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ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Roger M. Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYREL RASHONE COLLINS

APPELLANT

APPELLATE CASE # 2014-000216

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
3 COUNTY OF CHARLESTON) Case No. 2012-GS-10-5449
4) Case. No. 2012-GS-10-5452
5 STATE OF SOUTH CAROLINA)
6)
7 VS.) Transcript of Record
8)
9 TYREL RASHONE COLLINS,)
10)
11 Defendant.)
12)
13 DATE: September 9, 2013

14 B E F O R E:

15 The Honorable J.C. Nicholson, Jr.

16 A P P E A R A N C E:

17 Stephanie B. Linder and Gregory Voigt,
18 Assistant Solicitors
19 For the State

20 Jason T. King and Luke J. Malloy, III
21 For the Defendant

22 Karen V. Andersen, RMR, CRR
23 Circuit Court Reporter
24
25

1 THE COURT: Good morning, ladies and gentlemen.
2 I'm Judge Nicholson. We are going to be trying a case
3 here in General Sessions, which is our criminal court.
4 And I believe the State is going to call the case State
5 vs. Tyrel Collins; is that correct?

6 MS. LINDER: Yes, Your Honor.

7 THE COURT: All right. Mr. Collins is charged
8 with -- he's indicted for possession of a firearm during
9 the commission of a violent crime, and also indicted for
10 murder. These are the indictments. The indictment is
11 not proof of evidence; it is merely the means by which
12 the case is brought before the Court. It is not a
13 determination of the innocence or guilt in any manner
14 whatsoever. It is just merely the administrative means
15 by which the offense is brought before the Court for
16 trial.

17 Now, first thing I'm going to do is call out a
18 list of witnesses. And I'm going to ask you basically
19 the same question about each witness: Do you know the
20 witness; are you related by blood or marriage; or have
21 you had any contact with the witness in any manner
22 whatsoever? And when I say blood or marriage and when I
23 talk about marriage and talk about past marriages and
24 future marriages, if it's on the horizon and you are
25 aware of it.

1 talking about this case? If so, please stand.

2 (No response from the Jury.)

3 THE COURT: Is any member of the jury panel
4 aware of any bias or prejudiced toward either the State
5 or the defendant in this case? If so, please stand.

6 (No response from the Jury.)

7 THE COURT: Does any member of the jury panel
8 know of any reason, personal or otherwise, as to why they
9 cannot serve on this jury? If so, please stand.

10 (No response from the Jury.)

11 THE COURT: Any further questions from the
12 State?

13 MS. LINDER: Nothing further from the State.

14 THE COURT: Anything from the defendant?

15 MR. KING: Not from the defendant, Your Honor.

16 THE COURT: Okay. Madam Clerk, how long before
17 you give us a strike sheet?

18 THE CLERK: Ten minutes.

19 THE COURT: How much time do you all need to
20 look at the strike sheet once I give you a copy of it?

21 MS. LINDER: Maybe two minutes.

22 THE COURT: Mr. King?

23 MR. KING: Like five minutes, Judge.

24 THE COURT: Is the State ready?

25 MS. LINDER: Yes, Your Honor. We are ready.

1 THE COURT: Mr. King, are you ready?

2 MR. KING: Yes, Your Honor.

3 THE COURT: Pardon?

4 MR. KING: Yes, Your Honor.

5 THE COURT: Okay. Madam.

6 THE CLERK: Ladies and gentlemen, when I call
7 your name and juror number, please come forward to the
8 podium, turn and face the audience.

9 Juror Number 68, David Crawford. What say you
10 for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KING: Please seat the juror.

14 THE CLERK: Have a seat in the jury box.

15 Juror Number 40, Tamarra Brown. What say you
16 for the State?

17 MS. LINDER: Please excuse this juror.

18 THE CLERK: Please have a seat in the gallery.

19 Juror Number 340, Aaron Voelker. What say you
20 for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please seat the juror.

24 THE CLERK: Juror Number 24, Lee Blanchard.
25 What say you for the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KING: Please excuse this juror.

4 THE CLERK: Juror Number 148, Anna Hicks. What
5 say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defense?

8 MR. KING: Please excuse this juror.

9 THE CLERK: Juror Number 196, James Lyga. What
10 say you for the State?

11 MS. LINDER: Please excuse this juror.

12 THE CLERK: Please have a seat.

13 Juror number 252, Kristen Poston. What say you
14 for the State?

15 MS. LINDER: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KING: Please seat the juror.

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

19 Juror Number 210, Patricia McDaniel. What say
20 you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please seat this juror.

24 THE CLERK: 54, Frank Cinnante. What say you
25 for the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KING: Please seat the juror.

4 THE CLERK: Juror No. 22, Carleton Blair. What
5 say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KING: Please excuse this juror.

9 THE CLERK: Juror Number 300, Charles
10 Smallldridge. What say you for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KING: Please excuse this juror.

14 THE CLERK: Juror Number 162, Morris Jackson.
15 What say you for the State?

16 MS. LINDER: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. KING: Please seat the juror.

19 THE CLERK: Juror Number 169, Lindsay Fry. What
20 say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please excuse this juror.

24 THE CLERK: Five strikes for the defendant.

25 Juror Number 5, Shirley Anderson Bowens. What

1 say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. KING: Please seat this juror.

5 THE CLERK: Juror Number 295, Ana Silva. What

6 say you for the State?

7 MS. LINDER: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KING: Please excuse this juror.

10 THE CLERK: Juror Number 337, Brian

11 Vanderschauw. What say you for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. KING: Please seat the juror.

15 THE CLERK: Juror Number 265, Eric Radabaugh.

16 What say you for the State?

17 MS. LINDER: Please present this juror.

18 THE CLERK: What say you for the defense?

19 MR. KING: Please excuse this juror.

20 THE CLERK: Juror Number 158, Rebecca Hudson.

21 What say you for the State?

22 MS. LINDER: Please excuse this juror.

23 THE CLERK: Three strikes for the State.

24 Juror Number 321, John Stott. What say you for

25 the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KING: Please seat the juror.

4 THE CLERK: Juror Number 227; John Mucherson.

5 What say you for the State?

6 MS. LINDER: Please excuse this juror.

7 THE CLERK: Juror Number 156, Cheryl Houston.

8 What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KING: Please seat the juror.

12 THE CLERK: Juror Number 264, Martha Quick.

13 What say you for the State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. KING: Please excuse this juror.

17 THE CLERK: Three strikes for the defendant.

18 Juror No. 13, Adam Barrett. What say you for

19 the State?

20 MS. LINDER: Please present this juror.

21 THE CLERK: What say you for the defendant?

22 MR. KING: Please seat the juror.

23 THE CLERK: Juror Number 84, Tyson Dutton. What

24 say you for the State?

25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KING: Please seat the juror.

3 THE COURT: Two alternates?

4 MS. LINDER: Yes, Judge.

5 THE CLERK: Striking the first alternate.

6 Juror Number 89, Sean Emanuel. What say you for
7 the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. KING: Please seat the juror.

11 THE CLERK: Selecting the second alternate.

12 Juror Number 153, Betty Hood. What say you for the
13 State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. KING: Please excuse this juror.

17 THE CLERK: Juror Number 9, James Avant. What
18 say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please seat the juror.

22 THE CLERK: Have a seat in the jury box.

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, I'm going to ask you to go to the jury room
25 very briefly. Don't discuss the case. Everybody that's

1 got bags, leave them with the bailiffs. I'm not going to
2 let you take them in the jury room, and same with your
3 cell phones. Follow the bailiffs into the jury room.

4 (Whereupon, the jury leaves open court at 12:58
5 p.m.)

6 THE COURT: Other than the questions that were
7 made at the bench, any motions from the strike of the
8 jury?

9 MS. LINDER: Nothing from the State, Your Honor.

10 THE COURT: Any motions from the defendant?

11 MR. KING: May I confer with Mrs. Linder for
12 just one second?

13 THE COURT: Yes, sir.

14 MR. KING: No motions, Your Honor.

15 THE COURT: No motions? Okay.

16 Remaining members of the jury panel, be back in
17 the assembly room downstairs at 2:15. Everyone else,
18 everybody be back in the assembly room at 2:15. Thank
19 you very much. You are free to go.

20 (A recess transpired.)

21 (Whereupon, the jury returns to open court at
22 1:09 p.m.)

23 THE COURT: Mr. John Stott, I'm going to appoint
24 you as foreman. If you will come down and sit on the end
25 and swap with this young man on the end please. As far

1 as when you come in the courtroom, Mr. Foreman, if you
2 will sit there, and two alternates will also sit where
3 they are sitting. How the rest of you sit it's up to you
4 how you file in the courtroom.

5 We are not going to start the trial until the
6 morning. I'm going to have you come back at 9:30 in the
7 morning. I've got to hear some motions this afternoon
8 and I think it will probably take most of the afternoon.
9 So I don't want you sitting around waiting. So we will
10 start the trial in the morning at 9:30.

11 I want you to make a decision on what you hear
12 in the courtroom, not what you read in the paper or see
13 on the television or see on the computer. I don't want
14 you to do any computer research at all on this case. I
15 want you to base your decision on what you hear in the
16 courtroom.

17 What's on the website, what's on the computer,
18 if there is anything, may be accurate, may not be
19 accurate. I don't know. May include hearsay, may
20 include some other things. I'm telling you not to do any
21 research electronically about this case, period. Don't
22 discuss the case with anybody. If anybody tries to
23 discuss the case with you, please walk away.

24 We will start in the morning at 9:30. And if
25 you will be back in the courtroom at 9:30, we will get

1 MS. LINDER: No, Judge.

2 THE COURT: Bring the jury, please.

3 (Whereupon, the jury returns to open court at
4 09:48 a.m.)

5 THE COURT: Swear in the jury.

6 (Whereupon, the jury is sworn.)

7 THE COURT: All right. Solicitor.

8 MR. VOIGT: May it please the Court, Your Honor.

9 Ladies and gentlemen, thank you very much for
10 your patience with us as we worked through some legal
11 issues yesterday so we could present our case to you
12 today.

13 Can you bring that up? This is Mall Park. This
14 doesn't really show you much other than a playground and
15 a basketball court in Mall Park, which is on the east
16 side, a neighborhood called the East Side. And East Side
17 has roots going back a good ways.

18 On October 27th, 2011, a fellow by the name of
19 Solomon Chisolm, Solomon Chisolm, was in Mall Park
20 playing cards with some other people. Somebody came up
21 and shot him numerous times, including a final shot to
22 the head.

