: It appeared so. There weren't a lot of people in the
10 parking lot.
- 11 Q: Now after you arrived on the scene, what's the first step
12 you took?
- 13 A: The first step I took, I spoke to the bar owner and he
14 advised me that there was video, that he had video
15 surveillance at the, at the bar. And so I asked to download
16 that.
- 17 Q: Okay. So he tells you, and that's Mr. Wayne Feaster?
- 18 A: It is.
- 19 Q: Now Mr. Feaster tells you that they have video in the bar
20 -- did you notice anything with regards to the camera system
21 or the number of cameras they had?
- 22 A: I knew there were multiple cameras, some inside and some
23 outside. I don't recall exactly how many.
- 24 Q: Okay. So, so he tells you about the video and you decide
25 it's a pretty good idea to go get that video?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

323

- 1 A: Yes, sir.
- 2 Q: How does that work?
- 3 A: In this case it was just a DVR system. I used just a
- 4 little thumb drive, a little USB stick, that was able to plug
- 5 into the DVR system and copy the video to the thumb drive.
- 6 Q: And while this was going on, did that happen like that or
- 7 ---
- 8 A: It took a while to download.
- 9 Q: And while, while that file, video file, the information
- 10 was downloaded, have you got a targeted point in time you were
- 11 trying to download?
- 12 A: We knew based on the 911 call around the time of the
- 13 shooting, so I was downloading, I think, between 1:00 A.M. and
- 14 about 2:25..
- 15 Q: And did you possibly record some things that occurred
- 16 before 1:00 A.M.?
- 17 A: I did respond back the following night and record things
- 18 that respond, or happened before 1:00 A.M. after I think we
- 19 had a chance to talk to the witnesses.
- 20 Q: Now everything that, that you recorded, you took down and
- 21 what happened that day ---
- 22 A: I'm sorry?
- 23 Q: What happened to the video information you downloaded?
- 24 A: Okay. So once I get back to the Crime Scene Lab, I
- 25 download the contents of that USB stick onto our

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

324

1 investigations network. That way detectives have a chance to
2 look at and we also put it onto a CD so that it cannot be
3 changed and that CD goes directly into evidence.

4 Q: And at any time, did you edit it, delete it?

5 A: No.

6 Q: Add to it?

7 A: No.

8 Q: Now you said it took some time to download this video you
9 were looking for and there were numerous cameras?

10 A: Correct.

11 Q: With numerous files?

12 A: Correct.

13 Q: It took some time to put it on this thumb drive?

14 A: Yes, sir.

15 Q: And that's one of those little sticks you just pop right
16 into the computer?

17 A: It is. Uh-huh (affirmative response).

18 Q: While this was being downloaded, what did you do?

19 A: I started to take some photos outside the bar in the
20 parking lot and then I was directed to the hospital for some
21 evidence collection there.

22 Q: And what type of evidence collection did you do at the
23 hospital?

24 A: There were two victims who were transported to the
25 hospital prior to my getting to the scene. It is standard for

State v. Chestnut

325

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 us to do gunshot residue testing on victims of gunshot wounds.

2 So I did gunshot residue testing on both victims and I also

3 was able to photograph injuries to Mr. Canty.

4 Q: Officer McSpadden, I'm gonna show you what's been

5 previously marked as State's Number Forty-two. See if you

6 recognize State's Forty-two and its contents?

7 A: These are gunshot residue test kits from Mr. McFadden and

8 Mr. Canty.

9 Q: Now how -- are those the ones you took that night?

10 A: They are.

11 Q: About what time did you take those, can you tell?

12 A: May I open it?

13 Q: Sure.

14 A: There is a sheet of paper that's inside when the kits are

15 sent to SLED that has the time on them. That has been removed

16 by SLED during their investigation it appears. So I know that

17 I left to go to the hospital at about 2:20 hours and I

18 returned back to the crime scene at 3:30. So it would've been

19 somewhere around 3 o'clock.

20 Q: And you stated that upon your arrival at the crime scene,

21 it had already been secured, correct?

22 A: It had.

23 Q: So while you're gone to the hospital collecting some

24 evidence in this case, this had been secured?

25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

326

- 1 Q: And it is roped off, people weren't allowed in or out?
- 2 A: Multiple police officers on the scene and the scene was
- 3 roped off with crime scene tape.
- 4 Q: And no doubt about it, these are the gunshot residue kits
- 5 you collected?
- 6 A: That is correct; it has my handwriting on it.
- 7 Q: And upon your collection of these gunshot residue kits,
- 8 you say there were two
- 9 A: Mr. McFadden and Mr. Canty.
- 10 Q: Upon your collection of these gunshot residue kits
- 11 contained in State's Number Forty-two, what efforts do you
- 12 take to preserve them?
- 13 A: They are sealed up with evidence tape on the outside of
- 14 the kit and then my initials go onto that evidence tape.
- 15 Q: And this, this tape, is it tamper evident?
- 16 A: It is. It's very fragile. So if anyone attempts to open
- 17 that, it would show on the tape.
- 18 Q: And after you placed this tamper evident, tamper resistant
- 19 tape on these kits that you took, what, if anything, do you do
- 20 with these?
- 21 A: We did nothing else with them beyond sending them to SLED.
- 22 All the analysis is done at SLED.
- 23 Q: Do you take them to SLED?
- 24 A: I don't believe I transmitted these, but someone from the
- 25 Police Department, probably from our Property and Evidence

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

327

1 Division would have.

2 Q: Okay. Do you hold them at your office or are they held in
3 separately?

4 A: Only for a short time. Our office does not have long-term
5 storage. The long-term storage is done by our Property and
6 Evidence Division so it goes from us to them.

7 Q: And when they received them, you take it to them it
8 continues to be sealed?

9 A: It is.

10 Q: And is there any kind of documentation that goes along
11 with that?

12 A: Sure, absolutely. There's a chain of custody. It's
13 computerized now so when we sign it over to them there's a
14 date and time stamp that goes along with it.

15 MR. RICHARDSON: Court's indulgence?

16 THE COURT: Yes, sir.

17 BY MR. RICHARDSON:

18 Q: In just a moment, I'm gonna ask you to take a look at some
19 photographs?

20 A: Okay.

21 STATE'S EXHIBIT NUMBER EIGHTY-EIGHT THRU NINETY-THREE

22 MARKED FOR IDENTIFICATION

23 Q: I'm gonna show you what's been marked for identification
24 purposes as State's Eighty-eight through Ninety-three. See if
25 you can identify those photographs.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

328

1 A: These are photographs that I took at the hospital.

2 Q: And these are the ones you took when?

3 A: These are Mr. Canty's injury photographs taken at the
4 hospital on the night of March 6th around 3:00 A.M.

5 Q: And you say night, but we're talking about early morning
6 hours?

7 A: Yes, sorry.

8 Q: I know common terms. And these are photographs you took
9 of Mr. Canty?

10 A: Correct.

11 Q: Do these photographs clearly and accurately define the
12 condition in which you found Mr. Canty at the hospital?

13 A: Yes, sir.

14 MR. RICHARDSON: Your Honor, the State will seek to
15 introduce and publish State's Eighty-eight through Ninety-
16 three?

17 THE COURT: Any objection?

18 MS. PRATT: May we approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of the jury but out of hearing of the jury.)

22 THE COURT: I will allow State's Eighty-eight through
23 Ninety-three in evidence.

24 STATE'S EXHIBIT NUMBER EIGHTY-EIGHT THROUGH

25 NINETY THREE ADMITTED INTO EVIDENCE

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

329

1 MR. RICHARDSON: Your Honor, permission to publish?

2 THE COURT: You may do so.

3 BY MR. RICHARDSON:

4 Q: And you state -- photograph Eighty-eight, who is that?

5 A: Damien Canty.

6 Q: And State's Eighty-nine through Ninety-one, take a look at
7 those real quick and, I'm sorry, also Ninety-two. Who is
8 that?

9 A: This is Damien Canty.

10 Q: These photographs were taken in the early morning hours of
11 March 6th, 2012?

12 A: Correct..

13 Q: And what is the purpose of State's Eighty-nine through
14 Ninety-two?

15 A: They were documenting a laceration on Mr. Canty's forehead
16 at his hairline.

17 Q: And the marker we see in State's Ninety through Ninety-
18 two; what is that?

19 A: It's a ruler. It's just the document size.

20 Q: And your capabilities to take photographs, you can't take
21 any internal photographs, correct?

22 A: Correct.

23 Q: Now I'm gonna show you State's Ninety-three. The purpose
24 of that photograph?

25 A: This was showing that Mr. Canty had a wound to his right

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

330

- 1 elbow that had been bandaged prior to my arrival.
- 2 Q: And what time did you say you arrived again?
- 3 A: It would have been around 3:00 A.M.
- 4 Q: After taking the gunshot residue kits from both victims
- 5 and taking these photographs of Mr. Canty, did you take any
- 6 photographs of Jamal McFadden that night?
- 7 A: I did not. Mr. McFadden was being prepped for surgery at
- 8 the time and he was still receiving treatment.
- 9 Q: Did you see Mr. McFadden at that time?
- 10 A: I did.
- 11 Q: Could you describe his hairdo if you could?
- 12 A: He had medium length dreads I would say. Maybe about to
- 13 the chin.
- 14 Q: Okay. But dreads?
- 15 A: Yes.
- 16 Q: Did there come a time when you returned to 3rd Avenue
- 17 Sports Bar?
- 18 A: I did. That was around 3:30 in the morning. Once I
- 19 finished at the hospital, I did return to the bar.
- 20 Q: And what was the purpose in returning to the bar?
- 21 A: At that point, I had not finished documenting the scene or
- 22 collecting any evidence.
- 23 Q: Okay. And it's your responsibility to document this
- 24 scene?
- 25 A: Yes, sir.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

331

1 Q: And why is that?

2 A: That is my, one of responsibilities as a Crime Scene
3 Officer. We're equipped with cameras and we document the
4 scene as we find it and then any evidence that we collect
5 along the way.

6 Q: And you're saying to the police, this is your scene?

7 A: This is my scene. When I say we, I meant Crime Scene as
8 in general.

9 Q: And you're saying -- this is your scene?

10 A: This is my scene.

11 Q: Now, when you get back -- you said you get back and you
12 left some video running, correct ---

13 A: Correct.

14 Q: --- whenever you left? Was it complete whenever you got
15 back?

16 A: It was done when I got back.

17 Q: And what did you do with that video?

18 A: I secured the thumb drive -- well, there was -- I wasn't
19 familiar with this video system so I downloaded it in the
20 format that the DVR provides. I did not know if we would be
21 able to view that with the equipment that we have, but the DVR
22 gave me the option to download as an ABI file, which I knew
23 was something that was compatible with what we were able to
24 use in our lab. So I copied the same video files in ABI
25 format.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

332

- 1 Q: And ABI order signed ---
- 2 A: It's just a basic video format. It's used in like Windows
3 Media Player.
- 4 Q: Okay. Okay. I'm not tech savvy so. I know how to work
5 what I have. Other than getting that video, what else did you
6 do at the scene that night?
- 7 A: After I started the ABI download, I met with the Detective
8 who had been at the scene the entire time that I was gone and
9 we reviewed the scene and what potential evidence had been
10 located in the parking lot.
- 11 Q: I'm gonna show you what has been marked for identification
12 State's Forty-nine through Sixty-four. First I'd like to hand
13 you State's, as I stated, Forty-nine through Sixty-four. Take
14 a moment and leaf through those, Officer McSpadden, and tell
15 me if you recognize them and how you recognize them, please,
16 ma'am.
- 17 A: These are the photographs that I took outside 3rd Avenue
18 Sports Bar in the parking lot.
- 19 Q: Are those -- when did you take those photographs?
- 20 A: It would have been after 3:30 in the morning when I
21 returned to the bar.
- 22 Q: And those aren't all the photographs you took that night?
- 23 A: No.
- 24 Q: But those are definitely photographs you took?
- 25 A: They are.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

333

1 MR. RICHARDSON: Your Honor, the State would seek to
2 introduce State's Forty-nine through Sixty-four and publish
3 via Power Point at the appropriate time?

4 THE COURT: Any objection?

5 MS. PRATT: No, Your Honor.

6 THE COURT: In evidence without objection. You may
7 publish.

8 STATE'S EXHIBIT NUMBERS FORTY-NINE THROUGH SIXTY-FOUR

9 ADMITTED INTO EVIDENCE

10 MR. RICHARDSON: Your Honor, I'm gonna leave these up
11 here so Ms., Officer McSpadden can site the pictures I pull up
12 by the identification number.

13 THE COURT: All right, sir.

14 BY MR. RICHARDSON:

15 Q: Officer McSpadden, prior to handling the Power Point, I
16 would like to ask you, did you ever do any type of crime scene
17 sketch or mapping?

18 A: I did. After -- well, after I returned to the Crime Scene
19 Lab, that was done later and the sketch was done based on my
20 photographs.

21 Q: Based on your photographs?

22 A: Correct.

23 Q: Did you make any notes that night?

24 A: I normally don't make a lot of notes. I use my
25 photographs as notes.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

334

- 1 Q: And do you ever issue a report?
- 2 A: Absolutely.
- 3 Q: That's based off your memories and your photographs?
- 4 A: Correct.
- 5 Q: Is that used whenever you do the sketch?
- 6 A: Correct.
- 7 Q: And what types of information do you put in your crime
- 8 scene sketch?
- 9 A: On the crime scene sketch I would have put basic locations
- 10 of the buildings, any vehicles that were relevant to the scene
- 11 and the locations of any potential evidence items that were
- 12 marked that night.
- 13 Q: And you say potential evidence, so you try to collect as
- 14 much as ---
- 15 A: This is a bar parking lot so there were things certainly
- 16 that were related to the incident and then certain things that
- 17 were not. So we didn't know at that time whether perhaps
- 18 cigarette butts or things like that were related to our
- 19 incident. We marked all of those things to collect.
- 20 Q: I'm gonna show you what has been marked as State's Eighty-
- 21 seven. Do you recognize State's Eighty-seven?
- 22 A: That is the sketch I did.
- 23 Q: And how do you recognize -- it's a sketch you did ---
- 24 A: Correct.
- 25 Q: --- so you answered the question before I asked?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

335

1 A: Correct.

2 Q: Is it a fair and accurate depiction of what you observed
3 that night?

4 A: Yes, sir.

5 Q: Not the scale?

6 A: No the scale obviously.

7 MR. RICHARDSON: Your Honor, the State would seek to
8 introduce and publish Eighty-seven?

9 THE COURT: Any objection?

10 MS. PRATT: No objection, Your Honor.

11 THE COURT: All right. It's in evidence without
12 objection. You may publish.

13 STATE'S EXHIBIT NUMBER EIGHTY-SEVEN

14 ADMITTED INTO EVIDENCE

15 BY MR. RICHARDSON:

16 Q: Some of the items that you photographed that night,
17 Officer McSpadden, are they also represented on this sketch?

18 A: Yes, sir.

19 MR. RICHARDSON: Your Honor, if I could have Officer
20 McSpadden come down off the stand as long as we can get her
21 near a microphone?

22 THE COURT: Go ahead.

23 MR. RICHARDSON: Can all the jury see the screen with
24 this up here? You cannot. Then maybe we'll come back to this
25 in a moment. We'll come back and do that in just a second.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

336

1 THE COURT: Go ahead and have a seat.

2 BY MR. RICHARDSON:

3 Q: Officer McSpadden, if I can just start a Power Point.

4 Okay. This first photograph, does that, is that depicted in
5 the State's exhibits you have before you?

6 A: It is Number Forty-nine.

7 Q: Okay. So this is State's Forty-nine?

8 A: Yes.

9 Q: In State's Forty-nine, what are we seeing?

10 A: This is taken from near Third Avenue South facing the bar,
11 which is back in the back corner back there. There are
12 several patrol cars there and the scene has been taped off
13 with crime scene tape.

14 Q: And can you tell us what exhibit that is?

15 A: This is Fifty.

16 Q: Okay. State's Fifty. What are we seeing here?

17 A: On the other side of that patrol car that you can see in
18 Forty-nine, I've now stepped a little closer to the bar and
19 taken another photograph.

20 Q: And State's, I'll say that's Fifty-one?

21 A: Yes, sir.

22 Q: On State's Fifty-one, what are we seeing, Officer
23 McSpadden?

24 A: In order to document the entire scene, what I've done is
25 I'm standing in one place and just rotated slightly to my left

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

337

- 1 to photograph what was at the end of the bar that we couldn't
2 see in the other photograph and the vehicles that were along
3 the median there.
- 4 Q: Okay. So, this, this vehicle right here where I have the
5 laser pointer?
- 6 A: Yes, sir.
- 7 Q: That's up along the building?
- 8 A: It is.
- 9 Q: And right here we have the front of the bar?
- 10 A: Yes, correct.
- 11 Q: And this is just more parking?
- 12 A: Correct.
- 13 Q: And parking beside of the building?
- 14 A: Correct.
- 15 Q: What, what are we looking at now on State's Fifty-two?
- 16 A: This is going to be, if you're looking at the front of the
17 bar, there's a -- the building comes down towards Third Avenue
18 South on your right-hand side. So we're looking at the
19 adjacent businesses.
- 20 Q: Okay. So these are just other businesses that are along
21 near the sports bar?
- 22 A: Correct.
- 23 Q: As you walk away from the sports bar there, the sports
24 bar, the whole bar makes an L-shape?
- 25 A: It does. Correct.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

338

- 1 Q: And these are of the long part of the L?
- 2 A: Correct.
- 3 Q: Heading back towards Third Avenue. Now, Officer
- 4 McSpadden, it might be easier for me to see, but I see there's
- 5 like a little yellow marker here. Can you tell us what the
- 6 purpose of that is or what that is?
- 7 A: I do mark -- I marked potential items of evidence with a
- 8 little yellow tent that has a number on it and that is just so
- 9 that we can show the relative position of items of possible
- 10 evidence in the long photographs.
- 11 Q: So if I understand your testimony, any of these yellow
- 12 markers denote potential evidence?
- 13 A: Correct.
- 14 Q: And with regard to that, it is potential evidence that may
- 15 be of some use or not?
- 16 A: Correct.
- 17 Q: So anytime we see those yellow markers, that's potential
- 18 evidence?
- 19 A: Correct.
- 20 MR. RICHARDSON: Court's indulgence?
- 21 THE COURT: All right, sir.
- 22 BY MR. RICHARDSON:
- 23 Q: All right. Moving along, what number are we on now?
- 24 A: This is Fifty-three.
- 25 Q: Okay. And what is the purpose of State's Fifty-three?

State v. Chestnut

339

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 A: Fifty-three is a gold-colored Oldsmobile that was parked
2 near the entrance to the bar. When officers arrived on the
3 scene, they located Mr. McFadden in this vehicle.

4 Q: Okay. So this gold-colored ---

5 A: Oldsmobile.

6 Q: --- it's a Oldsmobile. Okay. That is the vehicle which
7 officers found Jamal McFadden?

8 A: Correct.

9 Q: Whenever they arrived?

10 A: Correct.

11 Q: All right. And State's, is that Fifty-five?

12 A: Fifty-four.

13 Q: Fifty-four; I was one ahead. What are we seeing in Fifty-
14 four?

15 A: At this point, I had marked the items of potential
16 evidence with the little yellow evidence tents so we are
17 seeing quite a few of them and this is a repeat of the
18 photograph from before where we're facing the bar, but with
19 the evidence items marked.

20 Q: Okay. So it's just a mark, now that we've marked the
21 items, correct?

22 A: Correct.

23 Q: At this point, you take a walk through and place those
24 markers down?

25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

340

- 1 Q: Now we see, now is that my camera -- let's see if I can
2 get it focused any better. There we go. We see more evidence
3 markers here. What number is this?
4 A: This is Fifty-five.
5 Q: And we see a police car and a gold van?
6 A: Yes.
7 Q: Does that gold van have any potential or significance?
8 A: There were items of potential evidence marked on and
9 around the van. The little evidence markers that you can see
10 down by the front passenger wheel and then there was also a
11 bullet strike in the windshield of that van.
12 Q: Okay. Was it on the passenger side or the driver's side?
13 A: Driver's side.
14 Q: Okay. So you wouldn't see it from that aspect?
15 A: No, you can kind of see the tent but that's it.
16 Q: Where we at now, State's Fifty-six?
17 A: Yes.
18 Q: And State's Fifty-six, there is a marker, I believe isn't
19 it? Number 8?
20 A: Uh-huh (affirmative response).
21 Q: Can you see that in the photograph you have?
22 A: Yes.
23 Q: What's the significance of Marker Number 8, what does it
24 show? Marker Number 8 was at a Winchester .380 caliber shell
25 casing.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

341

- 1 Q: So that was a Winchester .380 shell casing?
- 2 A: Correct.
- 3 Q: And then we've got a close-up photograph; is that 8?
- 4 A: Yes, sir.
- 5 Q: Now at some point, did another officer point out a shell
- 6 casing to you?
- 7 A: Yes, there had been quite a few officers there, especially
- 8 while I was gone to the hospital and they had a chance to kind
- 9 of look around and note things so that there were officers who
- 10 pointed out evidence items to me.
- 11 Q: Now when they point it out, do they pick it up, do they do
- 12 anything to it?
- 13 A: They should not, no.
- 14 Q: Okay. So they shouldn't pick it up?
- 15 A: They should not.
- 16 Q: They just call your attention and say, hey, there's
- 17 something here?
- 18 A: Hey, I've found something over here.
- 19 Q: Have you picked up .380 shell, .380 shell casings before?
- 20 A: Sure.
- 21 Q: Have you picked up 9 millimeter shell casings before?
- 22 A: Yes, sir.
- 23 Q: Are they similar in any way?
- 24 A: The .380's are shorter.
- 25 Q: .380's are shorter?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

342

- 1 A: Yes.
- 2 Q: But the same diameter?
- 3 A: About, I think they would be close, yeah.
- 4 Q: Okay. So, so .380 and 9 could be easily mistaken for one
- 5 another?
- 6 A: Yes.
- 7 Q: If you don't pick it up and read it?
- 8 A: Correct and there's a stamp on the end that tells you what
- 9 it is, but if you don't pick that up, it could be difficult to
- 10 see when it's laying on its side like it was.
- 11 Q: Let's go on. I think that is Marker Number 11?
- 12 A: Correct.
- 13 Q: What do we see in Marker 11?
- 14 A: Marker 11 is a bullet fragment.
- 15 Q: That is -- we'll come back to the diagram. So Marker 11
- 16 and all these markers we're talking about, they are noted on
- 17 your diagram, correct?
- 18 A: They are.
- 19 Q: So Marker 11 is a bullet fragment?
- 20 A: Yes.
- 21 Q: And is that the same bullet fragment?
- 22 A: It is.
- 23 Q: And again?
- 24 A: Yes.
- 25 Q: Did you manipulate the bullet fragment in any form?

State v. Chestnut

343

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

- 1 A: I turned it just to photograph the size of it in
2 collecting it.
- 3 Q: And the size of it, you get from this little rule here?
- 4 A: Yes.
- 5 Q: And all the markers have this rules?
- 6 A: They do.
- 7 Q: Let's go on. What number is this please, ma'am?
- 8 A: Sixty-one.
- 9 Q: And in State's Sixty-one, what are we seeing?
- 10 A: These are additional evidence markers. 22 will be blood
11 from the sidewalk; 23 will be a cigar; 24 will be a cigarette
12 butt. And this was around the rear of that gold Oldsmobile
13 back towards Third Avenue South a bit.
- 14 Q: Okay. So near the Gold Oldsmobile would be down a little
15 bit?
- 16 A: Correct.
- 17 Q: Walking away. State's Sixty-two, correct?
- 18 A: Correct.
- 19 Q: So in Sixty-two, what are we seeing in that Marker 16 on
20 State's Sixty-two?
- 21 A: This is the bullet strike in the van's windshield.
- 22 Q: Did you look in that van at a later date?
- 23 A: No, I don't believe so.
- 24 Q: Did you notice anything with regard to the damage done
25 there?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

344

- 1 A: I did note that it did not penetrate all the way through
2 the windshield.
- 3 Q: So it would be a deflection?
- 4 A: Correct. It would have struck and bounced off or ---
- 5 Q: Somewhere?
- 6 A: Yes.
- 7 Q: How about State's Nineteen, no, I'm sorry, not State's
8 Nineteen; State's Sixty-three?
- 9 A: Sixty-three.
- 10 Q: State's Sixty-three, what are we seeing where that Marker
11 19?
- 12 A: This is gonna be another .380 caliber shell casing and
13 again it is a Winchester.
- 14 Q: And finally State's Sixty-four what are we seeing there?
- 15 A: And that's Marker 26, a .380 caliber shell casing
16 Winchester.
- 17 Q: So all three shell casings you found were .380 Winchester?
- 18 A: Correct.
- 19 Q: And what, if anything, did you do with those shell
20 casings?
- 21 A: Those were just photographed and collected and then like I
22 said, we don't do any firearms' analysis in-house so they were
23 sent to SLED.
- 24 Q: Same thing with regard to the projectile?
- 25 A: Correct.

State v. Chestnut

345

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 MR. RICHARDSON: Your Honor, I've got another power point
2 to go through. I don't know that we need to turn the lights
3 up, Judge.

4 THE COURT: All right, sir.

5 MR. RICHARDSON: That's fine. It's fine.

6 THE COURT: All right.

7 MR. RICHARDSON: I don't have to approach the witness ---

8 THE COURT: Yes, sir. You got it?

9 MR. RICHARDSON: Yes, sir, Your Honor. I just want to
10 make sure I'm ---

11 BY MR. RICHARDSON:

12 Q: I'm gonna show you what's been previously marked as
13 State's Thirty-three; I'm sorry, Thirty-two, Thirty-three,
14 Thirty-four and Thirty-six. See if you can identify those.

15 A: These are the three casings and the bullet collected in
16 the parking lot.

17 Q: And who collected these?

18 A: I did.

19 Q: And upon your collection -- when did you collect them; how
20 did you collect them; how were they preserved, if at all?

21 A: Okay. The boxes, I put them all into a little box. The
22 box is marked with the marker number and then I change gloves
23 each time I collect a, any kind of different evidence so as to
24 avoid contamination. So I would have put on a fresh glove,
25 picked up the shell casing, photographed it, placed it into

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

346

1 the box, marked the box and then moved on to the next one.

2 Q: And you do that with each of these pieces of evidence?

3 A: Correct.

4 Q: And after you were done photographing it, photographing
5 and collecting this evidence, you placed it in the box?

6 A: Yes.

7 Q: What, if anything, did you do with these boxes on State's
8 Thirty-two, Thirty-three and Thirty-four?

9 A: The boxes are then sealed with evidence tape. It's a
10 fragile tape so that they would show any tampering.

11 Q: Do you do anything to initial or document it in anyway?

12 A: There should be an initial on the bottom of it. It's been
13 covered up by a, by a label.

14 Q: But no doubt about it, these are the shell casings you
15 collected March 6th, 2012 in the early morning hours?

16 A: Correct.

17 Q: Okay. And once you collected them and sealed them and
18 initialed them and documented them, what did you do with them?

19 A: These would be placed into evidence and then sent to SLED.

20 MR. RICHARDSON: Once again Court's indulgence?

21 THE COURT: Yes, sir.

22 BY MR. RICHARDSON:

23 Q: Now so we can get a more full picture, can you come down
24 off the stand please, ma'am.

25 Officer McSpadden, if you can stand near that microphone

State v. Chestnut

347

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 and we can wait on Ms. Pratt. Now this is the sketch you did
2 earlier?

3 A: It is.

4 Q: On State's Eighty-seven. For the record, this Item Number
5 20, what is that?

6 A: Item 20 was a shoe that was on top of that gold
7 Oldsmobile.

8 Q: Okay. So this is the gold Oldsmobile?

9 A: It is.

10 Q: Correct. And the gold Oldsmobile is and I know you say
11 this is not to scale, but are these parking spots?

12 A: They are parking spots.

13 Q: How many -- I mean are they accurate as to the correct
14 count of parking spaces?

15 A: They are, yes.

16 Q: So the gold Oldsmobile is one spot over away from the
17 door?

18 A: Correct.

19 Q: Now I believe we said Number 8 was a shell casing,
20 correct?

21 A: Correct.

22 Q: And Number 8 was found over here and that was a .380 shell
23 casing?

24 A: Correct.

25 Q: Winchester?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

348

- 1 A: Winchester.
- 2 Q: And Number 11, that was a ---
- 3 A: That was a bullet fragment.
- 4 Q: A bullet fragment, projectile?
- 5 A: Correct.
- 6 Q: And that was found?
- 7 A: At the rear of the blue car.
- 8 Q: Okay. So back towards the sports bar from the shell
- 9 casing?
- 10 A: Correct.
- 11 Q: And then what do we have, 19 and 26, what are those?
- 12 A: Those were shell casings, .380.
- 13 Q: Those were shell casings as well and those were .380, .380
- 14 shell casings?
- 15 A: Correct.
- 16 Q: We've got numbers 1 through 26 here. How long did y'all
- 17 search the parking lot?
- 18 A: Oh, probably two hours.
- 19 Q: Two hours. How many -- two hours after you got there or
- 20 before you got there?
- 21 A: Oh, probably after.
- 22 Q: Okay. So two hours after you got there and the officers
- 23 were looking around before that?
- 24 A: They were there before that.
- 25 Q: So you got done and got back at what did you say 3:30?

State v. Chestnut

349

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

- 1 A: 3:30.
- 2 Q: So you were there until 5:30?
- 3 A: Just about.
- 4 Q: So if the officers got there at 1:30, we're talking about
- 5 a space of at least four hours?
- 6 A: Yes.
- 7 Q: Where people were walking the parking lot looking for
- 8 evidence?
- 9 A: Correct.
- 10 Q: Tell me about any other shell casings you found anywhere
- 11 on the scene?
- 12 A: I found no other shell casings.
- 13 Q: No shell casings anywhere else?
- 14 A: None.
- 15 Q: On the scene, did you find any other bullet fragments?
- 16 A: None.
- 17 Q: And you said this was a bullet deflection, correct?
- 18 A: Correct.
- 19 Q: Into the windshield?
- 20 A: Correct.
- 21 Q: And could you tell which way the bullet went?
- 22 A: No.
- 23 Q: But it deflected off of the windshield and that was off
- 24 the right side of the windshield, correct?
- 25 A: The driver's side.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

350

1 Q: So right here off. All right. Resume your seat, please,
2 ma'am. What other steps did you take during the, the day of
3 March 6th, 2012?

4 A: After I finished or when I left the bar, I went back to
5 the police department and secured all the evidence that I had
6 into the, the evidence room for further processing at a later
7 time and that was the end of my shift on that day. I did
8 return at 4:00 P.M. that afternoon.

9 Q: I think earlier you said you went and got some more video?

10 A: Yes.

11 Q: Now at any other point during the course of this
12 investigation, did you have the opportunity to perform search
13 on a red Kia Sorento?

14 A: I did.

15 Q: And when was that?

16 A: That was on March 7th at about 3:40 in the afternoon.

17 Q: Okay. March 7th at 3:40 in the afternoon; is that the
18 first time you come back on shift or I guess not if you ---

19 A: No.

20 Q: If that vehicle was stopped on March 6th and you didn't
21 search it until March 7th, how would that vehicle have been
22 housed in-between?

23 A: The Crime Scene Lab is equipped with several vehicle
24 storage units. We have one in the lab itself and that is
25 where the gold Oldsmobile was housed. And then we have four

State v. Chestnut

351

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 on the back side of our building.

2 Q: And the, on the backside, do you recall where the red Kia
3 was housed?

4 A: It was in one of the bays on the backside of our building.

5 Q: And you stated you did the search on March 7th, 2012?

6 A: Correct.

7 Q: First of all, I'm gonna show you two photographs that have
8 been previously introduced into evidence, State's Forty-six
9 and Forty-seven; do you recognize those?

10 A: I do. I took these photographs.

11 Q: Okay. And what are those photographs of?

12 A: They are of the Kia as it was housed in our garage.

13 Q: Okay. Now I'm gonna ask you to take a look at I believe
14 it's Sixty-five through Seventy-eight. You had time to review
15 them?

16 A: Yes.

17 Q: Officer McSpadden, could you tell us if you recognize
18 Sixty-five through Seventy-eight?

19 A: I do.

20 Q: And what do you recognize Sixty-five through Seventy-eight
21 as being?

22 A: These are photographs I took during the search of the red
23 Kia.

24 Q: All right. Now I'll ask you once again, just like we did
25 before with the Power Point, if you could just keep those with

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

352

1 you and tell us what we're looking at and what -- the exhibit
2 number.

3 MR. RICHARDSON: Your Honor, the State would seek to
4 introduce and publish at this time?

5 THE COURT: Any objection?

6 MS. PRATT: None, Your Honor.

7 THE COURT: You may do so.

8 STATE'S EXHIBIT NUMBERS SIXTY-FIVE THROUGH
9 SEVENTY EIGHT ADMITTED INTO EVIDENCE

10 BY MR. RICHARDSON:

11 Q: Officer McSpadden, can you tell, this is State's Forty-
12 six?

13 A: Seven. Forty-seven.

14 Q: Forty-seven, I'm sorry. Forty-seven, what are we seeing
15 here?

16 A: This is the back of the red Kia and I took the photograph
17 to show the registration.

18 Q: And who did that belong to?

19 A: Annaliese Testa.

20 Q: Annaliese Testa. And State's Forty-eight?

21 A: Forty-six is the side photograph.

22 Q: Okay. Forty-six, what's the purpose of State's Forty-six?

23 A: I photograph all -- all the way around the vehicle to show
24 anything that would be on the outside. So this is just the
25 driver's side.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

353

- 1 Q: Now we got I believe State's Sixty-five?
- 2 A: Correct.
- 3 Q: And what's the purpose of State's Sixty-five?
- 4 A: Just to show the driver's door and the driver's seat.
- 5 Q: And State's Sixty-six?
- 6 A: The driver's seat and the center console.
- 7 Q: Did you find anything of evidentiary value in Sixty-five
- 8 or Sixty-six?
- 9 A: No.
- 10 Q: So where the driver was sitting, you found nothing of
- 11 evidentiary value?
- 12 A: Correct.
- 13 Q: State's Sixty-seven?
- 14 A: Sixty-seven.
- 15 Q: What are we seeing here?
- 16 A: This is the door, the inside of the door and the seat
- 17 directly behind the driver.
- 18 Q: So it's the rear passenger compartment on the driver's
- 19 side?
- 20 A: Correct.
- 21 Q: What are we seeing right here?
- 22 A: That is a jacket or a sweater that's black with white
- 23 stripes.
- 24 Q: How about here?
- 25 A: That is a blue t-shirt and underneath it was a, like a

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

354

- 1 little bag, a nylon bag.
- 2 Q: Portfolio maybe?
- 3 A: Yes.
- 4 Q: State's Sixty -- is it eight?
- 5 A: Sixty-eight.
- 6 Q: State's Sixty-eight; just a closer view of all that?
- 7 A: Correct.
- 8 Q: And at this point, you're just documenting everything and
- 9 photographing it?
- 10 A: Correct.
- 11 Q: State's Sixty-nine?
- 12 A: This will be the door, the front passenger door.
- 13 Q: Okay. So, the front of the car -- but this is the one
- 14 directly beside the driver's seat?
- 15 A: Correct. Same thing as the driver's seat and the -- or
- 16 sorry, the front passenger seat and the console.
- 17 Q: And which number is that, Sixty-nine?
- 18 A: This is Seventy.
- 19 Q: That's Seventy, so the one before that was Sixty-nine.
- 20 Now I see this is State's Seventy-one?
- 21 A: Yes.
- 22 Q: And does it have ---
- 23 A: Cell phone, cigarettes.
- 24 Q: And State's Seventy-two?
- 25 A: Seventy-two, this would have been a Social Security card

State v. Chestnut

355

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 for Armando, I'm sorry, I don't want to mess up his middle
2 name, Chestnut, and it was found in that black portfolio.