23 Today we are here to prove who that person was.
24 We have the burden of proving who that person was. Part
25 of an opening statement, which is what this is, is it's

1 the first time the lawyers get to talk to you. It's kind
2 of our way of telling you what you are about to see. And
3 what I try to do when I get to talk to you is I like to
4 kind of give you some perspective on how to see evidence,
5 the evidence that we are going to present to you, the
6 standard that you should apply to that evidence.

7 I don't have much to say about what Mr. King or
8 his client have planned, because that's really in the big
9 scheme of things not as relevant because they don't have
10 to do anything. They never do. The burden is on us. We
11 have to show you that the gentleman seated at this table,
12 Mr. Tyrel Collins, was the person who fired the gun that
13 killed Solomon Chisolm. And that's why we are here
14 today.

15 We have chosen you because we would like you to
16 take this as seriously as we take it, as seriously as
17 Mr. King and his client take it. And we would like you
18 to weigh our evidence. And we each have different
19 conclusions we would like you to draw from it, but that's
20 what we would like you to do.

21 Evidence is going to come to you in one of many
22 ways. There's going to be things to look at. There's
23 going to be things to listen to. And there's going to be
24 witnesses from a witness stand and they are going to tell
25 you things.

1 Some of the things they are going to tell you
2 are what we call direct evidence: I saw this; I heard
3 that; I felt this; I tasted that, things that are
4 perceived by these witnesses with their five senses,
5 things they can directly tell you they knew happened.
6 All right?

7 There is going to be another type of evidence
8 that we are going to present to you as well. That's true
9 in every case, and especially in every murder case. And
10 that's circumstantial evidence.

11 Now, circumstantial evidence has got the same
12 weight - or can if you determine that it does - the same
13 weight as direct evidence, but --it's not, I saw this
14 happen, or, I heard that happen, or, I heard him say
15 this.

16 For example, a judge I used to practice in front
17 of, this was his example. I stole it from him and made
18 him angry. A man comes into the back of that courtroom
19 with an umbrella and he shakes it off and there's water
20 on it. Next person comes into the courtroom, and they've
21 got some sort of slick rain jacket on and it's wet.
22 There's not a window in here. You've been in here for
23 20, 30 minutes at least in the courtroom. But you can
24 conclude based on that evidence that outside on Broad
25 Street it's raining. We don't -- we can't show you that

1 because there's not a window in here, and we are not
2 going to let you on the computer to check radar or things
3 like that. But if people come in here and they are wet,
4 unless there's a sprinkler problem in the hall, which
5 would be kind of unusual, then you can conclude that it's
6 raining in downtown Charleston. That's what
7 circumstantial evidence is.

8 It's the oil in the driveway that let's you know
9 that a car was there. You don't see the car. The car
10 hasn't been there for awhile, but that spot will let you
11 know that that car had parked there for a considerable
12 period of time.

13 Well, this is Mall Park. All right? And this
14 is the East Side. And I'm going to explain to you a
15 little bit about Mall Park and a little bit about the
16 East Side. And I'm going to preface this by saying I'm
17 not going to apologize for the East Side. And I'm not
18 going to apologize for the witnesses that I'm going to
19 present to you or the police work that went into the
20 arrest of Tyrel Collins. But I do want to give you some
21 perspective on what we face in this particular community.

22 Henry Laurens, a great South Carolina patriot,
23 who's got a county and a town named after him, he plotted
24 this out in the 1760s. This was going to be kind of like
25 vacation homes for Georgetown planters, is how he

1 envisioned it. He had hundreds of lots, wound up selling
2 about half of them. And a bunch of rice planter from
3 Georgetown came down in the 18th Century and built big
4 houses right here on the East Side. It was called
5 Hampstead Village back then. There are still traces of
6 that name in the street. Hampstead runs right through
7 Mall Park.

8 It never developed, though, like some of the
9 other neighbors around it. He never sold all those lots.
10 And by the Civil War, the way this neighborhood was, it
11 changed substantially. This neighborhood was always
12 where the free men, the tradesmen congregated. So that
13 right after the Civil War, the largest concentration of
14 freed slaves in Charleston lived in this neighborhood.

15 And they were primarily iron workers, wood
16 workers, what we would call stevedores and longshoreman,
17 and people who worked in the carriage trade. And this
18 became a working-class neighborhood really from the 1880s
19 on. And the nature of it changed.

20 When Henry Laurens originally laid this out,
21 part of the draw was going to be that this was going to
22 be a quaint English village. And so he set out, because
23 all quaint English villages have common areas or greens,
24 he set out this area to be a green. And that's the way
25 it was. The streets, America Street and Columbus, didn't

1 go through it back in the old days. As a matter of fact,
2 probably the 1940s is when they cut those streets
3 through. The streets had always been there, but this was
4 a grassy area for adults to promenade on, to walk on.

5 And you know this from the nation's Capitol, a
6 large grassy area is called a mall. That's what this
7 was. This was the mall at Hampstead Village.

8 In 1915 or so, there was a movement, a public
9 parks movement across the United States. We were going
10 to get healthier. We were going to -- instead of kicking
11 cans down the road, children have things to do and places
12 to go to stay out of trouble.

13 So the City of Charleston got on the bandwagon
14 and built a series of public parks. And Mall Park was
15 one of the first ones that they built. Despite the fact
16 this was a primarily African American neighborhood,
17 African Americans weren't able to use Mall Park because
18 of segregation until the 1950s.

19 This entire area lost population in every sense
20 until 20 years ago; especially true immediately after
21 Hurricane Hugo. A lot of people took their insurance
22 money and left, which left a lot of empty property, which
23 left a lot of houses, broken windows, and the
24 neighborhood fell on to hard times.

25 So the cruelty of Jim Crow, segregation, hard

1 economic times, the cotton mill, which if you are not
2 from around here, is what they call the Cigar Factory on
3 East Bay, closed years ago, taking the major employer out
4 of the neighborhood. The East Side became a tough place,
5 tough place to raise a family, tough place to do
6 business, tough place to do police work.

7 You treat people badly for a number of years and
8 they kind of understand that you are treating them badly.
9 And it doesn't sometimes matter so much that things have
10 changed or your perspective has changed. Sometimes the
11 neighborhood doesn't understand that. That's why I say
12 I'm not going to apologize.

13 You are going to hear about the investigation.
14 You are going to hear about the shooting. You are going
15 to hear how many times he was shot, approximately from
16 what angle. But you are going to get a flavor of the
17 East Side. In all of our Charleston neighborhoods, this
18 was perhaps one of the most lawless. This has the
19 highest incidence of illiteracy, highest unemployment
20 rate, fewest college degrees. And it has been that way
21 for a considerable period of time. And the problem with
22 lawlessness is that it breeds lawlessness.

23 You are going to see through -- you are going to
24 see how the police investigated this case, how far out
25 they cast their net for witnesses and evidence. And you

1 are going to see what they brought in their nets. It is
2 going to be substantially less than it might be in other
3 places. There's a cultural bias against working with the
4 police for any reason. There's genuine fear in the
5 streets for cooperating with the police for any reason.
6 And that shapes kind of how I have to tell this story to
7 you, how the evidence I get to present and what the
8 witnesses say.

9 It's real in this pleasant little green area,
10 brightly colored playground equipment, and it's palpable.
11 Columbus Street, America Street, people don't tell their
12 stories and people count on people not telling their
13 stories and not explaining things and not seeing what
14 they saw. This was a lawless area.

15 Solomon Chisolm didn't have a gun in his hand
16 when he died, didn't have a six-shooter. He had two
17 cards, playing cards, like Wild Bill picked out in the
18 Dakota territory holding the dead man's hand, shot in the
19 back. They prosecuted the person that did that killing,
20 just like we are prosecuting this killing because we
21 can't allow lawlessness. We can't allow our streets to
22 be this way. Now, it is our burden to prove it.

23 And ultimately, that's the hardest task that we
24 have. You are going to hear evidence from witnesses.
25 You are going to hear direct observations. You are going

1 to get a chance to judge their credibility. No witness
2 in this case is going to come without some history, some
3 past. You are going to have to evaluate that. You are
4 going to have to evaluate them in terms of bias. Why
5 would they come? Why would they come say something that
6 would link him to a murder? What do they have to gain?
7 What do they have to lose? What you have to lose on the
8 East Side is maybe everything. You have to judge them
9 individually. And I'm going to tell you that nobody is
10 perfect, not in this case and maybe not in any case.

11 You are going to hear bits and pieces that are
12 going to place Tyrel Collins there. You are going to
13 hear bits and pieces that are going to -- you know, you
14 may never find out why. And that may be a question that
15 you have now and that you carry with you back in the jury
16 room when you are allowed to talk about it. You may say,
17 why did he do this? Why would he do this? Why would
18 anybody do this?

19 We have to prove certain elements in a homicide,
20 but one of them is not motive, the why. We have an idea,
21 but having an idea is not the same as having evidence.
22 And we may not be able to give you satisfactorily a why.
23 This isn't like a TV show. There's a TV show on now that
24 has the premise that they are going to tell you the "why"
25 first and work backwards from that.

1 Most mysteries you've ever read, at some point
2 you find out why. If you figure out why before the last
3 chapter and you have that epiphany, you know who the
4 killer is going to be. We don't have to prove it. And
5 that may be unsatisfactory to you at some point, but we
6 don't have to prove it.

7 What we have to prove is that there was a
8 killing of another human being. You will see enough of
9 that to know that there's a killing of another human
10 being. We have to prove the identity of the person who
11 killed the other human being. We've got the reasonable
12 doubt. Not beyond any doubt, not beyond whatever idea
13 you may have in your head that could possibly extricate
14 them from this epiphany. If you think he did it when I'm
15 done presenting my evidence when this case is over, then
16 that's beyond a reasonable doubt.

17 But we also have to prove malice aforethought,
18 an old English term. It's kind of clunky. Don't speak
19 like that anymore. Although more likely, I speak like
20 that more than most people because of my trade. This is
21 one of those things I said in every murder case we have
22 circumstance evidence. Well, malice aforethought is an
23 evil intention, an evil heart. And we don't talk like
24 that anymore much either. But what it is is when you get
25 inside that person's head, these are ill intentions. And

1 it is not good enough that you used a gun and shot him.
2 A gun isn't good enough to prove that. All the
3 circumstances of the killing, of this homicide, must show
4 you he meant no good and that this was truly a bad act.
5 And we are talking about the act, the bad act.

6 Please listen very carefully to what you hear
7 from the witness stand. You will have many opportunities
8 to weigh our witnesses, the credibility of our witnesses,
9 the quality and quantity of our evidence. We have chosen
10 you because we think that you can do this for us. And we
11 thank you.

12 Remember, what I say isn't evidence. What
13 Mr. King says isn't evidence. We hope to give you some
14 guidance, be able to give you some perspective, and
15 that's really why we are here.

16 Thank you. Please give your attention to
17 Mr. King.

18 THE COURT: Mr. King.

19 MR. KING: Good morning. The solicitor talked
20 about the East Side. This is the East Side, the common
21 area. And Solomon Chisolm was legendary in this area as
22 a killer.

23 MS. LINDER: Objection, Your Honor. May we
24 approach?

25 THE COURT: Yes, ma'am.

1 (Whereupon, a bench conference is heard off the
2 record.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, I'm going to have to ask you to go to the jury
5 room. And the reason I'm going doing that, when
6 objections are made, and during the trial, I'm not
7 permitted to comment on the facts of case. And sometimes
8 when an objection is made and I'm trying to determine
9 whether or not it's admissible or not admissible, I want
10 to be free to comment on the facts with the lawyers to
11 fully understand what the objection may be. But I can't
12 comment on the facts in your presence. So, generally, I
13 will ask you to go to the jury room so I will be free to
14 comment on those facts.

15 Please do not discuss the case amongst
16 yourselves. I will get you back just as soon as I finish
17 this, hear this argument. Thank you very much.

18 (Whereupon, the jury leaves open court at 10:10
19 a.m.)

20 THE COURT: All right. In opening statements,
21 Mr. King stated: Good morning. The solicitor talked
22 about the East Side. This is the East Side, the common
23 area. And Solomon Chisolm was legendary in this area as
24 a killer.

25 And the State objected. Glad to hear you on

1 your objection. That's recorded exactly as to what
2 Mr. King said in opening statements.

3 All right. I'll be glad to hear you.

4 MR. VOIGT: Thank you very much, Your Honor.

5 The reason why at the bench we moved for a mistrial is
6 because he's now rung a bell that we can't unring. He's
7 done it in a place that is -- I mean, this was designed
8 to be improper. It's designed to come out before an
9 objection can be made. It's designed to be heard so it
10 can't be unheard. It's the first shot out of his mouth.

11 We can't -- there's no curative instruction that
12 fixes it. There's nothing that makes it go away. It was
13 designed that way.

14 You know, there were all sorts of things that
15 the Court has instructed each of us not to bring up in
16 opening. I thought I did. But he steps right into it.

17 I don't know who -- Solomon Chisolm was never
18 convicted of any homicide. I know that's not the same as
19 not being a killer, but he has not -- for someone who has
20 no burden to prove anything, no obligation to prove
21 anything, he can't just come right out and drop a bomb
22 like that, something unsubstantiated that he doesn't have
23 to substantiate. That's just slinging mud and trying to
24 prejudice this jury, and I think I has.

25 I don't think we get to -- I don't think we can

1 put all the pieces back together again from that.

2 THE COURT: Okay. Let me hear you, Mr. King.

3 MR. KING: Your Honor, I believe it is relevant.

4 He's not just some innocent citizen sitting out there
5 playing cards.

6 THE COURT: I mean, there's a way to do
7 character and there's a way not to do character. To
8 stand in front of a jury and say he's a legendary killer
9 is totally improper. That's not the way you do a
10 character.

11 You can call a witness and say: Does he have a
12 reputation for violence? That's the way you do it;
13 correct?

14 MR. KING: I believe that's --

15 THE COURT: Not a killer. .

16 MR. KING: Your Honor, what I said --

17 THE COURT: How do you think you are supposed to
18 attack character of violence? How do you think you are
19 supposed to do that?

20 MR. KING: By reputation.

21 THE COURT: Okay, by reputation. Telling the
22 jury he's a legendary killer, do you think that's
23 reputation?

24 MR. KING: Yes, Your Honor. In this community,
25 he was legendary. I didn't say he was a killer. In this

1 community he's legendary.

2 THE COURT: I just read to you what you said. A
3 legendary killer is what you told the jury.

4 MR. KING: In this community he is legendary as
5 a killer, which means he has the reputation -- notorious
6 reputation in this community for having killed a dozen
7 people. I mean, Detective Osborne, his brother
8 Raymond --

9 THE COURT: What kind of proof do you have of
10 that if we head into trial?

11 MR. KING: I can ask Raymond Clement, his
12 brother, and Detective Osborne who worked the cases. And
13 the point necessarily is that in the community, he was
14 legendary as a killer. Any number of people could have
15 wanted to kill him. He's in the drug trade.

16 I mean, they are talking about motive. There
17 are all kinds of reasons people wanted to kill this man.
18 I think it is relevant to who might have had a motive to
19 kill him.

20 And the State has to disprove self-defense. I
21 think it is relevant to that. So the statement I made
22 was basically that he had a reputation as a killer. But
23 it is not -- he had a legendary reputation.

24 THE COURT: Well, you didn't say reputation.
25 You said he was known as a legendary killer, is what you

1 said.

2 MR. KING: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. KING: Newspaper article, Your Honor:

5 Killing claims man named one of Charleston's --

6 THE COURT: I'm sorry, what?

7 MR. KING: There's a newspaper article right
8 after the shooting with a headline: Killing claims man
9 named one of the Charleston's worst criminals. The man
10 shot dead on Charleston's East Side Thursday night was
11 long considered one of the city's worst criminals.
12 Charleston police named Solomon Chisolm to a list of its
13 most hard-core offenders after a string of violent
14 crimes. He more than lived up to the reputation racking
15 up three murder charges in less than four months during
16 that period. Each time he managed to avoid prison.
17 Witnesses got scared or changed their stories. Cases
18 fell apart.

19 MR. VOIGT: And if Mr. King had brought that in
20 correctly, not in opening, not in the opening sentence,
21 then perhaps -- I mean, we are at the point where we
22 don't know and we cannot necessarily anticipate a
23 self-defense defense. If he brings those things out and
24 goes into them through questioning witnesses, that's one
25 thing. You don't drop that bomb in opening and then

1 scurry away from it.

2 And those newspaper articles and whatever they
3 say, no jury would ever be able to consider any more than
4 we should be considering them now.

5 THE COURT: Mr. King, is there any evidence in
6 this case of self-defense; I mean, any at all other than
7 your defendant's testimony?

8 MR. KING: If the State puts up the gunshot
9 residue expert, the victim had gunshot residue on his
10 hand.

11 THE COURT: Okay. The victim did?

12 MR. KING: Yes.

13 THE COURT: How about the defendant; was any
14 residue on his shirt?

15 MR. KING: I don't believe that's going to be in
16 dispute, Judge. That's probably going to be a motion
17 tomorrow.

18 THE COURT: Well, my question to you is real
19 simple. Was there any residue shown on the T-shirt that
20 was taken out of the defendant's house?

21 MR. KING: In my position, no, Judge. It comes
22 down to --

23 THE COURT: Well, what did SLED say?

24 MR. KING: Said there were particles consistent
25 with gunshot residue.

1 THE COURT: Just answer my question. I'm not
2 trying to argue which way --

3 MR. KING: I know.

4 THE COURT: I want to know what SLED said.

5 MR. KING: SLED said they found one particle
6 consistent with gunshot residue, another particle that
7 may be associated with gunshot residue, but both of those
8 particles could have come from other sources. And
9 there's no evidence of --

10 THE COURT: Thank you. I appreciate you
11 answering my question.

12 What else do you have that would substantiate a
13 self-defense issue?

14 MR. KING: I believe that's all I have.

15 THE COURT: Just the residue? That's all you've
16 got that it was self-defense?

17 MR. KING: Yes, Your Honor. I also believe it's
18 more than just self-defense. It shows --

19 THE COURT: What else would it be if not
20 self-defense?

21 MR. KING: The likelihood that many other people
22 would have wanted to kill this man.

23 THE COURT: Do you have anybody that's going to
24 testify that they wanted to kill him? Now you are saying
25 he's not the one that did the killing? I mean, at some

1 point in time you just shotgun yourself with no
2 credibility at all, with no evidence to back it up.

3 MR. KING: We haven't gotten to any testimony
4 yet.

5 THE COURT: I know, but you are offering
6 testimony in court in opening statements which basically
7 is improper in opening statements. You are basically
8 telling the jury what you are going to prove. You don't
9 sit up there and argue that he's a legendary killer.
10 That's improper in opening statements.

11 There was a time years ago when only thing you
12 could do in opening statement was read the pleadings.
13 And the new rules allowed you to make opening statements
14 which is a pre-summary of the case, not argumentative.
15 You argue in closing arguments. That is argumentative.
16 It is improper.

17 Lawyers have got to the point now where they
18 want make open statements argumentative. They want to
19 make opening statements a closing statement. That's not
20 what opening statements are. Do you understand?

21 MR. KING: Yes, Your Honor.

22 THE COURT: Now the question in my mind is if
23 I'm going to grant a mistrial or not. Okay? Because I
24 think the statement is very clearly improper in opening
25 statement, especially if you don't have any proof of

1 self-defense other than some residue on the defendant's
2 hands.

3 MR. KING: Your Honor, I intended to draw
4 evidence out through cross-examination to make the
5 argument that --

6 THE COURT: That's fine. It would have been
7 perfectly proper in closing arguments. I wouldn't be
8 sitting here telling you that. I have no problem in
9 closing arguments. I do have a problem in opening
10 statements. Do you understand?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Mr. King, how do you think you are
13 supposed to prove character in a criminal case? What's
14 your thoughts on that? How do you think you are supposed
15 to prove it? How are you allowed under the rules to
16 prove character?

17 MR. KING: By reputation evidence.

18 THE COURT: Okay. What else? Threats,
19 introduce threats?

20 MR. KING: Yes, Your Honor.

21 THE COURT: Okay. What else?

22 MR. KING: The way I intended to do it was
23 through his reputation in the community.

24 THE COURT: Okay. That's fine. I have no
25 problem with that. I think that's proper. Where I have

1 a problem is making that argument in opening statements.