3 Q: And that was in the rear seat behind the driver?

4 A: Correct.

5 Q: The passenger compartment behind the driver?

6 A: Correct.

7 Q: And there was a blue t-shirt on top of that?

8 A: Yes.

9 Q: And this is at least a Social Security card with the name
10 of Armando Chestnut?

11 A: Correct.

12 Q: And this shirt, it's a blue t-shirt?

13 A: A blue t-shirt from the seat behind the driver.

14 Q: And what State's Exhibit Number is that?

15 A: Seventy-three.

16 Q: Seventy-three. Seventy-four?

17 A: Seventy-four is the jacket from the floorboard.

18 Q: Seventy-five?

19 A: Same thing, the rear of the jacket.

20 Q: Seventy-six?

21 A: Seventy-six is the same; it's the rear of the jacket and
22 the hood has been folded forward so you can see the back of
23 the jacket.

24 Q: Seventy-seven?

25 A: Same thing. This is taken from the front with the arm,

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

356

1 right arm stretched out.

2 Q: Seventy-eight?

3 A: This was taken in the Crime Scene Lab. And once I got
4 back underneath better lighting, I was able to see what
5 appeared to be some blood on the rear of the jacket.

6 Q: We'll go back to State's, I believe, Seventy-seven. We
7 see these blue things; what are those?

8 A: Oh, my gloves.

9 Q: What's the purpose of wearing gloves?

10 A: Gloves are to prevent contamination from myself or another
11 piece of evidence to what I'm handling.

12 Q: You want to make sure you keep everything in the condition
13 in which you find it?

14 A: Correct.

15 Q: Now those items, the -- Your Honor, I believe I'm done
16 with the Power Point.

17 THE COURT: All right. Madam Bailiff, cut the lights
18 back on. Thank you, ma'am.

19 BY MR. RICHARDSON:

20 Q: Now we, you took some, those items we just took a picture
21 of, we see you holding them up, correct?

22 A: Correct.

23 Q: I'm gonna show you what's been previously marked as
24 State's Forty-one. If you can look in State's Forty-one and
25 you can pull it out and tell me if you recognize that item?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

357

- 1 A: I do.
- 2 Q: And what is State's Forty-one?
- 3 A: It is the blue t-shirt.
- 4 Q: Okay. And this blue t-shirt, this is the one we saw in
- 5 the photograph?
- 6 A: It is.
- 7 Q: Found in the back of that red Kia Sorento?
- 8 A: Correct.
- 9 Q: And what was done with this blue t-shirt?
- 10 A: The blue t-shirt, I don't think we did any processing on
- 11 it in the lab. It would have been sent to SLED for gunshot
- 12 residue testing.
- 13 Q: Just make sure, and how can you tell this is the blue t-
- 14 shirt that you took out of that vehicle?
- 15 A: It does have the same markings on the front and the bag
- 16 shows, the bag was labeled with my handwriting.
- 17 Q: And after you took this bag and shirt into custody, how
- 18 did you package it, if at all?
- 19 A: It would have been packaged right in this bag and it's
- 20 packaged separately from everything else and then evidence
- 21 tape placed on the rear of the bag, which is tamper-evident.
- 22 Q: And it's open now, right?
- 23 A: Correct.
- 24 Q: But at the time, you would have sealed it and put your
- 25 initials on it?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

358

1 A: Yes.

2 Q: And upon sealing it, after photographing it and sealing it
3 and putting it in the bag -- or I guess you put it in the bag
4 and then sealed it -- what do you do with it?

5 A: That was sent to SLED for gunshot residue testing. We
6 don't do anything with them in-house.

7 Q: Now prior to it going to SLED, did it go directly to SLED
8 or ---

9 A: It did not. It just says the other evidence we spoke
10 about, it went to Property and Evidence and then from there to
11 SLED.

12 Q: And I'm gonna try and wrap this up. I didn't want to make
13 a lot of noise while you were testifying. Now if we can go to
14 State's Thirty-nine; if you'll open State's Thirty-nine and
15 tell me if you recognize that?

16 A: I do.

17 Q: And State's Thirty-nine, can you tell us what's contained
18 in there?

19 A: It is the black-and-white jacket that was found in the
20 floorboard behind the driver's seat in the red Kia.

21 Q: And this is the jacket we're talking about?

22 A: Correct.

23 Q: Okay. And upon taking that jacket or sweater, shirt,
24 whatever you want to call it, black-and-white, what was done
25 with that sweater?

State v. Chestnut

359

MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

1 A: I swabbed an area on the back of that sweater that did
2 contain blood. Then the sweater was packaged inside that
3 paper bag, sealed with evidence tape and placed into evidence.

4 Q: And so blood was on the exterior?

5 A: It was.

6 Q: Okay. Was there any blood on the t-shirt that you saw?

7 A: No.

8 Q: It was on the rear of it?

9 A: Correct.

10 Q: And you sealed that item?

11 A: Correct.

12 Q: In that bag?

13 A: That bag.

14 Q: And what was done with it? Did you initial it that
15 document?

16 A: Yes.

17 Q: And upon doing all that, what did you do with it?

18 A: It was placed into evidence to be stored in Property and
19 Evidence until such time that it went to SLED.

20 Q: And who makes those requests to send items to SLED?

21 A: I do.

22 Q: And you have to wait until they say we're ready?

23 A: No.

24 Q: You just wait till everything can go at one time?

25 A: Yes.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

360

1 Q: Because y'all have personnel to take stuff?

2 A: We do and it's, you know, a two-hour drive and so we try
3 to get everything together to go at one time.

4 Q: But your testimony is that y'all wear gloves to prevent
5 contamination?

6 A: Correct.

7 Q: And you separate things into different containers to
8 prevent contamination?

9 A: Correct.

10 Q: Even the shell casings, you change gloves every time to
11 prevent contamination?

12 A: Correct.

13 Q: And box each one separately?

14 A: Yes.

15 Q: Now you made the requests at SLED. What request, if any,
16 did you make with regard to, to the, to those cartridges, the
17 shell casings and the projectile?

18 A: The shell casings and the projectile were sent for
19 firearms analysis. So they would compare the markings on them
20 and any firearms that were sent along to determine if those
21 casings came from the same source.

22 Q: And with regard to the black-and-white sweater and the,
23 and the blue t-shirt. What, if any, requests were made with
24 regard to those?

25 A: Those were for gunshot residue.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

361

1 MR. RICHARDSON: Will you mark that?

2 STATE'S EXHIBIT NUMBER NINETY-FOUR

3 MARKED FOR IDENTIFICATION

4

5 BY MR. RICHARDSON:

6 Q: Will you mark that? I'm gonna hand to you what's been
7 marked for identification, State's Ninety-four. You can open
8 it ---

9 MS. PRATT: May I see it?

10 Q: Don't speak about it until we get properly identified and
11 I need to show it to Ms. Pratt.

12 MS. PRATT: Thank you.

13 MR. RICHARDSON: Yes, ma'am.

14 BY MR. RICHARDSON:

15 Q: State's Ninety-four?

16 A: Uh-huh (affirmative response).

17 Q: Can you tell us what that is?

18 A: This is the UCLA hat from the front passenger seat.

19 Q: Was that ever sent to SLED?

20 A: No.

21 Q: And why?

22 A: We did not expect there to be evidence that would be
23 pertinent to the case on it.

24 Q: That's from your experience and your education?

25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

362

1 MR. RICHARDSON: The State would seek to introduce
2 Ninety-four, Your Honor.

3 THE COURT: Any objection?

4 MS. PRATT: No objection, Your Honor.

5 THE COURT: It's in evidence without objection.

6 STATE'S EXHIBIT NUMBER NINETY-FOUR

7 ADMITTED INTO EVIDENCE

8 BY MR. RICHARDSON:

9 Q: At some point in the future, did you have an opportunity
10 to respond to the home of Corey Myers?

11 A: I did. That was on the evening of the 6th, the afternoon.

12 Q: That's the evening of the 6th?

13 A: Correct.

14 Q: What was the purpose of responding to Mr. Myers'
15 apartment?

16 A: I'm sorry; I gave you the wrong date. It was the evening
17 of the 8th and I responded to Mr. Myers' apartment for a
18 search as granted by Mr. Myers.

19 Q: Because Mr. Myers signed a Consent to Search?

20 A: Correct.

21 Q: And I'm gonna show you what's been previously marked and
22 admitted as Defense Number Five?

23 A: Okay.

24 Q: Is that the consent you saw?

25 A: It is.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

363

1 Q: So that's where Mr. Myers allowed you to search his home?

2 A: Correct.

3 Q: Let me show you what has been previously marked as State's
4 Seventy-nine through Eighty-six.

5 A: Okay.

6 Q: State's Seventy-nine through Eighty-six, how do you
7 recognize those photos, if you do?

8 A: I took the photos.

9 Q: And with regard to these photos, what are they?

10 A: They are the inside of Mr. Myers' apartment.

11 Q: Okay. And these are photos you took on the evening of
12 March 8th?

13 A: Correct.

14 Q: When you did a consent search of the apartment?

15 A: Correct.

16 MR. RICHARDSON: Your Honor, the State would seek to
17 introduce State's Seventy-nine through Eighty-six and publish?

18 THE COURT: Any objection?

19 MS. PRATT: I would like to review them, Your Honor,
20 please?

21 THE COURT: Certainly.

22 MR. RICHARDSON: I thought you had seen them previously.

23 MS. PRATT: No, sir. No objection, Your Honor.

24 THE COURT: All right. Seventy-nine through Eighty-six
25 are in evidence without objection. You may proceed.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

364

1 STATE'S EXHIBIT NUMBERS SEVENTY-NINE THROUGH
2 EIGHTY-SIX ADMITTED INTO EVIDENCE

3 MR. RICHARDSON: Publish, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. RICHARDSON:

6 Q: Officer McSpadden, these photographs, these are the scene
7 just as you found it?

8 A: Correct.

9 Q: You didn't set anything out, move anything, until you took
10 the photographs?

11 A: Correct.

12 Q: Did you take any items into evidence that night?

13 A: I did. I took a handgun and some bullets and two articles
14 of clothing.

15 Q: You took a handgun and I'm gonna show you what's already
16 been introduced into evidence as State's Number Thirty-eight.
17 See if you recognize State's Thirty-eight?

18 A: Yes.

19 Q: And how do you recognize State's Thirty-eight?

20 A: This is the handgun I collected from Mr. Myers' apartment.

21 Q: And whenever you collected it, was it loaded or unloaded
22 or in what condition was it?

23 A: It was unloaded on the bed.

24 Q: Now what's been marked as State's Ninety-five; see if you
25 recognize State's Ninety-five?

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

365

1 A: I do.

2 Q: And State's Ninety-five, what do you recognize it as
3 being?

4 A: These are the bullets that were collected from Mr. Myers'
5 apartment.

6 Q: And what caliber are they?

7 A: .40.

8 Q: So not .380's?

9 A: Not .380.

10 MR. RICHARDSON: State would seek to or State would seek
11 Ninety-five into evidence, Your Honor?

12 THE COURT: Any objection?

13 MS. PRATT: No objection, Your Honor.

14 THE COURT: All right. State's Ninety-five into
15 evidence.

16 STATE'S EXHIBIT NUMBER NINETY-FIVE

17 ADMITTED INTO EVIDENCE

18 BY MR. RICHARDSON:

19 Q: You stated you took two articles of clothing, correct?

20 A: Correct.

21 Q: I'm gonna show you State's Forty-three and Forty; I'm
22 gonna just put them back here behind you where you can look at
23 them. Tell me if you recognize those items; this is Forty and
24 Forty-three?

25 A: I do.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

366

- 1 Q: Okay. What is, what do we find in State's Forty?
- 2 A: State's Forty is a red-and-grey jacket that was found on
- 3 the, I believe it was on the floor in Mr. Myers' bedroom.
- 4 Q: Okay. And these were the sweater and the jeans?
- 5 A: Correct.
- 6 Q: Okay. The jeans are in Forty ---
- 7 A: Forty-three.
- 8 Q: Forty-three. Okay. And these are items you took?
- 9 A: Yes.
- 10 Q: And after you took them, how did, what did you do with
- 11 them?
- 12 A: They're packaged in paper bags and then -- separately.
- 13 They would have been collected -- I would've switched gloves
- 14 in between them being packaged into a paper bag and then
- 15 sealed with tape.
- 16 Q: Okay. And did you initial or sign anything?
- 17 A: Yes.
- 18 Q: And are there any other ways you document it?
- 19 A: It's just logged into evidence.
- 20 Q: Now after, after you do this, I just want to make sure
- 21 we're all clear and I imagine the jury is abundantly clear now
- 22 how everything's housed. It's logged into evidence?
- 23 A: Correct.
- 24 Q: Stored in evidence?
- 25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - DIRECT BY RICHARDSON

367

- 1 Q: Until such time as it goes up to SLED?
- 2 A: Correct.
- 3 Q: And all the items you collected, would they have gone up
- 4 to SLED at one time?
- 5 A: I know the handgun did. I'm not sure about the bullets.
- 6 But these two, the clothing, did.
- 7 Q: Okay. So everything for GSR, gunshot residue ---
- 8 A: Gunshot residue, yes.
- 9 Q: --- it all went up at one time?
- 10 A: Correct.
- 11 Q: The shell casings with any associated firearms would have
- 12 gone up?
- 13 A: Correct.
- 14 Q: And what analysis was requested on these two pieces of
- 15 clothing, State's Forty and Forty-three?
- 16 A: Gunshot residue.
- 17 MR. RICHARDSON: Court's indulgence, Your Honor?
- 18 THE COURT: Yes, sir.
- 19 BY MR. RICHARDSON:
- 20 Q: With regard to firearms or, or gunshot residue, are there
- 21 any other items that you sent to SLED?
- 22 A: No.
- 23 Q: Nothing else you took into custody?
- 24 A: Correct.
- 25 Q: But any other projectiles or anything you would have

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

368

1 requested that analysis?

2 A: Yes.

3 Q: And if anyone else collected any other evidence -- if
4 someone else took a piece of evidence and boxed it, they would
5 have -- they would have turned it into evidence, correct?

6 A: Correct.

7 Q: Thank you, Officer McSpadden. If you'll answer any
8 questions Ms. Pratt may have.

9 THE COURT: All right. Cross examination.

10 MS. PRATT: Thank you, Your Honor.

11 CROSS EXAMINATION OF MICHELLE MCSPADDEN BY MS. PRATT:

12 Q: Officer McSpadden, you had a pretty daunting job that
13 night, didn't you?

14 A: Yes, ma'am.

15 Q: You were managing, as far as I can tell, somewhere in the
16 neighborhood of fifty or sixty pieces of evidence; is that
17 right or more?

18 A: Yes.

19 Q: That's certainly what we've put in today has been about
20 fifty or sixty that you handled?

21 A: Sure.

22 Q: Okay. And you follow the same procedures every time; is
23 that right?

24 A: Yes.

25 Q: So that you know that you've not contaminated ---

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

369

1 A: Correct.

2 Q: --- anything that's going on? Okay. I want to start with
3 Corey Myers' apartment, if I can, and I need to find the --
4 the jury may still have the photos. Let me ask you this while
5 we're -- while the jury still has the photos on those?

6 THE COURT: If you need them, ma'am, you can retrieve
7 them?

8 MS. PRATT: May I?

9 THE COURT: Yes, ma'am.

10 MS. PRATT: Thank you, Your Honor.

11 BY MS. PRATT:

12 Q: And as I understand it, and you go by Agent, is it, or
13 Officer or ---

14 A: Officer is fine.

15 Q: Officer. All right. As I understand it, Officer, you
16 came to that apartment on the 8th; is that right?

17 A: Correct.

18 Q: So that's about two days after the incident?

19 A: Yes, ma'am.

20 Q: You have no knowledge -- would it be fair to say, you have
21 no knowledge of what happened to anything in that apartment
22 between the 6th and the 8th or prior to that?

23 A: Correct.

24 Q: Okay. So just when you arrived, correct?

25 A: Yes.

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

370

1 Q: All right. And I am going to show you first of all what
2 is marked as State's Exhibit Eighty and ask if you'll look at
3 that photograph?

4 A: Okay.

5 Q: Is that the way that you found these items?

6 A: It is.

7 Q: So you came in and took photos of what looks like it was
8 set out for you to find; is that right?

9 MR. RICHARDSON: Your Honor, objection, characterization
10 of the evidence; it calls for speculation.

11 THE COURT: Rephrase the question.

12 MS. PRATT: Certainly.

13 BY MS. PRATT:

14 Q: Is this the way that you normally find evidence in a, in a
15 scene that you're searching?

16 A: I don't know that there's a normal way. I documented it
17 as I found it.

18 Q: Okay. All right. But you didn't place it in this way?

19 A: No, ma'am.

20 Q: And isn't it true sometimes when the police do things and
21 they're taking a photo, they will set them out in a particular
22 form and take the picture; maybe you might not, but you've
23 seen photos like that, haven't you?

24 A: Normally things are photographed the way we see them and
25 then if we have to move them for some reason to get a better

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

371

- 1 photograph that may be done.
- 2 Q: But this is exactly how you found it?
- 3 A: Correct.
- 4 Q: So you found a gun off to the left-hand side of the photo,
- 5 correct?
- 6 A: Yes.
- 7 Q: And bullets, most of the mattress length down away from
- 8 them; is that right?
- 9 A: Correct.
- 10 Q: And you, we've already introduced the bullets into
- 11 evidence, correct?
- 12 A: Yes, ma'am.
- 13 Q: But all you know about the bullets, if I can say this, is
- 14 that that's how they were when you got there?
- 15 A: That is right.
- 16 Q: You do not know whether they were the same bullets that
- 17 were in the gun that night?
- 18 A: I do not.
- 19 Q: Whether one was added or taken away?
- 20 A: No, ma'am.
- 21 Q: You didn't do any fingerprint testing on those, correct?
- 22 A: No, ma'am.
- 23 Q: And were there other people present in, when you did the
- 24 search besides the police officers?
- 25 A: Oh, besides the police officers, I believe Mr. Myers'

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

372

- 1 girlfriend was present.
- 2 Q: All right. And does his girlfriend, to your knowledge,
3 reside in the home?
- 4 A: I don't know.
- 5 Q: All right. And you saw evidence of a child, toys and so
6 far, so forth in the home; is that right? Let me show you
7 Exhibit Seventy-nine.
- 8 A: Oh, yes, correct.
- 9 Q: All right. So from that, strike that. All right. So
10 you've seen evidence of children's toys. And this photograph
11 is Seventy-nine, is also the way that you found things?
- 12 A: Correct.
- 13 Q: Did you collect these other items?
- 14 A: No.
- 15 Q: Did you test these other items?
- 16 A: No.
- 17 Q: Do you know what the other items are?
- 18 A: I don't recall off the top of my head, it appears to be
19 some clothing perhaps, a cigarette lighter and ---
- 20 Q: But there's clothing there?
- 21 A: It appears to be, yes.
- 22 Q: And you did not collect those?
- 23 A: Correct.
- 24 Q: Why did you decide not to collect those?
- 25 A: Mr. Myers was quite specific about what he gave us

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

373

- 1 permission to collect. It was on the Consent to Search form.
- 2 Q: And that would be Defense Exhibit Five; is that right?
- 3 A: Yes.
- 4 Q: And he only let you do those items, right?
- 5 A: Correct.
- 6 Q: Did you ever pursue a search warrant so that you could get
- 7 these other things?
- 8 A: No, ma'am.
- 9 Q: So you only took exactly what Corey told you that he would
- 10 let you have?
- 11 A: That was by consent and that is how we do things.
- 12 Q: Right, but it was exactly what he told you?
- 13 A: Correct.
- 14 Q: And nothing else. All right. I will give some of these
- 15 back to the jury. I'm gonna show you what are State's Eighty-
- 16 five and Eighty-six and ask if you recognize those?
- 17 A: Yes.
- 18 Q: All right. Eighty-five is what?
- 19 A: Eighty-five is the foot of the bed and it shows a pair of
- 20 jeans and a sweatshirt and shoes and those kind of things.
- 21 Q: All right. And is that a different bed?
- 22 A: This is a different bed, yes. There were two bedrooms in
- 23 the apartment.
- 24 Q: So it's even a different bedroom?
- 25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

374

- 1 Q: And that's the way you found it?
- 2 A: Yes.
- 3 Q: Two days later?
- 4 A: Correct.
- 5 Q: So and Ms. -- Mr. Myers' girlfriend was present in the
- 6 apartment at least at the time that you got there?
- 7 A: Yes.
- 8 Q: And Number Eighty-six is not exactly the same position as
- 9 Eighty-five?
- 10 A: I moved it just for a better photograph.
- 11 Q: All right. And, Officer McSpadden, to be fair, you don't
- 12 know what happened to these items before you got there, do
- 13 you?
- 14 A: No, ma'am.
- 15 Q: And you don't know why they were laid out on the floor at
- 16 the foot of a bed ---
- 17 A: No, ma'am.
- 18 Q: --- do you, where people might be walking, you have no
- 19 knowledge of that at all?
- 20 A: No.
- 21 Q: Okay. In the picture of the, of the gun, the magazine was
- 22 removed and that is the way that you found it also?
- 23 A: Correct.
- 24 Q: Okay. And the bullets removed as well?
- 25 A: Yes, ma'am.

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

375

- 1 Q: Did you take the GSR lifts on the red-and-grey jacket?
- 2 A: No, ma'am, the entire jacket was sent to SLED.
- 3 Q: So you did not do the lifts?
- 4 A: Correct.
- 5 Q: Okay. And I believe the Solicitor asked you whose
- 6 decision it was to send different items to SLED; is that
- 7 right?
- 8 A: I do the, the requests. The decision is kind of a
- 9 collaboration.
- 10 Q: Okay. I'm gonna show you what is Group 33, Item 1 and
- 11 Group 32, Item 1 and ask if you remember collecting those
- 12 things or being involved in any place in touching these items?
- 13 A: May I open them?
- 14 Q: Would you have -- well, let me ask, would you have an
- 15 initial on the, on it in any way?
- 16 A: This is not my writing, no. I do not believe I collected
- 17 these.
- 18 Q: All right. But you would be the person making the
- 19 decision of sending them to SLED; is that right?
- 20 A: Again, the decision is a collaboration. I just do the
- 21 paperwork.
- 22 Q: You did not make a decision to send these to SLED though,
- 23 did you?
- 24 A: It does not appear they have been to SLED, so, no, ma'am.
- 25 Q: All right. And did you, at the hospital, collect a

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

376

- 1 jacket, a blue with white sleeve jacket from Mr. Canty?
- 2 A: I'm looking back over my photos if you'll give me just a
- 3 moment. No, I do not have -- I do not see where I have a
- 4 jacket for Mr. Canty.
- 5 Q: Okay. Did you collect any clothes from Mr. Canty?
- 6 A: I believe the hospital gave me a bag containing clothing
- 7 and that bag contained a pair of boxer shorts, a pair of jeans
- 8 and a pair of shoes.
- 9 Q: Did you send those to SLED?
- 10 A: No, ma'am.
- 11 Q: Now you were not present at the time that either of the
- 12 people from Hemingway, McFadden or Canty, were transported to
- 13 the hospital; is that right?
- 14 A: That's correct.
- 15 Q: If you had someone who is going to the hospital and there
- 16 has been an incident where there has been shooting, is it
- 17 normal to bag the hands to keep them preserved?
- 18 A: That, I wouldn't say it happens every time, but certainly
- 19 if there is the opportunity, we don't want to delay medical
- 20 treatment by any circumstance, but if there is an opportunity
- 21 that is something we try to do.
- 22 Q: Would it be better practice obviously to do that?
- 23 A: It would be.
- 24 Q: It would preserve evidence, wouldn't it?
- 25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

377

1 Q: So that if there had been any gunshot residue on either
2 Mr. Canty or Mr. McFadden, the hands being bagged would have
3 assisted in preserving that evidence; is that right?

4 A: That is correct.

5 Q: And by the time you got to the hospital about 3:30 to --
6 well I may be stating that time wrong -- maybe about 2:30 to
7 do the GSR lift?

8 A: Around 3:00 A.M.

9 Q: Both of them had already been treated somewhat at the
10 hospital?

11 A: They were being treated, yes, ma'am.

12 Q: All right. They had tags on them; they had IV's inserted?

13 A: Correct.

14 Q: They had had treatment by hospital professionals?

15 A: Correct.

16 Q: And handling by hospital professionals?

17 A: Yes, ma'am.

18 Q: Okay. So that could mean that GSR that might have been on
19 their hands might have been removed; is that possible?

20 A: It's possible.

21 Q: Okay. And then you don't know what happened when you
22 weren't present so you can't say?

23 A: Correct.

24 Q: When you arrived at the crime scene, would it be fair to
25 say that most of the cars and the people that would have been

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

378

1 there that night were gone?

2 A: I knew from viewing the video that people left before
3 police officers arrived and certainly before I arrived.

4 Q: Okay. And certainly you viewed the video yourself?

5 A: Correct.

6 Q: And that helped you to make a determination about your
7 crime scene, didn't it; is that right?

8 A: I'm not sure I follow you.

9 Q: Well you viewed it so that you could see where cars were,
10 where people were, where incidents might have occurred,
11 correct?

12 A: Sure.

13 Q: Okay. And I'm going to show you State's Exhibit Eighty-
14 seven.

15 A: Yes, ma'am. You had it right.

16 Q: I have it right. It's upside down. Thank you. All
17 right. And when you viewed the video, did you watch what
18 happened as the people were living after about 1:15 in the
19 morning?

20 A: Yes, ma'am.

21 Q: So you saw cars, a car specifically pull out of here and
22 go down this road, didn't you?

23 A: I believe so.

24 Q: And you saw cars coming from this area and going further
25 down to that drive, correct?

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

379

- 1 A: There were cars leaving. I don't recall from which
2 spaces.
- 3 Q: And actually you can see cars leaving down this road as
4 well, can't you?
- 5 A: I don't recall. I'm sorry.
- 6 Q: But certainly there's cars driving straight through the
7 center of your crime scene?
- 8 A: I believe so.
- 9 Q: Okay. And if cars are moving through the center of your
10 crime scene, it's possible that items of evidence were moved
11 by those people or those cars before you got there?
- 12 A: It is possible.
- 13 Q: You wouldn't know because you weren't there?
- 14 A: Right.
- 15 Q: And obviously the police did not get there I think until
16 about 1:19; is that right?
- 17 A: I don't recall.
- 18 Q: But certainly somewhat a little bit before you?
- 19 A: Yes.
- 20 Q: So there would be a period of time between the call in,
21 let's say it that way, and the arrival of the officer?
- 22 A: Yes.
- 23 Q: When people could be going through the crime scene, things
24 can move; you don't know, correct?
- 25 A: Correct.

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

380

- 1 Q: Okay. So when you placed the markers, this is how you
2 found them at that point?
- 3 A: That is.
- 4 Q: That does not mean that that's actually where they were at
5 the, during the incident necessarily; is that fair?
- 6 A: It is fair to say things could move.
- 7 Q: Okay. All right. And I'm gonna point your attention to
8 Items 1 and 2.
- 9 A: Okay.
- 10 Q: What are they?
- 11 A: They are blood on the sidewalk and on the wall of the east
12 complex.
- 13 Q: And that's right near a spigot, isn't it?
- 14 A: I think there is one there.
- 15 Q: Okay. All right. But there's certainly no question that
16 there is blood on this sidewalk?
- 17 A: Correct.
- 18 Q: Okay. From what you saw when you arrived, but knowing
19 that you arrived after some of these things had been driven
20 through, can you specifically say that a person was standing
21 in a certain location when they were shot, from what you have
22 in this situation?
- 23 A: Not in this situation.
- 24 Q: Because of the fact that people had gone through the crime
25 scene, correct, driven through and people weren't still in the

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

381

1 same places?

2 A: Sure.

3 Q: Okay. Okay. The bullet fragment, which I believe is
4 State's Exhibit Thirty-six, did you test it for the presence
5 of blood?

6 A: I do not believe so. No, ma'am.

7 Q: So you do not know if that is a bullet that went through a
8 person, clothing, hit anything else that was in your crime
9 scene, a cigarette pack for example or anything else?

10 A: I do not know.

11 Q: No knowledge at all. Okay. In your crime scene, you have
12 markers that show presence of beer bottles, don't you?

13 A: Yes, ma'am.

14 Q: Can you tell me which markers those are?

15 A: Marker Number 3 is a broken beer bottle; Number 6 is an
16 intact beer bottle; Number 14 is a broken beer bottle; 17, 18
17 are portions of broken beer bottles; it appears to be all the
18 bottles.

19 Q: All right. So in regards to the ones that are close to
20 this blue car, which numbers did you say again; did you say 3
21 and 6?

22 A: Yes, ma'am.

23 Q: All right. Those are broken, one's a broken beer bottle?

24 A: And one's intact.

25 Q: Intact. Did you test those for fingerprints?

State v. Chestnut
MICHELLE MCSPADDEN - CROSS BY PRATT

382

- 1 A: No, ma'am.
- 2 Q: Did you test them for blood?
- 3 A: No, ma'am.
- 4 Q: I'm going to show you which -- the casings which have been
5 marked and I believe are in -- well, the casings are Thirty-
6 two, Thirty-three and Thirty-four and Six exhibits and I'm
7 going to ask you if you recognize those?
- 8 A: I do.
- 9 Q: Do any of those three casings appear flattened in any way?
- 10 A: One of them is slightly oblong whereas it should be round.
11 This one.
- 12 Q: And that would be Number Thirty-two that you say is
13 slightly oblong?
- 14 A: I believe so, yes.
- 15 Q: Okay. When you arrived back from the hospital, had you
16 placed these markers yourself?
- 17 A: The tents; yes, ma'am.
- 18 Q: Okay. Do you remember who pointed out to you anything
19 about these particular items?
- 20 A: I do not. I know that I walked through the scene with a
21 detective, but I don't recall if there were other officers who
22 pointed out specific items.
- 23 Q: And did you receive into evidence a 9 millimeter casing?
- 24 A: No, ma'am.
- 25 MS. PRATT: With the Court's indulgence just a moment?

State v. Chestnut
MICHELLE MCSPADDEN - RECROSS BY PRATT

383

1 THE COURT: Yes, ma'am.

2 MS. PRATT: I believe that's all, Your Honor. Thank you.

3 THE COURT: Redirect?

4 MR. RICHARDSON: Yes, sir, Your Honor.

5 REDIRECT EXAMINATION OF MICHELLE MCSPADDEN BY MR. RICHARDSON:

6 Q: I believe you indicated on Ms. Pratt's questioning that
7 you stated that State's Thirty-two looks slightly oblong?

8 A: Slightly oblong.

9 Q: From looking at State's Thirty-two, any markings you find
10 on there, could you tell which marker on the crime scene
11 sketch states Eighty-seven denotes 32?

12 A: Marker Number 8.

13 Q: Okay. So it's the one over here near the car?

14 A: It is.

15 Q: Okay. And Ms. Pratt asked you about watching that video;
16 did you watch the video?

17 A: I did.

18 Q: Did you see the victim, Mr. McFadden, get shot on the
19 video?

20 A: I believe so.

21 Q: Given the incident where you saw him shot, were you
22 surprised to find either the shell casing or the projectile in
23 those locations?

24 A: I was not.

25 Q: Ms. Pratt asked you about bagging hands?

State v. Chestnut
MICHELLE MCSPADDEN - RECROSS BY PRATT

384

- 1 A: Yes.
- 2 Q: It's typically done on people that die at the scene,
3 correct?
- 4 A: Certainly, because there is no, well, risk then delaying
5 medical treatment.
- 6 Q: Okay. So the main focus is trying to make sure, trying to
7 save Jamal McFadden's life and trying to save Damien Canty's
8 life?
- 9 A: It was.
- 10 Q: The broken beer bottles Ms. Pratt asked about, when she
11 asked about did you test them for blood?
- 12 A: Correct.
- 13 Q: Did you see any blood on them?
- 14 A: No and again, those weren't collected because we didn't
15 know what was evidence at that point. After we had a chance
16 to review the video, we did not feel the need to put those
17 bottles into a particular person's hands.
- 18 Q: Okay. And with regard to the blood Ms. Pratt pointed out,
19 how would any analysis have been done on the blood?
- 20 A: We don't do any in-house. DNA is just something that's
21 beyond our capabilities as far as, you know, technology and,
22 and really money goes. So that would have been sent to SLED
23 for DNA analysis. It would have to be done there; it cannot
24 be done here.
- 25 Q: But if you have blood to analyze, you need something to

State v. Chestnut
BY THE COURT

385

1 analyze against, correct?