2 Do you understand?

3 MR. KING: Yes, Your Honor.

4 THE COURT: And the reputation is not going to
5 come in with a newspaper article. Okay? Because that
6 reporter doesn't even know the deceased. There's no way
7 he would know the character. You are going to have to
8 have somebody to testify that knows the deceased and
9 knows his reputation, character reputation for violence.
10 Correct?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Do you have somebody that's going to
13 testify to that?

14 MR. KING: I believe that the witnesses that the
15 State will call --

16 THE COURT: I didn't ask you that. I said, do
17 you have somebody that's going to testify to that?

18 MR. KING: To testify to his character?

19 THE COURT: Yes, sir.

20 MR. KING: I could call witnesses.

21 THE COURT: Well, I understand. Isn't that your
22 obligation?

23 MR. KING: Well, the State doesn't have to put
24 up a defense, Judge. I mean, I can get evidence out from
25 cross-examination. That's what --

1 THE COURT: If you are going to put up a defense
2 of character violence in self-defense, how are you going
3 to put it up? Do you think you can put it up on
4 cross-examination and then have self-defense charged by
5 this Court? Do you think that?

6 MR. KING: The State has to disprove
7 self-defense.

8 THE COURT: But you've got -- that's true. But
9 you have to offer some testimony for self-defense. Do
10 you think you can -- your obligation is just on
11 cross-examination of self-defense?

12 MR. KING: I believe --

13 THE COURT: I'm just asking you. I'm not trying
14 to rule against you one way or the other. I'm just
15 asking, do you think you can prove self-defense through
16 cross-examination without putting up any testimony about
17 your self-defense?

18 MR. KING: No. I don't know that I can prove
19 self-defense at all; I honestly don't.

20 THE COURT: Then why are we sitting here talking
21 about his character for violence if you are not going to
22 introduce self-defense? That's the only reason that
23 would make it relevant.

24 MR. KING: It is not relevant to show -- they
25 are going to talk about Mr. Collins killing him. And

1 they discuss motive in the opening. The fact that he is
2 in the drug business and this whole community believes
3 that he's killed many people --

4 THE COURT: Well, he may be a blue ribbon killer
5 that killed the sorriest son of a bitch in Charleston, I
6 don't know, but that's not the point.

7 MR. KING: My argument was planning on being any
8 number of people wanted to kill him, not necessarily
9 self-defense, but this man had a target on his head.
10 From the legends and the way people in the community
11 viewed him, any number of people could have --

12 THE COURT: That may be. I don't know.

13 MR. KING: That's what I intend to argue, not
14 self-defense.

15 THE COURT: How are you going to argue unless
16 you have some facts to back it up?

17 MR. KING: I can -- cross-examination of the
18 State's witnesses.

19 THE COURT: I'm going to read something to you.
20 Okay.

21 The defendant can introduce evidence under
22 character of the victim to show that the defendant acted
23 in self-defense to a charge of assault and battery,
24 charge of murder. The defendant must lay a proper
25 foundation to introduce the victim's reputation for

1 violence. One of the foundations is that the defendant
2 must know of the victim's reputation for violence.

3 I mean, that's what the law is. You've got to
4 offer some foundation before you can just stand up there
5 and say, hey, he's a legendary killer. It's like I told
6 you yesterday, you can't ask some woman is she a
7 prostitute if you don't have any basis knowing that she's
8 a prostitute. You've got to have some foundation, some
9 basis of what you are doing, not something you read in a
10 damn newspaper.

11 Your motion for mistrial is granted. Thank you
12 very much.

13 Be here ten o'clock as to why I shouldn't hold
14 you in contempt. Do you understand?

15 MR. KING: Yes, Your Honor.

16 (Whereupon, proceedings are concluded.)

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1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
3 COUNTY OF CHARLESTON) Case No. 2012-GS-10-5449
4) Case No. 2012-GS-10-5452

5)
6 STATE OF SOUTH CAROLINA)
7)
8 VS.) Transcript of Record
9)
10 TYREL RASHONE COLLINS,)
11)
12 Defendant.)
13)

14 DATE: January 6 - 9, 2014

15
16 B E F O R E:

17 The Honorable Roger M. Young, Sr.
18

19 A P P E A R A N C E:

20 Stephanie B. Linder and Gregory Voigt,
21 Assistant Solicitors
22 For the State

23 Jason T. King and Luke J. Malloy, III
24 For the Defendant
25

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 THE COURT: Jason, you've got double jeopardy
2 motion; and what else, a motion to suppress a gunshot
3 residue? Is that ones you take up now or is that something
4 we need to have an expert for later?

5 MR. KING: I believe we will have to wait later in
6 the week when the expert is here to clarify those issues.

7 THE COURT: All right. What else did you have?

8 MR. KING: Your Honor, I have a search warrant
9 motion. I told the solicitor -- I had originally filed Neil
10 vs. Biggers motion that we heard in the previous trial. I'm
11 fine with not rehashing all of that. I sent a copy of the
12 transcript from the previous trial.

13 THE COURT: I read them.

14 MR. KING: However you want to do it, incorporate
15 that.

16 THE COURT: If you are willing to say that the
17 testimony is what it is and you don't need to question
18 anybody any further, then we can do one of two things. I
19 can either adopt Judge Nicholson's rulings, or I can allow
20 you to argue based on those. So I'm giving you the option.

21 MR. KING: Yes, Your Honor.

22 THE COURT: As long as we don't need to bring the
23 witnesses back in to do it, well, that saves some time.

24 MR. KING: I have no better arguments now than I
25 did then. If Your Honor wants to just adopt Judge

1 selection. He's the detective. So, I mean, he'll be
2 available for right after jury selection if Your Honor would
3 like.

4 THE COURT: Well, let's draw the jury. See where
5 that gets us. And we will probably break for lunch, come
6 back, give you that period of double jeopardy motion, and
7 then start the trial this afternoon. Okay?

8 MR. KING: Yes, Your Honor.

9 THE COURT: You got 10 strikes. You got five. Is
10 there anything we need to take up before we start the jury
11 selection?

12 MS. LINDER: Nothing from before we pick the jury,
13 Judge.

14 MR. KING: There may be some duplicated names on
15 our witness list, Your Honor.

16 THE COURT: There may be what on the list?

17 MR. KING: There may be duplicate names.

18 THE COURT: All right. Okay. Is the panel picked
19 yet and brought up or are we still waiting?

20 THE DEPUTY: They are sending half to 4C and --

21 THE COURT: Is my half here yet?

22 THE DEPUTY: No.

23 THE COURT: Okay. Let me ask you this. You had a
24 motion about the victim's reputation, I saw on an e-mail.

25 MR. VOIGT: Yes, Your Honor.

1 THE COURT: Does that still need to be heard?

2 MR. VOIGT: That probably does. I think that's
3 where we ran off the tracks last time we tried this. And
4 the motion in limine is an attempt to maybe --

5 THE COURT: Do you intend to bring -- put up a
6 self-defense defense?

7 MR. KING: No, Your Honor.

8 THE COURT: All right. Then what is the relevancy
9 of the defendant's or of the victim'S reputation?

10 MR. KING: The relevance is that it's not just if
11 he was a bad guy. He was the most notorious person in that
12 area in a long time. He was in the paper. And there was a
13 point where I read an article in the paper during the
14 argument to Judge Nicholson about when he declared the
15 mistrial, he was accused of three different murders, but
16 wasn't convicted of any one of those. He was rumored to
17 have killed anywhere from eight to a dozen people.

18 I mean, I would equate it to like to Billy the Kid.
19 So if someone had killed Billy the Kid, it seems to me that
20 the jury ought to know --

21 THE COURT: That he deserved to be killed?

22 MR. KING: No, no, Judge.

23 THE COURT: We don't allow that usually. You have
24 to be a lot more subtle. And it really only seems to be
25 relevant in a self-defense argument of why the defendant was

1 in a heightened sense of awareness because the person had a
2 bad reputation. But we don't just get to go out and kill
3 bad people.

4 MR. KING: What about the argument that there could
5 have been any number of people who would have wanted to kill
6 Solomon Chisolm, because of the enemies that he made and the
7 reputation?

8 THE COURT: You've got to present a little bit more
9 evidence than, yeah, there were a lot of people that might
10 have had a motive. Third-party guilt isn't just something
11 you can just throw up on wall and see if it sticks. You got
12 to actually be able to point to somebody, more or less.

13 But if the only -- if you are not going to be
14 putting up a self-defense defense, then reputation of the
15 victim has no relevancy that I could see. Because we don't
16 allow just a, you know, well,
17 he's-a-bad-guy-and-deserves-to-be-killed argument. If
18 that's your argument, and that's all you've got, you might
19 as well try to go for a plea.

20 MR. KING: No, there's not an identity argument, no
21 identity argument.

22 Give a little back story. Four days -- Solomon
23 Chisolm is the victim, and who I argued in the first trial
24 was legendary in the East Side for being a killer. And --

25 THE COURT: That didn't work out so well.

1 MR. KING: No, no, Your Honor, that didn't work out
2 well. A mistrial was granted.

3 Four days before he was killed, Tyrel Collins was
4 driving, was riding as a passenger in a car on the
5 interstate. I think there were four people in the car.
6 He's a passenger. Someone shot into that car and killed the
7 driver. Mr. Collins was covered in blood. I think he had
8 to grab a steering wheel to steer the car over. And no one
9 was ever charged with that, but according to the police
10 report, the only suspect was Solomon Chisolm for doing that.

11 So in the investigation of the case, that was at
12 least one considered a motive for Tyrel Collins to go back
13 and kill Solomon Chisolm because the shooting happened on
14 the night of the funeral for the driver who was killed.

15 I think -- all of that may help the State some by
16 giving a motive. I don't think they intend to go into that.
17 But I believe it may be something that I can go into as well
18 for reasons why people would have thought that he did it.
19 You understand what I mean?

20 THE COURT: Do you want to help them present a
21 motive?

22 MR. KING: I wouldn't be arguing that, Judge, but I
23 may go into at some point if, as the trial develops -- and
24 I'm not sure exactly how things are going to develop,
25 because witnesses have changed stories. I'm not sure

1 exactly how it's going to go, but it could become relevant
2 that the first person, the first suspect that would pop into
3 anybody who knew about this area, first suspect to pop into
4 their head would be Tyrel Collins, because his car had been
5 shot at four days before. That might give a reason why
6 other witnesses might suspect him to have done it.

7 THE COURT: Well, how would that exonerate your
8 client?

9 MR. KING: It's more complicated, Judge. It would
10 have to do with if there's a witness who identified
11 Mr. Collins, and if I wanted to explain how did he -- that
12 he didn't actually see who did it, then how did he know who
13 to pick, and you would think because he was the obvious
14 suspect. That would be the argument I could make. I'm not
15 saying I'm going to make, because I agree it could be
16 dangerous ground, and I have to tread carefully.

17 THE COURT: I don't know how I could see upside to
18 that information for you to have that in. If the State
19 wants to present it, I would see why they would want to
20 present it. I don't know why you wouldn't be trying to keep
21 it out because it gives your client motive. Maybe I'm
22 missing the subtlety of your argument, but I don't see how
23 that information helps you in defense.

24 MR. KING: Maybe we could see how the trial
25 develops. I won't go into any of this. If I decide I want

1 to go into it, maybe I can approach and we can have a matter
2 of law and argue it then, just --

3 THE COURT: I would say that would be good.

4 MR. KING: -- test you.

5 THE COURT: That's exactly what you need to do. So
6 I don't know what -- is your defense at this point "wasn't
7 me"?

8 MR. KING: Yes.

9 THE COURT: Okay. Well, then I wouldn't at this
10 point see any relevance to a defense that you've indicated
11 to me that you have. If anything, it supplies motive for
12 your client. And if it's kind of a backhanded reputation of
13 victim evidence, well, again, I don't see where that's
14 relevant since you're not putting up self-defense. And it
15 really doesn't seem to accomplish the point at all. So stay
16 away from it certainly in opening argument.

17 And if you see that during the course of the
18 development of the trial that you want to explore that
19 avenue, well, let's take a break outside of the presence of
20 the jury and discuss it before you get there.

21 MR. KING: Yes, Your Honor.

22 THE COURT: Fair enough?

23 MR. KING: Fair enough.

24 THE COURT: All right. Anything else?

25 MR. VOIGT: That was the sum and substance of our

1 just like this. Bring your purse or pocketbook or
2 belongings with you. And you come through here, stand in
3 front of this podium, and turn around and face back that
4 way.

5 The State will get to say, you know, present the
6 juror or strike the juror. And then if the State strikes
7 you, you go back. If the State presents you or says you are
8 okay, then the defense will get a chance to either strike
9 you or allow you on.

10 If either of the two strike you, you go back to
11 your seat. If neither of them strike you, you get to come
12 over here to the jury box, and you will be one of our
13 jurors. We will do that until we get 12 jurors and two
14 alternates.

15 In South Carolina, the State has a certain number
16 of objections or strikes that they get to do, which is five.
17 And defense gets to do ten. On the alternates, the State
18 will get one strike and defense will get two.

19 So if y'all are ready, Mr. Clerk, you may begin.

20 THE CLERK: Thank you, Your Honor.

21 As the judge indicated, whenever your name is
22 called, go and gather your belonging and make your way to
23 this podium, and I will instruct you from that point on.

24 Juror 103, Michael Dovey.

25 What say you for the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KING: Please seat this juror.

4 THE CLERK: Sir, please make your way to the jury
5 box. You've been selected as a juror in the trial of this
6 case.

7 Juror 173, Stanley Kellett. What say you for the
8 State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KING: Please seat Mr. Kellett.

12 THE CLERK: Sir, if you would please make your way
13 to the jury box. You've been selected as a juror in the
14 trial of this case.

15 Juror Number 309, Yolanda Simpson.

16 What say you for the State?

17 MS. LINDER: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KING: Please seat Ms. Simpson.

20 THE CLERK: Sir, if you would please, make your way
21 to the jury box. You've been selected as a jury in the
22 trial of this case.

23 Juror No. 359, William Whorton.

24 What say you for the State?

25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KING: Please seat Mr. Whorton.

3 THE CLERK: Sir, if you would make your way to the
4 jury box. You've been selected as a juror in the trial of
5 this case.

6 Juror No. 202, Kitera Linen.

7 What say you for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. KING: Please seat this juror.

11 THE CLERK: Ma'am, if you would please make your
12 way to the jury box. You've been selected as a juror in the
13 trial of this case.

14 Juror No. 199, Isaac Legare.

15 What say you for the State?

16 MS. LINDER: Beg the Court's indulgence. Please
17 present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KING: Please seat Mr. Legare.

20 THE CLERK: Sir, if you would please make your way
21 to the jury box, you've been selected as a juror in the
22 trial of this case.

23 Juror No. 349, Cheryl Warnimont. What say you for
24 the State?

25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KING: Please seat this juror.

3 THE CLERK: Ma'am, if you would make your way to
4 the jury box. You've been selected as a juror in the trial
5 of this case.

6 Juror No. 327, Althea Tisdale.

7 What say you for the State?

8 MS. LINDER: Please excuse this juror.

9 THE CLERK: Ma'am, if you would, please return to
10 your seat. You've been excused from the trial of this case.

11 Juror No. 344, Bruce Wallace.

12 What say you for the State?

13 MS. LINDER: Please present this juror.

14 THE CLERK: What say you for the defendant?

15 MR. KING: Please seat Mr. Wallace.

16 THE CLERK: Sir, if you would make your way to the
17 jury box, you've been selected as a juror in the trial of
18 this case.

19 Juror No. 363, Rose Williams.

20 What say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please excuse this juror.

24 THE CLERK: Ma'am, if you will please return to
25 your seat. You've been excused from the trial of this case.

1 Juror No. 271, Franklin Rector.

2 What say you for the State?

3 MS. LINDER: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. KING: Please seat Mr. Rector.

6 THE CLERK: Sir, if you will make your way to the
7 jury box, you've been selected as a juror in the trial of
8 this case.

9 Juror No. 258, Jonathan Peace.

10 What say you for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KING: Please excuse this juror.

14 THE CLERK: Sir, if you will please return to your
15 seat. You've been excused from the trial of this case.

16 Juror No. 153, Sharon Hobart.

17 What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. KING: Please excuse this juror.

21 THE CLERK: Ma'am, if you would return to your
22 seat. You've been excused as a juror for the trial of this
23 case.

24 Juror No. 101, Blaine Dooley.

25 What say you for the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KING: Please seat Mr. Dooley.

4 THE CLERK: Sir, if you will make your way to the
5 jury box. You've been selected as a juror in the trial of
6 this case.

7 Juror No. 42, Diane Breedlove.

8 What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KING: Please seat Ms. Breedlove.

12 THE CLERK: Ma'am, if you would please make your
13 way to the jury box. You've been selected as a juror in the
14 trial of this case.

15 Juror No. 297, Shirley Scott.

16 What say you for the State?

17 MS. LINDER: Please excuse this juror.

18 THE CLERK: Ma'am, if you would please return to
19 your seat. You've been excused from the trial of this case.

20 Juror No. 212, Vicky Matcovich.

21 What say you for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. KING: Please excuse this juror.

25 THE CLERK: Ma'am, if you would return to your

1 seat. You've been excused from the trial of this case.

2 Juror No. 123, Nancy Freitag.

3 What say you for the State?

4 MS. LINDER: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. KING: Please excuse this juror.

7 THE CLERK: Ma'am, if you would return to your

8 seat. You've been excused in the trial of the case.

9 Defendant has exhausted their strikes.

10 Juror No. 174, Ryan Kelly.

11 What say you for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. KING: Please seat Mr. Kelly.

15 THE CLERK: If you will make your way to the jury

16 box. You've been selected as the last juror in this case.

17 Now, striking for our alternate. Strikes are one

18 and two.

19 Juror No. 356, Kimberly Whipkey.

20 What say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please seat this juror.

24 THE CLERK: Ma'am, please make your way to the jury

25 box. You've been selected as the first alternate in the

1 trial of this case.

2 Now striking for our second alternate, Alternate 1
3 and 2.

4 Juror No. 158, Carl Hudson.

5 What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KING: Please seat this juror.

9 THE CLERK: Sir, please make your way to the jury
10 box. You've been selected as the second alternate in the
11 trial of this case.

12 THE COURT: All right. Anything from the State?

13 MS. LINDER: Nothing from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. KING: No, Your Honor.

16 THE COURT: All right. Folks, you are our jury
17 now. And we will start this case after lunch. I'm going to
18 send you back with the bailiffs right now. He'll show you
19 where to report back to after lunch. Don't come straight
20 back to the courtroom; you go to the jury room.

21 I've got -- it's almost one o'clock right now.
22 We're going to take a lunch break. And we've got a couple
23 of pretrial motions and stuff that we'll need to take care
24 of before we're ready to start the trial. So I'm going to
25 give you a little bit of a longer lunch, have you report

1 So I have some concern. I think it goes beyond
2 what just you were saying, is what she's potentially able to
3 talk about.

4 THE COURT: All right. In that case then, I will
5 have her sequestered as well.

6 MR. KING: I do have Investigator Lee Ginn who is
7 not here at the moment, but will he be allowed?

8 THE COURT: That's fine.

9 All right. All right. What sort of motions do we
10 need to take up now?

11 MR. KING: I need to make sure that none of the
12 witnesses are in here right now, Judge.

13 THE COURT: All right.

14 Do you have any motions that you wanted to take up?

15 MR. KING: Yes, Your Honor. I think we can start
16 with the double jeopardy motion.

17 THE COURT: All right. Go ahead.

18 MR. KING: We've already discussed, I guess, some
19 of the argument would go there. I provided the transcript.
20 Your Honor was able to read it, where the State gave an
21 opening statement, and I began an opening statement, and
22 told the jury that they talked about the East Side is a
23 high-crime area. And I told the jury that Solomon Chisolm,
24 the victim in the crime, was legendary in that area for
25 being a killer. And the State objected. And a mistrial was

1 granted.

2 I just filed a motion that that mistrial was
3 improperly granted and not dictated by manifest necessity.
4 I think a curative instruction could have been given. What
5 I said wasn't evidence. You know, I know the State has a
6 right to a fair trial, but here's a defendant who has the
7 rights of the trial, the constitutional rights and the most
8 protections.

9 It was the State who made the motion, but I don't
10 believe that it rose to the level of mistrial. We'd ask, I
11 guess, to dismiss the indictments as being barred by double
12 jeopardy.

13 THE COURT: Who would like to argue this for the
14 State?

15 MR. VOIGT: Your Honor, the defense argues State v.
16 Prince. That's the first of the modern case adopting
17 mistrial language in South Carolina. State vs. Prince was a
18 several-day trial. Jury was out for a long time. After
19 about eight hours, the judge indicated that he was going to
20 declare a mistrial, that it was hung. The jury came back
21 and asked to hear an additional four hours of testimony. At
22 that point, the Court declared it a hung jury, declared a
23 mistrial.