2 A: Yes.

3 Q: So you need a DNA sample against you evidence?

4 A: Correct.

5 Q: Do you know if y'all ever got a sample from anybody named
6 Thoro?

7 A: Not that I know of.

8 Q: Or Hubert?

9 A: No.

10 Q: Or Dewayne?

11 A: No.

12 MR. RICHARDSON: Your Honor, I have no further questions.

13 THE COURT: Anything on those questions?

14 MS. PRATT: Just a couple, Your Honor.

15 RECROSS EXAMINATION OF MICHELLE MCSPADDEN BY MS. PRATT:

16 Q: You watched the video?

17 A: Yes, ma'am.

18 Q: And you made a decision after watching the video not to
19 see who had the bottle in their hand, not to do fingerprints?

20 A: We didn't need to identify anyone. Fingerprints are used
21 for identification for the most part. So we didn't need to
22 identify anyone because Mr. Feaster was able to identify the
23 people in the video.

24 Q: But you didn't think it was worthwhile confirming that
25 there was a bottle used by one of the people from the

State v. Chestnut
BY THE COURT

386

- 1 Hemingway group against someone else and confirming that for
2 this jury?
- 3 A: No.
- 4 Q: Okay. All right. And you could have tested that right
5 here in Myrtle Beach, correct?
- 6 A: It could be done, yes.
- 7 Q: You had fingerprints on both McFadden and Canty, didn't
8 you?
- 9 A: Only if they had been, only if they had -- we did not take
10 any that night.
- 11 Q: Okay. So you didn't take any fingerprints from the
12 Hemingway people that were there and you didn't test the
13 bottles that might have been used by the Hemingway people in
14 this assault, correct?
- 15 A: Correct.
- 16 Q: Okay. And you're saying that about the DNA testing on the
17 blood -- isn't it true, and maybe I just watch too much T.V.,
18 but isn't it true that you can do a presumptive test for blood
19 with a little spray bottle and something turns purple?
- 20 A: We did -- yes.
- 21 Q: So you didn't test the bottles for blood or the bullet for
22 blood or anything like that, correct?
- 23 A: I did not see any on there, on the bottles, the things
24 that were tested were the blood that was on the sidewalk and
25 the blood that was on the wall. Those were -- a presumptive

State v. Chestnut
BY THE COURT

387

1 test was done and confirmed to be blood. It's only done on
2 something that I can see.

3 Q: Would it be difficult to do it -- if you thought a bottle
4 had been used as a weapon, would that be so hard to test it?

5 A: It would not be difficult, there's just -- I mean, you
6 should be able to see any blood that was on it and if there
7 was blood on it, then we would test.

8 Q: The fact is you just didn't do it, did you?

9 A: It was not done.

10 THE COURT: All right, Solicitor, you wish the witness to
11 be excused?

12 MR. RICHARDSON: I do, Your Honor.

13 THE COURT: Any objection, ma'am?

14 MS. PRATT: None at all, Your Honor.

15 THE COURT: All right, ma'am, you are released from your
16 subpoena and may go back to regular duties.

17 A: Thank you.

18 BY THE COURT:

19 THE COURT: All right. Ladies and gentlemen, we are
20 going to stop for the evening.

21 MR. RICHARDSON: Your Honor, if we may approach?

22 THE COURT: Yes.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of the jury but out of hearing of the jury.)

25 THE COURT: All right. Ladies and gentlemen, we're gonna

State v. Chestnut
TERESA MOORE - DIRECT BY RICHARDSON

392

1 MR. RICHARDSON: The State would call Nurse Teresa Moore.

2 THE COURT: Please come around and be sworn, ma'am. You
3 can meet the Clerk right here at the corner.

4 TERESA MOORE, HAVING BEEN SWORN
5 TESTIFIES AS FOLLOWS:

6 CLERK: Please be seated. Please state your full name
7 and spell your last name.

8 MS. MOORE: Teresa Moore, M-O-O-R-E.

9 THE COURT: Go ahead, Solicitor.

10 MR. RICHARDSON: Thank you, Your Honor.

11 DIRECT EXAMINATION OF TERESA MOORE BY MR. RICHARDSON:

12 Q: Ms. Moore, could you please tell us all where you're
13 employed, how long and in what capacity?

14 A: Grand Strand Regional Medical Center. I have worked there
15 for eleven years as an Administrative Supervisor.

16 Q: And you're a nurse, correct?

17 A: I'm a nurse.

18 Q: Could you tell us about some of your duties as
19 Administrative Supervisor?

20 A: I am the Bed Czar. I deal with most of the problems and
21 complaints and I take care of the families as their loved ones
22 pass away and I'm responsible for the morgue, I'm responsible
23 for the chain of command.

24 Q: And Grand Strand Regional Medical Center, I know it seems
25 like an incredibly simple question but do they do surgeries

State v. Chestnut
TERESA MOORE - DIRECT BY RICHARDSON

393

1 there?

2 A: Yes.

3 Q: Okay. Do y'all deal with potential victims of crime?

4 A: Yes.

5 Q: And when foreign articles are removed from victims, are
6 there any steps taken to collect those items?

7 A: Yes, sir.

8 Q: Okay. What are those steps?

9 A: We have a chain of command. When the surgeon removes a
10 bullet or foreign object, it is given to the OR Circulator and
11 then she calls the Administrative Supervisor and I go down and
12 pick up the bullet or whatever it is and it's always in a
13 plastic container with a -- in a plastic bag with a label of
14 the patient's name and the date and time.

15 Q: Okay. So it has the patient's name?

16 A: Uh-huh (affirmative response).

17 Q: That the foreign object was removed from?

18 A: Uh-huh (affirmative response).

19 Q: And it has the date and time so you can tell when the
20 surgery was performed?

21 A: Uh-huh (affirmative response).

22 THE COURT: You need to answer yes or no, ma'am?

23 A: Yes, I'm sorry.

24 BY MR. RICHARDSON:

25 Q: Any other information with regard to the surgeon or

State v. Chestnut
TERESA MOORE - DIRECT BY RICHARDSON

394

1 anything else?

2 A: There's a form that we fill out. The surgeon signs his
3 name, date and time. The circulator nurse signs her name,
4 date and time. I sign my name, date and time. I keep that
5 foreign object on my body and then I call dispatch and tell
6 them that I have the, the article and then they send a police
7 officer to pick it up, who signs that chain of command and
8 then he's given a copy and the original is put on the
9 patient's chart.

10 Q: And the, whenever you call dispatch, you call dispatch
11 with the victim's name?

12 A: Yes.

13 Q: And that information is provided to them so they can
14 contact law enforcement?

15 A: Yes.

16 Q: Were you working back on March 7th, 2012?

17 A: Yes, sir.

18 Q: And you were so employed as an Administrative Supervisor?

19 A: Yes, sir.

20 Q: Okay. I'm gonna show you what's been previously marked
21 and shown to Defense as State's Number Ninety-six for
22 identification. Can you take a look at that please, Ms.
23 Moore, and tell me if you recognize that item?

24 A: I do; yes, sir.

25 Q: And, Ms. Moore, how do you recognize that item?

State v. Chestnut

395

TERESA MOORE - DIRECT BY RICHARDSON

1 A: I recognize the form from the hospital and I recognize my
2 hand signature.

3 Q: Your hand signature?

4 A: Uh-huh (affirmative response).

5 Q: And for the record, is this what you're talking about when
6 you're talking about chain of command?

7 A: Yes, sir.

8 Q: Okay.

9 MR. RICHARDSON: Your Honor, State would seek to
10 introduce and publish State's Ninety-six?

11 THE COURT: Any objection?

12 MS. PRATT: No objection, Your Honor.

13 THE COURT: It's in evidence without objection.

14 STATE'S EXHIBIT NUMBER NINETY-SIX

15 ADMITTED INTO EVIDENCE

16 BY MR. RICHARDSON:

17 Q: Now with regard to State's Number Ninety-six, Ms. Moore,
18 could you tell me when, if at all, any surgery was done?

19 A: On the date, which is 3/7/12.

20 Q: And the surgeon's name?

21 A: Dr. Boulliuon.

22 Q: And you would only sign this if you received something?

23 A: Yes, sir.

24 Q: Okay. Do you recall what you received that day?

25 A: I, I received bullets. That's all that I recall.

State v. Chestnut
TERESA MOORE - DIRECT BY RICHARDSON

396

1 Q: And the procedure you talked about previously that it
2 comes in -- it's in a little tube sealed with the name and
3 everything?

4 A: A plastic cup container and it's sealed with a label with
5 the patient's name, the date and time, and where it was
6 removed from, and then it's in a plastic bag that is, you
7 know, sealed.

8 Q: And would you take that item and fill out a chain of
9 command if that -- if those steps weren't taken?

10 A: No, and I have to have that given to me and, I mean, it
11 has to be handed to me by the circulator.

12 Q: And does reflect you took an object on or about March 7th,
13 2012?

14 A: Yes, sir.

15 Q: And who did you receive that from?

16 A: A nurse, Paul Conlin, C-O-N-L-I-N.

17 Q: Now if I understand your prior testimony correctly, that
18 nurse would have come out of the operating room with that?

19 A: Yes, sir.

20 Q: So they would have been present during the surgery?

21 A: Yes, sir.

22 Q: And I'm not gonna ask you to receive the, or read the
23 officer's signature on there. With regard to that, with
24 regard to the item you took on March 7th, 2012, do you see
25 what time you took it?

State v. Chestnut
TERESA MOORE - DIRECT BY RICHARDSON

397

- 1 A: I -- at 11:59 or that's when the surgeon signed it. I
2 really can't read the times.
- 3 Q: That's fine. That's fine. And did you follow your
4 procedure in calling dispatch?
- 5 A: Yes, sir.
- 6 Q: And to your recollection, do you know if an officer ever
7 responded?
- 8 A: Yes, sir.
- 9 Q: And do you know when that officer responded?
- 10 A: It has his signature here as 18:50.
- 11 Q: 18:50?
- 12 A: Uh-huh (affirmative response).
- 13 Q: And whenever the officer responded, what, if any, actions
14 did you take?
- 15 A: I handed him the bullet and he signed the form.
- 16 Q: And he would have come in and said I'm looking for Nurse
17 Moore and I need whatever item she has?
- 18 A: Yes, he went through security at the entrance of the
19 emergency room and that's -- and they called me.
- 20 Q: To the best of your knowledge, did you have any more
21 projectiles or bullets on you that day?
- 22 A: No.
- 23 Q: Okay. That's the only one?
- 24 A: Just one.
- 25 Q: And that was pretty much the extent of your involvement in

State v. Chestnut
TERESA MOORE - CROSS BY PRATT

398

1 this, correct?

2 A: Yes, sir.

3 Q: And if the items were boxed up, you wouldn't be able to
4 tell what it is, correct; you wouldn't be able to tell if it's
5 the same one?

6 A: No. No.

7 Q: Thank you, Nurse Moore. If you'll answer any questions
8 Ms. Pratt may have?

9 THE COURT: Cross examination?

10 MS. PRATT: May it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. PRATT: Thank you.

13 CROSS EXAMINATION OF TERESA MOORE BY MS. PRATT:

14 Q: Good morning.

15 A: Hi.

16 Q: Nurse Moore, were you involved in the treatment of Mr.
17 Canty at all?

18 A: No.

19 Q: But you are an RN?

20 A: Yes.

21 Q: And how long have you been an RN?

22 A: Since 1981.

23 Q: Okay. And you have been a person who has treated in the
24 past injuries, lacerations, kinds of trauma, types of
25 injuries, have you?

State v. Chestnut
TERESA MOORE - CROSS BY PRATT

399

- 1 A: Yes, ma'am.
- 2 Q: All right. I'm gonna show you what's been marked as
3 State's Exhibit Ninety-two and ask you to review that picture
4 please? Just review it and I'll ask you questions.
- 5 A: Okay.
- 6 Q: What is that injury?
- 7 A: A wound.
- 8 Q: All right. Does it look -- would in your -- do you
9 believe that it would be a life-threatening wound?
- 10 A: I don't think I'm capable of answering that.
- 11 Q: All right. Would there be other facts that you would need
12 in order to make that determination?
- 13 A: Yes.
- 14 Q: Okay. Thank you very much. And you don't, from what you
15 testified -- let me just be sure -- you don't know anything
16 about what went on with Mr. Canty as far as whether he checked
17 himself out or his condition or anything else; is that true?
- 18 A: I don't right now. At the time, I'm sure -- I am aware of
19 the two-hundred-and-fifty patients that are in the building.
20 I know when a trauma is called and usually I attend that if
21 it's a level one. I know when someone's in the morgue, their
22 -- I'm responsible for their name and the proper procedure
23 following that. But I don't recall his name or anything like
24 that.
- 25 Q: Not this person today; is that fair?

State v. Chestnut
MARK EDWARD LANDI - DIRECT BY RICHARDSON

400

1 A: No.

2 Q: Thank you. I appreciate that. Nothing further, Your
3 Honor.

4 THE COURT: Redirect?

5 MR. RICHARDSON: Your Honor, I just ask that Ms. Moore be
6 excused to return to her home.

7 THE COURT: Any objection?

8 MS. PRATT: None, Your Honor.

9 THE COURT: All right. Ma'am, you're released from your
10 subpoena and may go back to your regular activities.

11 A: Thank you.

12 THE COURT: Next witness please, sir?

13 MR. RICHARDSON: Officer Landi, please?

14 THE COURT: All Right. Sir, if you'd come up here and
15 meet the Clerk right up at the corner, please, sir; right up
16 here, sir.

17 MARK EDWARD LANDI, HAVING BEEN SWORN
18 TESTIFIES AS FOLLOWS:

19 CLERK: Thank you. Please state your full name and spell
20 your last name?

21 MR. LANDI: All right. My full name is Mark Edward
22 Landi, spelled L-A-N-D-I.

23 DIRECT EXAMINATION OF MARK EDWARD LANDI BY MR. RICHARDSON:

24 Q: Officer Landi, how are you doing today?

25 A: I'm doing fine; how are you?

State v. Chestnut
MARK EDWARD LANDI - DIRECT BY RICHARDSON

1 Q: Happy Birthday.

2 A: Thank you. I appreciate that.

3 Q: Could you tell us all where you're employed, for how long
4 and in what capacity please?

5 A: Yes, sir. Employed by Myrtle Beach Police Department and
6 I'm a patrol officer assigned to the Special Operations
7 Division which is on waterfront on bike patrol. And I've been
8 with the police department this time right at just a little
9 over two and a half years.

10 Q: Were you so employed back on March 7th, 2012?

11 A: Yes, sir, I was.

12 Q: In the course of your duties a patrol officer with Special
13 Ops, do you ever collect evidence?

14 A: Yes, sir.

15 Q: Do you ever go to Grand Strand Regional Medical Center to
16 collect evidence?

17 A: Yes, sir.

18 Q: You go where you're dispatched?

19 A: I go where I'm told.

20 Q: Okay. And you were employed and were you working on March
21 7th, 2012?

22 A: Yes, I was.

23 Q: In the course of your duties on March 7th, 2012, did you
24 have any opportunities, describe any opportunities you had to
25 collect evidence with regard to a shooting, a murder that

State v. Chestnut
MARK EDWARD LANDI - DIRECT BY RICHARDSON

1 occurred at 3rd Avenue Sports Bar please?

2 A: If I may refer to the notes, it's been a while.

3 Q: Having trouble remembering; you need to refresh your
4 recollection?

5 A: Well, it is my 51st birthday, so, yeah.

6 MR. RICHARDSON: Your Honor, may he have time to review
7 the report?

8 THE COURT: Yes, sir. Once you finish reviewing the
9 report, let the Solicitor know.

10 A: All right. I'm good.

11 BY MR. RICHARDSON:

12 Q: All right. Once again on that day did you have an
13 opportunity to go collect any evidence in regard to the, the
14 shooting and murder that occurred at 3rd Avenue Sports Bar?

15 A: Yes, I did.

16 Q: And what was that?

17 A: I was dispatched to Grand Strand Regional Medical Center
18 to pick up a slug that was taken out of a victim's body that
19 was involved in a shooting. And that would be the charge
20 nurse or the nurse that was responsible for or who was in
21 possession of it and sign for it and kept it in my possession
22 until I met with the Crime Scene Tech.

23 Q: And who was that Crime Scene Officer?

24 A: That was PFC Michelle McSpadden.

25 Q: So, it was Crime Scene Officer Ms. McSpadden?

State v. Chestnut
MARK EDWARD LANDI - DIRECT BY RICHARDSON

403

- 1 A: Yes.
- 2 Q: I'm gonna show you what's been previously introduced as
- 3 State's Number Ninety-six; see if you recognize that?
- 4 A: I do.
- 5 Q: And what do you recognize that as being?
- 6 A: This is chain of custody that the hospital at Grand Strand
- 7 Regional provided where I signed for the slug that I picked up
- 8 that night at the emergency room.
- 9 Q: Did you get a copy of this?
- 10 A: I did.
- 11 Q: And down at the bottom right here, whose signature do we
- 12 see?
- 13 A: That's mine.
- 14 Q: That's yours?
- 15 A: That's mine.
- 16 Q: Your John Hancock?
- 17 A: That's it.
- 18 Q: I didn't want Ms. Moore to try to read that. She couldn't
- 19 read mine either. Now when you received this slug, this
- 20 projectile, this bullet, do you recall how it was packaged?
- 21 A: At this point, I'd be guessing.
- 22 Q: Okay.
- 23 A: But I think for the best of my recollection, I want to
- 24 say it was in some type of a plastic container. I don't know
- 25 if it was a clear plastic container or something where it was

State v. Chestnut
MARK EDWARD LANDI - DIRECT BY RICHARDSON

404

1 -- the best way to describe it is if you're familiar with a
2 prescription bottle.

3 Q: Okay.

4 A: I guess is the best way to describe it. Some type of
5 container like that, I believe.

6 Q: And between the time you got this item, this bullet in a
7 plastic container, did you do anything to manipulate it in any
8 way?

9 A: No, sir.

10 Q: So you took what you got from the hospital and you took it
11 directly to Michelle McSpadden?

12 A: That's it.

13 Q: Do you know what time you delivered it to, to Officer
14 McSpadden?

15 A: According to the report it'd be about 19:30 hours.

16 Q: Okay. And what time did you pick that up?

17 A: I picked it up and it was approximately 18:23 hours is
18 when I ---

19 Q: All right. Let's speak in civilian terms, 18 ---

20 A: I'm sorry, my apologies. 18:23 that would be 6:23 in the
21 evening and then the 19:30 hours would be 7:30 in the evening.

22 Q: It's still early to do math?

23 A: I'm sorry.

24 Q: So, you didn't repackage it or anything?

25 A: No, sir.

State v. Chestnut
MARK EDWARD LANDI - CROSS BY PRATT

405

1 Q: So any packaging was done after that, that was outside of
2 your presence?

3 A: That's correct.

4 Q: And it's your testimony you kept it on your person, didn't
5 tamper with it in any way until you gave it to Officer
6 McSpadden?

7 A: That's correct.

8 Q: About forty-five minutes to an hour later?

9 A: Approximately thereabouts.

10 Q: All right. Thank you, Officer Landi. If you'll answer
11 any questions Ms. Pratt may have.

12 THE COURT: Cross examination?

13 MS. PRATT: Thank you, Your Honor.

14 CROSS EXAMINATION OF MARK EDWARD LANDI BY MS. PRATT:

15 Q: Officer Landi, you do know that fifty-one is too young to
16 lose your memory, right?

17 A: That's what they say.

18 Q: And did you have any other involvement in this situation;
19 did you go to the crime scene at the time; were you involved
20 in anything else?

21 A: No, ma'am, I sure wasn't. This is my only involvement.

22 Q: Thank you.

23 MS. PRATT: I have nothing further, Your Honor.

24 THE COURT: All right. Do you wish this witness to be
25 excused, Solicitor?

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

406

1 MR. RICHARDSON: I do, Your Honor. He's probably got
2 other things to do.

3 THE COURT: Any objection, ma'am?

4 MS. PRATT: None, Your Honor.

5 THE COURT: All right, sir. You are released from your
6 subpoena to go celebrate your birthday.

7 A: Thank you.

8 THE COURT: All right, sir.

9 Who's your next witness, Solicitor?

10 MR. RICHARDSON: The State would call Officer Randy
11 Miller.

12 Thank you. Thank you very much, Officer.

13 THE COURT: All right, sir, if you'd come all the way up
14 here and meet the Clerk up here at the corner, please, sir?

15 RANDY SCOTT MILLER, JR., HAVING BEEN
16 SWORN TESTIFIES AS FOLLOWS:

17 CLERK: Please state your full name and spell your last
18 name.

19 MR. MILLER: Randy Scott Miller, Jr., M-I-L-L-E-R.

20 DIRECT EXAMINATION OF RANDY SCOTT MILLER, JR. BY MR.

21 RICHARDSON:

22 Q: Agent Miller, could you tell us a little bit about
23 yourself, where you're employed and in what capacity?

24 A: I'm employed by the City of Myrtle Beach Police
25 Department. I'm currently assigned to the 15th Circuit Drug

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

407

1 Enforcement Unit.

2 Q: And as a member of the 15th Circuit Drug Enforcement Unit,
3 could you tell us a little bit about that?

4 A: Basically, the Drug Enforcement Unit is several agencies
5 with the Horry and Georgetown County. Officers put together
6 to form a drug unit. We have jurisdiction, like I said, in
7 Horry and Georgetown County and it's made up of multiple
8 agencies.

9 Q: So you -- and you're a Myrtle Beach officer?

10 A: That's correct.

11 Q: Now as a member of the 15th Circuit Drug Enforcement Unit,
12 are there times when that unit is called upon to assist other
13 agencies?

14 A: Yes.

15 Q: And in what types of ways?

16 A: With warrant service, investigators, search warrants, just
17 different ways we, we can help provide assistance, things of
18 that nature, arrest warrants, search warrants, surveillance
19 observations, complaints, surveillance, you know, those types
20 of things.

21 Q: Okay. And how about, you said surveillance?

22 A: Yes.

23 Q: Now how does that occur? How do you get involved with
24 other agencies in cooperating with them?

25 A: Only they'll call one of our offices and request, request

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

408

1 assistance. If they, they have an operation like a
2 surveillance operation or a search warrant, they'll just give
3 us a phone call, brief us on what they have and we'll provide
4 assistance in any way we can normally.

5 Q: And go back to March 6th, 2013, on that day, it was a
6 Tuesday, did you have an opportunity to assist the City of
7 Myrtle Beach Police Department?

8 A: Yes.

9 Q: And could you, could you describe what kind of request you
10 got?

11 A: The request I got, I received a phone call from Myrtle
12 Beach, another Myrtle Beach agent that was assigned to the
13 Drug Enforcement Unit. He briefed me on a shooting incident
14 that had occurred that night before; stated that they had a
15 possible location of 240 Osprey Cove Loop and possibly the
16 Defendant was with a female driving a red I believe it was a
17 Kia SUV. So they had the address, the vehicle, they were
18 setting up on that address doing surveillance. The vehicle
19 was there at the time and he also briefed me that Myrtle Beach
20 was in -- Myrtle Beach investigators were in the process of
21 obtaining an arrest warrant for the Defendant, Armando
22 Chestnut, and also the female is with.

23 Q: And that was Annaliese Testa?

24 A: Yes.

25 Q: Okay. And Osprey Cove, is that outside of the City Limits

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

409

- 1 of Myrtle Beach?
- 2 A: It is.
- 3 Q: But still within Horry?
- 4 A: It's in Horry County.
- 5 Q: Now with regard to -- and you assisted in this?
- 6 A: Yes.
- 7 Q: And when you say they set up, they did this, you're
- 8 talking about the whole unit, correct?
- 9 A: Yes, agents within the unit. They were, they were already
- 10 on scene at 240 Osprey Cove Loop. They had set up around that
- 11 address conducting surveillance and they advised me that the
- 12 vehicle was, was on scene also, the red SUV.
- 13 Q: Now so this is the information you had, the vehicle y'all
- 14 were searching for was there and so y'all had eyes on it?
- 15 A: That's correct.
- 16 Q: And y'all were just in the sit-and-wait mode?
- 17 A: Yes.
- 18 Q: Now were there any instruction what to do if that vehicle
- 19 left the scene?
- 20 A: Well, our, our plan was to wait, we had information that
- 21 the investigators were obtaining arrest warrants. So our, our
- 22 plan was if the vehicle left to follow it, try to identify if
- 23 it was the Defendant, get a vehicle stop on it and basically
- 24 ID them from that point and confirm the arrest warrants.
- 25 Q: After doing this, after assisting Myrtle Beach with this,

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

410

- 1 did you issue a report in this matter?
- 2 A: Yes.
- 3 Q: And have you reviewed that report?
- 4 A: Yes, I have a copy of it.
- 5 Q: In reviewing that report, did you see any types of
- 6 clerical errors?
- 7 A: Yes.
- 8 Q: What was that?
- 9 A: When I wrote the report, I put the wrong date on there. I
- 10 put February 28th, 2012; it should have been March 6th, 2012.
- 11 Q: So after you looked at the report, you knew there was a
- 12 mistake, didn't you?
- 13 A: Yes, sir.
- 14 Q: And that mistake, did you look at any -- was that made on
- 15 any other reports?
- 16 A: Yes, sir, I believe it was made on, on another report.
- 17 Q: So the date you placed was February 28th but it should've
- 18 said March 6th, 2012?
- 19 A: That's correct.
- 20 Q: No doubt about that's the date you did surveillance?
- 21 A: Yes, sir.
- 22 Q: Okay. Are there any other errors you saw on there?
- 23 A: Not that I could find.
- 24 Q: So if I understand you correctly, you unit had a location,
- 25 a possible location on Armando Chestnut and his girlfriend,

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

411

1 Annaliese Testa?

2 A: That's right.

3 Q: And a description of the vehicle and all that was at 240
4 Osprey Cove Loop?

5 A: Yes, sir.

6 Q: What efforts -- you've already told me that those efforts.
7 You know about what time of day y'all arrived on the scene
8 there at Osprey Cove Loop?

9 A: I don't recall the exact time. I believe it was early
10 afternoon.

11 Q: Early afternoon. Who all assisted; do you remember the
12 agents who assisted in the ---

13 A: Agent Beam is the agent that initially contacted me and
14 briefed me on the incident; Agent C.J. Cox who's employed by
15 Coastal, Coastal Carolina; Jeremy Brown is with the Drug
16 Enforcement Unit employed by Conway; Chris Thompson with the
17 Drug Enforcement Unit employed by Aynor; and Agent Freddie
18 Curry, who is with Drug Enforcement Unit employed by Surfside.

19 Q: And whenever y'all got there -- so everybody was doing
20 different jobs?

21 A: That's correct.

22 Q: Did y'all have one vehicle, two vehicles?

23 A: Agent, Agent Beam and Agent Cox were in one vehicle;
24 Jeremy Brown was in his own vehicle; and Thompson and Currie
25 and myself were also in separate vehicles. Agent Currie was

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

412

- 1 the, the main surveillance agent watching the residence.
- 2 Q: And you were in the vehicle with Agent Currie?
- 3 A: I'm by myself. I was positioned out, outside the
- 4 neighborhood off of 707 to pick the vehicle up if it was to
- 5 leave, leave the neighborhood.
- 6 Q: Now and what types of vehicles were y'all in; were they
- 7 squad cars or ---
- 8 A: No, we were in unmarked narcotics vehicles.
- 9 Q: In the -- what were you driving?
- 10 A: A Jeep Cherokee.
- 11 Q: A Jeep Cherokee; so an SUV?
- 12 A: A black Jeep Cherokee.
- 13 Q: A black Jeep Cherokee, a black SUV. In the course of
- 14 your duties that day, March 6th, 2012, did you have the
- 15 opportunity to, to take any actions against that red Kia?
- 16 A: Yes.
- 17 Q: And describe what you did?
- 18 A: Agent, Agent Currie advised over the radio that a female
- 19 and a male subject matching description of the Defendant,
- 20 Armando Chestnut and the female that they had information on
- 21 had left the residence, walked to the red SUV in the driveway.
- 22 The female got in the driver's seat, the male got in the
- 23 passenger seat. From that point, Agent Currie relayed over
- 24 the radio the direction they left the house. Officers picked
- 25 up mobile surveillance on the vehicle, Agent Cox and Agent

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

413

1 Beam, as it left the residence. Currie, of course stayed in
2 position for a minute not to give up his position. They
3 picked the vehicle up inside the neighborhood, relayed to me
4 when it was leaving the neighborhood. I picked it up once the
5 vehicle came out on 707. From that point, the vehicle went
6 southbound on 707. We followed it for several miles. We were
7 trying to get ahold to Horry County Police Department to get
8 some actual marked police cars with Horry County Police and
9 the lights and the sirens and all that good stuff in the area
10 to initiate the traffic stop for us. I followed the vehicle,
11 like I said, for just a couple of miles, ended up on Bay Road,
12 which is off of 707. That's, that's where the traffic stop
13 actually ended up taking place at Bay Road and 707.

14 Q: Prior to the traffic stop, did you witness any actions
15 taken by anybody in the vehicle?

16 A: Yes, the, the vehicle, because we had to get Horry County
17 and took just a few minutes to get them in the area. I
18 believe the vehicle noticed that we were following them. We
19 only had a couple of vehicles, it made some awkward driving,
20 would leave, get off of 707, get off Bay Road, enter
21 neighborhoods, just seemed to be driving in circles. I
22 noticed -- I was one vehicle back from the Kia SUV; I noticed
23 the passenger seat was way down and I could see somebody in
24 the passenger seat like they were trying to hide. When we got
25 to the point of Shady Branch Road and Bay Road where they

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

414

- 1 intersect, I noticed as the, the red SUV was making a left
2 hand turn to go back towards 707, I noticed something come out
3 of the passenger, the passenger window like a hand just
4 reached out and dropped something. At that point, I relayed
5 that to the officers on surveillance and the location where I
6 seen the object come from the vehicle. It was only then,
7 maybe thirty seconds, when County was -- Horry County was on
8 scene and the traffic stop was initiated.
- 9 Q: And when you said -- you just said that you saw somebody
10 in the passenger seat and they appeared to be laid back some?
- 11 A: Yes, the seat was reclined all the way back. I could tell
12 somebody was, somebody was in there; I could see a head at a
13 couple of different times.
- 14 Q: Okay. You could see the head moving around, how about the
15 driver, were they laid back too?
- 16 A: No the driver was just normal.
- 17 Q: Sitting up. And where, where did you see that object get
18 thrown out the car?
- 19 A: Right at the intersection of Shady Branch Road and Bay
20 Road. I had stated that it was approximately fifty yard east
21 of the intersection is what I relayed on the radio.
- 22 Q: At any point, after you saw that object get tossed out,
23 you stated that the patrol cars got there and initiated the
24 stop?
- 25 A: Yes, it was only about thirty seconds after I seen the

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

415

1 object. The county officers were on scene and stopped the
2 vehicle. The Defendant, Armando Chestnut and the female,
3 Annaliese Testa, were detained at that point and I asked
4 Jeremy Brown, Agent Jeremy Brown to go back with me to look
5 for the object that was thrown from the vehicle and we did
6 locate exactly where I called out and where I seen something
7 get tossed from the vehicle, a black in color, I believe it
8 was a .380 handgun.

9 Q: Now you said you saw somebody laying down and you saw
10 somebody driving the vehicle?

11 A: That's correct.

12 Q: Can you describe the person you saw driving the vehicle?

13 A: It was Annaliese Testa; if I'm pronouncing that right.

14 Q: White girl?

15 A: Yes.

16 Q: Long dark hair?

17 A: Yes.

18 Q: And did you ever learn the identity of who was in the
19 passenger seat laying down?

20 A: Yes, it was the Defendant, Armando Chestnut.

21 Q: Do you see him in the courtroom today?

22 A: Yes, sitting right there.

23 STATE'S EXHIBIT NUMBER NINETY-SEVEN, NINETY-EIGHT, NINETY-

24 NINE AND ONE HUNDRED MARKED FOR IDENTIFICATION

25 BY MR. RICHARDSON:

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

416

- 1 Q: Agent Miller, I'm gonna show you what's been marked as
2 State's Ninety-seven through One Hundred; see if you recognize
3 those photographs?
4 A: You just want me to go through them?
5 Q: If you'll just look real quick?
6 A: Okay.
7 Q: They're not in evidence yet; if you'll just see if you
8 recognize them first?
9 A: I do recognize them.
10 Q: And how do you recognize those photographs?
11 A: From the incident that occurred on March 6th, 2012.
12 That's the location of -- specifically this picture, that's
13 the intersection of Shady Branch Road and Bay Road and
14 approximately fifty yards where the three agents are standing
15 here is where we located the handgun.
16 Q: Okay. Is that on Bay Road or Shady Branch Road?
17 A: This is Bay Road and that's Shady Branch Road. When I
18 observed the vehicle, it made that left-hand turn, which would
19 be I guess east back towards 707.
20 Q: Okay. From Shady Branch back on onto Bay ---
21 A: Made a left onto Bay Road towards 707.
22 Q: And these photographs, do they fairly and accurately
23 depict what you saw on March 6th, 2012?
24 A: Yes, sir.
25 MR. RICHARDSON: The State would seek to introduce

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

417

1 State's Ninety-seven through One Hundred, Your Honor?

2 THE COURT: Any objection?

3 MS. PRATT: Your Honor, I believe that there's not a
4 proper foundation yet for those photos as to who took and who
5 was in the photos.

6 MR. RICHARDSON: Your Honor, he's identified them as ---

7 THE COURT: Okay. You talked about one of them, let's be
8 clear that he's talking -- that he recognizes all of them.

9 BY MR. RICHARDSON:

10 Q: Do you recognize the people in State's -- I believe that's
11 Ninety-seven?

12 A: Yes. The gentleman with the blue hat is Agent Dan
13 Roberts; Agent with the white hat is Agent Jeremiah Beam; and
14 I can't be positive on, on the third one.

15 Q: Is it an agent?

16 A: It's an officer, yes, sir.

17 Q: It's an officer with DEU and this is taken from where you
18 saw the handgun?

19 A: Yes, sir.

20 Q: Or the object that was thrown?

21 A: Yes.

22 Q: How about the others, State's Ninety-eight, Ninety-nine
23 and One hundred? Just tell us what you're seeing?

24 A: These three pictures are of the handgun at the location
25 where we located it.

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

418

1 Q: At any point, did you move the handgun after you located
2 it?

3 A: No, sir, other than crime scene who came to collect it.
4 No agent on scene from the point I found it touched it or
5 moved it in any kind of way.

6 Q: And you're the agent that found it, correct?

7 A: Yes, sir.

8 Q: And once again, these fairly and accurately depict what
9 you were looking at on March 6th, 2012?

10 A: Yes.

11 Q: Where you found the pistol?

12 A: That's correct.

13 MR. RICHARDSON: Your Honor, State would seek to
14 introduce these now. I believe the sufficient chain has been
15 ---

16 THE COURT: Ninety-seven to One Hundred?

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 THE COURT: Any objection?

19 MS. PRATT: No, Your Honor.

20 THE COURT: They're in evidence without objection.

21 You may proceed.

22 STATE'S EXHIBIT NUMBERS NINETY-SEVEN, NINETY-EIGHT, NINETY-

23 NINE AND ONE HUNDRED ADMITTED INTO EVIDENCE

24 MR. RICHARDSON: May I publish at this time?

25 THE COURT: You may do so.

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

419

1 BY MR. RICHARDSON:

2 Q: Now you were just describing State's Ninety-seven and you
3 said this long road here is Bay Road, correct?

4 A: That's correct.

5 Q: And I believe you indicated those, those gentlemen -- I
6 know it's hard to make them out -- but those are agents with
7 the Drug Enforcement Unit?

8 A: Yes, the one appears he's got his back to me, I can't, the
9 one I can't make out, could be the -- looks -- seems like he
10 has a uniform on. It's either one of the crime scene officers
11 or, or a canine unit that was on scene there.

12 Q: Okay. And they're standing, I believe you said, over
13 where you found the gun?

14 A: That's correct.

15 Q: And then Ninety-eight, can you tell us what we're looking
16 at here?

17 A: That's, there is a long ditch that runs alongside the
18 roadside and that's a picture of, of the ditch area just off
19 the roadway where the gun was located.

20 Q: Can you see the gun in there?

21 A: You cannot see the gun. I can see it in this one. It was
22 just maybe, I'd estimate a foot to a foot-and-a-half off the
23 waterline where it was located, which is seen better in the
24 next picture.

25 Q: You can see the gun you stated in Ninety-nine?

State v. Chestnut
RANDY SCOTT MILLER - DIRECT BY RICHARDSON

420

- 1 A: Yes.
- 2 Q: And it's over here to the, as you face the picture to the
3 left of dandelion.
- 4 A: That's correct.
- 5 Q: And State's Ninety-eight, how many dandelions you see?
- 6 A: One right there.
- 7 Q: Okay. If you look close can you see the gun there?
- 8 A: Yes. Yes, I can. It's just to the left of the dandelion.
- 9 Q: So that dandelion is a pretty good mapping tool?
- 10 A: Yes.
- 11 Q: Okay. And then State's One Hundred, what do you see here?
- 12 A: That's a picture of the handgun that was located.
- 13 Q: And you testified that nobody with the Drug Enforcement
14 Unit manipulated, moved, did anything to that, that handgun?
- 15 A: No, sir.
- 16 Q: Did you find any other black objects where you saw
17 something get tossed out of that car by the passenger?
- 18 A: No, sir, that was the only, the only object we found.
- 19 Q: Now after y'all found this, you say nobody in your
20 department or in your agency picked it up or anything. What
21 did y'all do?
- 22 A: That's correct. Once I located the gun, Agent Beam
23 notified Myrtle Beach Crime Scene, who responded to the scene.
24 We basically just stood by guarding it, if you want to say,
25 made sure it wasn't moved or manipulated in any kind of way

State v. Chestnut

421

RANDY SCOTT MILLER - DIRECT BY RICHARDSON

1 until, until they arrived and collected the evidence.

2 Q: Okay. And they actually did these photographs, correct?

3 A: That's correct.

4 Q: So you didn't even do as much as to get down to look at
5 the serial number?

6 A: I just -- I did bend over and look at it, but like I said,
7 it wasn't touched because, you know, it was evidence at that
8 point.

9 Q: You weren't gonna touch it ---

10 A: We weren't gonna touch it or move it, exactly.

11 Q: And did you all stay on scene and guard this pistol until
12 Myrtle Beach Crime Scene arrived?

13 A: Yes.

14 Q: Do you remember who arrived?

15 A: Investigator Joe Graham.

16 Q: Joe Graham arrived and do you know what steps he took?

17 A: I wasn't exactly involved with the collection of it. I
18 was there and I can't really speak to -- I know he collected
19 it into an evidence bag. That's really all I can testify to.

20 Q: Once he was there, y'all were done?

21 A: Exactly. It was his scene, his evidence and it was his
22 job to collect it.

23 Q: Did you have any further involvement in the investigation
24 of this crime?

25 A: No, sir; that was the extent of my involvement.

State v. Chestnut
RANDY SCOTT MILLER - CROSS BY PRATT

422

1 Q: Agent Miller, thank you for your testimony. If you'll
2 answer any questions Ms. Pratt has for you.

3 THE COURT: All right. Cross examination?

4 MS. PRATT: Thank you, Your Honor.

5 CROSS EXAMINATION OF RANDY SCOTT MILLER BY MS. PRATT:

6 Q: Agent Miller, when you say that the person in the
7 passenger seat appeared to be hiding, that is your opinion or
8 speculation on your part, is it not?

9 A: That's, that's my opinion as to what was going on.

10 Q: Okay. That's from your perspective; is that right?

11 A: That's correct.

12 Q: Okay. And I believe you said that it was a matter of
13 maybe thirty seconds before the county got on the scene after
14 the weapon was dropped out of the Kia Sorento?

15 A: Yes, I estimated about thirty seconds.

16 Q: And you were watching that area the whole time, or were
17 you continuing to follow the Sorento?

18 A: I continued to follow the Kia SUV to the point ---

19 Q: So, you don't know what happened after that, do you?

20 A: As far as?

21 Q: Watching that particular spot from the side of the road.

22 A: No, I continued to follow the SUV until the traffic stop
23 was initiated.

24 Q: Okay. Thank you. I have nothing further.

25 THE COURT: Any redirect?

State v. Chestnut
RANDY SCOTT MILLER - REDIRECT BY RICHARDSON

423

1 MR. RICHARDSON: No, sir, Your Honor, and I'd ask that
2 this witness -- real quick.

3 REDIRECT EXAMINATION OF RANDY SCOTT MILLER BY MR. RICHARDSON:

4 Q: Did you notice a lot of other traffic on Bay Road that
5 day?

6 A: No traffic was very minimum.

7 MR. RICHARDSON: No further questions, Your Honor.

8 THE COURT: All right, sir. You -- I'm sorry, Solicitor,
9 do you want to release him from his subpoena?

10 MR. RICHARDSON: I would, Your Honor.

11 THE COURT: Any objection?

12 MS. PRATT: No objection, Your Honor.

13 THE COURT: All right, sir, you're released from your
14 subpoena. You can go back to your regular activities.

15 A: Thank you, Your Honor.

16 THE COURT: All right. Next witness, please, sir?

17 MR. HYMAN: The State calls Joe Graham.

18 THE COURT: Who was that again?

19 MR. HYMAN: Joe Graham, Officer Joe Graham.

20 THE COURT: All right. Sir, if you'd come on up here and
21 meet the Clerk at the corner, please?

22 JOE GRAHAM, HAVING BEEN SWORN

23 TESTIFIES AS FOLLOWS:

24 CLERK: Please state your full name and spell your last
25 name?

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

424

1 MR. GRAHAM: Joe Graham, G-R-A-H-A-M.

2 DIRECT EXAMINATION OF JOE GRAHAM BY MR. HYMAN:

3 Q: Good morning, Officer Graham. Please tell us a little bit
4 about yourself. Where do you -- where are you employed?

5 A: I'm currently employed with the Myrtle Beach Police
6 Department. I've been there approximately twenty-three years.

7 Q: And in what capacities have you served the Myrtle Beach
8 Police Department?

9 A: I've served everything -- in just about every capacity as
10 far as different jobs. I've worked Traffic Division, Patrol
11 Division, most of my career has predominantly been in the
12 Investigation Division though with approximately eight years
13 as a detective between violent crimes and property crimes, two
14 different stints in the Crime Scene and Forensics Unit and now
15 twice as the Crime Scene and Forensics Supervisor.

16 Q: And what's your current position there?

17 A: Currently, I'm assigned as one of the Nighttime Shift
18 Waterfront Supervisors.

19 Q: And as a supervisor, tell us what some of your typical
20 duties are?

21 A: To review reports and other activities that the officers
22 perform on a daily basis.

23 Q: And back in March of 2012, were you a supervisor at that
24 time?

25 A: Yes, at that time, I was actually assigned as a Crime

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

425

1 Scene and Forensic Supervisor.

2 Q: And are you familiar with the case that we're here to
3 speak about today, the murder of Jamal McFadden?

4 A: Yes, sir, I actually monitored the activities of the
5 processing of the incident involved and I actually
6 participated myself in collecting some of the evidence.

7 Q: And that's what I want to speak with you about. Did you
8 have an occasion to respond to Bay Road while assisting in
9 this investigation?

10 A: Yes, sir, I did. It was, unfortunately it was a busy day
11 that day. We had several different calls and other incidents
12 going on. Most of the crime scene personnel were tied up and
13 as a supervisor, I assist whenever they get tied up with
14 various calls. I received a call to respond to the Bay Road
15 and Shady Branch Road area to collect a weapon that was
16 reported to be involved in this case.

17 Q: And when you arrived on scene -- Tell us how you got
18 there. How did you get notified to come out to Bay Road?

19 A: It was actually the information was passed out through the
20 supervisory chain. I responded to the scene where I met with
21 Randy Miller and other DEU Officers.

22 Q: And who all was present you said of the DEU Officers?

23 A: I think initially on the scene there was Stan Roberts,
24 Jeremiah Beam, Jeremy Brown, Randy Miller and Chris Thompson.
25 I specifically spoke with Officer Miller, who located the

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

426

1 weapon.

2 MR. RICHARDSON: Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (REPORTER'S NOTE: A bench conference was held off the record
5 in the presence of the jury but out of hearing of the jury.)

6 THE COURT: All right. Officer, the report that you, do
7 you have a report there?

8 A: Yes, sir.

9 THE COURT: All right. Could you give that to the
10 Solicitor first please?

11 Be at ease for just a second please.

12 MR. RICHARDSON: Court's indulgence, Your Honor?

13 THE COURT: Yes, sir.

14 MS. PRATT: Your Honor, I would simply make an objection
15 as to the use of the report other than to refresh his memory
16 if he is unable to remember.

17 THE COURT: Thank you, ma'am.

18 All right. Officer, you need to testify from your
19 memory. If you aren't able to recall, you may then use the
20 report to refresh your memory, you put the report down and
21 answer the question without reviewing the report. All right.
22 Thank you.

23 Go ahead, Solicitor.

24 MR. HYMAN: Thank you, Your Honor.

25 BY MR. HYMAN:

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

427

1 Q: Now, Officer Graham, when you arrived on the scene, you
2 said DEU was present and what, if anything, did you observe
3 when you got there?

4 A: I got there and spoke with the officers. They pointed out
5 a handgun that was laying on the side of the road.

6 Q: The handgun was laying on the side of the road?

7 A: Yes, sir.

8 Q: And tell us what you did involving the handgun when you
9 got there?

10 A: I took photographs of where it was lying, collected the
11 weapon, went ahead and cleared it and took swabs from the
12 handgun.

13 Q: Took swabs?

14 A: Yes, sir.

15 Q: And tell us, do you know if the gun -- if the weapon was
16 loaded at that time?

17 A: No, sir; it was not loaded.

18 Q: Did you do anything to secure the weapon?

19 A: When I initially picked it up, I cleared it to make sure
20 there wasn't any ammunition in it. And from that point, I
21 took photographs and after the swabs, secured it in a package.

22 Q: And to your knowledge, had anyone touched or tampered with
23 the weapon before you arrived?

24 A: I was advised that no one had touched or tampered with it.

25 Q: And what was the position of the firearm when you found

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

428

- 1 it?
- 2 A: It was laying on the side of the road.
- 3 Q: Was it in grass?
- 4 A: Yes, sir, in the grassy area on the side of the road.
- 5 Q: Okay. And describe what the handgun looked like?
- 6 A: It was a little short, small .380.
- 7 Q: Small .380?
- 8 A: A semi-automatic handgun.
- 9 Q: Did that gun have any particular distinctive markings on
- 10 it that would assist in identification?
- 11 A: It had a serial number on it, which I recorded.
- 12 Q: You did record that serial number?
- 13 A: Yes, sir, in the initial report I did. I actually
- 14 transposed two of the numbers, but I do have the correct
- 15 serial number on the weapon.
- 16 Q: And you don't happen to remember that serial number by any
- 17 chance, do you?
- 18 A: Not without looking at the report.
- 19 MR. HYMAN: Permission to approach the witness, Your
- 20 Honor?
- 21 THE COURT: Yes, sir.
- 22 BY MR. HYMAN:
- 23 Q: Mr. Graham, I'm approaching you with State's Exhibit
- 24 Thirty-seven. Would you take a look at that and tell me if
- 25 you recognize that item?

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

429

- 1 A: Yes, sir; this is the handgun I collected that day.
- 2 Q: It is and how can you tell?
- 3 A: The serial number, the markings on the box and the other
- 4 information.
- 5 Q: Are there any other forms of identification on that item
- 6 that you can tell by?
- 7 A: Other than the make and model and other information.
- 8 Q: Okay. And that is the same serial number that you
- 9 recorded?
- 10 A: Yes, sir; it is.
- 11 Q: Very good. And when you collected it into evidence, did
- 12 you do anything -- what did you put it in?
- 13 A: Basically, initially, just a bag. After I took the
- 14 initial swabs, once I actually -- I returned to the lab, I
- 15 processed it, the slide area for fingerprints using powders
- 16 and from that point, I placed it in a box secured for further
- 17 testing.
- 18 Q: And the bag that you put it in, did that bag have a
- 19 sealable device on it or was it wide open?
- 20 A: Basically, the initial transport from the scene to the lab
- 21 area was a bag with a folded, just a folded top. Once I
- 22 actually finished processing, I sealed it in the box itself
- 23 right here with these seals on it.
- 24 Q: And I'm handing you what's already been introduced into
- 25 evidence, State's Exhibit One Hundred. Would you tell me if

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

430

1 you recognize that document, that photograph?

2 A: Yes, sir, this is a picture I actually took on the scene
3 of the weapon itself.

4 Q: And does that appear to be the same weapon?

5 A: Yes, sir; it is.

6 Q: And State's Ninety-nine in evidence, would you tell us
7 what that photograph is?

8 A: Oh, this is a little bit more distant photograph of the
9 same handgun.

10 Q: And does that appear to be in the same position that the
11 firearm was in when you arrived on the scene?

12 A: Yes, sir.

13 MR. HYMAN: Your Honor, at this time, the State would
14 offer State's Exhibit Thirty-seven into evidence?

15 THE COURT: Any objection?

16 MS. PRATT: No objection, Your Honor.

17 THE COURT: All right. State's Thirty-seven is in
18 evidence without objection.

19 STATE'S EXHIBIT NUMBER THIRTY-SEVEN

20 ADMITTED INTO EVIDENCE

21 BY MR. HYMAN:

22 Q: And, Officer Graham, did you do anything further to assist
23 in the investigation of this case?

24 A: Actually, with the other incidents during the day, this is
25 the only involvement I had with this case other than just

State v. Chestnut
JOE GRAHAM - DIRECT BY HYMAN

431

1 reviewing some of the reports and other information.

2 Q: Once you collected the pistol, what did you do with it?

3 A: I secured it in our temporary evidence facility and turned
4 it over to the other crime scene officers and property and
5 evidence personnel.

6 Q: And where is the evidence facility?

7 A: The main storage evidence facility is at the Myrtle Beach
8 Police Department. With the crime scene and forensics lab, we
9 do have a temporary storage area where occasionally we do
10 store different items that need to be processed or are in
11 transition.

12 Q: Okay. Momentarily I would like to show you a few more
13 photographs. Could I have these marked please?

14 MR. HYMAN: Permission to approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. HYMAN:

17 Q: I'm showing you what's been marked for identification
18 purposes only as State's Exhibits One-O-One through One-O-
19 Three. Please just take a moment to glance at those
20 photographs and tell me if you recognize what that's a picture
21 of?

22 A: Yes, sir, these are also photographs of the handgun.

23 Q: And how can you be sure that's the same handgun?

24 A: It's the same make, model and serial number; it's the same
25 weapon.

State v. Chestnut
JOE GRAHAM - DIRECT BY PRATT

432

1 MR. HYMAN: Your Honor, at this time ---

2 Q: Does that appear to be a fair and accurate representation
3 of the handgun as it ---

4 A: Yes, sir; it is.

5 Q: Any reason to believe that photographs been tampered with?

6 A: No, sir, this is a photograph I actually took. It's
7 actually on the crime scene and forensics lab table.

8 MR. HYMAN: Your Honor, at this time the State would
9 offer State's Exhibits One-O-One through One-O-Three into
10 evidence?

11 THE COURT: Any objection?

12 MS. PRATT: No objection, Your Honor.

13 THE COURT: I'm sorry. Into evidence without objection.
14 You may publish.

15 STATE'S EXHIBIT NUMBERS ONE-HUNDRED-ONE THROUGH
16 ONE-HUNDRED-THREE ADMITTED INTO EVIDENCE

17 MR. HYMAN: Thank you, Your Honor. Just one second.

18 BY MR. HYMAN:

19 Q: The State has no further questions. Please answer any
20 questions Ms. Pratt may have.

21 THE COURT: Yes, ma'am, Cross examination?

22 MS. PRATT: Thank you, Your Honor.

23 CROSS EXAMINATION OF JOE GRAHAM BY MS. PRATT:

24 Q: Officer Graham, did you, did you take any fingerprints
25 from the gun?

State v. Chestnut
JOE GRAHAM - DIRECT BY PRATT

433

1 A: I attempted to process the slide for latents but didn't
2 recover any, any latent detail.

3 Q: And you did take some swabs for touch DNA?

4 A: Yes.

5 Q: Were those ever sent off?

6 A: Yes, ma'am, they were sent off.

7 Q: Thank you.

8 THE COURT: All right. Any further questions?

9 MR. HYMAN: Nothing further, Your Honor.

10 THE COURT: Do you wish the witness be excused?

11 MR. HYMAN: The State does, Your Honor.

12 THE COURT: Any objection?

13 MS. PRATT: No objection, Your Honor.

14 THE COURT: All right, sir, you're released from your
15 subpoena. You may go back to your regular activities. If you
16 just want hand those exhibits that you have right there at the
17 desk to the Court Reporter please.

18 All right. Solicitor and Ms. Pratt, y'all come up here
19 for just one second, please?

20 MR. RICHARDSON: Certainly, Your Honor.

21 (REPORTER'S NOTE: A bench conference was held off the record
22 in the presence of the jury but out of hearing of the jury.)

23 THE COURT: All right. Next witness, please, sir?

24 MR. RICHARDSON: State would call Crime Scene Officer
25 William Stair.

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

434

1 THE COURT: All right, sir, if you'll come around and
2 meet the Clerk of Court up here, please, sir?

3 WILLIAM JOSEPH STAIR, HAVING BEEN
4 SWORN TESTIFIES AS FOLLOWS:

5 CLERK: Please state your full name and spell your last
6 name?

7 MR. STAIR: William Joseph Stair, S-T-A-I-R.

8 MR. RICHARDSON: I'll hand these to Ms. Pratt, Your
9 Honor.

10 THE COURT: All right, sir.

11 DIRECT EXAMINATION OF WILLIAM JOSEPH STAIR BY MR. RICHARDSON:

12 Q: Officer Stair, could you please tell us where you're
13 employed, how long and in what capacity?

14 A: City of Myrtle Beach. I've been employed there since
15 2006. My current position is in the Crime Scene Unit.

16 Q: Okay. I think we've all heard about that Crime Scene
17 Unit. I don't think we need to go through what all y'all do
18 again. How long have you been with the Crime Scene Unit?

19 A: Three years and nine months.

20 Q: So you were in the Crime Scene Unit back in March of 2012?

21 A: Yes, I was.

22 Q: Now in the course of your duties as a Crime Scene officer
23 with the Myrtle Beach Police Department, did you have an
24 opportunity to become involved with an investigation of the
25 murder and attempted murder that occurred at 3rd Avenue Sports

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

435

- 1 Bar?
- 2 A: Yes, I did.
- 3 Q: Tell us a little bit about your involvement?
- 4 A: On the morning of the 6th of March, I came into work. I
- 5 was provided with a search warrant to process the vehicle that
- 6 belonged to the victim.
- 7 Q: And that's the victim, Jamal McFadden?
- 8 A: Yes, it is.
- 9 Q: Could you tell us what kind of vehicle it was?
- 10 A: It was a Oldsmobile, gold in color.
- 11 Q: Oldsmobile, gold in color. And where was this vehicle
- 12 located when you got there?
- 13 A: It was located in the Crime Scene bay.
- 14 Q: And that's a secure bay?
- 15 A: A secure bay.
- 16 Q: Who has access to it?
- 17 A: The only people that have access to the bay is Crime Scene
- 18 personnel.
- 19 Q: And we're talking about the bay that's actually right
- 20 beside your office, correct?
- 21 A: Correct.
- 22 Q: Now prior to -- or prior to the actual search of the
- 23 vehicle, did you do any document search or record it in any
- 24 way?
- 25 A: Before I started to search the vehicle I took photographs

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

436

1 of the exterior of the vehicle. And once I opened the doors,
2 I photograph the interior as it is before I start.

3 Q: Okay. Thank you. Now I'm gonna show you what's been
4 marked for identification purposes, State's One-O-Four through
5 One-Seventeen. Tell me if you recognize those items and how
6 you recognize them?

7 A: These would be the photographs I took of the vehicle. The
8 exterior showing the vehicle information including the license
9 plate, the registration showing who the vehicle belongs to as
10 well as the interior photographs of a black t-shirt and a
11 jacket that were lying in the front-seat passenger side and
12 the driver's side.

13 Q: And these are photographs you took?

14 A: These are the photographs I took.

15 Q: Do they fairly and accurately depict the condition and the
16 manner in which you found the vehicle on March 6th, 2012?

17 A: Yes, they do.

18 MR. RICHARDSON: Your Honor, the State would seek to
19 introduce State's One-O-Four through One-Seventeen?

20 THE COURT: Any objection?

21 MS. PRATT: None, Your Honor.

22 THE COURT: All right. They are in evidence. You may
23 publish.

24 STATE'S EXHIBIT NUMBERS ONE-HUNDRED-FOUR THROUGH
25 ONE-HUNDRED-SEVENTEEN ADMITTED INTO EVIDENCE

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

437

1 MR. RICHARDSON: Thank you, Your Honor.

2 BY MR. RICHARDSON:

3 Q: Directing your attention to State's One-O-Six, can you
4 tell me what we're seeing in State's One-O-Six?

5 A: That would be a photograph I took of the driver's seat
6 before I started searching the vehicle. It's a multi-colored
7 jacket that was laying on the seat.

8 Q: And that jacket, was it collected?

9 A: Yes, it was.

10 Q: And that was in the driver's seat?

11 A: Yes.

12 Q: Now I'm gonna show you State's One-O-Seven and One-O-
13 Eight. Can you tell us what we're seeing first in One-O-
14 Seven?

15 A: That would be the photograph of the interior of the glove
16 box.

17 Q: And why did you go in the glove box?

18 A: Looking for paperwork showing who the vehicle belongs to.

19 Q: And State's One-O-Eight?

20 A: A photograph of the registration.

21 Q: And on that registration, who is listed as the owner of
22 that vehicle?

23 A: Jamal McFadden.

24 Q: Jamal McFadden. State's One-O-Nine, One-Ten and One-
25 Eleven, can you tell us what we're looking at in these please?

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

438

1 A: It would be three photographs I took of the front
2 passenger seat with a black t-shirt on it.

3 Q: And the black t-shirt. And One-Eleven is just a closer
4 look?

5 A: Yes.

6 Q: And prior to taking these pictures, either the multi-
7 colored jacket or this black t-shirt, did you do anything to
8 manipulate them in any way, move them or anything?

9 A: No.

10 Q: Did you notice anything unusual about the black t-shirt?

11 A: Once I picked it up, I observed that it has been cut up
12 from the middle from the bottom hem to the neckline.

13 Q: And had you seen that kind of damage before?

14 A: Yes, I have.

15 Q: And could you discern anything with regard to what type of
16 damage that appeared to be?

17 MS. PRATT: Objection, calls for speculation by the
18 witness, Your Honor.

19 THE COURT: Rephrase your question please.

20 BY MR. RICHARDSON:

21 Q: In the past, when you've seen that kind of damage, did you
22 learn what kind of damage that was?

23 A: Yes, I have.

24 Q: And in the past, what kind of damage had that been?

25 A: Paramedics on scene treating patients usually cut the

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

439

- 1 shirt right up the middle so they can have access to the
2 patient.
- 3 Q: So they can treat them?
- 4 A: Yes.
- 5 Q: And this cut is consistent with what you had seen in the
6 past?
- 7 A: Yes.
- 8 Q: Let me show you now what's been introduced as State's One-
9 Twelve and One-Thirteen. First, One-Twelve, what are we
10 seeing?
- 11 A: That'd be a photograph of the t-shirt after I removed it
12 and laid it on a table. I placed photo stickers next to the
13 -- a hole which I observed in the shirt.
- 14 Q: Okay. And this is on the frontside or the backside?
- 15 A: That would be on the backside.
- 16 Q: Do we see the cut?
- 17 A: That would be on the front.
- 18 Q: On the front, okay. So that's the backside and it's 2 and
19 then on State's One-Twelve and on State's One-Thirteen, we see
20 a Marker Number 1; is that right?
- 21 A: Yes, that would be on the frontside.
- 22 Q: We can see the little hole there. There's a hole in the
23 front and a hole in the back?
- 24 A: Yes.
- 25 Q: Now that was the black shirt you found in the passenger

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

440

1 side of the front seat?

2 A: Yes, it was.

3 Q: Now State's One-Fourteen?

4 A: That would be a photograph of the jacket I removed from
5 the driver's seat.

6 Q: And you collected these so we can take a look at it,
7 correct?

8 A: Yes.

9 Q: Now your other two markers, you had 1 and 2 already,
10 right?

11 A: Yes.

12 Q: On State's One-Fifteen, can you tell us what's depicted
13 there?

14 A: I put Photo Marker Number 3 next to a small hole in the
15 front left side of the jacket.

16 Q: And State's 4?

17 A: We have Marker Number 4, put it on the back side of the
18 jacket on the right.

19 Q: That's Marker 4 on State's One-Sixteen. And State's One-
20 Seventeen?

21 A: That's would be a close-up of Marker Number 4.

22 Q: And I'd asked you what side the holes on and all that, but
23 we'll look at it in just a second. Now, I'm gonna show you
24 what's been marked for identification as State's One-Eighteen
25 and One-Nineteen; do you recognize these items?

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

441

1 A: Yes, I do.

2 Q: And how do you recognize State's One-Eighteen and One-
3 Nineteen?

4 A: When I was finished with the shirt and the jacket, I
5 placed them into these bags and sealed them.

6 Q: Now, we've got some gloves up here and I would like you to
7 open them -- these are where you placed evidence?

8 A: Yes.

9 Q: What's in State's One-Eighteen?

10 A: That would be the jacket from the driver's seat.

11 Q: That should be the jacket?

12 A: Yes.

13 Q: Okay. And One-Nineteen?

14 A: That would be the shirt from the passenger seat.

15 Q: Okay. I'm gonna had you knife and you have gloves here;
16 if I can get you to open --

17 MR. RICHARDSON: Your Honor, the State would seek to
18 introduce One-Eighteen and One-Nineteen?

19 THE COURT: Any objection?

20 MS. PRATT: No, Your Honor.

21 THE COURT: They're in evidence without objection.

22 STATE'S EXHIBIT NUMBERS ONE HUNDRED EIGHTEEN AND

23 ONE HUNDRED NINETEEN ADMITTED INTO EVIDENCE

24 BY MR. RICHARDSON:

25 Q: If you could open those up so we could see them, please,

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

442

1 sir?

2 MR. RICHARDSON: Your Honor, as they're in evidence, I
3 have gloves provided.

4 THE COURT: All right, sir.

5 BY MR. RICHARDSON:

6 Q: All right. We're opening State's -- that's One-Nineteen,
7 correct?

8 A: Yes.

9 Q: Is this the shirt you removed from the passenger seat of
10 the front seat from that Oldsmobile?

11 A: Yes, it is.

12 Q: And what we're seeing here, it's slit open, that's as you
13 described it previously. So Polo brand?

14 A: Yes.

15 Q: If you hold it down, we see marker number one, correct?

16 A: Correct.

17 Q: That's on the front side of the shirt?

18 A: Yes.

19 Q: On the left side?

20 A: Yes, the left side just below the breast.

21 Q: Just below where a pocket would be?

22 A: Yes.

23 Q: And on the backside if we reverse the shirt around, that
24 is Marker Number 2?

25 A: Yes.

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

443

- 1 Q: That is rear right left, I believe?
- 2 A: Yes.
- 3 Q: Right near the armpit area?
- 4 A: Yes, sir.
- 5 Q: Now, have we opened One-Eighteen yet?
- 6 A: Not yet.
- 7 Q: Okay. Is this indeed the jacket you got out of the
- 8 driver's seat?
- 9 A: Yes, it is.
- 10 Q: And a piece of paper just fell off.
- 11 A: Marker Number 3, which was on the front left side.
- 12 Q: The front left side; right where that arrow is pointing?
- 13 A: It was directly above.
- 14 Q: So we can reapply. It goes back right here?
- 15 A: Yes.
- 16 Q: We have photographic evidence of where it was, correct?
- 17 A: Yes.
- 18 Q: And on reverse, that's Marker 4?
- 19 A: Marker Number 4.
- 20 Q: They doesn't stick very well to this material, correct?
- 21 A: No.
- 22 Q: So once again we have 3 depicts, front, left side, below
- 23 this breast?
- 24 A: Correct.
- 25 Q: And 4 depicts about the same area, the right side armpit?

State v. Chestnut
WILLIAM STAIR - DIRECT BY RICHARDSON

444

1 A: Yes.

2 Q: And this is what you collected out of the victim's
3 driver's seat?

4 A: Yes, it is.

5 Q: And to your knowledge, were these items ever sent off for
6 any kind of analysis?

7 A: I do not.

8 Q: You didn't request any analysis?

9 A: I did not.

10 Q: I just don't know which arrow that came from.

11 MR. RICHARDSON: Your Honor, if I may suggest just Ms.
12 Pratt and I get together regard to placement of the stickers?

13 THE COURT: All right, sir. Very good.

14 BY MR. RICHARDSON:

15 Q: After obtaining the registration of this vehicle belonging
16 to Jamal McFadden and collecting this clothing out of the car,
17 this jacket and shirt, did you have any other involvement in
18 the case?

19 A: I attended the autopsy.

20 Q: Okay. You attended the autopsy. The victim, what kind of
21 hair did he have?

22 A: He had long dreadlock style hair about shoulder length.

23 Q: And that's the extent of your involvement in this case?

24 A: Yes.

25 Q: Thank you. Please answer any questions Ms. Pratt may

State v. Chestnut
WILLIAM STAIR - CROSS BY PRATT

445

1 have.

2 THE COURT: All right. Ms. Pratt, cross examination?

3 MS. PRATT: Thank you, Your Honor.

4 CROSS EXAMINATION OF WILLIAM STAIR BY MS. PRATT:

5 Q: Officer Stair, what time did you execute the search
6 warrant; do you know?

7 A: It was approximately 1:00 P.M.

8 Q: And that's 1:00 P.M. on the same day as the incident,
9 correct?

10 A: Correct, on March 6th.

11 Q: And at that point they already had gotten a search warrant
12 for this vehicle; is that correct?

13 A: That is correct.

14 Q: Okay. And I'm going to show you these two items. First
15 of all, I want to show you what's written as Item Number --
16 Group 33, Item 1; is that your handwriting?

17 A: Yes, it is.

18 Q: And this one is Group 32, Item 1; is that right?

19 A: Yes, it is.

20 Q: All right. And these two items, before you opened them in
21 the courtroom today, had they been opened in any way?

22 A: They should not have been, no.

23 Q: They were not opened. So they were not sent to SLED for
24 testing?

25 A: It does not appear so, no.

State v. Chestnut
WILLIAM STAIR - CROSS BY PRATT

446

1 Q: Nothing was ever done with these other than what you did
2 with them yourself?

3 A: Yes.

4 Q: And you know that because your initials are on the back;
5 is that you; can you tell?

6 A: Yes, that's my initials.

7 Q: Looks kind of like -- that look like a C & S on that one;
8 and that would be you on 33?

9 A: Yes.

10 Q: Okay. So these items, nothing was ever done with them, if
11 I understand, except for what you did in taking the photos?

12 A: As far as I am aware, yes.

13 Q: Well, if they had anything, like we said, this would've
14 been opened and you would tell today, wouldn't you?

15 A: Yes.

16 Q: You'd know because your initials would not be on that
17 tape,, correct?

18 A: That's correct.

19 Q: All right. And part of your training is to process for
20 other things besides just taking photographs, correct?

21 A: Correct.

22 Q: Including, say, fingerprints, GSR, DNA, collection
23 evidence; is that right?

24 A: Yes.

25 Q: Okay. Have you ever had to ask for a search warrant

State v. Chestnut
WILLIAM STAIR - CROSS BY PRATT

447

1 yourself from a Magistrate?

2 A: No, I have not.

3 Q: Okay. I have nothing further.

4 THE COURT: Any redirect?

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

6 THE COURT: And do you wish the witness to be excused?

7 MR. RICHARDSON: I would ask that Officer Stair be
8 excused, Your Honor.

9 THE COURT: Any objection?

10 MS. PRATT: No objection, Your Honor.

11 THE COURT: All right, sir. You are released from your
12 subpoena and you make go back to your regular duties. If you
13 have any exhibits you can hand those to the Court Reporter,
14 please.

15 While he's leaving, Solicitor, Ms. Pratt, y'all come up
16 for a conference please?

17 (REPORTER'S NOTE: A bench conference was held off the record
18 in the presence of the jury but out of hearing of the jury.)