24 And what the defense attorney did in that case is
25 something that does not appear in a transcript that was

1 provided to you. He leaned over to the microphone and said
2 two words: I object. And that's how the Court of Appeals
3 knew that that was a mistrial granted over the defense
4 objection.

5 Mr. King has provided you with a transcript of what
6 was probably the most uncomfortable 15 minutes of his
7 professional career. The transcript really doesn't -- it's
8 interesting to read something that happened very recently
9 and that I have memories of. And really doesn't convey, I
10 think, the kind of emotions that was in the room at the
11 time. I think there were a lot of angry people at the time,
12 myself being one of them.

13 My initial argument to the Court was what Mr. King
14 had done in trying to introduce reputation of the victim in
15 the first sentence of his opening statement, I was arguing
16 that it was an intentional act. And the entire transcript
17 and the colloquy between Judge Nicholson and Mr. King really
18 involves whether or not that was an intentional act or not.
19 And we get into a long discussion, Mr. King and the judge
20 do, about how evidence is introduced and that sort of thing.

21 But at no point does Mr. King say the words, I
22 object to the mistrial. And it's simple to do. And it
23 would -- I mean, he had the opportunity to speak. It was
24 not like he was being harangued, and was not being hemmed
25 in. He had the ability to make the record if he wanted to,

1 and he did not.

2 The fact is that after that transcript ends -- you
3 know, that transcript ends frankly with a contempt threat
4 towards Mr. King. It didn't end that way. Over the course
5 of probably an hour, we all walked ourselves back to our
6 respective positions and agreed to fight another day.

7 I would believe -- I would argue, Judge, that the
8 actions that the defense took that day were an acquiescence
9 to the mistrial.

10 THE COURT: Well, the transcript that I read didn't
11 seem to any way indicate that he thought -- I didn't sense
12 that Mr. King joined in the motion for a mistrial. He
13 didn't -- in fact, he made arguments that he thought he
14 could say what he said.

15 MR. VOIGT: But he didn't object to the mistrial
16 being granted.

17 THE COURT: Isn't that, in essence, an objection,
18 arguing against it?

19 MR. VOIGT: I think that our -- I've done this from
20 both sides. And I've taught myself to protect the record.
21 And objecting on the record, especially in mistrials, is how
22 we get the ball rolling. It's how we keep the record intact
23 for our clients. It's not hard to do. It's not a magic
24 formula. But they are magic words. And just -- like I
25 said, the essence of that transcript argument is not an

1 objection to the granting of the mistrial. It's an
2 explanation as to why he shouldn't be held in contempt and
3 why what he did was not a purposeful act, why he thought he
4 could do it, despite the fact that he could not.

5 I made the motion for a mistrial. I made the
6 motion for a mistrial. And I think I was right when I did;
7 still think I'm right. But that bell could not have been
8 unrung. Those things could not have been unsaid. That
9 impression to that particular jury -- I don't even remember
10 them, even though I spent hours with them -- could not have
11 been undone. We had not invested -- we had invested,
12 frankly, just the time and effort of jury selection. And I
13 think that a mistrial was the easiest, cleanest way of
14 cauterizing and removing that particular stain from that
15 trial.

16 Had we been two days into a trial, I'm not sure
17 that that would have been necessarily the best result. The
18 cases that talk about necessity talk about necessity not
19 actually being meant in the literal sense, but necessity
20 being: Can a fair trial go forward from this point? And I
21 believe that Judge Nicholson properly concluded that it
22 couldn't when you lead-off like that and that's your lead.

23 There's no -- I'm not used to objecting in
24 openings. I rarely object in closing statements. That
25 was -- that's the point -- you know, each of us when we talk

1 to the jury, what they hear, what they are all attuned to is
2 the first few concepts, the first few sentences, the first
3 few words that come out of our mouths. That problem, that
4 error, was front-end loaded, so that the -- that jury was no
5 -- was never going to be more attuned to what Mr. King was
6 saying than at just that moment, which is why I, you know, I
7 blew up like I did.

8 I don't think you could have -- I don't think you
9 could have put that genie back in the bottle. I think that
10 was -- you know, The Court is going to talk about
11 Mr. Elliott, talk about the wide latitude and discretion
12 given to a trial court. I think Judge Nicholson did exactly
13 what was proper under the facts of that particular case at
14 that particular time.

15 THE COURT: Anything in reply?

16 MR. KING: Just, Your Honor, that I don't think the
17 contempt came about until the very end. And I was standing
18 here, as Mr. Voigt said, for about 15 minutes arguing my
19 position and why I believed that it should be part of the
20 trial. I really did believe it should be relevant and the
21 jury should know it.

22 By the time we got to the end, the Judge was mad,
23 and he said "contempt," and I shut up. And I wasn't going
24 to say anything after that. So I think any objection after
25 that would have been futile. I think it's clear from the

1 record that I opposed the mistrial and tried my best to
2 argue to continue.

3 As far as merits, Judge, we give jury instructions
4 all the time, you know, and instruct juries that if they
5 hear things that are prejudicial, we instruct them to
6 disregard that and we move forward. We all recognize that.
7 Even though common sense might say you can't unhear
8 something once you hear it, but we do it all the time with
9 curative instructions as a regular part of trials. I just
10 don't think that that was -- you know, we had 12 good jurors
11 ready to try the case, and that didn't rise to the level of
12 manifest necessity.

13 THE COURT: All right. Well, I think it's clear
14 that you argued against the motion. I don't know that it's
15 required that you say the magic words "I object". It's
16 clear you didn't acquiesce and you argued against it, and I
17 think that's sufficient.

18 As to the merits of it, I think Judge Nicholson, he
19 acted within his sound discretion to grant the mistrial.
20 And there was clearly a misunderstanding of what you could
21 and couldn't say. And it was brought about by the defense,
22 not by the prosecution. And so the granting of the mistrial
23 does not act to part of the prosecution because of double
24 jeopardy. So that motion is denied.

25 All right. Do you have any others?

1 MS. LINDER: I'll have somebody do it right now.

2 THE COURT: All right. Bringing the jury in. Let
3 the record reflect the defendant is in the courtroom.

4 (Whereupon, the jury returns to open court at 03:33
5 p.m.)

6 THE COURT: All right. Did you all get the
7 opportunity to pick a foreperson?

8 A JUROR: No, Your Honor, we didn't.

9 THE COURT: Not yet? All right. In the blue
10 jacket, in the front row, what's your name and number?

11 A JUROR: Blaine Dooley, 101.

12 THE COURT: 101. Congratulations, Mr. Dooley,
13 you're the foreman of the jury.

14 All right. Now, before we begin, I need to have
15 the clerk administer your oath to you. So if you would
16 please stand, raise your right hand, clerk will administer
17 your oath.

18 (Whereupon, the jury is sworn.)

19 THE COURT: All right. Folks, we're going to get
20 started on the trial now. Let me go over a few things with
21 you, and I'll tell you some of the law that applies right
22 now. But most of it is just procedural things that I will
23 be going over with you.

24 I told you that this is the case of the State of
25 South Carolina vs. Mr. Tyrel Rashone Collins. Mr. Collins

1 was indicted for murder and for possession of a firearm
2 during the commission of a violent crime. Both of these
3 cases were presented to the Grand Jury and returned with a
4 true bill. However, as I mentioned to you during the
5 process where we picked the jury, these indictments do not
6 in any way, shape, or form, shift the burden of proof from
7 the State to Mr. Collins, nor are they evidence. They are
8 simply the charging documents that give this court
9 jurisdiction to hear this matter and puts Mr. Collins on
10 notice of what he is charged with.

11 The reason why I tell you this is because these are
12 the only two documents that you will have back in the jury
13 room to deliberate with you that are not evidence. Anything
14 else that goes back with you when you are deliberating your
15 verdict is evidence. But these two documents, these
16 indictments, are not evidence.

17 The only reason they are going to go back with you
18 is because on the back, there's a place for the foreman of
19 the jury to write the verdict, either guilty or not guilty.

20 All right. So the State of South Carolina has
21 charged Mr. Collins with these two offenses. Because the
22 State has the burden of proof, the State has to prove to
23 each of you beyond a reasonable doubt that he is guilty of
24 each of these crimes. Each of these charges are to be
25 considered separately.

1 The fact that the State has charged him is not to
2 be considered by you as evidence. All right? The threshold
3 for charging somebody is totally different than the
4 threshold that you must meet for convicting somebody of a
5 crime. So the State has the burden of proving to 12 of you
6 beyond a reasonable doubt that he is guilty of these crimes
7 that they have charged.

8 As I've told you, he doesn't have to prove he's
9 innocent. The State has to prove he's guilty. The only
10 thing that he has to do is show up. And that he's done. He
11 doesn't have to present a defense. He doesn't have to
12 testify. He doesn't even have to tell me at this point if
13 he wants to put up a defense or if he wants to testify.
14 Again, that is because he doesn't have any burden of proof.

15 And I will tell you now and I will tell you at the
16 end of the trial, if he doesn't testify or put up a defense,
17 you are not to consider that in any way, shape, or form when
18 you are deliberating your verdict. The only thing that you
19 can consider is the evidence that's put in at trial, and has
20 the state proved to you beyond a reasonable doubt that he is
21 guilty of these charges.

22 You'll hear this phrase again and again, beyond a
23 reasonable doubt. I'll explain it to you in a little bit
24 more detail at the end of the trial. But basically what
25 beyond a reasonable doubt means is that when you've heard

1 all of the evidence as a whole at the end of all of the
2 evidence, are you firmly convinced of his guilt? If you are
3 firmly convinced of his guilt, then you convict.

4 If you are not firmly convinced of his guilt, then
5 you must acquit him of the charge. All right? That is the
6 law, and that is your duty that now that you have sworn to
7 undertake as jurors in this case.

8 So, the State has the burden of proof. The State
9 puts up their case first. Again, the Defendant may not put
10 up a case. He may, but he may not. But you're going to
11 hear from the State first.

12 So the State will have the opportunity to call
13 witnesses. And when they call a witness, they will have the
14 opportunity to ask that witness questions first. When a
15 party calls a witness and asks the questions first, we call
16 that direct examination. All right?