19 THE COURT: All right. Next witness, please?

20 MR. RICHARDSON: The State would call Officer Malinda
21 Shadoan.

22 THE COURT: All right. Ma'am, if you would come up and
23 meet the Clerk right up here, please, ma'am?

24 MALINDA SHADOAN, HAVING BEEN SWORN

25 TESTIFIES AS FOLLOWS:

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

448

1 CLERK: Please state your full name and spell your last
2 name?

3 MS. SHADOAN: Malinda Shadoan, S-H-A-D-O-A-N.

4 THE COURT: Could you spell your first name also please?

5 MS. SHADOAN: M-A-L-I-N-D-A.

6 THE COURT: All right. Very good.

7 Solicitor?

8 DIRECT EXAMINATION OF MALINDA SHADOAN BY MR. RICHARDSON:

9 Q: I think I'm ready. Officer Shadoan, if you could tell us
10 a little bit about yourself, where you're employed, how long
11 and what capacity?

12 A: I work for the City of Myrtle Beach. I've worked there
13 for five years this month. I am -- now work at Property and
14 Evidence Division. I have been there almost now a year and a
15 half.

16 Q: So you were in the Property and Evidence Division back in
17 March of 2012?

18 A: Yes, sir.

19 Q: And I'm sure we've seen in the movies where the evidence
20 is kept down in the dungeon, the basement?

21 A: Right.

22 Q: Myrtle Beach have a basement?

23 A: No basement.

24 Q: Okay. Tell us about the Evidence Department; what is done
25 in the Evidence Department; what's its purpose?

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

449

1 A: We basically house all the evidence of any type of case.
2 We house them for years and years. I'm basically the guardian
3 of all that evidence. It comes in from a officer who has
4 evidence of a case and they drop it in a secure locker or hand
5 it directly to me or two other ladies are in that office and
6 we secure it in a location in that room that is only
7 authorized for access for the three of us.

8 Q: And when the evidence comes in, is it -- is it packaged in
9 any certain way?

10 A: It's usually packaged in a brown bag with evidence tape
11 securely on it so even I can't get into it.

12 Q: Okay. It's tamper-evident, tamper-resistant tape?

13 A: Tamper-resistant.

14 Q: And on that tape are there any other markings or anything?

15 A: Usually the officer will have their initials and the date
16 in which they dropped it.

17 Q: And what other -- lost my train of thought -- what other
18 documentation do you do to track evidence?

19 A: They'll have labels on there to explain what exactly is
20 inside that bag, what group number that they associated with
21 it for that case and from there I will go ahead and, after
22 they've done the vouchers for it to let me know that whatever
23 kind of evidence they have is listed, and we'll go ahead and
24 process it and put labels on there and such.

25 Q: Okay. And is that so you can tell what piece goes where?

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

450

1 A: Yes, sir.

2 Q: And you can track each piece of evidence from when it's
3 collected until it gets to you?

4 A: Right.

5 Q: And on to wherever you take it?

6 A: Right.

7 Q: Great. That so you can find it?

8 A: Easily.

9 Q: All right. Well, in the present case with regards to the
10 murder of Jamal Chestnut and the attempted murder of David
11 Canty, did -- did your department take in some evidence?

12 A: Yes, sir.

13 Q: Okay. And the evidence that you took in was properly
14 sealed and what not?

15 A: Yes, all of them had that red evidence tape that's
16 securely across it.

17 Q: And actually you and I met previously and you looked at
18 all of it and confirmed it, correct?

19 A: Yes.

20 Q: I'm gonna start showing you some items. First I'm gonna
21 show you what's been marked as State's Thirty-two, Thirty-
22 three and Thirty-four. Can you tell us if you recognize what
23 these are?

24 A: Yes, sir.

25 Q: And how do you recognize those items?

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

451

1 A: They have our group number on there with our case number,
2 the evidence tape and this is the property and evidence
3 sticker in which I put on there once it's processed by me.

4 Q: And these are items that were received by the evidence
5 room?

6 A: Yes.

7 Q: And do you know when they were received?

8 A: Could I refer to my notes.

9 MR. RICHARDSON: Your Honor, if she may refer to her
10 notes?

11 THE COURT: All right, ma'am, you may refresh your memory
12 by the notes and then put the notes down and answer the
13 question.

14 A: Sure. These were collected on March 15th, 2012 by locker
15 39 in which I took it out of the secure locker and then
16 processed it accordingly.

17 Q: Okay. And when you took them in they were properly
18 sealed?

19 A: Yes, sir.

20 Q: After you took them in, how were they secured?

21 A: We have a property and evidence room that we put into, all
22 this evidence into bin locations. Homicide stuff actually
23 goes upstairs into the juvenile hall, which is under double
24 lock and key, and we only have access to that as well.

25 Q: I'll trying to group everything. With regard to any of

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

452

- 1 the firearms information you had here, was all that stored in
2 the same way?
- 3 A: The firearm itself goes into our drug and gun vault, which
4 is downstairs exactly where I work every day and that has a
5 big combination lock that's even been hard for me to get into
6 sometimes.
- 7 Q: So, it's double secure.
- 8 A: Yes.
- 9 Q: How about the shell casings, are they secured, I believe
10 you said only three people have access?
- 11 A: Correct.
- 12 Q: Now, those shell casings -- and I'm gonna show you what's
13 been marked as State's Thirty-five and Thirty-six, same
14 questions. Do you recognize those documents and if so, how?
- 15 A: I do by the same markings and the evidence tape and the
16 labels that I put on there once they're processed.
- 17 Q: And when were these items received?
- 18 A: The same date.
- 19 Q: The same date?
- 20 A: Uh-huh (affirmative response).
- 21 Q: And they were all separately packaged?
- 22 A: Correct.
- 23 Q: Let me show you State's Thirty-seven and Thirty-eight.
24 Can you look at Thirty-seven and Thirty-eight?
- 25 A: These are the handguns that were processed by me as well.

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

453

1 Q: And State's Thirty-seven and Thirty-eight, when were those
2 taken into custody?

3 A: Right around the same time as well.

4 Q: Specifically in regard to the .380, I believe that's Item
5 Thirty-seven. Can you tell us -- can you refresh your
6 recollection if you need to and tell us exactly when that was
7 taken into custody?

8 A: I can.

9 Q: And deposited in evidence? And the same question with
10 regard to Thirty-eight?

11 A: These were on March 12, 2012.

12 Q: All of them came into evidence March 12, 2012?

13 A: Yes, half of it came March 12 and then half came March
14 15th.

15 Q: Okay. And whenever you received them, all of them were
16 sealed or not?

17 A: Guns actually do not get sealed because I have to go
18 inside a do an ATF trace request on them and make sure the
19 serial numbers match up to what the officer had put on there.

20 Q: And the serial numbers, they're particular to each
21 firearm?

22 A: Correct.

23 Q: So the documents should follow -- the documents should
24 follow the ---

25 A: It did, yes.

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

454

1 Q: Now with regard to Thirty-two, Thirty-three, Thirty-four,
2 Thirty-five, Thirty-six, Thirty-seven and Thirty-eight; did
3 those items ever leave the custody of Myrtle Beach Police
4 Department?

5 A: I know that the guns did. They both went to SLED and I
6 don't believe -- I'm sorry -- some of the casings went, the
7 fired bullets went to SLED as well.

8 Q: All the shell casings went?

9 A: Correct.

10 Q: And the two projectiles, they went as well?

11 A: Correct.

12 Q: Can you tell, did all of these things go up to SLED at the
13 same time?

14 A: They did.

15 Q: And who took them to SLED?

16 A: I did.

17 Q: When was that?

18 A: March 28th, 2012 at 12:37 in the afternoon.

19 Q: And when you got to SLED, what, if anything, did you do?

20 A: I went into the CFI Forensic Tech and when I went there I
21 showed them my iLAB which is something -- a submission to show
22 what evidence we're going to be testing over there at SLED.
23 Then they would put it in their own packaging so they would
24 take this little item and put it into a separate SLED
25 packaging and they make sure that it was sealed before I left

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

455

1 and I had to initial everything, initial and date.

2 Q: And they don't cut open your packaging; they just take
3 your packaging and put it in their package?

4 A: Correct.

5 Q: So it's a box in a box in a box?

6 A: Correct.

7 Q: And you initial that in front of them?

8 A: I do.

9 Q: And that tape, are you familiar with that type or tape or
10 seal they use?

11 A: SLED has their specific yellow tape that says SLED across
12 it with the initial and date areas for me to sign.

13 Q: And it's tamper-evident.

14 A: That's also tamper-evident.

15 Q: And all this was done I believe you said on March 28th?

16 A: Correct.

17 MR. RICHARDSON: Your Honor, at this time, the State
18 would seek to introduce State's Thirty-eight, Thirty-seven,
19 Thirty-six, Thirty-two, Thirty-three and Thirty-four. I
20 believe the chain is complete?

21 THE COURT: Any objection?

22 MS. PRATT: No objection, Your Honor.

23 THE COURT: All right. State's Thirty-two, Thirty-three,
24 Thirty-four, Thirty-six, Thirty-seven and Thirty-eight are in
25 evidence without objection.

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

456

1 MR. RICHARDSON: Thank you, Your Honor.

2 STATE'S EXHIBIT NUMBER THIRTY-TWO, THIRTY-THREE,

3 THIRTY-FOUR, THIRTY-SIX, THIRTY-SEVEN AND THIRTY-EIGHT

4 ADMITTED INTO EVIDENCE

5 BY MR. RICHARDSON:

6 Q: At any point, did you get these items back?

7 A: I did.

8 Q: And when was that?

9 A: September 20th, 2012 at 2:15 in the afternoon.

10 Q: And where did you get them?

11 A: I went to SLED to retrieve them.

12 Q: And where were they stored?

13 A: At their Evidence Control room as well.

14 Q: Once you got them back, I'm sorry.

15 A: I'm sorry. It went back to our property and evidence room
16 upstairs in the jail.

17 Q: Until we asked for them?

18 A: Correct.

19 Q: Same thing with regard to State's Thirty-five, correct?

20 A: Yes.

21 Q: You got it back on the same day?

22 A: Correct.

23 Q: Now, do you recognize State's Forty-two?

24 THE COURT: Solicitor, you said State's Thirty-five; is
25 that what you meant to say? Because I just said Thirty-two,

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

457

1 Thirty-four -- Thirty-two, Thirty-three, Thirty-four?

2 MR. RICHARDSON: This is not into evidence. I haven't
3 moved it into evidence. I just wanted to make sure we got it
4 back at the same time.

5 THE COURT: Okay. All right.

6 MR. RICHARDSON: I realize there's still one ---

7 THE COURT: All right. Very good. Okay.

8 BY MR. RICHARDSON:

9 Q: State's Forty-two, do you recognize State's Forty-two?
10 And if you need to open it, you can.

11 A: They are GSR kits.

12 Q: And do you know if that was ever -- are they pertinent to
13 this case?

14 A: Yes, they are.

15 Q: And how can you tell?

16 A: They have the case number that is associated with this
17 case.

18 Q: And when these were taken, these were taken into evidence?

19 A: Correct.

20 Q: How would they have been stored?

21 A: They're just like this and then they go in the same bin
22 location as all the rest of it.

23 Q: Okay. And so they're kept separate from each other?

24 A: They are.

25 Q: There's two GSR kits, correct?

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

458

1 A: Right.

2 Q: And they're documented by number and everything else?

3 A: Yes, they have group numbers, which each one is different.

4 Q: And are they stored in a bag similar to the shell casings
5 and everything?

6 A: Yes.

7 Q: And so they would've remained in your custody after they
8 were returned to you?

9 A: They were.

10 Q: When, do you know when those were turned in?

11 A: It was also March 12th, 2012.

12 Q: Okay. And State's Thirty-nine and Forty-one, do you
13 recognize those items?

14 A: The packaging, yes, I do.

15 Q: And how do you recognize them?

16 A: It's got our label with the case number on it again with
17 our group number.

18 Q: State's Thirty-nine and Forty -- did I say Forty-two or
19 Forty-one -- but State's Exhibit Thirty-nine and Forty-one,
20 they have your group numbers?

21 A: Correct.

22 Q: So you recognize these documents you took into evidence?

23 A: Correct.

24 Q: And all these items, when they come in sealed, do you do
25 anything to open them?

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

459

- 1 A: No, we're not allowed to.
- 2 Q: But you're recognizing them from the bag?
- 3 A: Just by the bag only and what it says on the outside.
- 4 Q: Can you tell when these two items were taken?
- 5 A: That was also March 12th, 2012.
- 6 Q: And finally with regard to the clothing, State's Forty and
- 7 Forty-three. I'm sorry.
- 8 A: That's okay. I got it.
- 9 Q: Do you recognize State's Forty and Forty-three?
- 10 A: I do.
- 11 Q: And how do you recognize that?
- 12 A: By the same label with the case number and group numbers.
- 13 Q: And once again, when were these taken into custody?
- 14 A: Also March 12th, 2012.
- 15 Q: And all these items we just discussed, State's Thirty-
- 16 nine, Forty-one, Forty, Forty-three, Forty-two, all these
- 17 items, they were all stored in evidence just as you described
- 18 earlier?
- 19 A: They were.
- 20 Q: Only three people had access to that?
- 21 A: Correct.
- 22 Q: The seals, whenever you got hold of them, were they
- 23 intact?
- 24 A: They were.
- 25 Q: And did they ever leave the custody of the Myrtle Beach

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

460

- 1 Police Department?
- 2 A: Can you repeat the numbers again, the group numbers?
- 3 Q: Group numbers, I'm sorry. They said we got the Group 68,
- 4 Item 1, that's with regard to number Forty, State's Forty.
- 5 A: Correct.
- 6 Q: Group 67, Item 1 and 2 it looks like.
- 7 A: Correct.
- 8 Q: Group 44, Item 1?
- 9 A: Correct.
- 10 Q: Group 47, Item 1?
- 11 A: Correct. On the white label.
- 12 Q: On the white label, Group 62 and 65, both Items 1?
- 13 A: Correct. Those all went to SLED.
- 14 Q: They all went to SLED; on what date was that?
- 15 A: March 28th, 2012.
- 16 Q: And who took those?
- 17 A: I did.
- 18 Q: And when you took them, I reckon you took them out of your
- 19 evidence storage?
- 20 A: Correct.
- 21 Q: Were the seals still intact?
- 22 A: Yes, they were.
- 23 Q: And when you got to SLED, did you follow the same
- 24 procedure you as you described before?
- 25 A: Same process at the same time, right.

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

461

1 Q: You sealed it, you signed it and they take it?

2 A: Yes.

3 Q: And that's that tamper-evident tape?

4 A: Right in front of me, yes.

5 MR. RICHARDSON: Your Honor, at this time, the State
6 would seek to introduce State's Thirty-nine, Forty, Forty-one,
7 Forty-two, Forty-three into evidence?

8 THE COURT: Any objection?

9 MS. PRATT: May I have those numbers again; I'm sorry.

10 Thirty-nine ---

11 MR. RICHARDSON: Thirty-nine, Forty, Forty-one, Forty-two
12 and Forty-three.

13 MS. PRATT: No objection.

14 THE COURT: All right. They're in evidence without
15 objection.

16 STATE'S EXHIBIT NUMBERS THIRTY-NINE, FORTY, FORTY-ONE

17 FORTY-TWO AND FORTY-THREE ADMITTED INTO EVIDENCE

18 BY MR. RICHARDSON:

19 Q: I don't know that we had this -- State's Ninety-five, do
20 you recognize that?

21 A: Yes, I do.

22 Q: And how do you recognize that item?

23 A: It has our label with the group number and our evidence
24 tape.

25 Q: And was this taken into evidence?

State v. Chestnut
MALINDA SHADOAN - DIRECT BY RICHARDSON

1 A: It was.

2 Q: Did it pertain to this case?

3 A: It did.

4 MR. RICHARDSON: State would seek to introduce Ninety-
5 five into evidence, Your Honor?

6 THE COURT: Any objection?

7 MS. PRATT: No objection, Your Honor.

8 THE COURT: In evidence without objection.

9 STATE'S EXHIBIT NUMBER NINETY-FIVE

10 ADMITTED INTO EVIDENCE

11 BY MR. RICHARDSON:

12 Q: All these items -- the, the clothing we just talked about,
13 that was -- was that ever picked up from SLED?

14 A: Yes, sir.

15 Q: And it was returned to your evidence locker?

16 A: Yes, it was.

17 Q: Until trial?

18 A: Right.

19 Q: And, and that's the extent of your involvement in this
20 case, Officer Shadoan?

21 A: Correct.

22 Q: Thank you.

23 A: You're welcome.

24 THE COURT: Cross examination?

25 MS. PRATT: Thank you, Your Honor.

State v. Chestnut
MALINDA SHADOAN - CROSS BY PRATT

463

1 CROSS EXAMINATION OF MILINDA SHADOAN BY MS. PRATT:

2 Q: Officer Shadoan, there were a lot more pieces of evidence
3 that were put into your evidence room by CSS McSpadden; is
4 that right?

5 A: That's correct.

6 Q: There were items that were from the crime scene, like a
7 beer bottle, debris from the wreck, cigarettes, boxes of
8 cigarettes, that kind of thing, correct?

9 A: Correct.

10 Q: In fact, there were probably about twenty-six items just
11 from the crime scene; do you have any knowledge of that kind
12 of number?

13 A: I don't.

14 Q: Not specifically?

15 A: Not specifically.

16 Q: But you actually only handled, from what I can tell, as
17 far as taking them and testing anything about eight items; is
18 that right?

19 A: To SLED, I have seventeen that we to SLED.

20 Q: Seventeen that went to SLED that would include sub-items,
21 wouldn't it?

22 A: Yes.

23 Q: Okay. So under the eight total, there would've been sub-
24 items that ---

25 A: That is correct.

State v. Chestnut
MALINDA SHADOAN - CROSS BY PRATT

464

1 Q: All right. And I'm going to show you what are State's
2 One-Eighteen and One-Nineteen; they're a Group 33, Item 1 and
3 Group 32, Item 1 and ask if those were ever transported by you
4 anywhere?

5 A: No, they were not.

6 Q: Okay. So they would not have been tested, to your
7 knowledge, by SLED in any way, correct?

8 A: That's correct.

9 Q: And the other items that I was mentioning, the beer
10 bottles and the cigarette butts and those kinds of things,
11 those were not transported or tested in any way; is that
12 right?

13 A: With SLED they were not, no.

14 Q: Okay. And you basically -- you're a custodian that makes
15 sure things stay where they're supposed to be and they're not
16 touched, correct?

17 A: Correct, I'm just the guardian.

18 Q: And you carry stuff to Columbia?

19 A: Correct.

20 Q: And you bring it back to put back where it goes?

21 A: Yes.

22 Q: You do not open or test or do anything like that?

23 A: No.

24 Q: All right. I have nothing further.

25 THE COURT: Okay. Redirect?

State v. Chestnut
MICHELLE MCSPADDEN - REDIRECT BY RICHARDSON

467

1 (REPORTER'S NOTE: The jury returns to the courtroom. 11:58
2 A.M.)

3 THE COURT: All right. Solicitor, your next witness
4 please.

5 MR. RICHARDSON: Thank you, Your Honor. The State would
6 like to recall Crime Scene Officer Michelle McSpadden.

7 THE COURT: All right. Come back up here, ma'am, you
8 remember that you remain and continue to be under oath?

9 MS. MCSPADDEN: Yes, sir.

10 THE COURT: All right. Very good. And if you would just
11 state your name for the record please, ma'am?

12 MS. MCSPADDEN: Michelle McSpadden.

13 THE COURT: Go ahead, Solicitor.

14 MR. RICHARDSON: Thank you.

15 REDIRECT EXAMINATION OF MICHELLE MCSPADDEN BY MR. RICHARDSON:

16 Q: Officer McSpadden, I think everybody would want to
17 strangle me if I went back through everything from yesterday.

18 In showing you a mountain of evidence yesterday, I
19 neglected to ask you about one thing. As I approach you, I'm
20 gonna hand to you State's Number Thirty-five and see if you
21 recognize State's Number Thirty-five?

22 A: I do.

23 Q: And what do you recognize State's Number Thirty-five to
24 be?

25 A: It is a marked as a bullet from Mr. Canty's elbow removed

State v. Chestnut
MICHELLE MCSPADDEN - REDIRECT BY RICHARDSON

468

- 1 during surgery, I believe.
- 2 Q: Okay. And is it not -- and you took it into custody?
- 3 A: I received it from Officer Landi.
- 4 Q: Okay. So you got this from Officer Mark Landi with Myrtle
- 5 Beach Police Department?
- 6 A: Correct.
- 7 Q: When was that?
- 8 A: On the 17th, he received it about 18:50 hours, I believe,
- 9 and then I drove up and met him.
- 10 Q: The 17th or the 7th?
- 11 A: I'm sorry, the 7th.
- 12 Q: Use dashes instead of slashes, right?
- 13 A: That's right.
- 14 Q: So you received it on March 7th?
- 15 A: Correct.
- 16 Q: And, and in everyday people time that would be?
- 17 A: Just before 7:00 P.M.
- 18 Q: Just before 7:00. And once you took this into custody, do
- 19 you recall how it was packaged?
- 20 A: It was in a little plastic cup with a blue lid.
- 21 Q: Did it have any kind of labels or anything on it?
- 22 A: It was labeled with Mr. Canty's name.
- 23 Q: So it had Damien Canty's name on there and you got it from
- 24 Officer Landi and you got it on March 7th?
- 25 A: Correct.

State v. Chestnut

469

MICHELLE MCSPADDEN - REDIRECT BY RICHARDSON

1 Q: Upon your receipt of this item State's Number Thirty-five,
2 what, if anything, did you do with it?

3 A: I took it back to the Crime Scene Lab and then
4 photographed it and packaged it for SLED.

5 Q: And that's the box we see there?

6 A: That is the packaging, yes.

7 Q: And once you boxed it, that red tape?

8 A: Evidence tape, again, it's a fragile tape so that it shows
9 any tampering.

10 Q: And you initialed it and numbered it?

11 A: Correct.

12 Q: And upon doing all that, what, if anything, did you do
13 with this box?

14 A: It was placed into evidence.

15 Q: With all the associated paperwork?

16 A: Correct.

17 Q: And that was Myrtle Beach evidence, correct?

18 A: Correct.

19 Q: Okay.

20 MR. RICHARDSON: Your Honor, at this time, the State
21 would seek to introduce State's Number Thirty-five?

22 THE COURT: Any objection?

23 MS. PRATT: No objection, Your Honor.

24 THE COURT: All right. It's in evidence without
25 objection.

State v. Chestnut
MICHELLE MCSPADDEN - RECROSS BY PRATT

470

STATE'S EXHIBIT NUMBER THIRTY-FIVE

ADMITTED INTO EVIDENCE

Q: Officer McSpadden, thank you. I apologize for having to recall you for that limited purpose.

A: No problem.

THE COURT: All right. Any cross examination?

MS. PRATT: Yes, Your Honor, just a couple of questions.

RECROSS EXAMINATION OF MICHELLE MCSPADDEN BY MS. PRATT:

Q: Officer McSpadden, the bullet, obviously it came from a search warrant. Other than those, everything that went into evidence -- the different search warrants, everything that went into evidence came from the crime scene that is reflected on the diagram; is that right?

A: Pretty much.

Q: That you were involved with?

A: The only thing I remember doing was just some DNA standards from like Ms. Testa, so those were not part of a search warrant, but something that I did.

Q: All right. And I'm gonna show you what's in evidence as State's Forty-nine, Fifty, Fifty-one, Fifty-four, Fifty-five and Fifty-six. These are photographs of the crime scene that I believe you testified yesterday that you took?

A: Yes.

Q: And they are actually showing the crime scene tape and the perimeter; is that right?

State v. Chestnut
MICHELLE MCSPADDEN - RECROSS BY PRATT

471

- 1 A: Correct.
- 2 Q: Was any evidence searched for or at least -- strike that.
- 3 Was any evidence recovered outside of that perimeter other
- 4 than what we've already said the bullets and the search
- 5 warrant and so forth?
- 6 A: Correct. I can't tell how far the tape goes back. I know
- 7 that Number Twenty-six I believe on there, that the last
- 8 casing was kind of far over and I can't tell which side of the
- 9 tape it would have been on, but somewhere around there.
- 10 Q: But nothing beyond Number Twenty-six then; would that be a
- 11 fair statement?
- 12 A: That's fair, yes.
- 13 Q: All right. And the tape was already up when you got
- 14 there?
- 15 A: It was.
- 16 Q: So you had nothing to do with the establishing this
- 17 perimeter?
- 18 A: Correct.
- 19 Q: Or the search -- did you search behind the perimeter?
- 20 A: I did take a walk back there. I did not locate anything
- 21 further.
- 22 Q: All right. Were there things back there, I mean cigarette
- 23 butts and cigarette and bottles and things like that?
- 24 A: I don't recall any bottles. There may have been some
- 25 cigarette butts. There were -- there was a car back there,

State v. Chestnut
BY THE COURT

472

1 but I don't recall bottles or anything.

2 Q: And you didn't collect anything from back there?

3 A: I did not.

4 Q: Thank you. Nothing further.

5 THE COURT: Any redirect?

6 MR. RICHARDSON: No, sir, and I ask that she be excused
7 for good this time.

8 THE COURT: All right. Any objection?

9 MS. PRATT: None at all, Your Honor.

10 THE COURT: All right, ma'am, you are again released from
11 your subpoena and may go back to your regular duties.

12 A: Thank you.

13 THE COURT: Thank you.

14 MR. RICHARDSON: Thank you, Your Honor.

15 BY THE COURT:

16 THE COURT: All right. Ladies and gentlemen, the next
17 witness that is going to testify is the Coroner. He is not
18 available, not the Coroner, I'm sorry, medical examiner, not
19 the Coroner. I'm sorry, Medical Examiner; he'd have a fit if
20 I said that. The doctor is not available until approximately
21 2 o'clock. So you'll have an extended time in for your lunch
22 break. I have again some other matters in some other cases I
23 will attend to in the interim. So hopefully I'll be done with
24 those when y'all get back.

25 If y'all will be back and make sure you, Madam Bailiff,

State v. Chestnut

475

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 please, sir?

2 MR. RICHARDSON: Thank you, Your Honor. The State would
3 call Dr. Edward Leroy Proctor to the stand.

4 THE COURT: All right, sir. Will you please come around
5 and meet the Clerk right over here and be sworn, sir?

6 DR. EDWARD LEROY PROCTOR, JR., HAVING
7 BEEN SWORN TESTIFIES AS FOLLOWS:

8 CLERK: State your full name and spell your last?

9 THE COURT: Yes, ma'am.

10 DR. PROCTOR: I am Edward Leroy Proctor, Jr., and that
11 last name is spelled P-R-O-C-T-O-R.

12 THE COURT: Go ahead, Solicitor.

13 MR. RICHARDSON: Thank you. Thank you, Your Honor.

14 DIRECT EXAMINATION OF DR. EDWARD LEROY PROCTOR, JR. BY MR.

15 RICHARDSON:

16 Q: Dr. Proctor, could you please tell us where you're
17 employed and in what capacity?

18 A: Yes, sir. I am self-employed. I am a pathologist engaged
19 in the practice of Clinical Pathology, Anatomic Pathology and
20 Forensic Pathology with an office in the hospital at Grand
21 Strand Hospital in Myrtle Beach.

22 Q: And could you tell us a little bit about your educational
23 background?

24 A: Yes, sir. I got my Bachelor's Degree at Clemson; my M.D.
25 Degree at the Medical University of Charleston; did a combined

State v. Chestnut

476

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 Clinical and Anatomic Pathology residency at Walter Reed Army
2 Medical Center in, Washington, D.C.; and become Board
3 Certified in Clinical Pathology, Anatomic Pathology and
4 Forensics.

5 Q: And you're born and bred in Horry County, correct?

6 A: Horry County, yes, sir.

7 Q: How long have you been a pathologist?

8 A: I completed my training and was Board Certified in 1982;
9 about thirty years plus.

10 Q: Thirty years.

11 MS. PRATT: Your Honor, we would stipulate to Dr.
12 Proctor's excellent qualifications as an expert.

13 THE COURT: Do you wish to further question the witness
14 as to his qualifications, Solicitor?

15 MR. RICHARDSON: No, sir, as long as he's allowed to give
16 his opinion testimony.

17 THE COURT: All right. The witness is qualified to give
18 his opinion in the fields of Clinical, Anatomical and Forensic
19 Pathology. You may proceed.

20 MR. RICHARDSON: Thank you, Your Honor.

21 BY MR. RICHARDSON:

22 Q: Dr. Proctor, specifically with regard to forensic
23 pathology, could you tell us about that field a little bit?

24 A: Yes, sir. Forensic Pathology is the area of pathology
25 where we work closely with law enforcement to evaluate a case

State v. Chestnut

477

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 and determine a cause and manner of death. We take the
2 information we have available at the time of autopsy, perform
3 an external exam, an internal examination, toxicologic
4 evaluation, take all of that information and formulate a cause
5 and manner of death.

6 Q: And were you engaged in this type of work back in March of
7 2012?

8 A: Yes, sir.

9 Q: Now with regard to forensic pathology, could you tell us
10 what a forensic autopsy is?

11 A: Well, the forensic autopsy again is, I am requested by the
12 Coroner or one of the Assistant Coroners to do a medical/legal
13 examination. And usually that examination has some
14 information which is available. We usually have the crime
15 scene group that assists with photographs and that type stuff.
16 My job is to do a complete external examination, noting any
17 injuries, wounds or whatever; an internal examination,
18 microscopic examination of tissues, if necessary; toxicologic
19 evaluation of blood. Take all of the information from that
20 and determine why they died and what was the manner.

21 Q: And after you perform a forensic autopsy, do you issue a
22 report?

23 A: Yes, sir. I have a copy.

24 Q: And you have a copy of your report?

25 A: I do.

State v. Chestnut

478

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 Q: Now in the course of your work as a Forensic Pathologist,
2 did you have the opportunity to conduct an autopsy on Jamal
3 McFadden?

4 A: Yes, sir; I did.

5 Q: I know this is an incredibly simple question but it's one
6 that has to be asked: Jamal McFadden, he was deceased?

7 A: Yes, he was.

8 Q: Do you know his date of death?

9 A: I have on this report the date of death I was given by the
10 Coroner was approximately 9:25 A.M. on the 6th of March, 2012.

11 Q: Okay. So that'd be the morning time on March 6th?

12 A: Yes, sir.

13 Q: Now, the autopsy, where was that performed?

14 A: That was performed in the morgue facility at Grand Strand
15 Regional Medical Center, Myrtle Beach.

16 Q: And when was it?

17 A: I performed that case on the afternoon of March the 6th at
18 approximately 4:00 P.M.

19 Q: Okay. So he passed away that morning and you were able to
20 conduct the autopsy that afternoon?

21 A: That's correct.

22 Q: March 6th, 2012. Now without getting too graphic, could
23 you tell us how a forensic autopsy is performed?

24 A: Basically we did an external examination. I noted any
25 injuries or wounds or whatever and then we actually make an

State v. Chestnut

479

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 incision, open the body, inspect the organs to see what's
2 damaged, see where the injuries are and then took -- saved
3 pieces of organs that I deemed necessary to look at under the
4 microscope and took a sample of blood and evaluated that for
5 toxicology.

6 Q: And was that done in this case?

7 A: Yes, sir.

8 Q: It was. Did you obtain a toxicologic, toxicological
9 evaluation with regard to Mr. McFadden?

10 A: As a matter of fact, we actually have two toxicologic
11 reports. There was blood that was taken from Mr. McFadden
12 premortem, i.e. before he died, and we have the result from
13 that. And then we have a postmortem blood, I think that he
14 underwent surgical intervention and received multiple
15 transfusions. So we had blood from before he died and blood
16 after he died after he received the transfusions.

17 Q: Okay, so prior to treatment would have been his more
18 accurate toxicology report?

19 A: That is correct.

20 Q: Okay. And just tell us a little bit about that type of
21 toxicological report?

22 A: Our premortem report revealed a blood ethanol of 99
23 milligrams per deciliter, which is .09 gram percent, which is
24 you put it in terms of Breathalyzer it's .09 whereas .1, .08,
25 .1 is the legal base level of intoxication. The drugs screen

State v. Chestnut

480

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 was positive for THC, premortem, which is a marijuana
2 metabolite. Postmortem the ethanol was 27 milligrams per
3 deciliter. Did not detect THC but the postmortem screen which
4 was performed at a different institution than Grand Strand,
5 was positive for MDMA, which is Ecstasy.

6 Q: And during surgery, can you make any conclusions with
7 regards to those two different toxicology reports with two
8 different results?

9 A: Two, two big things, number one, he received multiple
10 blood components which would have definitely made the blood
11 alcohol go down. Number two, the MDMA, Ecstasy was not
12 detected in the premortem screen because that was performed at
13 Grand Strand and our screen is basically a basic drug screen
14 and does not include Ecstasy. The postmortem screen at the
15 reference lab does and that's why it was shown there.

16 Q: And that was actually in the blood, correct?

17 A: That's correct.

18 Q: So it would have been accurate?

19 A: Yeah, it basically just said it was positive; it didn't
20 really quantitate, but it was there.

21 Q: But we don't know how much?

22 A: No, sir.

23 Q: We do know approximately how much alcohol?

24 A: Yes. Yes. I would say the most accurate alcohol would be
25 the premortem, not postmortem.

State v. Chestnut

481

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 Q: That was .09?

2 A: .09; yes, sir.

3 Q: Legally he could be charged with DUI, correct?

4 A: That's correct.

5 Q: Now with regard to -- other than the toxicological
6 findings, can you take us through your examination of Jamal?

7 A: Yes, sir. My external examination basically did not
8 reveal -- well, the most important thing it revealed was a
9 gunshot wound and, and this wound actually penetrated the left
10 lower chest abdomen area about 52 centimeters below the top of
11 the head and left of the midline, basically left midline,
12 midaxillary area, right at the bottom of the rib cage.

13 Q: Bottom of the rib cage.

14 A: The bullet traveled at a left to right direction basically
15 through the left lobe and right lobe of the liver and exited
16 about 52 centimeters down from the top of the head, so
17 slightly lower than the entrance site. It caused a large
18 gaping wound to the liver, which when I examined him had been
19 packed and had stay sutures to keep it, try to keep it from
20 bleeding. The skin itself showed no evidence of residue. I
21 did not have the benefit of seeing the clothes so that I don't
22 -- I can't make a comment about stippling and what not, which
23 may or may not have been on the clothes. I don't know. No
24 projectile was recovered. The remainder of the examination
25 showed very little, very few other findings other than just

State v. Chestnut

482

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 mild congestive changes in organs, which would probably be
2 secondary to surgical intervention.

3 Q: And you described an entrance wound and an exit wound,
4 correct?

5 A: That's correct.

6 Q: And how can you tell the difference?

7 A: The entrance wound is, was more well-defined, round, the
8 edge was sort of, they were darkened. May have been some
9 residue there, but it's hard -- microscopically, you just
10 can't tell. The exit wound was more irregular and the bullet
11 coming in would have deformed as it traversed the body and
12 caused a different size exit wound on its way out.

13 Q: Would it be fair to say it kind of cuts and slices on the
14 way in and tears on the way out?

15 A: Well, basically the, the, the velocity of the bullet slows
16 down and as the bullet slows down, it creates a wider -- as
17 the bullet, it has a air pocket around it that expands and as
18 the bullet slows down that air pocket expands so the damage
19 gets greater as it slows down. The rate of decrease in
20 velocity causes most of the damage and that's, that's why you
21 see a difference size wound on the way out. Plus I didn't see
22 anything but the bullet does become deformed as it goes
23 through and may have slightly deformed on its way through and
24 causes a bigger hole.

25 Q: Now, when you talk about deforming, you're not talking

State v. Chestnut

483

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 about flattening completely out?

2 A: Not completely unless it hit a bone or something, which

3 ---

4 Q: Basically a round nose may turn flat?

5 A: Or a hollow point would flatten out, yes, sir.

6 Q: Dr. Proctor, you just talked about as a bullet goes

7 through the body it starts opening a bigger, I guess, channel?

8 A: That's correct. It has, has a air -- it expands. The
9 energy around the bullet expands as the bullet slows down.

10 Q: In this case, did you see that?

11 A: Well, we don't actually see the expansion, we see the
12 evidence of it, which is the damage to the organs and tissue.

13 Q: Okay. We're not talking about from say an inch to twelve
14 inches?

15 A: No. We're talking about a space probably -- the bullet is
16 what, three or four millimeters -- probably half a centimeter
17 across from the size of the bullet -- so about another two or
18 three millimeters on each side. So you've got a defect of
19 about a centimeter, a centimeter-and-a-half wide through the
20 liver, which is a large hole.

21 Q: A pretty good size?

22 A: Yes, sir.

23 Q: I know you described the damage. I'm gonna hand to you
24 two charts. First of all see, Your Honor, prior to getting
25 them marked, I'm just gonna see if he can use them.

State v. Chestnut

484

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 THE COURT: Yes, sir.

2 Q: I'll hand you these two and there's a number twenty and
3 number twenty-one on there; those are not State ID numbers,
4 but would either one of those be helpful in describing your
5 testimony to the jury?

6 A: Yes, sir. Number Twenty would probably be the easiest to
7 use.

8 Q: Okay. And I'm gonna hand you again, first of all I'll
9 have this marked.

10 STATE'S EXHIBIT NUMBER ONE-HUNDRED-TWENTY

11 MARKED FOR IDENTIFICATION

12 MR. RICHARDSON: State's One-Twenty, I apologize. Ms.
13 Pratt has seen the document, Your Honor.

14 MS. PRATT: Yes, I have, Your Honor.

15 THE COURT: State's which one?

16 MR. RICHARDSON: One-two-zero.

17 THE COURT: Okay. Very good.

18 BY MR. RICHARDSON:

19 Q: Dr. Proctor, looking at State's One-Twenty, you indicated
20 that it would help. If you could put an X on the entrance
21 wound and an O on the exit wound, please, sir, the approximate
22 location?

23 I'm gonna write out here beside the X entrance ---

24 A: Entrance.

25 Q: And O, I'm gonna write exit. Is that fair and accurate?

State v. Chestnut

485

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 A: That is fair and accurate.

2 MR. RICHARDSON: The State would move to introduce
3 State's One-Hundred-Twenty?

4 THE COURT: Any objection?

5 MR. RICHARDSON: Publish?

6 MS. PRATT: No objection, Your Honor.

7 THE COURT: All right. It's in evidence without
8 objection. You may publish.

9 STATE'S EXHIBIT NUMBER ONE-HUNDRED-TWENTY

10 ADMITTED INTO EVIDENCE

11 BY MR. RICHARDSON:

12 Q: Dr. Proctor, the exit wound, was it on the front or over
13 to the side or ---

14 A: Both were basically sort of in the, what we call the
15 midaxillary line about halfway between the front and the back.
16 The entrance was slightly higher than the exit, which by a
17 couple of centimeters.

18 Q: And all we can tell from that is exactly what you just
19 testified?

20 A: That's correct. I, I did not have the benefit of the
21 clothes to examine for the residue, which may or may not have
22 been examined. I can state that there had been evidence of a
23 surgical intervention. You know, there was -- you know, the
24 surgical incision had been previously sutured so I did not see
25 the clothes and I cannot tell you what was or was not cleaned

State v. Chestnut

486

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 up on the body prior to me doing my examination.

2 Q: You talked about the stippling earlier. Could you tell
3 what stippling is?

4 A: Stippling around a, a, a gunshot wound indicates -- is a
5 means that we use to indicate the distance of the weapon from
6 the victim. If we see stippling, which is actually burning of
7 the skin or over lying clothing and residue, which is actually
8 the soot and the powder that comes out the gun, if we see that
9 with a, with a handgun it usually indicates a distance from
10 the victim of approximately eighteen to twenty-four inches.
11 Above twenty-four inches may get a little residue but not much
12 stippling at all.

13 Q: Okay. So at two feet, you're not gonna get a whole lot?

14 A: Two feet it becomes very difficult for me to give you
15 anything with accuracy ---

16 Q: And after two feet?

17 A: After two feet, it's just, it's difficult.

18 Q: And is there anything that you can tell with regard to,
19 say, a small caliber versus a rifle were used?

20 A: Well, no not really. A shotgun you can look at patterns
21 of the spread of the shot, but with a high powered rifle it's
22 just gonna be a much higher velocity with a small entrance
23 and a tremendous gaping exit wound because of the high
24 velocity of rounds being used.

25 Q: It may've been a poorly asked question but with regard to

State v. Chestnut

487

DR. EDWARD LEROY PROCTOR - DIRECT BY RICHARDSON

1 the distance stippling will travel?

2 A: Stippling no, the distance stippling will travel, no, it
3 would be difficult to tell.

4 Q: So, you're stating that the, after the bullet entered on
5 his left side and exited on his right side it caused massive
6 internal trauma.

7 A: It caused significant damage to the liver, yes, sir.

8 Q: And as it ripped through the body ---

9 A: That's correct.

10 Q: --- what would the damage have been? What, what would
11 have been the effects of that damage?

12 A: Well the, the, the immediate effect was it caused
13 significant damage to the liver. And a laceration or damage
14 in the liver in and of itself creates a significant degree of
15 hemorrhage. It's very difficult -- and we're getting out of
16 my realm of expertise -- but it's very difficult for a surgeon
17 to repair a liver because it constantly bleeds and in this
18 case, there was evidence of a concerted effort to save the guy
19 because it was, the liver was packed with stuff to absorb and
20 make the blood clot and they had what we call stay sutures to
21 sort of pull together to hold it together and that was in the
22 area of the wound.

23 Q: And you indicated earlier that they gave him a blood ---

24 A: I don't know the amount, but yes, he was given, I was
25 told, significant amounts of blood.

State v. Chestnut
DR. EDWARD LEROY PROCTOR - CROSS BY PRATT

488

1 Q: And those are infusions, right?

2 A: Yes, sir, blood transfusions.

3 Q: Pints of blood?

4 A: That's correct.

5 Q: So with regard to your forensic pathology or your forensic
6 autopsy, could you tell us the manner of death of Jamal
7 McFadden?

8 A: Based upon what I was told and my findings at autopsy, my
9 manner of death is homicide, which in forensic terms means
10 death at the hands of another.

11 Q: And the cause of the death is that ---

12 A: The gunshot wound to the liver with extensive hepatic
13 damage or damage to the liver and he hemorrhaged.

14 Q: Caused him to bleed out?

15 A: That's correct.

16 Q: Thank you, Dr. Proctor. If you'll answer any questions
17 Mr. Pratt may have.

18 THE COURT: Cross examination?

19 MS. PRATT: Thank you, Your Honor, may it please the
20 Court?

21 CROSS EXAMINATION OF DR. EDWARD LEROY PROCTOR, JR., BY MS.

22 PRATT:

23 Q: Good afternoon, Dr. Proctor. Dr. Proctor, when you say
24 homicide being death at the hands of another, you don't make
25 any qualification or judgment as to justification of the

State v. Chestnut

489

DR. EDWARD LEROY PROCTOR - CROSS BY PRATT

1 homicide or reasons behind or anything else, do you?

2 A: No, ma'am. Homicide could be anything from with intent to
3 self-defense. It's just by definition, death at the hands of
4 another.

5 Q: And so self-defense or an intent was that what you said of
6 those ---

7 A: Correct.

8 Q: The whole range is still homicide?

9 A: In forensic, in forensic, we use homicide, death at the
10 hands of another; suicide, death by one's on hands; natural,
11 undetermined and accidental.

12 Q: Okay. And the blood test that you did that showed the tox
13 screen results for I think you said about a .09, some pot and
14 some ecstasy would have been drawn when he got to the hospital
15 within a couple of hours maybe?

16 A: Probably drawn in the emergency department and was blood
17 that was -- I was told was available and we would have pulled
18 that from the lab and tested it there or it may have been
19 tested by the surgical team getting ready to operate on the
20 guy to see what was there, if there was anything that would
21 interfere with them trying to operate.

22 Q: And so it would be accurate as to how Mr. McFadden was
23 prior to or close to the gunshot wound; isn't that correct?

24 A: That's correct. Yes, ma'am.

25 Q: All right. From the entrance wound, do you have any way

State v. Chestnut

490

DR. EDWARD LEROY PROCTOR - CROSS BY PRATT

1 of telling whether the bullet, because I know you don't have a
2 projectile?

3 A: No.

4 Q: But from the wounds that you examined, do you have any way
5 of telling whether the bullet was a 9 millimeter, a .38, a
6 .380 or a .40?

7 A: No, ma'am.

8 Q: No way at all?

9 A: No way. I can, I can tell you that it looked like a
10 larger caliber, but when I use that terminology, a .22 to a
11 .32 is a fairly small whole. Then you get up to .38, .357,
12 9's and .40's, .45's, those we'll call larger caliber. It
13 looked to be of a larger caliber, but to tell you which
14 caliber, I cannot.

15 Q: So it could be any one of the four that I mentioned or you
16 said a .357 or a .45?

17 A: Correct.

18 Q: You just don't know?

19 A: I don't know.

20 Q: But you're pretty sure it's not like a .22 or .32?

21 A: That's correct.

22 Q: Okay. All right. From your examination, do you have any
23 way of telling when the projectile would have exited the body;
24 could it have stopped at any point and then while the --
25 because we have a video of the victim walking a long way

State v. Chestnut

491

DR. EDWARD LEROY PROCTOR - CROSS BY PRATT

1 around an entire parking area and so on; is there -- do we
2 have any way of knowing when the projectile would have fallen
3 out of his body basically?

4 A: I would assume based on looking at the damage to the liver
5 that this, this bullet was a ,for lack of a better term, a
6 clean shot that came through and went all the way through all
7 at one swipe.

8 Q: And that's an assumption that you're fairly sure of, but
9 it's not a perfect assumption?

10 A: I can't, I can't say unequivocally, but I didn't see any
11 damage to anything else other than the liver. So I would
12 assume this bullet clean traversed the victim immediately.

13 Q: All right. And it didn't strike a rib and bounce around
14 like some of the bullets that ---

15 A: No. No.

16 Q: --- we've dealt with in the past?

17 A: No, this was a straight, clean shot. No other damage
18 anywhere but the liver.

19 Q: All right. If I would have the Court's permission for Dr.
20 Proctor to step down ---

21 THE COURT: Yes, ma'am.

22 BY MS. PRATT:

23 Q: --- for something that might assist us. Dr. Proctor, I
24 have brought two little Band-Aids?

25 A: Okay.

State v. Chestnut

492

DR. EDWARD LEROY PROCTOR - CROSS BY PRATT

1 Q: Instead of sticky notes. And I would like you to mark on
2 my body where the entrance and the exit would be and that's my
3 rib cage there?

4 A: Okay. All right. The entrance was on the left side.

5 Q: So this is my left hand.

6 A: Your left side would have been basically midaxillary line
7 which runs straight in the midline somewhere in this area here
8 close to the bottom of the rib cage and the exit would have
9 been on the right side and, let's see, rib cage, I may not
10 have it exact, but it's slightly in the lower mid-axillary
11 line on the right. So basically what happened, the bullet
12 basically came in this way, traversed the body and came out
13 this way.

14 Q: And it's on a slightly downward?

15 A: Very slight down about a -- I said 52 centimeters, so
16 about an inch lower than where it came in. So ---

17 Q: But straight through or slightly front to back?

18 A: Pretty much straight through. The liver, it came right
19 through the middle of the liver.

20 Q: Okay. So I want to, you to stand and pretend you're the
21 shooter?

22 A: Okay.

23 Q: Okay. Just so that I can get an idea. If Mr. McFadden
24 has his back to you and turns, which way would he have to turn
25 in order to have an entrance wound there?

State v. Chestnut

493

DR. EDWARD LEROY PROCTOR - CROSS BY PRATT

1 A: Well, if his back's to me and he's sort of turning towards
2 me, if you turn towards me with your left side and I shoot
3 just like this, you notice my hands slightly down. I don't
4 know how tall he was, but in general, the gun pointing left to
5 right, boom.

6 Q: Okay. So, stay still, then if Mr. McFadden is like this;
7 he has to turn this way?

8 A: He's turning towards me. Depending on, depending on where
9 the shooter is; that I don't know. All I can tell you is that
10 the angle, regardless of where the shooter was or how Mr.
11 McFadden turned that angle, it basically came this way.

12 Q: Okay. With back and then swinging to the front?

13 A: If, if, if the, if the assailant was behind then yes.

14 Q: Okay. All right.

15 A: Or the assailant was left-handed. I don't know.

16 Q: Okay. I'll think how that plays into it. And what did
17 you say about stippling?

18 A: I did not see any.

19 Q: You did not see any but you did not have the clothes?

20 A: I did not have the clothes.

21 Q: So you can't tell whether it was like this or like this
22 when the bullet went?

23 A: No. On the basis of my examination, without the clothing,
24 I cannot.

25 Q: Okay. All right. Good. You can go back to the witness

State v. Chestnut

494

DR. EDWARD LEROY PROCTOR - REDIRECT BY RICHARDSON

1 stand. That's all the questions I have. Thank you, Doctor.

2 THE COURT: All right. Redirect?

3 MR. RICHARDSON: Very briefly, Your Honor.

4 REDIRECT EXAMINATION OF DR. EDWARD LEROY PROCTOR, JR., BY MR.

5 RICHARDSON:

6 Q: Dr. Proctor, I'm gonna show you a video and ask if it's
7 consistent with your findings?

8 MS. PRATT: Your Honor, I do not believe that that's in
9 response to my cross without a proper examination.

10 MR. RICHARDSON: She asked about the angles, Your Honor.

11 THE COURT: Y'all come up and talk to me just a second.

12 MR. RICHARDSON: Yes, sir, Your Honor.

13 (REPORTER'S NOTE: A bench conference was held off the record
14 in the presence of the jury but out of hearing of the jury.)

15 THE COURT: I'm gonna allow that over the objection of
16 the Defense.

17 MS. PRATT: Thank you, Your Honor.

18 BY MR. RICHARDSON:

19 Q: And as I'm doing this, Dr. Proctor, you mentioned a -- you
20 mentioned a .9 millimeter is a little bit larger round,
21 correct?

22 A: Correct.

23 Q: And a .380, the actual projectile a .380 is the same
24 diameter as a .9 millimeter, correct?

25 A: To my recollection they're very close.

State v. Chestnut

495

DR. EDWARD LEROY PROCTOR - REDIRECT BY RICHARDSON

1 Q: So that would be a large round as well?

2 A: .380 is.

3 Q: Dr. Proctor, I'm gonna show you a clip from what has been
4 marked previously as State's Exhibit Number One.

5 MR. RICHARDSON: And, Your Honor, may I have Dr. Proctor
6 come down off the stand ---

7 THE COURT: Yes, sir.

8 MR. RICHARDSON: --- so he can see a little bit better.

9 THE COURT: Just either want to go over there next to the
10 microphone on the Solicitor's desk or right here, either one.

11 A: That's fine.

12 MR. RICHARDSON: The video I'll be playing CH02-2012-03-
13 06-00-49-28.

14 THE COURT: All right, sir.

15 BY MR. RICHARDSON:

16 Q: Starting about 1:14 -- Dr. Proctor, I want you to pay
17 attention to right there in this area?

18 A: Okay.

19 Q: Can you see all right?

20 A: Yes, sir.

21 Q: Dr. Proctor, right there. Did you just see the video?

22 A: I did.

23 Q: Do you need to see any more of the video, Dr. Proctor?

24 A: Back it up a little bit?

25 Q: Back it up just a little bit. Tell me if you want to

State v. Chestnut

496

DR. EDWARD LEROY PROCTOR - REDIRECT BY RICHARDSON

1 pause. The motion you just saw, this fellow with dreads, was
2 that consistent?

3 A: It was on the left side. You know, he was down, aiming
4 down, but it certainly could be consistent, yes, sir.

5 Q: Okay. And you didn't know anything about the distance the
6 gun was?

7 A: No, not there; I could not.

8 THE COURT: You done with that, Solicitor?

9 MR. RICHARDSON: Yes, sir, I am.

10 THE COURT: All right.

11 BY MR. RICHARDSON:

12 Q: And that could certainly be consistent with your findings?

13 A: That's correct.

14 Q: Thank you, Dr. Proctor, I have no further questions.

15 THE COURT: Anything on those questions, ma'am?

16 MS. PRATT: No, Your Honor.

17 THE COURT: All right. Do you wish the witness to be
18 excused?

19 MR. RICHARDSON: I do, Your Honor.

20 THE COURT: Any objection?

21 MS. PRATT: None, Your Honor.

22 THE COURT: All right, Doctor, you're released from your
23 subpoena. You may go back to your regular duties, sir.

24 A: Thank you, sir.

25 THE COURT: All right. Your next witness, Solicitor?

State v. Chestnut

497

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 MR. RICHARDSON: The State would call Detective Will
2 Kitelinger to the stand.

3 THE COURT: All right. You just meet the Clerk right
4 over there at the corner, sir.

5 CLERK: State your name and spell your last name.

6 MR. KITELINGER: William John Kitelinger. It's K-I-T-E-
7 L-I-N-G-E-R.

8 THE COURT: All right, Solicitor.

9 MR. RICHARDSON: Thank you, Your Honor.

10 DIRECT EXAMINATION OF WILLIAM JOHN KITELINGER BY MR.

11 RICHARDSON:

12 Q: Detective Kitelinger, could you tell us a little bit about
13 yourself, where you're employed and in what capacity?

14 A: I'm currently employed by the Myrtle Beach Police
15 Department. I have the rank of Master Corporal and am
16 assigned to the Violent Crimes Division of the Myrtle Beach
17 Police Department.

18 Q: And as a Master Corporal in Violent Crimes Division, you
19 investigate violent crimes, I'm assuming?

20 A: Yes, sir.

21 Q: Could you tell us what types or what type of duties you
22 regularly perform?

23 A: Investigating crimes ranging from armed robberies,
24 robberies, homicides, sexual assaults, and conduct the various
25 types of investigations that go along with those types of

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

498

1 crimes.

2 Q: And in the course of -- now, now as an investigator with
3 the Violent Crimes Unit, do you work solo or you have a team
4 or what?

5 A: Often times in cases we work with another detective, but
6 we're not assigned anyone specifically as a partner. It's --
7 we work rotating shifts and oftentimes it's who's available.

8 Q: So you don't work got out by yourself, everybody throws in
9 together?

10 A: In most case, we would never -- we don't go out by
11 ourselves.

12 Q: In the course of your -- as an investigator or detective
13 of the City of Myrtle Beach Police Department, did you have
14 the opportunity to become involved in the, in the
15 investigation of murder and attempted murder and assault that
16 occurred at 3rd Avenue Sports Bar?

17 A: I did.

18 Q: And that bar is located in the City of Myrtle Beach?

19 A: It is.

20 Q: Could you tell us a little bit about how you came to be
21 involved in this investigation?

22 A: Sure. I actually arrived at work at 6:30 in the morning.
23 I had met with the Captain over the investigative division at
24 that time and had been notified that a shooting had occurred
25 earlier in that morning at the incident location, 3rd Avenue

State v. Chestnut

499

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 South Sports Bar. I was also notified at that point that I
2 would be taking over the investigation from the detectives
3 that had responded to the original scene. I then met with
4 those detectives. They were still working and they told me a
5 little bit about what they had found. A lot of it was -- a
6 lot of the conversation was revolved around the video that was
7 taken from the bar. We talked about the video a little bit
8 and we actually were able to take that video, put it on a
9 larger screen and began to review it and -- to try to
10 determine the subjects involved and actually what happened.

11 Q: So, so you came in at 6:30 and the case got assigned or
12 reassigned to you?

13 A: Correct.

14 Q: Prior, prior to your involvement, do you know who the lead
15 in the case was?

16 A: Detective Amick and Detective Quinn both responded that
17 evening to the incident location and the crime scene.

18 Q: And they deal more with property crimes?

19 A: Right. The Myrtle Beach Police Department Investigations
20 Division is broken down into two parts actually. There are
21 property crimes detectives and their duties would be burglary
22 of autos and people breaking into houses and businesses. And
23 the other section is my section the Violent Crimes Division
24 and I would investigate the crimes that I had mentioned a
25 little bit earlier. We all though have duty at night, not --

State v. Chestnut

500

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 the violent crimes people are not the only ones that have the
2 duty at night. And so the property crimes detectives are --
3 often respond to violent crimes that happened during the
4 night. And often times, they -- I mean they're fully trained
5 detectives. They're, they're not any different than I am,
6 they just specialize in a different type of crime and they are
7 fully capable of handling violent crimes that they respond to
8 at night. And in this particular case, due to the fact it was
9 a shooting and I was the first violent crimes detective to
10 respond, I was then assigned basically the violent crimes case
11 from the property crimes detectives, who had initially
12 responded.

13 Q: And so you get on at 6:30 that morning and I think we just
14 heard Dr. Proctor testify that, that the victim passed away at
15 9 o'clock?

16 A: Shortly thereafter, yes.

17 Q: So at this point, it's a shooting case of Jamal McFadden?

18 A: Exactly, it was just a shooting case at this particular
19 point.

20 Q: And not to denigrate the just a shooting case.

21 A: No. No, I mean -- and I -- I mean, realistically, the
22 shooting is obviously a very serious crime, but it was -- if
23 someone were to pass away from that shooting, it becomes an
24 entirely different crime with an entirely different set of
25 parameters.

State v. Chestnut

501

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 Q: Now as this case developed, as it became an actual murder
2 case instead of an attempted murder case with regard to Jamal,
3 you said y'all sat there and y'all watched a video?

4 A: Yes.

5 Q: Other than Myrtle Beach Police Department, who else was
6 there that might be citizens?

7 A: I was the -- we actually brought in Mr. Wayne Feaster. He
8 was the owner of the club, who had a great deal of knowledge
9 of the people that frequented his club and he was able to give
10 us his opinion as to who those people were.

11 Q: Then we were able to take those names and obtain pictures
12 of those people. And then ourselves, we compare those
13 pictures of the people to the people that we saw on the video?

14 A: Yes, sir.

15 Q: And now without telling us exactly what Mr. Feaster said,
16 after he watched the video and y'all talked were there any
17 particular people y'all were looking for?

18 A: After talking to Mr. Feaster, and reviewing the video, we
19 determined that there were two primary subjects in this case.
20 The two primary subjects being the Defendant, Mr. Chestnut;
21 and the other subject, Mr. Myers, Corey Myers. We also saw
22 several additional subjects that were involved in the assault
23 on Mr. Canty inside the club and we were determined to
24 identify those as well. But at that particular moment, we
25 believed that one of subjects was in fact a, a person named

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

502

1 Michael Spivey.

2 Q: Now after you got the name Armando Chestnut, when did you
3 start looking for him?

4 A: We consulted with the on-call Solicitor, who responded to
5 the scene, which was yourself, the Captain of detectives, the
6 Lieutenant over detectives and myself, and we determined that
7 based on the information that we had received from the
8 witnesses and what we saw in the video, we had enough probable
9 cause to search or issue warrants for Mr. Chestnut and Mr.
10 Myers.

11 Q: And we'll come back to Mr. Chestnut. Prior to, prior to
12 speaking with Mr. Chestnut or finding Mr. Chestnut, you
13 mentioned Michael Spivey. Did you have the opportunity to
14 speak to Mikael Spivey?

15 A: Right. One of the -- we also determined at that
16 particular point that we had enough probable cause to charge
17 Mr. Spivey with assault by a mob. We witnessed him on the
18 video punching Mr. Canty causing him to fall to the ground.
19 We sent officers out to try to locate him because not only was
20 he involved in the crime, but we thought he was a potential
21 suspect for that. Mr. Spivey got wind of the fact that we
22 were looking for him, contacted us and volunteered to come in
23 and give his statement.

24 Q: And without telling us what he said, after speaking with
25 Mr. Spivey, what steps then did you take?

State v. Chestnut

503

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 A: We arrested Mr. Spivey based on his statement for assault
2 and battery by a mob second degree.

3 Q: On the video, he's the one that knocks Mr. Canty down in
4 the club?

5 A: Just for clarification, it's the initial punch that causes
6 -- well let me rephrase that -- perhaps not the initial punch,
7 but it is the punch that I believe that caused Mr. Canty to
8 fall to the ground.

9 Q: Now, we've heard some discussion of Thoro?

10 A: Yes.

11 Q: Did you ever speak with anybody that goes by Thoro?

12 A: We determined that a possible subject could be Thoro. We
13 got a name of Hubert Durant. I actively looked for Thoro. I
14 contacted our violent crimes, I mean our Street Crimes
15 Division, our Narcotics Division people that may have known
16 where he was. We went to previous locations. We were never
17 able to locate Mr. Thoro and sit down and conduct and
18 interview him, of him in regards to this. One of the pieces
19 of information I did receive was that Mr. Thoro was not making
20 himself available ---

21 MS. PRATT: Objection, calls for hearsay in the answer,
22 Your Honor.

23 THE COURT: Sustained.

24 MS. PRATT: Thank you.

25 BY MR. RICHARDSON:

State v. Chestnut

504

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

- 1 Q: We'll move on.
- 2 A: Okay.
- 3 Q: Did you ever have the complaining victim come in with
4 regard to the assault case?
- 5 A: No.
- 6 Q: Now, how about Gucci?
- 7 A: No.
- 8 Q: How about Corey Myers?
- 9 A: We located Corey Myers.
- 10 Q: Did you have the opportunity to speak with Mr. Myers?
- 11 A: Yes.
- 12 Q: When did that happen?
- 13 A: Later in the day of the incident, I was contacted by Corey
14 Myers' attorney. Corey Myers' attorney stated that he had
15 gotten word as well that we were looking for him and wanted to
16 talk to him and that Mr. Myers was willing to make a statement
17 and ask if I had warrants after -- for him. I advised him
18 that I, in fact, did have active warrants for him and he
19 advised me that he along with his client, Mr. Myers, would
20 turn himself in at the main police department in Myrtle Beach.
- 21 Q: That occurred on March 6th?
- 22 A: Yes.
- 23 Q: Now, when you were able to located Mr. Myers -- he turned
24 himself in, didn't he?
- 25 A: Yes, he did.

State v. Chestnut

505

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 Q: Went down to the police department and turned himself in.

2 Were you able to interview him that day?

3 A: No, I read Mr. Myers his Miranda Rights, but he was

4 advised by his attorney that due to the fact of medication he

5 had been prescribed for an injury he had received, not to give

6 me a statement at that present time. His attorney assured me

7 that he would give a statement in the future.

8 Q: Did he have any bandages or anything on?

9 A: Yes, sir.

10 Q: Which hand was bandaged?

11 A: Left.

12 Q: His left hand?

13 A: Yes.

14 Q: After he turned himself in at the police department, what

15 happened to Corey?

16 A: He was arrested and transferred to the J. Reuben Long

17 Detention Center.

18 Q: Now after he was arrested and was taken to J. Reuben Long,

19 did there come a time when you were able to interview him?

20 A: Yes, there was. I was later contacted by his attorney and

21 we make arrangements after contacting our Solicitor that I

22 would be able to meet Mr. Myers at the jail and I did in fact

23 conduct an interview with him at the J. Reuben Long Detention

24 Center with his attorney present.

25 Q: I'm gonna show you what's been previously marked and

State v. Chestnut

506

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 admitted as Defendant's Number Five. Do you recognize

2 Defendant's Number Five?

3 A: Yes, I do.

4 Q: And once again, what is Defendant's Number Five?

5 A: It is a Consent to Search form that I asked Corey Myers to
6 sign in order for me to obtain certain items from his
7 residence that I believed were relevant to the case.

8 Q: And when did this get signed?

9 A: It appears it was signed on the 8th.

10 Q: Was that the day before you interviewed him?

11 A: Yes.

12 Q: Was he on any pain medication at this point?

13 A: No, I think that it was a temporary pain medication and he
14 had been off -- he had -- was in contact with his attorney and
15 his attorney advised him it was okay for him to sign the form.

16 Q: But his attorney was not present when he signed the form?

17 A: No, he was not.

18 Q: And -- so that, does that account for the delay between
19 when you got this signed and the interview?

20 MS. PRATT: Objection, leading.

21 THE COURT: Don't suggest the answer in the question.
22 Just rephrase it.

23 BY MR. RICHARDSON:

24 Q: Could you account for the delay between March 8th, 2012
25 when you got the consent signed and the interview being March

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

507

1 9th?

2 A: Right. The interview was obviously why the attorney
3 wanted to be present when we conducted the interview. We felt
4 it was okay for him to sign the consent form, but he was not
5 going to be available to conduct the interview at that time.
6 And so we conducted the interview later.

7 Q: And the limitations on that consent form, in your
8 experience, is that unusual to be limited?

9 A: No, actually on a consent form we try to put on there kind
10 of specifically what we're looking for. I can't just write in
11 there everything and I was looking for items that I thought
12 were specific to the crime, specifically the firearm.

13 Obviously, that's a great interest to us is the firearm and
14 some of his clothing items that we could, to get for
15 processing and testing. Those kind of items we felt were --
16 and the ammunition, were very specific to the investigation.

17 Q: Thank you. Now when you did speak to Corey Myers, that
18 occurred out at J. Reuben?

19 A: Yes, it did.

20 Q: Who all was present?

21 A: Myself, Mr. Myers and his attorney, M.J. Schwartz.

22 Q: And in the course of -- let me back up. On that date and
23 prior to your search of Corey's residence, that was on [REDACTED]

24 [REDACTED]?

25 A: Yes.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

508

1 Q: He was taken into custody on the 6th and he was still in
2 jail on the 9th?

3 A: Correct.

4 Q: To your knowledge, did he leave at any point in between?

5 A: No.

6 Q: So he would have not of had access -- he would not have
7 had access to his house?

8 MS. PRATT: Objection, calls for speculation on the part
9 of the witness as to the timeframes that the Solicitor is
10 talking about.

11 THE COURT: I'm gonna allow the question.

12 A: He was incarcerated that entire time. To my knowledge, he
13 was incarcerated that entire time.

14 BY MR. RICHARDSON:

15 Q: To your knowledge, does J. Reuben allow nightly furloughs
16 to their house?

17 A: Not to my knowledge.

18 MR. RICHARDSON: Court's indulgence?

19 THE COURT: Yes, sir.

20 BY MR. RICHARDSON:

21 Q: And, and, pertaining to the statement from Mr. Myers, did
22 you promise him anything?

23 A: No.

24 Q: Threaten him in any way?

25 A: No.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

509

1 Q: Just waited on his attorney; made sure his attorney was
2 there?

3 A: Sure, yeah.

4 Q: Let's go back to -- let's go back to Armando Chestnut.

5 You were looking for him on March 6th, I believe you
6 testified?

7 A: Yes.

8 Q: And did you utilize any other agencies in an attempt to
9 locate him?

10 A: Right. We utilized the 15th Circuit Drug Enforcement Unit
11 and our Street Crimes Unit were given information that we were
12 looking for him and that we would have warrants for him and
13 they began to actively search for him.

14 Q: And at some point, did you have the opportunity to
15 actually meet with Mr. Chestnut?

16 A: Yes, I did. I was notified while I was out of the office
17 actually working on some other things that the Drug
18 Enforcement Unit had located a residence where he was and
19 shortly after locating that residence, a traffic stop had been
20 conducted and they had found Mr. Chestnut along with his
21 girlfriend, Annaliese, Annaliese Testa and that they were
22 actually in route to the Myrtle Beach Annex to be interviewed.

23 Q: So they arrived at the annex?

24 A: They arrived at the annex.

25 Q: And some of us may not be familiar; where is the Myrtle

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

510

1 Beach Police Annex?

2 A: Myrtle Beach Police Department isn't all in one building.
3 It's actually in several different buildings that are used for
4 different purposes. The building that houses the
5 Investigation Unit is called the Myrtle Beach Annex. It's a,
6 it's a newer building, I guess you'd say, and it's on the old
7 Air Force base actually behind Market Commons.

8 Q: Now when, when they were brought in custody -- were you
9 actually in the annex when they were brought into custody?

10 A: I don't think I had arrived. I was on my way, but I think
11 they actually got there shortly before I did, if I remember
12 correctly.

13 Q: Now they both came in; did you speak with both Mr.
14 Chestnut and Ms. Testa?

15 A: Yes, I did.

16 Q: Who first?

17 A: I talked to Ms. Testa first.

18 Q: And why was that?

19 A: Quite frankly, I thought that if I was going to gather
20 some information about the case that it would be a better
21 strategical idea to talk to her first to see what information
22 I could gather from her before I conducted my interview with
23 Mr. Chestnut.