17 Now, the other side has the opportunity to ask
18 questions after direct examination. And that's called
19 cross-examination. I'm sure you've heard that phrase
20 before. So, the way we do this is, I allow one round of
21 direct, one round of cross, and then a shorter round of
22 redirect, and a short round of recross, and then we move on
23 to the next witness.

24 The State will then have the opportunity to call
25 all of the witnesses that they want to that they feel like

1 it's necessary to convince you of guilt beyond a reasonable
2 doubt. After the case -- after the State has presented all
3 of their evidence, the defense will have the opportunity to
4 present a defense if they want to. Again, he doesn't have
5 to disclose yet if he wants to or if he's going to testify.
6 And again, I reiterate, that's a constitutional right that
7 each of us, not just Mr. Collins, each of us has.

8 And the law is very clear that if he does not put
9 up a defense and he doesn't testify, you're not to hold that
10 against him. You're not to even discuss that or consider
11 that in any way when you are deliberating for a verdict.

12 So, let's go back here and just retalk a little bit
13 more about this burden of proof or standard of proof in a
14 case like this. This is a criminal case. So it's a serious
15 matter. Beyond a reasonable doubt, as I told you, has to
16 leave you firmly convinced of the defendant's guilt. You
17 probably heard that phrase beyond a reasonable doubt before.
18 It's a very high burden of proof. It's in the constitution.

19 In a civil case, if any of y'all ever served as a
20 juror in a civil case, you may have heard the phrase
21 preponderance of the evidence. That was a prepond -- that's
22 the burden of proof that a party must meet in a civil case
23 in order to prevail in a civil case where there's people
24 that have either had like an automobile accident, or maybe
25 there was a breach of contract or whatever it was. The

1 party that's suing has the burden of proof in a case like
2 that.

3 And they have to prove to 12 jurors that what they
4 allege in their complaint is true by a preponderance of the
5 evidence. Preponderance of the evidence means the greater
6 weight of the evidence, or is whatever they are trying to
7 prove more likely true than not true. All right.

8 You may be scratching your head a little bit going,
9 well, I heard what he said, but I don't know really what
10 that means. I don't blame you. I mean, it's something that
11 not -- you might have heard it, but maybe not have
12 understood it. So an example that I use in a civil trial
13 is, you have those set of scales where you see weighing
14 things, weigh the old-fashion way, if you put something on
15 one end and balance it off on the other. Well, in the
16 beginning of a trial those scales are even. All right?

17 In a civil case, the plaintiff, the person who
18 brings the lawsuit, has to present a preponderance or
19 greater weight of the evidence. In other words, they just
20 have to tip that scale even if it's just a little bit in
21 their favor. And if they have, they've met their burden of
22 proof in a civil case. It's not much. It's just tipping
23 that scale by the greater weight of the evidence, or
24 sometimes we say, is whatever they are trying to prove more
25 likely true than not true. And you think of that may be in

1 a probability of little over 50 percent. It doesn't take
2 much in a civil case to prevail.

3 At the end of a civil trial, though, if a person
4 has not tipped those scales in their favor or maybe you
5 think that they even favored the defendant, then they
6 haven't met their burden of proof and the defendant would be
7 entitled to a verdict. But in a criminal case like this,
8 the burden of proof, beyond a reasonable doubt, firmly
9 convinced of guilt, that means the State has to tip those
10 scales a lot more. We don't measure it in terms of a
11 number, of probabilities, or anything like that. But it's a
12 heavier burden than in a civil case.

13 And so at the end of the trial, when it is all said
14 and done, and you've heard from all of the witnesses, you've
15 heard both sides of the story, and everything everybody is
16 going to tell you, then and only then is it proper for you
17 12 people to begin your deliberations and discuss whether or
18 not they met their burden of proof, whether or not you are
19 firmly convinced that Mr. Collins is guilty of those charges
20 that he's brought in court for today.

21 So I say, we're going to be in trial for a few
22 days. We estimate it will take about three days maybe to
23 try this case. You hear direct examination. That's one
24 side. You hear cross. That's another side. You start
25 going, oh, I see different stories here. Things are a

1 little bit like -- cross-examination and direct examination
2 is one of the best things we've ever devised to come up with
3 how to come up with the truth. All right.

4 So you are going to hear one witness, one side.
5 Cross-examination, hear another side. Then you're going to
6 get to the next witness. One side, cross-examination, you
7 hear the other side. That's going to go back and forth and
8 back and forth throughout the trial. That's why I keep
9 saying, every time we take a break, don't begin your
10 deliberations or discussions yet. Why? Because you haven't
11 heard all of the evidence.

12 So it's really improper and it's unfair, mainly, to
13 everybody, the parties, to not make up your mind until
14 you've heard all of the evidence and both sides of the story
15 on that, because there's always two sides to a story.
16 That's why -- I mean, you figured that much out just because
17 you lived life-long enough. And it's what I tell jurors
18 every time that sounds the simplest thing about a trial, but
19 in actuality, human nature, it's the hardest thing to do,
20 keep an open mind until you've heard all of the evidence.

21 And once you've heard all of the evidence and I
22 tell you what the law is that applies, then and only then
23 can you begin your deliberations. So that's all we ask,
24 just keep an open mind, listen attentively to what these
25 folks have to say.

1 So the process, the procedural part of the trial is
2 you'll hear from the parties in a few moments on opening
3 statements. And opening statements are simply the lawyers
4 getting up and giving you what I call a Reader's Digest
5 conversion, condensed version. They're just going to give
6 you a little overview of what this case is about, what the
7 evidence is that you're likely to hear. The lawyers are not
8 testifying. They're not allowed to testify. The only thing
9 they're doing is giving you a little preview.

10 So what I want you to keep in mind throughout that
11 is to say, you know what, what this person is saying, that's
12 not evidence. Evidence is somebody getting on the witness
13 stand, and after they've been placed under oath, telling you
14 what they heard, they saw, they touched, they felt, they
15 smelt. That's evidence. Documents that I let in, that's
16 evidence. Videotape recordings, things like that, those --
17 that's evidence.

18 Lawyers getting up and talking is not evidence.
19 All right? So when a lawyer asks a question, that's not
20 evidence. The answer to the question is evidence. Okay?
21 All right?

22 So just keep that in mind, because a lot of times
23 it's a little confusing. The lawyers do a lot of talking.
24 Just remember, what they say, this is not evidence. That
25 you get off the witness stand, what other people tell you

1 that are brought in as witnesses, that's evidence. Pictures
2 are evidence, recordings that you might hear, videos that
3 you might see, that's evidence. Okay? So keep that in
4 mind.

5 Now, you have a role in this trial, I have a role
6 in this trial. Everybody in the courtroom, basically, has a
7 role in the trial. But your role is the judges of the
8 facts. All right? My role is the Judge of the law. So
9 even though you're not wearing a black robe like I'm
10 wearing, my black robe is designed to show impartiality. I,
11 like you, I mean, I know the lawyers and little bit more
12 about the case than you, not much, but I don't have a dog in
13 this fight. I don't have an interest in the outcome of the
14 lawsuit any more than you do. If I know the people, I have
15 basically said, it doesn't affect my ability to be fair and
16 impartial. I can rule against them. I can rule for them.
17 Doesn't matter. I go onto the next one after this one is
18 over with.

19 So in that respect, my job is two-fold: Preside
20 over the trial; make sure both sides get a fair trial.
21 Remember, the State's entitled to a fair trial, just like
22 Mr. Collins is entitled to a fair trial. So I have to make
23 sure that the rules of procedures, in other words, how the
24 trial flows, are followed, and I also have to rule on
25 evidence from time to time.

1 Evidence takes all types of forms. Sometimes I
2 know what's coming up. And when a lawyer says, objection,
3 that's kind of like our little code word for: Stop, Judge,
4 you've got to make a ruling. Because my job is to make sure
5 that the evidence that you hear is proper evidence. We call
6 it legally competent evidence. In other words, it's
7 evidence that you're supposed to hear. You're not supposed
8 to hear some kind of evidence, because generally speaking,
9 it's unreliable in one form or another, but the bottom line
10 is, it's unreliable. So my job is to make sure you hear the
11 best kind of evidence that you're supposed to hear. And so
12 sometimes when they say objection, what they're really doing
13 is saying: Judge, you're on alert, you have to make a
14 ruling.

15 And sometimes I can make a ruling based simply on
16 the context of what's been said at that point. They might
17 stand up and say: Objection, hearsay, or, objection,
18 leading question, that sort of thing. And I can rule on
19 those just by saying overruled or sustained. Sometimes I
20 have to say, well, just come up here a second and tell me
21 out of earshot of jury what the problem is or what's your
22 objection.

23 Sometimes, though, I have to send you out and
24 listen to what the question is, what the answer is, flesh it
25 out a little bit more, so I can make sure that it's proper

1 for you to hear it or not hear it. And the reason for that
2 is real simple, because we only want to do this one time if
3 we can help it. All right? Nobody wants to do a trial
4 twice. And the bottom line is, as I've told you when we
5 were down qualifying, well in excess probably 95 percent of
6 the time, whenever a jury decides that's what the outcome is
7 for all practical purposes, well, if there ever is an appeal
8 from this case or any other case, the appealable issues are,
9 generally speaking, did the judge make a mistake? Because
10 if there is any evidence in the record to support your
11 verdict, then it gets upheld. If that's the only thing is
12 insufficient evidence, if there's any evidence whatsoever to
13 support your verdict, then it goes forward.

14 On the other hand, if they say, well, the judge
15 didn't follow the procedures right, or he let in evidence
16 that he shouldn't have, or he kept the jury from hearing
17 something about that they should have heard, those are
18 appealable things.

19 And so we really are not trying to hide anything
20 from you. When a lawyer says objection, they're just doing
21 their job. I'm just doing my job. We're just trying to do
22 this, do it one time, so we're not wasting your time by
23 coming in here and listening to three days of testimony, and
24 then find out two years from now we've got to do it again.
25 All right? That's really what we're doing. So just be

1 patient with us if we ever have to do that. I don't know if
2 we will, but it comes up. So I'm just letting you know
3 ahead of time, that's what that's about.

4 So once we have the opening statements, then we
5 will move into the examination of the witnesses,
6 presentation of evidence. After all the evidence is in,
7 then we will have closing arguments where the lawyers then
8 get up and summarize the evidence that you've heard and
9 attempt to argue or persuade you to render a verdict on
10 their clients' behalf. I'll then charge you on what the law
11 is, and then you will retire and consider what your verdict
12 is. So that's pretty much what we will be doing over the
13 next few days.