24 Q: So when you interviewed Ms. Testa, who, who was with you
25 in that interview?

State v. Chestnut

511

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 A: I interviewed Ms. Testa, if I remember correctly, it was
2 Detective Clothier and Detective Truex.

3 Q: Detective Truex and how many interviews did y'all conduct
4 during the course of this investigation, a lot?

5 A: Quite a few.

6 Q: Without looking at your notes, would it be difficult to,
7 to remember some of the interviews and who was there?

8 A: Yes, I -- the person in this particular case that I
9 conducted most of my interviews with was Detective Truex, but
10 that was not always the case.

11 Q: While you were speaking -- you and Detective Truex was
12 speaking to Ms. Testa, where was the Defendant?

13 A: In the interview, he was in a separate interview room.

14 Q: And was he in there alone?

15 A: For a period of time; actually he might have actually been
16 -- in the annex there are two interview rooms and a conference
17 room. We used all three of those rooms to hold people and
18 conduct the interviews. And -- it seems to me I thought, I
19 think that during that time, he was actually in the conference
20 room not in one of the interview rooms. We talked to Ms.
21 Testa inside one of the conference rooms or one of the
22 interview rooms, I'm sorry.

23 Q: And who, if anybody was, for lack of a better term,
24 babysitting Mr. Chestnut?

25 A: I think that at that time it was Detective Clothier and

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

512

1 Officer Tedone.

2 Q: Now while he's sitting in the conference room, would this
3 have been recorded?

4 A: No.

5 Q: Why?

6 A: The conference room is not there is no recording equipment
7 within our conference room and Detective Clothier's duties
8 would not have been to interview Mr. Chestnut, it was simply
9 make sure that he is in our custody and isn't trying to harm
10 himself or, or do anything like that. It would not have been
11 Detective Clothier's duty to question him. He had not been
12 Mirandized and it would not have been in any of his parameters
13 or duties to question him at that point.

14 Q: And have you done this babysitting duty before?

15 A: Yes.

16 Q: And what were your instructions with regard to while you
17 babysat?

18 A: Not to talk anything about the case. You know, there
19 might be inadvertent small talk, weather, you know, those kind
20 of things, but as far as the case goes -- I mean you, you're
21 pretty specific on what you -- what the case is about and you
22 know, talk -- understand that -- it's very understood that
23 you're not gonna talk about that case until the investigators
24 handling the case has talked with that person.

25 Q: Now how long did your interview with Ms. Testa take?

State v. Chestnut

513

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 A: If I remember correctly, it was approximately an hour.

2 Q: About an hour or so. And after speaking, after speaking
3 with Annaliese, what did you do?

4 A: I arrested her.

5 Q: You arrested her? After, after you arrested Annaliese,
6 where did you go? Did you go home?

7 A: No, she was -- I had notified her that she was gonna be
8 arrested for her charges. Then she was taken -- I don't know
9 exactly where she was taken to, because I went into the
10 conference room then with Mr. Chestnut.

11 Q: Did y'all ever leave the conference room with Mr.
12 Chestnut? Did y'all go another room?

13 A: We went into the interview room at that point with Mr.
14 Chestnut.

15 Q: Okay. So, Mr. Chestnut was taken into an interview room?

16 A: Correct.

17 Q: Okay. And that -- I think you described a little bit for
18 us the interview room. About how big is it?

19 A: It's not very large. It's probably 6x6. It's a very
20 small, often as you see on T.V. It's a small room. It has
21 one small desk and several chairs in it. But the interview
22 rooms are -- have recording equipment in it so that we can
23 record both visually and audiolly everything -- audio -- audio
24 and visual recording of everything that goes on within that
25 room.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

514

1 Q: When you first met with Mr. Chestnut, take us through that
2 just a little bit; what occurred?

3 A: I met with Mr. Chestnut. I advised him of his Miranda
4 Rights. He acknowledged that he understood his Miranda Rights
5 and then acknowledged he wanted to make a statement. I began
6 asking him questions about the shooting that occurred. He
7 initially denied having much involvement in the shooting. I
8 confronted him with some of the evidence that we found at the
9 scene. At that point, Mr. Chestnut admitted to in fact
10 shooting a person at the scene. We talked more -- I talked to
11 him trying to determine who he felt he had shot. As the
12 conversation progressed, Mr. Chestnut eluded to the fact that,
13 and actually said that he shot the person who had had dreads.
14 He knew that another person -- I believe he knew another
15 person had been shot in the arm and that was Mr. Canty, who
16 was more heavy set. In our interview, we kind of talked about
17 the guy with the dreads versus the heavier set guy. And at
18 one point, you know, Mr. Canty states that, you know, that if
19 the guy that got shot was the guy with the dreads, that's on
20 me. We talked about the firearm, what happened to the weapon
21 that he used. He admitted to possessing the firearm and
22 throwing it out the window when he was stopped earlier that
23 day.

24 MS. PRATT: Your Honor, if I could ask Detective
25 Kitelinger to speak up; I can barely hear him.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

515

1 A: I'm sorry.

2 THE COURT: All right.

3 MS. PRATT: Thank you.

4 THE COURT: Speak directly into the microphone and speak
5 up.

6 BY MR. RICHARDSON:

7 Q: I'm sorry, Detective Kitelinger, you were -- as you first
8 sat down with, with Armando Chestnut, you took him into the
9 interview room?

10 A: Yes.

11 Q: And it's about as big from the front of Ms. Kay's table to
12 the Judge's bench possibly?

13 A: It's approximately that size, yes.

14 Q: Did you take any steps to make him comfortable in that
15 room?

16 A: Probably offered him water and made sure he had something
17 to drink. I took the handcuffs from behind him and actually
18 moved the handcuffs to the front where they were hooked in the
19 front of him.

20 Q: Okay. So he had handcuffs on?

21 A: Yes.

22 Q: But no doubt, he's in custody?

23 A: Yeah, he's under arrest.

24 Q: He's ridden there in a police car and he's in custody.

25 How did the -- prior to actually conducting that interview,

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

516

1 did you or anyone to your knowledge, or anyone in your
2 presence, take any notes to gather some background information
3 in regards to his education and his ability to speak English?

4 A: Prior to me giving him his Miranda Rights, I asked several
5 questions. Some of the questions I ask are how far did you
6 make it in school; is English your native language; can you
7 read or write and are you under the effects of any drugs or
8 alcohol at that time so that I can determine how well the
9 person I'm about to question can understand what I'm about to
10 ask them.

11 Q: Is it pretty standard practice to ask those questions?

12 A: It is for me, yes.

13 Q: You want to make sure that they understand?

14 A: Yes.

15 Q: From the responses you received to these questions, what
16 was your understanding and your belief with regards to the
17 Defendant's ability to understand your questions?

18 A: I thought he was able to understand the questions I was
19 asking him and would be to get me viable responses.

20 Q: What, what lead you to that, to that conclusion?

21 A: Well, based on his demeanor, his -- he never asked me to
22 rephrase my questions; he never asked me to ask a question
23 again; he answered my questions quickly after I asked them; he
24 paid attention to me; he didn't drift off; he didn't appear to
25 fall asleep; he didn't mumble or, or what -- would give me any

State v. Chestnut

517

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 indication that he wasn't understanding anything that we were
2 talking about together.

3 Q: So his answers and responses seemed appropriate?

4 A: Yes.

5 Q: Did you ask anything about his consumption of alcohol or
6 any other substance that might impair his ability to think?

7 A: As I said earlier, I asked him if he was under the
8 influence of any drugs or alcohol. He did in fact respond
9 that he had smoked marijuana.

10 Q: And that was his response that he smoked some marijuana.
11 Was there any mention of how much?

12 A: No.

13 Q: When?

14 A: No.

15 Q: From your observations and your experience, have you
16 encountered people that are high or under the influence?

17 A: Multiple times, yes.

18 Q: From your observations and experience, what did you
19 believe with regard to the Defendant's level of intoxication?

20 A: You know, I had only talked, I had only talked to him for
21 a short period of time at that time, but based on everything I
22 saw, I felt that Mr. Chestnut was in control of his facilities
23 and was gonna be able to answer my questions. If I had felt,
24 as my investigation would have went on -- I mean, it wasn't --
25 it just doesn't end there. If I ask that question and I begin

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

518

1 to interview things -- and things begin to deteriorate or pick
2 up signs that he may not understand what I'm asking him or he
3 may be more under the influence than what I suspected
4 initially, there -- I would have, you know, stopped the
5 interview or done something perhaps differently. But as the
6 interview progressed, there was no signs at all from beginning
7 to end that he wasn't able to understand what I was asking
8 him. He gave me concise -- you know, what I felt were concise
9 answers. He was able to move around. He stood up on several
10 occasions. He did not stumble; he did not weave; he did not
11 fall down. He had the water bottle that we had offered him
12 and he was able to manipulate the water bottle, take the cap
13 off, take a drink, put it back on, set it down, all without a
14 kind of fumbling or doing anything that would give me the
15 impression that he was not aware of what was being asked of
16 him or the answers that he was given.

17 Q: So if I understand, he seems to understand your questions,
18 responds appropriately, he doesn't appear to be high or
19 intoxicated. After determining all this, that he seems to be
20 of sound mind and understand everything, did you or anyone to
21 your knowledge or in your presence, take any measures to make
22 sure the Defendant knew of his rights, his constitutional
23 rights?

24 A: Yes. After I asked the questions and we talked, you know,
25 he told me about the marijuana, I read him a copy of his

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

519

1 Miranda Rights.

2 Q: Allow me show you what's been marked for identification,
3 State's One-Twenty-one. First and foremost, could you take a
4 look at that, Detective Kitelinger, and tell me if you
5 recognize that form?

6 A: This is the Miranda form that I used in advising Mr.
7 Chestnut of his Miranda Rights.

8 Q: And how do you recognize it?

9 A: It has my signature.

10 Q: And that's the Miranda Rights you read from and you read
11 to Mr. Chestnut on March 6th, 2012?

12 A: Correct.

13 MR. RICHARDSON: For the record, Your Honor, the State
14 would seek to introduce State's One Hundred Twenty-one into
15 evidence and publish it?

16 THE COURT: Any objection?

17 MS. PRATT: No objection, Your Honor.

18 THE COURT: It's in evidence without objection.

19 STATE'S EXHIBIT NUMBER ONE-HUNDRED-TWENTY-ONE

20 ADMITTED INTO EVIDENCE

21 BY MR. RICHARDSON:

22 Q: Detective Kitelinger, up in the top left corner, I see
23 some, is it handwriting at the top?

24 A: It is my handwriting.

25 Q: And what is the purpose of that handwriting?

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

520

1 A: As I mentioned earlier, I asked four specific questions;
2 education, is English their native language; can they read and
3 write and are they under the influence of any drugs or
4 alcohol. In order to assist myself and to remind me later if
5 the, if I need to refer back to this document, I make notes in
6 the top left-hand corner of the Miranda form that I, in fact,
7 did ask those questions.

8 Q: Now can you demonstrate for us how you informed the
9 Defendant of his rights? Did you just show him? Demonstrate
10 it.

11 A: I, I sit down with someone and I advise them that I'm
12 gonna read you your Miranda Rights. Oftentimes I tell them,
13 you've probably seen these before if you watch T.V. and things
14 of that nature. I ask them -- when I read each one
15 specifically I need them to answer yes or no that they
16 understand it. Once they answer yes or no, I'm gonna put a
17 check mark behind each one so I know that I, in fact, I did
18 cover that and didn't skip one inadvertently. I will read
19 each one individually. For example, I will say you have the
20 right to remain silent and refuse to answer any questions; do
21 you understand that? Once they affirm that they understand
22 that, I will put a check mark so that I know I've asked that
23 question. Anything you say can be used against you in a court
24 of law; and I'll ask if they understand that one. If they say
25 yes, I'll put a check mark that they understood that and I did

State v. Chestnut

521

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 in fact ask that question. You have the right to talk to an
2 attorney and have him present with you while being questioned.
3 Again, I ask for him to tell me that he understands it; I
4 check mark it. If you cannot afford to hire a lawyer, one
5 will be appointed to represent you before any questioning if
6 you desire one. Again, does he understand it; yes or no; if
7 he does I put a check by it. And the last one is if you
8 desire to make a statement or answer my questions, you have
9 the right to stop at any time. Again I ask if he understands
10 that; I then put a check mark behind it. And after I've done
11 that, I ask them to sign the document and I explain to them
12 that the only thing that they're signing is that they
13 understand their rights.

14 Q: Thank you, Detective Kitelinger. After being read and
15 informed of his Miranda Rights, did the Defendant agree to
16 make a statement?

17 A: Yes, he did.

18 Q: So he signed it indicating he understood his rights and
19 made a statement?

20 A: Yes.

21 Q: Did you or anyone to your knowledge or in your presence,
22 make any undue promises of leniency, to reward in exchange for
23 his statement?

24 A: No.

25 Q: You or anyone in your presence threaten the Defendant in

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

522

1 any manner?

2 A: No.

3 Q: After being informed of his right to give or not give a
4 statement or cease the interview, did the Defendant at any
5 time say, hey, I want to stop?

6 A: No.

7 Q: I don't want to give in?

8 A: No.

9 Q: After being informed of his right to counsel, did the
10 Defendant at any point say, I need to talk to an attorney?

11 A: No.

12 Q: And to the best of your knowledge, was the Defendant's
13 statement given freely and voluntarily?

14 A: Yes.

15 MS. PRATT: Objection, calls for an opinion on the part
16 of the witness, which is ---

17 THE COURT: Rephrase your question.

18 BY MR. RICHARDSON:

19 Q: What was your understanding with regard to the Defendant's
20 voluntariness to give his statement?

21 A: I felt that he was giving me the statement voluntarily and
22 of his own free will.

23 MR. RICHARDSON: Your Honor, this might be the
24 appropriate time to take a short break prior to the
25 interviews.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

523

1 THE COURT: All right. Ladies and gentlemen, the
2 Solicitor has got to set up to play the interviews. You can
3 go to your jury room for a few moments. Thank you.

4 (REPORTER'S NOTE: The jury exits the courtroom. 3:19 P.M.)

5 All right. We'll take a short break for about five or
6 ten minutes. Thank you very much.

7 MR. RICHARDSON: Your Honor, may the witness leave the
8 stand to if he needs to ---

9 THE COURT: He may leave the stand and you may discuss
10 with him only the matter that we talked about.

11 MR. RICHARDSON: Yes, Your Honor. I'll do that.

12 THE COURT: Thank you.

13 (RECESS - 3:19 P.M.)

14 *****OFF THE RECORD*****

15 (On the Record - 3:33 P.M.)

16 THE COURT: Have a seat. Thank you.

17 All right, Solicitor, the State ready to go?

18 MR. RICHARDSON: We are, Your Honor.

19 MS. PRATT: Defense? Oh, where's Ms. Pratt?

20 MR. RICHARDSON: She may be talking to a witness, Your
21 Honor.

22 THE COURT: All right. Well let's just wait for her to
23 come in.

24 All right, Ms. Pratt, you ready for the jury?

25 MS. PRATT: Yes, Your Honor.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

524

1 THE COURT: All right. Ask the jury to come in please.

2 Thank you very much.

3 (REPORTER'S NOTE: The jury returns to the courtroom. 3:35
4 P.M.)

5 MS. PRATT: May we approach, Your Honor?

6 THE COURT: Absolutely.

7 (REPORTER'S NOTE: A bench conference was held off the record
8 and outside the presence of the jury.)

9 All right, Solicitor, you ready to go?

10 MR. RICHARDSON: Your Honor, thank you for your patience
11 and everyone else as well.

12 BY MR. RICHARDSON:

13 Q: Detective Kitelinger, we were talking about, to the best
14 of your knowledge, it was your understanding that this
15 interview was freely given?

16 A: Yes.

17 Q: Now prior to your interviewing the Defendant, had anybody
18 interviewed him to your knowledge?

19 A: Not to my knowledge.

20 Q: Now your interview, you're speaking with him, you're
21 informing him of his rights, is this recorded in any shape or
22 fashion?

23 A: Yes, it was recorded several ways. It was recorded both
24 by video and a handheld recording device.

25 MS. PRATT: Could you speak up just a bit?

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

525

1 THE COURT: You're gonna need to speak up. You've got to
2 speak directly into the microphone and speak up.

3 A: I don't think I can get any closer. It was recorded by
4 both video and a handheld recording device.

5 BY MR. RICHARDSON:

6 Q: Detective Kitelinger, I showed you previously and I
7 believe Ms. Pratt doesn't have an objection, I showed you the
8 disk earlier, it was in this case marked State's Twenty --
9 One-Twenty-two?

10 A: Yes.

11 Q: And that CD, does that contain the interview of Mr.
12 Chestnut?

13 A: It does.

14 MR. RICHARDSON: Your Honor, the State would seek to
15 introduce State's One-Twenty-two into evidence and publish?

16 THE COURT: Any objection to State's One Hundred Twenty-
17 two coming into evidence at this time?

18 MS. PRATT: None, Your Honor.

19 THE COURT: All right. State's One-Twenty-two is in
20 evidence without objection. You may proceed. You may
21 publish.

22 STATE'S EXHIBIT NUMBER ONE-HUNDRED-TWENTY-TWO

23 ADMITTED INTO EVIDENCE

24 MR. RICHARDSON: Thank you, Your Honor. I just want to
25 inquire of the jury to make sure they can hear.

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

526

1 THE COURT: Yes, sir.

2 MR. RICHARDSON: Oh, hold on, I've got to take the cap
3 off, Your Honor.

4 Thank you, Ms. Pratt.

5 MS. PRATT: You're welcome, sir.

6 *****OFF THE RECORD*****

7 (REPORTER'S NOTE: State's Exhibit One-Hundred-Twenty-two
8 played for the jury.)

9 (On the Record.)

10 BY MR. RICHARDSON:

11 Q: Detective Kitelinger, I forgot to ask earlier, at any
12 point during that interview, did the Defendant ever request to
13 take a break or get up and use the restroom?

14 A: No.

15 Q: If he would have, would you have allowed him that?

16 A: Of course.

17 Q: Now, you stated previously you ended up getting charges on
18 Corey Myers?

19 A: Yes.

20 Q: At the time the warrants were served on Corey Myers, did
21 you have any reports back from SLED or anything?

22 A: No, we hadn't any kind of the firearms analysis back from
23 SLED at that time.

24 Q: And what were you going off of?

25 A: Mainly the statement of witnesses and what we saw on the

State v. Chestnut

527

WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

1 video.

2 Q: And you've had time to review the video since?

3 A: Yes.

4 Q: Have you had more time now to review the video than you
5 did that day?

6 A: Yeah, I mean, I've reviewed it, reviewed it, reviewed the
7 video.

8 Q: And when you were watching the video, did you ever see
9 Corey Myers fire?

10 A: We never, I never saw Corey Myers actually fire the gun.
11 I was fairly confident that Corey had a gun, but I personally
12 did not see him shoot the gun on the video.

13 Q: What, if any action, did you see Corey do?

14 A: Apparently -- by looking at the video, it appears to me
15 that Corey does in fact have a gun and then he enters the
16 fight, swings it over his head and strikes some people
17 involved in the fight at least several times. And then I
18 believe the gun is seen flying from his hand and landing in
19 the parking lot.

20 Q: We can't tell if it's a gun or anything else, but you see
21 something fly?

22 A: Something seems to fly from that area.

23 Q: So the decision to charge Corey was based solely on the
24 evidence you had on March 6, 2011?

25 A: And the fact that we believe that they were acting in

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

528

1 concert.

2 Q: And that's in 2012. So you thought they were acting all
3 together?

4 A: Yes.

5 Q: I'm gonna show you what's been previously introduced as
6 State's One-O-One. In the video, we saw you show a picture to
7 the Defendant. State's One-O-One?

8 A: Yes.

9 Q: Is that, I'm not saying that's the exact same picture you
10 showed him on that day, but is it ---

11 A: It's the photo that I presented to Mr. Chestnut and asked
12 if that was the gun he, in fact, threw out of the window?

13 Q: You just had a copy of this same photo?

14 A: Correct. It was actually -- I believe it was a photo copy
15 off of a printer, yes.

16 Q: And what was his response?

17 A: Yes, that it was the gun that he had threw out the window.

18 Q: He threw that gun out the window off Bay Road?

19 A: Yes.

20 Q: Now, how many victims do we have in this crime?

21 A: Two.

22 Q: Any of our victims wearing grey sweatshirts?

23 A: Not that I'm aware of.

24 Q: Jamal McFadden, you've seen photographs of him and you
25 seen Jamal McFadden in this -- Could you describe his

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

529

1 hairstyle?

2 A: It was dreads a little bit longer than -- not quite to his
3 shoulders but neck length.

4 Q: Definitely dreads?

5 A: Yes.

6 Q: Now we also saw the Defendant, he was sketching something
7 while y'all were in the interview room?

8 A: Yes.

9 Q: You look at it that day?

10 A: Briefly, as he was doing it.

11 Q: And was that retained?

12 A: Not to my knowledge, no.

13 Q: Now during the interview, if he was drawing, why not
14 retain it?

15 A: The images that he was drawing -- that was earlier in the
16 interview. Once he then decided to be more forthcoming and
17 talk about the shooting and stuff, I realized that what he had
18 actually written down was not actually what had occurred. So
19 it really didn't match what he talked about later.

20 Q: And you had already watched the video at this point?

21 A: Correct.

22 Q: And what he was drawing, did it reflect what you saw on
23 the video?

24 A: No.

25 Q: So there was no reason to keep it?

State v. Chestnut
WILLIAM JOHN KITELINGER - DIRECT BY RICHARDSON

530

- 1 A: I didn't think so, no.
- 2 Q: We also heard you tell Corey, now I'm sorry, I know this
3 is something you didn't mean to do. What did you mean by
4 that?
- 5 A: In an interview technique, you know, often in interview
6 you are very compassionate towards a person and you try to
7 show them understanding. You try to make them relax and one
8 of the methods that you use during interview is to allow
9 somebody to, you know, you be -- become compassionate with
10 them and, and basically try to make them understand that you
11 feel for them, that you understand that perhaps that was not
12 what was meant to happen, to make them more comfortable with
13 telling you what actually happened.
- 14 Q: Prior to doing the interview or during the course of the
15 interview, was Mr. Chestnut allowed to see that video?
- 16 A: No.
- 17 Q: And at the beginning of the interview, did y'all even
18 bring up the video?
- 19 A: I don't believe so, no.
- 20 Q: And throughout the interview, the Defendant says he fired
21 one time?
- 22 A: Yes.
- 23 Q: With this handgun?
- 24 A: Yes.
- 25 Q: Detective Kitelinger ---

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

531

1 MR. RICHARDSON: The Court's indulgence?

2 THE COURT: Yes, sir.

3 BY MR. RICHARDSON:

4 Q: Detective Kitelinger, with regards to the kind of charges
5 brought against Armando Chestnut stemming from the shooting,
6 murder and everything from the 3rd Avenue Sports Bar during
7 the early morning hours of March 6th, 2012, was that the
8 extent of your involvement in this case?

9 A: Yes, other than the investigation bringing forth the
10 charges and any of the other duties I would have with in
11 regard to the investigation afterwards; that's it.

12 Q: Thank you. Thank you, Detective. If you'll answer any
13 questions Ms. Pratt may have.

14 THE COURT: Cross examination.

15 MS. PRATT: Thank you, Your Honor. May it please the
16 Court?

17 CROSS EXAMINATION OF WILL KITELINGER BY MS. PRATT:

18 Q: Detective Kitelinger, you were the lead detective in this
19 case, correct?

20 A: Yes.

21 Q: And so it was your job to oversee the entire
22 investigation, right?

23 A: Yes.

24 Q: And make sure the right people were interviewed, right?

25 A: Yes.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

532

1 Q: Make sure the right evidence was collected, yes?

2 A: Yes.

3 Q: Make sure that things were sent to SLED when they
4 should've been sent to SLED, correct?

5 A: Yes.

6 Q: In fact, that was your responsibility?

7 A: Yes.

8 Q: We've heard from a whole lot of other people who did parts
9 and pieces of that puzzle, but this was your investigation?

10 A: That is correct.

11 Q: Then why do we have so many pieces of evidence that never
12 got sent up to SLED; why do we have witnesses that aren't
13 here; why do we have witnesses that weren't interviewed?

14 MR. RICHARDSON: Your Honor, if she could ask one
15 question at a time; the State would object to compound
16 questions.

17 BY MS. PRATT:

18 Q: Start with the first one. Why don't we have everything
19 sent up to SLED?

20 A: We processed the evidence that we thought was related to
21 the case. Not every piece of evidence that you're gonna find
22 on a scene, especially in a bar parking lot, may be related to
23 that particular crime. The crime scene people did pick up
24 evidence. We put it in our property and we processed the
25 items that we believed or had reason to believe were related

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

533

1 to the case.

2 Q: But the truth is, you cherry-picked pieces of evidence,
3 specific ones, to have tested and ignored others, didn't you?

4 A: I don't think cherry-picked would be the exact term I
5 would use. I picked pieces of evidence that I thought were
6 relative to the evidence and information I had on the case at
7 the time and I processed those pieces of evidence, yes.

8 Q: But you didn't test McFadden's jacket?

9 A: No.

10 Q: You didn't test McFadden's shirt?

11 A: No.

12 Q: You didn't test the beer bottle that might've been used to
13 hit Thoro?

14 A: No.

15 Q: You didn't test the blood that was on the wall for where
16 Thoro was being beaten on the video, correct?

17 A: I think we retrieved a swab of it, yes.

18 Q: But you didn't test it?

19 A: As to how?

20 Q: Well, you didn't have it come back -- wouldn't it have
21 helped your investigation if the blood belonged to somebody
22 other than Thoro?

23 A: To do what?

24 Q: Maybe to get a fuller picture of what happened here
25 instead of half maybe; do you think?

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

534

- 1 A: Oh, I have more than half of a picture of an
2 investigation.
- 3 Q: What you have here and what the investigation has been has
4 been talking to -- well, first, let me back that up. You
5 watched the video, correct?
- 6 A: Yes.
- 7 Q: And you watched the video and you watched the video and
8 you went with what you saw on the video; is that right?
- 9 A: That was part of the evidence, yes.
- 10 Q: And there's no audio on the video, right?
- 11 A: No.
- 12 Q: So you don't hear another gun shot, correct?
- 13 A: No.
- 14 Q: You don't hear the screaming and yelling and everything
15 that's going on. They weren't silent in that fight, right?
- 16 A: I would think not, no.
- 17 Q: They're probably calling each other's names, threatening
18 each other, a lot of noise and hub-bub going on, correct?
- 19 A: I wasn't there. It's likely.
- 20 Q: Could have been gunshots all over the place for all you
21 know, correct?
- 22 A: I think in reviewing the video, people don't stand still
23 when gunshots are fired ---
- 24 Q: But there's ---
- 25 A: --- and so would be able -- by reviewing the video, when

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

535

1 you see people moving in a specific manner, it's a very good
2 indication as to when gunshots are fired.

3 Q: But there's a whole half of the scene that's not on the
4 video, isn't that right; this line of cars where there's
5 evidence collected, that's not on the video, is it?

6 A: There is portion of the parking lot that is not on the
7 video.

8 Q: That's right. And there's people going to this area,
9 there's obviously stuff going on here; that's not on the
10 video, is it?

11 A: That portion of the parking lot is not on the video.

12 Q: And so you made decisions based on an initial
13 determination of what you thought you saw and you stopped
14 there, didn't you?

15 A: No.

16 Q: You didn't?

17 A: No.

18 Q: Well, the Solicitor asked you about whether you
19 interviewed the complaining witness, the complaining witness
20 is Mr. Canty, right?

21 A: Yes.

22 Q: Never got an interview from him, did you?

23 A: We talked to Mr. Canty two times actually and both times
24 he had very little information to add to the investigation.

25 Q: Well, he didn't say anything, did he? When you say very

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

536

- 1 little investi -- evidence, he actually said he was too drunk
2 to remember, didn't he?
- 3 A: He had very little information to add to the
4 investigation.
- 5 Q: Okay. And he's not here today, is he?
- 6 A: No, he's not.
- 7 Q: Okay. Now you did -- when you first knew that Armando and
8 Annaliese had been stopped and were coming in, you guys
9 started the process to get a search warrant, didn't you?
10 Under your investigation, somebody did a search warrant for
11 their vehicle, Annaliese' vehicle, correct?
- 12 A: A search warrant was done for the red Kia Sorento, yes.
- 13 Q: And the search warrant was done for Annaliese' home,
14 correct?
- 15 A: I don't recall that one.
- 16 Q: You want to look at your notes to see that?
- 17 A: Sure.
- 18 Q: Please refresh your memory.
- 19 A: I don't have anything in my notes about a search warrant
20 for Ms. Testa's home.
- 21 Q: There's no consent and you went to her home and searched
22 her home though, correct; there is a search warrant, isn't
23 there, Detective?
- 24 A: I don't have anything in my notes. If you could provide
25 one, I'd be glad to look at it for you.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

537

- 1 Q: In your report, would you check to see a search warrant on
2 240 Osprey Cove Loop executed by Detective Amick?
- 3 A: Detective Amick is one of our detectives; I just don't
4 have it in my notes.
- 5 Q: But there is a search warrant by Detective Amick, correct?
- 6 A: Again, if you can show it to me, I'd be glad to look at
7 it.
- 8 Q: Excuse me. It's a thick binder.
- 9 A: I understand. Please take your time.
- 10 Q: I appreciate that. I'm gonna have my investigator look
11 through my notes and I'll move on to something else.
- 12 A: I completely understand.
- 13 Q: However, Amick was someone who was under -- Amick was
14 somebody who was under your control; is that correct?
- 15 A: He's a detective assigned to my unit or he's assigned to
16 the Property Crimes Division.
- 17 Q: While he's looking for that, let's go on to something else
18 then.
- 19 On March the 6th, after you had interviewed Armando, you
20 -- Corey turned himself in, correct?
- 21 A: Correct.
- 22 Q: Okay. And on the 6th, you had the opportunity to get a
23 search warrant of Corey's home, did you not?
- 24 A: Yes.
- 25 Q: Okay. Thank you. Tell me the process, a little bit for,

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

538

1 let me ask you some questions about the process on a search
2 warrant. You develop an affidavit that gives reasons why you
3 believe there's evidence in a place, correct?

4 A: Correct.

5 Q: And then you present that to a Magistrate and the
6 Magistrate either says yes, you have enough to enter someone's
7 home because it's a constitutional right to be free from
8 unreasonable search and seizure, correct?

9 A: Yes.

10 Q: And once the Magistrate says yes, it's okay, you go ahead
11 and do that, right?

12 A: Correct.

13 Q: Okay. You didn't do that when it came to Corey's home,
14 did you?

15 A: No, we didn't do a search warrant on Corey's home.

16 Q: And in fact you've had -- you let it go for two days
17 before you got Consent to Search from somebody that you'd
18 already got warrants on for murder; is that right?

19 A: Correct.

20 Q: Is that normal procedure not to search somebody's home
21 that has a, a charge of murder hanging over their head?

22 A: It all depends on the circumstances. Each case is
23 different when you're dealing with different entities,
24 attorneys, suspects, locations, places where things may or may
25 not be. The investigation was in it's very early stages. It

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

539

- 1 all depends on a specific situation.
- 2 Q: Did you have any doubt that his home or his car would
- 3 contain evidence that might be relevant to the crime?
- 4 A: There was evidence that I wanted to produce from Corey,
- 5 yes.
- 6 Q: That was not my question, Officer. I asked you,
- 7 Detective, excuse me?
- 8 A: That's quite all right.
- 9 Q: Any question that there would be relevant evidence to the
- 10 crime either in his home or in his car?
- 11 A: You never know where evidence is going to be. You have
- 12 reason to believe where there may be evidence, but you might
- 13 not know where evidence is going to be.
- 14 Q: Okay. If he had shot, there might be something on his
- 15 clothes or firearm and that would more likely than not be
- 16 either in his home or his car, right?
- 17 A: Yes.
- 18 Q: So why did you not go ahead and get a search warrant the
- 19 first day when you could have?
- 20 A: I actually received those items.
- 21 Q: Not until the second day after?
- 22 A: Correct.
- 23 Q: So you left it for two days, didn't you?
- 24 A: I didn't get them for two days. No, I did not.
- 25 Q: You did not search his home, correct?

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

540

1 A: No.

2 Q: And anything could have been in his home that might have
3 been relevant to this investigation; isn't that true?

4 A: Including the items that I received.

5 Q: Certainly, but other things might have been relevant,
6 correct? You never know, do you, because you didn't search?

7 A: I search for items that I think are going to be relevant
8 and specific to the investigation. I don't just rummage
9 around someone's house.

10 Q: Well let me ask you a question. If Corey's gun had
11 misfired in the defect that we described through the SLED
12 ballistics person, there would have been a shell casing still
13 in the chamber, correct? And wouldn't that shell casing
14 possibly have been in his home?

15 MR. RICHARDSON: Your Honor, it's out of this Agent's
16 expertise. I'd object to this line of questioning. It'd also
17 be commenting on another witness' testimony.

18 MS. PRATT: Your Honor, he is in charge ---

19 THE COURT: All right. I appreciate that, just ask him
20 direct questions as to ---

21 MS. PRATT: I will rephrase my question then, Your Honor,
22 I apologize.

23 BY MS. PRATT:

24 Q: Let me put it this way. If Corey had, his gun had fired
25 and a casing, for whatever reason, had not ejected, wouldn't

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

541

1 that necessarily have been either still in the gun or at his
2 home?

3 A: Yes.

4 Q: And wouldn't it have been important to get that sooner
5 than two days later?

6 A: If it existed.

7 Q: But you didn't, did you; you didn't do a search warrant?

8 A: No, I obtained the gun and the clothing that was relevant
9 to the investigation.

10 Q: Two days later, correct?

11 A: Yes.

12 Q: Was Detective Ballou (spelled phonetically) one of the
13 agents that was involved when Annaliese and Armando were
14 arrested from the -- he was from the DEU?

15 A: Right, he is a DEU agent.

16 Q: All right. And you say, you stated earlier that you don't
17 recall anything about a search warrant on Annaliese' house; is
18 that right?

19 A: There's nothing in my notes about that.

20 Q: But you don't recall anything about it; is that right?

21 A: No, I wasn't -- I didn't, I personally did not conduct a
22 search warrant on Annaliese Testa's house.

23 Q: I'm going to show you a report from Detective Ballou and
24 ask you to look at the last two words of the first page and
25 the first paragraph on the second page?

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

542

1 A: It states in here that a search warrant was done on the
2 residence.

3 Q: All right. And that would have been the same day, the
4 6th, right?

5 A: Yes.

6 Q: But instead of doing a search warrant on Corey Myers' home
7 or vehicle, you waited two days for him to give you a consent
8 to pick up four or five items; is that right?

9 A: Yes.

10 Q: You stated in your testimony that you did not interview
11 Corey in part right away because he was under some influence
12 of narcotic medication, correct?

13 A: Yes.

14 Q: But even though Armando told you that he had smoked some
15 weed, you went ahead and interviewed him, didn't you?

16 A: Yes.

17 Q: You did not ask him follow-up questions about when he had
18 smoked weed; how much he had smoked or anything along those
19 lines, did you?

20 A: Not those specific questions about, no.

21 Q: All you did was ask him, if I remember correctly from the
22 video, whether he would understand your questions and know
23 enough to ask you for a stop or whatever or something along
24 those lines, if he did not feel he understood the question,
25 correct?

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

543

- 1 A: Or if he felt he was impaired.
- 2 Q: No, did you use the word impaired?
- 3 A: Yes, I did.
- 4 Q: Hmm. Let me check on that one. You did not ask him about
- 5 when or how much or anything else though, did you?
- 6 A: No.
- 7 Q: Okay. Now when you interview a subject, don't you expect
- 8 at the beginning that they're not necessarily going to tell
- 9 you everything they know?
- 10 A: That's fairly common, yes.
- 11 Q: Okay. They're gonna feel you out to see what you know,
- 12 correct?
- 13 A: That's a fair statement, yes.
- 14 Q: And they're not gonna put themselves in more of a mess
- 15 than they already are in without knowing what you know,
- 16 correct?
- 17 A: I have seen some people who do that, yes.
- 18 Q: Okay. I mean even when you interviewed both Annaliese and
- 19 Corey the first time, they didn't start out by telling you
- 20 everything, did they?
- 21 A: No, they did not.
- 22 Q: So that's typical behavior, isn't it, for a Defendant?
- 23 A: I don't know if it's typical; I've seen it in my
- 24 interviews, yes.
- 25 Q: More than half the time?

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

544

- 1 A: I don't know what percentage.
- 2 Q: But you know if it's more than half the time, Detective?
- 3 A: I would say that it happens frequently.
- 4 Q: Okay. All right. But there's no question that right from
- 5 the beginning, the thing that Armando said over and over was,
- 6 were statements about how they busted his homeboy in the head
- 7 with bottles or his homeboy was leaking or his homeboy was
- 8 fighting, correct?
- 9 A: He made those comments, yes.
- 10 Q: All the way through the interview really right to the end?
- 11 A: I agree.
- 12 Q: Okay. And he made those comments about not only Thoro,
- 13 but also Corey, correct?
- 14 A: Corey being assaulted?
- 15 Q: Corey being -- Corey and the big dude being in the fight
- 16 in the middle?
- 17 A: Right. He mentions Thoro and Corey being involved in the
- 18 fight.
- 19 Q: All right. In the, in the -- being attacked is what he's
- 20 really talking about when he says busted with bottles,
- 21 correct?
- 22 A: He states that, yes.
- 23 Q: And right from the beginning, he's told you, well not
- 24 right from the beginning, maybe about when he starts to open
- 25 up about shooting, he tells you that he shot because they were

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

545

1 being attacked and he was trying to scare them off, doesn't
2 he?

3 A: He mentions that several times, yes.

4 Q: Several times. Okay. And as I watched the video today, I
5 -- I want to ask if you noticed what I did. Isn't it true
6 that at the end or near the end of the interview, maybe the
7 last twenty-five percent, you were trying to box him into
8 picking a person that he shot, correct?

9 A: I'm asking him to be specific about his information.

10 Q: I understand and he says to you, I shot, and it seems like
11 he's talking about shooting into the area of evidence of
12 State's Eighty-seven where the markers of 10, 9, 8, 4 and 3
13 are in here, isn't it?

14 A: I didn't get that impression, no.

15 Q: You didn't -- well, you had his drawing?

16 A: Okay.

17 Q: But you didn't bring his drawing?

18 A: No, I did not.

19 Q: So we don't know from, from that what he was pointing at?

20 A: No, but I just watched the tape and I did not, again, I
21 did not get that impression of that's where he was saying.

22 Q: On this diagram, whereabouts, which evidence marker is
23 Corey closest to at the time of the shooting?

24 A: I couldn't say. I'd have to look again. I, I don't, 5 or
25 6 perhaps.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

546

- 1 Q: 5 or 6?
- 2 A: Uh-huh (affirmative response).
- 3 Q: Okay. So he is either in the parking space where -- as I
- 4 just said where 3, 8, 9 and 10 are, or in the parking space
- 5 where 7 and 5 and 6 are, right; they're side by side?
- 6 A: The parking spaces are side by side.
- 7 Q: And that's where you're saying in that area, correct?
- 8 A: To the best of my recollection.
- 9 Q: And that's the area that Armando approaches on the video?
- 10 A: Yes.
- 11 Q: Okay. And that is just maybe a parking spot away from
- 12 where Thoro is getting beaten or attacked by a bunch of
- 13 Hemingway boys, correct?
- 14 A: I think there's a fight between a Myrtle Beach group and a
- 15 Hemingway group, yes.
- 16 Q: Do you call one person a group?
- 17 A: I don't think it was just one person.
- 18 Q: At the beginning its one person, isn't it?
- 19 A: That's not when you're talking about; you're talking about
- 20 when the shot was fired. When the shot was fired, there were
- 21 many people inside the melee, inside the fight.
- 22 Q: That's right and there were other people that Armando
- 23 describes including a slim guy and a guy in a brown jacket,
- 24 correct?
- 25 A: Correct.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

547

1 Q: Okay. So he's trying to tell you that there are other
2 people than the big dude and the guy with dreads and you're
3 consistently focusing him back to pick one between the big guy
4 and the guy with dreads; is that a fair statement of what you
5 did on the end, near the end of the interview?

6 A: No, I'm asking him to be specific who he shot at.

7 Q: But if he shot into a group of four people, how could he
8 be specific?

9 A: That's not what he was saying. He said he shot a person
10 and that's why I wanted him to be specific. I wanted to know
11 who he shot just as bad as he wanted for him, for me to tell
12 him who he shot.

13 Q: Haven't you already decided that you knew who he shot?

14 A: Absolutely not.

15 Q: You knew who was -- had died, correct?

16 A: Yes.

17 Q: He did not know who had died?

18 A: On my video, it appeared that I believed at the time that
19 Armando had shot the deceased.

20 Q: You didn't answer my question. He didn't know who had
21 died, did he?

22 A: No, he did not, no.

23 Q: And he didn't know which one had been shot in the elbow
24 either, did he?

25 A: I think it's, in the video I think, no, no, no, if you're

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

548

- 1 gonna let me answer please.
- 2 Q: I am.
- 3 A: I think if you watch the video, he talks about the large,
4 the big guy having a wound to the elbow.
- 5 Q: But you had specific knowledge that confirms it where he
6 doesn't have confirming knowledge of which person had which
7 injury, isn't that a fair statement?
- 8 A: That is a fair statement.
- 9 Q: Thank you. Okay. You obtained the warrant on attempted
10 murder for both Corey and for Armando, correct?
- 11 A: Correct.
- 12 Q: And elements of that are an attack on another person with,
13 really, I guess you would say, with a deadly weapon would be
14 one of the ways of describing, correct?
- 15 A: I don't have the elements in front of me.
- 16 Q: You saw on the video that Canty, the complaining witness
17 as you called him or the big guy as you called him ---
- 18 A: Yes.
- 19 Q: --- hit Thoro over the head with a bottle, correct?
- 20 A: No.
- 21 Q: You didn't see that?
- 22 A: No.
- 23 Q: You didn't see a bottle fly into the air as Canty comes
24 down like that?
- 25 A: I absolutely see a bottle fly through the air. I will

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

549

1 tell you quite frankly, and I understand, I watched the case,
2 I have watched the video many times too and I can tell you it
3 is my belief in watching the video that Mr. Canty does in fact
4 have a bottle in his hand, but I -- the video to me is not
5 clear enough to determine if that bottle actually struck Thoro
6 in the head. And I'll be glad to point it out to you.

7 Several things, as he -- one of the things ---

8 Q: Let me ask the questions.

9 THE COURT: I'm sorry, ma'am, he's trying to answer your
10 question.

11 A: One of the things that I did take into consideration
12 looking at the video, I actually believe and my interpretation
13 of the video that I assume that's what you're asking for, my
14 interpretation of the video, Mr. Canty actually has a beer
15 bottle in each hand I believe. Okay. One of the things I
16 took into consideration is I don't think anybody is gonna --
17 one of the things that I thought about personally was I don't
18 know why anybody would start a fight with a beer bottle in
19 each hand. What are you gonna fight with? So I did watch the
20 fact that a beer bottle does slam against the wall of the
21 building. I think that's very clear in the video. But what I
22 also see is that at the same time Mr. Canty's hand is coming
23 down with a beer bottle in it, Thoro also puts his hand up
24 either to block or to punch; it appears to me that as Mr.
25 Canty's hand is coming down, he encounters Thoro's arm and the

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

550

1 beer bottle is actually released from the hand and I have in
2 my interpretation looking at the video, I can't say
3 definitively if that beer bottle actually strikes Thoro or
4 not.

5 Q: And if you had tested the beer bottle for blood or
6 fingerprints, you might know that, wouldn't you?

7 A: How?

8 Q: If it had had blood on it, then you would've known it had
9 struck somebody wouldn't you?

10 A: I understand completely what you're saying, but Mr. Thoro
11 never made himself a victim. He wasn't available; I couldn't
12 look at his wounds. I would have loved for Thoro to show up
13 so I could ask him the questions. I would have loved Thoro to
14 show up so that if I had of made charges against Mr. Canty, I
15 certainly would have done that, but Mr. Thoro did not make
16 himself available for this investigation or to offer samples
17 for any kind of comparison testing to a beer bottle that I may
18 have had.

19 Q: And Detective, you're going way far afield with my
20 question.

21 A: Okay. I'm sorry.

22 Q: My question ---

23 THE COURT: Ma'am, no, stop right here. I've been
24 patient. If you have a problem with how a witness is
25 responding to the question, address that matter to the Court.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

551

1 You do not instruct the witness. Be clear.

2 MS. PRATT: Yes, Your Honor.

3 THE COURT: Thank you, ma'am.

4 BY MS. PRATT:

5 Q: If I could repeat my question. If you had tested the beer
6 bottle for blood, would you have known then if it had struck a
7 person?

8 A: Not necessarily. What if the beer bottle had fallen on
9 the ground and had touched blood on the ground. There are
10 other circumstances. But it would have been much more easy to
11 determine if Mr. Thoro had made himself available.

12 Q: How many of the men who participated outside from the
13 Kingstree/Hemingway area did you interview?

14 A: Mr. Canty.

15 Q: And, and no other man that participated outside in the --
16 in the incidents that occurred outside; is that right?

17 A: That is correct.

18 MS. PRATT: The Court's indulgence?

19 THE COURT: Yes, ma'am.

20 BY MS. PRATT:

21 Q: Did you actually receive any of the shell casings directly
22 in this case into your hands or did they go to McSpadden?

23 A: The shell casings were collected early in the morning
24 before I even came to work. I was not part of the crime scene
25 itself.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

552

- 1 Q: And when the Solicitor asked you the question about why
2 you were saying that you understood what was going on; you
3 understood what he, what my client was saying or doing; was it
4 your testimony that that was a technique for your interviewing
5 rather than an actual statement of, of understanding where he
6 was coming from?
- 7 A: I think it's a technique -- an interview technique to put
8 your client at ease and offer him an opportunity to speak with
9 you more comfortably.
- 10 Q: In the interviews that you conducted, didn't you hear
11 about other gunshots besides what my client had told you
12 about?
- 13 A: Yes.
- 14 Q: Did you ever figure out who the person in the brown jacket
15 was?
- 16 A: No.
- 17 Q: And there were several people in between those cars,
18 weren't there?
- 19 A: During, during the fight, yes.
- 20 Q: You stated that if Mr. Thoro had made himself available
21 that you would have interviewed him. Did you look for him
22 throughout this investigation?
- 23 A: We looked for him very aggressively.
- 24 Q: Did you check the arrest logs?
- 25 A: Yes.

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

553

- 1 Q: Didn't ever find him?
- 2 A: We looked for him. I had my Narcotics Units look for him;
- 3 I had our Street Crimes guys look for him; I wanted to talk to
- 4 Thoro very badly.
- 5 Q: And you had addresses for him?
- 6 A: All -- many different addresses.
- 7 Q: And you checked with addresses that were on record with
- 8 Myrtle Beach?
- 9 A: We searched for him.
- 10 Q: How long did you search?
- 11 A: I, I can't give an exact number of days.
- 12 Q: You already had warrants for both my client and Corey long
- 13 before you had stopped searching for Thoro though, right; you
- 14 already had warrants right away, didn't you?
- 15 A: Correct.
- 16 Q: And you actually served them -- you didn't wait to talk to
- 17 Thoro, did you?
- 18 A: No.
- 19 Q: You didn't wait to talk to any of the other potential
- 20 Hemingway people that were outside at the time, the men,
- 21 correct?
- 22 A: No.
- 23 Q: You just did the warrants?
- 24 A: Correct.
- 25 Q: No question when the crime scene was taped off that cars

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

554

1 had left the bar, correct, from the time of the actual
2 incident?

3 A: In reviewing the video, cars do leave after the incident,
4 yes.

5 Q: Okay. You see them going down both driveways, don't you?

6 A: I recall it going down the drive -- the primary driveway,
7 the one on the left. They could've certainly gone out on the
8 right side. I just don't recall any leaving out of there.

9 Q: Okay. Driving right through the middle of the crime
10 scene, correct?

11 A: Yes.

12 Q: And even my client in his statement says to you, y'all got
13 to talk to their camp, correct?

14 A: I remember him making that statement and watching that
15 video today, yes.

16 Q: But that did not happen as far as the men that were
17 outside; is that right?

18 A: I didn't interview anyone from Hemingway except Mr. Canty.

19 Q: Well, and the names that you got from Mr. Feaster would
20 have all been Myrtle Beach people, correct?

21 A: Correct.

22 Q: And so did you try to find out who the Hemingway people
23 were?

24 A: Absolutely.

25 Q: Who did you ask?

State v. Chestnut
WILLIAM JOHN KITELINGER - CROSS BY PRATT

555

1 A: I asked the other people out there at the scene, but
2 again, as you say, Mr. Feaster was familiar with the people
3 out there. It was very few people around that I was able to
4 garner names from in regards to the Hemingway people. I
5 certainly would have loved to interview them.

6 Q: That's all I have, Detective.

7 THE COURT: Redirect?

8 MR. RICHARDSON: No redirect, Your Honor. I ask that
9 Officer -- Detective Kitelinger be allowed to leave the stand.

10 THE COURT: All right. You may step down, sir.

11 A: Thank you, sir.

12 THE COURT: Are there other witnesses on behalf of the
13 State?

14 MR. RICHARDSON: Your Honor, the State rests in this
15 case.

16 THE COURT: Very good. All right. Ladies and gentlemen,
17 at this point in time, the State has rested its case. There
18 are matters of law that I have to take up outside your
19 presence with the attorneys, other matters to discuss on the
20 further proceedings in this matter. Those will take some
21 time, so no sense in you sitting in your jury room waiting for
22 that to be done. Looking at the time, I'm gonna let y'all go
23 home for the evening. We'll continue on and finish that
24 portion up before we come back tomorrow morning to proceed on
25 with the remainder of the case.

State v. Chestnut
MOTIONS

556

1 Please remember again, don't talk about the case; don't
2 allow anybody to talk to you about it; don't do any research;
3 don't investigate on your own; decide the case solely and
4 completely on the facts and evidence presented in the
5 courtroom and no other source.

6 Please again, in the morning -- all right. I just --
7 apparently I have just one extra matter tomorrow morning. So
8 I expect that we will be able to start by 9:30. Again, if you
9 can assemble in the jury room downstairs by 9:20 so you can be
10 brought upstairs, I would appreciate that. With that, you are
11 excused. Thank you very much.

12 (REPORTER'S NOTE: The jury exits the courtroom. 5:20 P.M.)

13 THE COURT: All right, Ms. Pratt, I'll be glad to hear
14 from you.

15 MOTIONS:

16 MS. PRATT: Thank you, Your Honor. At this time, we
17 would make a motion for a directed verdict on the charges of
18 murder, attempted murder, pointing and presenting a firearm
19 first. I'd like to address those first. The standard clearly
20 is taking the evidence in the light most favorable to the
21 State whether they have produced the evidence necessary on the
22 elements of these crimes in order to get past this kind of a
23 motion.

24 Your Honor, the State has the burden first of all --
25 well, let me back that up. All the facts from the State's

State v. Chestnut
MOTIONS

557

1 case at this point are in. There's clearly evidence of self-
2 defense from their own witnesses, from Corey, from statements
3 made by Mr. Feaster, who are the fact witnesses. And from
4 obviously reviewing the video, there are issues of defense --
5 of self-defense and defense of others.

6 The State has the burden of disproving the elements of
7 self-defense beyond a reasonable doubt. They have not done
8 so, Your Honor, and this is their case. They had the duty at
9 this point, to disprove self-defense. As a matter of law, at
10 this point, there's no question of the facts that they have
11 put in, there are -- as I say, their own witnesses have said
12 that they were, that there was a defending others and a self-
13 defense component to this crime.

14 Therefore, Your Honor, as to murder, voluntary
15 manslaughter -- excuse me, not voluntary manslaughter --
16 attempted murder and pointing and presenting which element
17 itself speaks to not abrogating the right of self-defense. We
18 would ask for a directed verdict.

19 THE COURT: All right, Solicitor, I'll be glad to hear
20 from you.

21 MR. RICHARDSON: Your Honor, I believe the State has at
22 least met its burden with regard to a directed verdict. Even
23 in State v. Starnes where there's a homicide prosecution which
24 Defendant, in his own home, when the victim was killed.
25 There's some testimony that the Defendant was venting a grudge

State v. Chestnut
MOTIONS

558

1 and the self-defense was through the jury. In this case,
2 throw everything else out, you still rely on the Defendant's
3 statement that says yeah, that might be right, he shot the guy
4 with the dreads because he had grabbed a pool cue inside.
5 Quite obviously, we've seen the video, he has no pool cue
6 outside. That does show some evidence that he was venting a
7 grudge. Additionally, with regard to self-defense, Your
8 Honor, we show the Defendant going to his car getting
9 something and running into a fight. This is up to the jury.
10 He's not without fault in bringing on the difficulty at that
11 point, neither is Thoro. I pointed out for the jury in the
12 video when Thoro walks up and that is indeed Thoro in the
13 white; he actually throws a punch up towards Damien Canty's
14 head and whether or not Damien Canty hits him with the bottle
15 at that point or tries to hit him with a bottle at that point,
16 because it is true he is trying to defend himself. But
17 anyway, we have heard no testimony from Thoro that he was in
18 fear for his life or imminent bodily damage. Corey Myers said
19 yeah, he was scared, but when asked him on, on redirect, he
20 said he'd been scared in most fights. He never said he
21 thought he was gonna get serious bodily harm. Your Honor,
22 there's been nothing from the Defendant indicating he thought
23 he was gonna get serious bodily harm. Even by his own
24 statement, of you don't believe he went to go get a gun out of
25 the car; he says he went to go put his weed and his phone up

State v. Chestnut
MOTIONS

559

1 before he went over there when he knew an altercation was
2 gonna be taking place. He can't avail himself for self-
3 defense, at least not at this juncture if he is walking into a
4 fight, armed or unarmed, Your Honor. Therefore, I believe the
5 State has met its burden with regard to directed verdict.

6 MS. PRATT: If I may respond, Your Honor?

7 THE COURT: Yes, ma'am.

8 MS. PRATT: Thank you, Your Honor. The cut is finer than
9 just a blanket, did this witness believe they were acting in
10 self-defense. Thoro clearly is being swarmed by Corey's
11 testimony by three, four, five, six, people from the Hemingway
12 side. He would have had to right to defend himself.
13 Therefore, under defense of others, anyone who comes to his
14 aid with the intent to assist him has the right to the same
15 defense and steps into his shoes. Therefore, Corey and
16 Armando, if they came because as Armando says, they were
17 jumping his homeboy or he was leaking; Corey says the same
18 things; they have the right to do that under the defense of
19 others coupled with and bootstrapped to self-defense for
20 Thoro. And then for Corey, it becomes self-defense because
21 Canty, as he testified, turns on him, jumps on him and they're
22 tousling on the ground. So there's an element there where
23 Corey is defending himself and Armando is coming up on the
24 fight in the video, where both of those people are being
25 attacked. Again, as I say, the State's burden is to disprove

State v. Chestnut
MOTIONS

560

1 self-defense and we would say to the State that they have not
2 done so.

3 THE COURT: All right. Thank you, ma'am.

4 Regarding your request for directed verdict as to the
5 charges of murder, attempted murder and pointing and
6 presenting a firearm, the, as far as the standard itself, of
7 course the Defendant's entitled to a directed verdict when the
8 State fails to produce evidence of the offense charged. I am
9 concerned with the existence of evidence not with its weight.
10 I'm not judging credibility or believability, that's for the
11 jury. I'm just deciding whether or not sufficient evidence
12 exists. If there's any direct evidence or substantial
13 circumstantial evidence, reasonably tending to prove the guilt
14 of the accused, then it properly goes to the jury. My
15 standard is not beyond a reasonable doubt. It is if there's
16 any direct evidence or substantial circumstantial evidence,
17 reasonably tending to prove the guilt of the accused of the
18 crime charged then it goes to the jury.

19 Obviously, I would grant a directed verdict if the
20 evidence merely raises a suspicion that the accused is guilty
21 of the crime charged or if the jury would only be speculating
22 as to the guilt of the accused or whether the evidence is
23 sufficient only to raise a mere suspicion of guilt.

24 In this particular matter, there is more than sufficient
25 evidence if that evidence is so believed by the jury to

State v. Chestnut
MOTIONS

561

1 convict the Defendant of the crimes of murder, attempted
2 murder and pointing and presenting a firearm in accordance
3 with the elements of each crime.

4 As to the specific matter you talked about regarding
5 self-defense, if the case goes to a jury, it will be incumbent
6 upon the Court and will be proper for the Court to charge the
7 law of self-defense to the jury. There is conflicting
8 evidence in the record as to whether or not self-defense
9 exists in this matter. You look at the first element we
10 always talk about in self-defense. Defendant must be without
11 fault in bringing on the difficulty. If the Defendant
12 voluntarily participated in mutual combat for purposes other
13 than protection, it's not self-defense. If the -- you have
14 the imminent danger element. The Defendant must actually
15 believe that he was in imminent danger of death or serious
16 bodily injury.

17 Now you talked about defense of others. Clearly a person
18 may take another's life in the defense of others. The right
19 to intervene to protect another person is subject to the same
20 rights and/or limitations as to a person claiming self-defense
21 for themselves. Therefore, it has to be shown that the person
22 being defended and the Defendant were both without fault in
23 bringing on the difficulty.

24 Also the issue about mutual combat exists. The issue
25 that we talked about fear of immediate danger of death or

State v. Chestnut
MOTIONS

562

1 serious bodily injury to the person being defended, whether or
2 not that was reasonable and would have been felt by an
3 ordinary person in the same or similar circumstances.

4 The evidence is conflicting in all of those issues. It
5 is not for the Court to make a determination and decide to
6 believe and who not to believe and to resolve conflicts in the
7 evidence. Therefore, it is not proper and the Court will not
8 grant your motion for directed verdict as stated.

9 MS. PRATT: Your Honor, and then further, as to the
10 charge of assault and battery by a mob, we would ask the Court
11 to direct a verdict in that regard. There is no evidence,
12 first of all, of a conspiracy or a premeditated purpose or
13 premeditated intent of committing an act of violence upon the
14 other and I believe the person that they are speaking about
15 would be, according to the indictment, Canty or McFadden.

16 Also, Your Honor, there is no serious bodily injury in
17 regards to Canty. The charge has been second degree and the
18 warrant itself actually speaks to Canty, but we have no
19 evidence there of a serious bodily injury under the
20 definitions. Therefore, we would ask that you direct a
21 verdict in regards to that particular charge.

22 THE COURT: You agree that the indictment speaks to both
23 those individuals though, correct?

24 MS. PRATT: It does, Your Honor.

25 THE COURT: Okay. So as to your request as far as

State v. Chestnut
MOTIONS

563

1 directed verdict, there is evidence certainly from the video,
2 reasonable interpretation of the video, of an assault and
3 battery second degree by a mob if you just look at that alone.
4 But taking all the evidence in conjunction with that clearly
5 there is sufficient evidence if that evidence is believed by
6 the jury to convict the Defendant of the crime of assault and
7 battery by a mob second degree.

8 Did I understand you made a secondary argument to remove
9 or have it be specific as to only Jamal McFadden and remove
10 Damien Canty?

11 MS. PRATT: I don't think that's what I'm trying to say
12 specifically, Your Honor. I think my problem is that there's
13 no evidence of the serious bodily injury because Mr. Canty --
14 we have no medical records, although we requested them. We
15 have no information from Mr. Canty as to whether it meets the
16 definition of serious bodily injury and that is what is
17 specified in the second degree.

18 THE COURT: Okay. I appreciate what you're saying. I'm
19 indicating to you there is certainly more than sufficient
20 evidence in the record, again, if that evidence is believed by
21 the jury and that's not my job not to judge the credibility
22 and believability; I'm looking at sufficiency of the evidence,
23 whether the evidence exists. Evidence exists in the record
24 certainly for, if the jury believes it, to convict the
25 Defendant of assault and battery by a mob second degree,

State v. Chestnut
BY THE COURT

564

1 seriously bodily injury, regarding Jamal McFadden. No
2 question about it. So, if that's -- that you're arguing
3 there's no evidence then your request for directed verdict is
4 denied. There's evidence that exists.

5 So I, anyway, we can talk about it further, but certainly
6 as to Mr. McFadden. You know, didn't hear anything else --
7 he's requested anything else, so not gonna go any further.

8 MS. PRATT: Thank you, Your Honor.

9 BY THE COURT:

10 THE COURT: All right. All right. So there are no other
11 motions that you have at this point in time?

12 MS. PRATT: Not at this time, Your Honor.

13 THE COURT: All right. Very good. All right.

14 Before I forget, is there a copy of the unredacted
15 interview in the record, not for the jury, but in the record
16 of this case in case there is some issue at a later date?

17 MR. RICHARDSON: Ms. Eubanks took that last week, Your
18 Honor. We left it with her and we had it marked whenever we
19 had the ---

20 THE COURT: All right, sir. So, that's in the Jackson v.
21 Denno hearing; it's part of the evidence in the Jackson v.
22 Denno hearing?

23 MR. RICHARDSON: That's correct, Your Honor.

24 THE COURT: All right. Very good. I just wanted, wanted
25 that to be clear that if any issue comes up there that it does

State v. Chestnut
ALLEN GRAHAM - DIRECT BY PRATT

577

1 gentlemen.

2 All right. Ms. Pratt -- I'm sorry.

3 Before we start that, I need to ask you, ladies and
4 gentlemen, a potential witness that may testify is Captain
5 Susan Safford, S-A-F-F-O-R-D, of the Horry County Sheriff's
6 Department. She is stationed at, works at the J. Reuben Long
7 Detention Center. Is there any member of the jury panel
8 that's related by blood or marriage, close personal friends,
9 acquaintances of, knows in any capacity, Captain Susan
10 Safford; if so, please stand? No juror having stood, it's
11 noted for the record. All right.

12 Your first witness, Ms. Pratt?

13 MS. PRATT: Thank you, Your Honor. I will call Allen
14 Graham to the witness stand.

15 THE COURT: All right. Please come around and be sworn,
16 sir. If you just meet the Clerk right up here at the corner,
17 sir.

18 ALLEN GRAHAM, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please state your full name and spell your last.

21 MR. GRAHAM: My name is Allen Graham. My last name is G-
22 R-A-H-A-M.

23 THE COURT: All right, ma'am, you may proceed.

24 MS. PRATT: Thank you, Your Honor.

25 DIRECT EXAMINATION OF ALLEN GRAHAM BY MS. PRATT:

State v. Chestnut
ALLEN GRAHAH - CB

578

- 1 Q: Mr. Graham, where do you reside?
- 2 A: Myrtle Beach.
- 3 Q: And are you employed in Myrtle Beach?
- 4 A: Yes, ma'am.
- 5 Q: Where do you work?
- 6 A: I work at 3rd Avenue Sports Bar & Grill.
- 7 Q: And what's your position there?
- 8 A: Head of security.
- 9 Q: Head of security. How long have you worked for the 3rd
- 10 Avenue Bar?
- 11 A: About two years now.
- 12 Q: All right. And how often do you work every week?
- 13 A: Three to four nights a week.
- 14 Q: All right. And I believe you worked last night, didn't
- 15 you?
- 16 A: Yes, ma'am.
- 17 Q: To what time did you work last night?
- 18 A: About 2:00, came home about 4:00.
- 19 Q: Okay. All right. Now, Mr. Graham, were you so employed
- 20 on March the 6th of 2012?
- 21 A: Yes, I was.
- 22 Q: You were present at the bar?
- 23 A: Yes.
- 24 Q: Please tell us what time you got there?
- 25 A: I arrived there about a quarter till 10:00 and ---

State v. Chestnut
ALLEN GRAHAH - CB

579

1 Q: Okay. And who, who else was working with you that night?

2 A: Well, there was Mr. Wayne Feaster and we also had another
3 security, which was Mike -- which is on -- Monday's is
4 normally a slow night. So, one of the securities had went
5 home earlier. So, we just got me doing -- checking and
6 inside.

7 Q: And when you say checking, what your duties?

8 A: We check, we check from head to toe searching for weapons,
9 for anything -- any criminal activities like that on them,
10 drugs or anything on them.

11 Q: Okay. And usually where are the bouncers or the security
12 people stationed?

13 A: Well, there's two outside and there's also two inside.

14 Q: But is that the way it was that night?

15 A: No, ma'am.

16 Q: Tell me what was going on that night then again?

17 A: That night I was the only security on point at the time
18 because like I said, one of the security left out early, left
19 on earlier because it was a slow night. But actually it got a
20 little heavy, crowds started coming. By the time I got there,
21 I went inside. My job is also to observe who is in the bar
22 and I noticed a couple of guys that was in the bar that I
23 never saw before.

24 Q: All right. So, when you, let's talk about then that
25 particular night. You were inside and outside searching I

State v. Chestnut
ALLEN GRAHAH - CB

580

- 1 think you said and you saw some guys that you hadn't seen
2 before. How many did you see?
3 A: Between about five or six of them.
4 Q: Do you have any idea where they were from?
5 A: No, not at that time, not at the time.
6 Q: Have you learned since then where they might've been from?
7 A: Yes, ma'am.
8 Q: And where is that?
9 A: Kingstree.
10 Q: All right. And tell me what you saw going on from about 1
11 o'clock, 1:10 in the morning?
12 A: Oh, I was standing outside and I turned around. I
13 observed a couple of guys over there by the pool table and I
14 observed some, some money on the table, which I thought they
15 was like gambling. I stepped aside and I walked over to them
16 and I said, I told the fellows that they can't gamble. I
17 turned around and walked back outside. About fifteen minutes
18 later, I happened to turn around again to see Mr. Wayne
19 Feaster over there by the table talking to the guys. So that
20 which mean, automatically I walks back into the bar and walks
21 over towards Wayne. And the guys was started discussing then
22 out of nowhere, this guy happened to grab -- try to grab a
23 pool stick.
24 Q: And so out of nowhere, a fellow grabbed a pool stick?
25 A: Yes.

State v. Chestnut
ALLEN GRAHAH - CB

581

- 1 Q: All right. And how long had you been in the bar at that
2 point before you saw that when you came back in?
- 3 A: I'd say about fifteen minutes before I walked back into
4 the bar.
- 5 Q: Okay. All right. And when you came back into the bar and
6 you said out of nowhere someone grabbed a pool stick. Can you
7 describe the person that grabbed the pool stick?
- 8 A: It was a short guy with dreads and had like a green, green
9 flight jacket something like that and I have to -- but I
10 grabbed the stick.
- 11 Q: Okay. So you grabbed the stick from a fellow. Do you
12 know now who that person was?
- 13 A: Yes.
- 14 Q: And who was that?
- 15 A: The one that was -- actually got killed.
- 16 Q: Okay. The one that got killed had the pool stick?
- 17 A: Yes.
- 18 Q: All right. And then what did you do next?
- 19 A: Then was my boss say let's get them out the bar and there
20 was conversating for us to get them out the bar.
- 21 Q: Were you throwing them out or barring them?
- 22 A: No, we was just telling them to go outside and discuss it,
23 no argument inside.
- 24 Q: All right. And so did -- did they leave the bar?
- 25 A: Yes.

State v. Chestnut
ALLEN GRAHAH - CB

582

- 1 Q: All right. And how many and from where? Tell me what you
2 saw.
- 3 A: Okay. There was a guy named Thoro, he walks out the bar.
4 There was about four or five guys walked behind him, which was
5 the Kingstree boys. And they stopped by the door and they got
6 into another discussion and as far as I seen, I thought it was
7 over then, but actually Thoro started walking away and the
8 guys started following Thoro, like two foot behind him.
- 9 Q: All right. And did what did you see?
- 10 A: I seen Thoro going over towards his car, I didn't exactly
11 see him open the door. All I notice he turned around and
12 walked up on the sidewalk and the guys had walked up in front
13 of him and one guy happened to have a beer bottle.
- 14 Q: Okay. And what happened? Well, describe the guy with the
15 beer bottle, please?
- 16 A: This guy, the heavy set guy, shorter than me but just kind
17 of stocky. He had a white baseball cap on and he had a beer
18 bottle. He had a white shirt on or something like that.
- 19 Q: And he had a beer bottle in his hand?
- 20 A: He had a beer bottle.
- 21 Q: Was he supposed to?
- 22 A: No. No, he snuck out the bar with it.
- 23 Q: Do you remember what kind of beer it was?
- 24 A: It was a Miller.
- 25 Q: Okay. And what did you see next?