14 So we thank you for your patience. We will take a
15 lot longer to do this trial if I stand up and talk all day
16 long. So I'm now going to turn it over to the State,
17 because the State has the burden of proof to make their
18 opening statement first. So, Mr. Voigt.

19 MR. VOIGT: Thank you, Judge. Thank you, ladies
20 and gentlemen, appreciate your patience. This should be the
21 least important part of the trial because it is just the
22 attorneys talking. It's me this time. Will be Mr. King in
23 a second.

24 Judge has covered a lot of ground that I don't need
25 to cover, so I'm going to be a little bit more brief with

1 you than I ordinarily would be on a case of this magnitude.

2 About 6:45 p.m., there were approximately five
3 shots rang out on October 27th, 2011. It was in the Mall
4 playground, which is on the East Side of Charleston, and
5 still daylight, daylight turning into nighttime, because at
6 that time in October, our days start to get a little bit
7 earlier. So very soon it was night.

8 There was a man playing cards on a bench near a
9 basketball court. His name was Solomon Chisolm, also known
10 as Sol Chisolm as well, Solomon Chisolm. And he was shot
11 several times. And he died right there on the bench. He
12 was playing cards not by himself. He wasn't playing
13 Solitaire, he was playing with other people. He still had
14 the cards in his hand. There were cards found there.

15 There were people playing basketball in that park.
16 There were people in that park doing what people do in
17 parks. That's why we have public parks.

18 And at the end of this case, remember, this our
19 burden, the State's burden, you may think to yourself, where
20 were all those people? Why didn't they come in here and
21 tell me what they saw? You'll have some, but you won't have
22 everybody.

23 Part of that has to do with a number of different
24 reasons. Remember I told you it was the East Side of
25 Charleston. The Mall Park playground, city put it in

1 sometime after '1915 when the playground movement was
2 sweeping the United States. It was a way of giving kids
3 fresh air. Back then, the streets didn't bisect and the
4 park was actually a long continuance mall, which is how it
5 was developed in the 1860s when it was a big land
6 development. It was supposed to be the place where all the
7 rich rice planters from Georgetown would come and build
8 their vacation homes. And the fellow that developed it was
9 a fellow named Henry Laurens. There's a town that bears his
10 name and a county that bears his name upstate. And he was a
11 patriot, and somebody fought the Revolutionary War. And he
12 was also one of the developers. And he developed Hempstead
13 Village, and created this long mall. Really, it was outside
14 of Charleston back then.

15 And the idea was that all the gentlemen and their
16 ladies would promenade down the mall. And that never really
17 worked out, that part of town. He sold all his lots. And
18 by the 1820s or so, 60 years later, that was a very
19 different neighborhood. Sometimes we talk in Charleston
20 about how there's before the war, what happened after the
21 war. This neighborhood was already mixed before the war.

22 And so people who came to live there were
23 tradesmen, people -- stevedores, people that worked along
24 the docks. A lot of people worked in the iron industry.
25 There wasn't a lot of big businesses there. What we call

1 the cigar factory was actually a cotton mill. It was the
2 big employer in the area. And so you had the big mansions,
3 the few that were ever got built, but in-between them, you
4 had much more modest homes, sometimes group homes and tenant
5 homes.

6 And when the city ultimately built that park, the
7 neighborhood really wasn't -- they built a park and a
8 playground, and the people who -- most the people who lived
9 in that neighborhood park, they weren't allowed to even use
10 the park. It wasn't until the 1950s that the City of
11 Charleston let African-Americans use the park in the
12 neighborhood that had been by that point for 100 years
13 primarily African-American.

14 The East Side, in every sense in the 20th Century,
15 lost population. Really lost it after Hugo when people took
16 their insurance money and left. And fewer people, more
17 broken windows. If you wanted to target an area in the city
18 with the lowest literacy, that would be it. Highest
19 unemployment, that would be it. Not necessarily the most
20 crime. Crime in -- Charleston is a small enough city that
21 pockets of crime move from time to time. So that's kind of
22 hard to pin down. But it's one of the least-blessed
23 neighborhoods in our city. And at various times in your
24 lifetime and mine, it's been under scrutiny.

25 And into that neighborhood is Solomon Chisolm

1 attempting to go play a card game. There may also be
2 another factor involved. They call it Genovese effect, also
3 known as the spectator effect, or bystander effect.
4 Genovese was killed in Queens in 1964. The New York Times
5 reported that 34 people heard her scream as she was attacked
6 and nobody called the police. New York Times actually got
7 it wrong. It was probably more like 12. But it caused
8 psychologists to study this effect.

9 What happens when people don't report crimes? Why
10 don't they report crimes? Bystander effect went something
11 like this: The more people out there, the more people you
12 just assume somebody else is willing to do. I don't know if
13 that came into play on October 27th, 2011, or not. But what
14 I do know is that the Court spent a good bit of time this
15 morning asking you the names of maybe 30 witnesses, and did
16 you know any of them? And some of you did and some of you
17 didn't. And, thankfully, you're not going to hear from all
18 30 or so of those people. You're going to hear from much
19 fewer.

20 There are going to be a lot of reasons for that.
21 Part of it is, we hope to be more efficient. We hope to be
22 able to show you things and do things without the necessity
23 of having to call four witnesses to bring in one bag of
24 evidence. But there will be times when you have to hear
25 little bits from this person, little bits from that person.

1 And understand what we're trying to do for you is paint an
2 entire picture.

3 And we think at the end you'll find that it's a
4 complete picture that you kind of do know what happened out
5 there. But know that of all the people standing out there
6 by the basketball courts, by the metal stands, you're not
7 going to get to hear from all of them for a number of
8 reasons. Some of them are selfish.

9 You may not hear from some of the police officers
10 or all of the police officers, and hopefully that's for
11 efficiency sake. But I would like you to concentrate on
12 what you hear from the witness stand, more tomorrow than
13 today. Today we're going to do -- we're running out of time
14 here in the afternoon. We're going to try to get through
15 some very basic things.

16 Tomorrow, I guess, is where the rubber meets the
17 road. You're going to have to establish in your own mind,
18 to your own satisfaction, the credibility of each witness
19 that we call. You do that a number of different ways. You
20 use your experience, how people act on the stand, their
21 posture. That can be misleading. It's kind of easy to
22 stand and talk to somebody and lie to them, for some of you;
23 for some people it is not. I want you to judge that
24 credibility. Look at what they say, why they say it, what
25 motives that have to say it.

1 Ultimately, whether you believe that the man who
2 walked through the Mall Park playground on October 27th,
3 armed with a firearm, came upon Solomon Chisolm, who was not
4 armed with a firearm, and ended his life, was Tyrel Collins.

5 Whether or not we've proven it is Tyrel Collins to
6 you will depend on if you believe the people that come sit
7 in this chair and tell you what they saw, not necessarily
8 what they heard, but mostly what they saw and what happened
9 immediately around Solomon's death.

10 It is not going to be everybody. We understand
11 that. And that's sometimes the way it's decided. But that
12 doesn't mean that we don't try cases.

13 Now, we have to prove beyond a reasonable doubt
14 when we get done with our case. You're not going to hear an
15 exact -- the Court tried to give you some idea about how
16 scales of justice work, but there's no magic formula. If
17 after you listen to my evidence -- I've got some stuff out
18 here, but really, the important stuff comes from there.
19 After listening to my evidence and seeing what we can show
20 you, you're firmly convinced that Tyrel Collins is the man
21 who walked through the park with the gun, that's it. All
22 right?

23 You're going to hear different kinds of evidence.
24 There's direct evidence. "I saw something." There's
25 circumstantial evidence. Sometimes you can only see things

1 by the residue or the path that they've left behind. There
2 are certain people who track animals through the woods based
3 on search of bent leaves or footprints, and they know how
4 tall the moose was, and how heavy it was, and what direction
5 it was going, why it was going in that direction, was there
6 water or something like that.

7 And sometimes as jurors; you have to look into
8 negative spaces and look to see what the very space tells
9 you happened. We call that circumstantial evidence.
10 There's going to be circumstantial evidence that tends to
11 point in one direction in this case. It's going to be the
12 little things that, taken in isolation by themselves, might
13 not be enough. You might go, well, that's interesting, but
14 that doesn't mean Tyrel Collins did something. But taken as
15 a whole, plus our direct evidence, that's how this case is
16 going to be presented to you.

17 Murder in South Carolina follows a very old
18 standard. This is the last thing I'm going to say to you.
19 It's really -- or perhaps one of the most complicated
20 actions in human emotions. It is a simple statute that
21 really goes back to old English law that it's the killing of
22 another person with malice aforethought. Well, we don't use
23 words like aforethought. Aforethought is kind of -- one of
24 those -- not really appropriate, it's a right word, but it's
25 words stuck together, different concepts in words. And it

1 really means, before you did what you did, you meant to do
2 what you did, or something close. In other words, killing
3 it going to causing great bodily harm or kill somebody.

4 And malice is ill will, evil intentions, evil
5 heart. Some of the old cases talk about deformed hearts,
6 and they really get flowery in how they say it.

7 Really what we are here today, though, is to punish
8 the sin, not the sinner. So this is really about when you
9 walk through a park and unload a gun with somebody who's
10 sitting with their back to you playing cards, what is that?
11 The State think it's murder.

12 And we think that after you hear the evidence and
13 see the evidence, that you will think it is murder, too.
14 Thank you very much.

15 THE COURT: Mr. King.

16 MR. KING: Thank you. That was a nice history
17 lesson and all, but I'm going to get to the point. The
18 point is that Tyrel Collins is not guilty. The State is not
19 going to be able to give you evidence that leaves you firmly
20 convinced. He didn't shoot Solomon Chisolm. And this trial
21 is about determining who did.

22 All of that opening statement you just heard, you
23 didn't hear much about the evidence. A good case, what do
24 you think you would hear? I got this witness who saw this.
25 I have this witness who saw this, and here's why you should

1 believe him, and here's some other stuff to support it.

2 That's what you have when you have a good case.

3 In this case, there's no gun found, no gun to be
4 connected to Tyrel Collins, no fingerprints at the scene to
5 be connected with Tyrel Collins, no DNA at the scene.

6 And solicitor talks about this bystander effect and
7 the East Side, I mean, the East Side and bystander effect is
8 not an excuse for a weak case. The burden of proof is still
9 the same. State has to prove this man guilty beyond a
10 reasonable doubt.

11 And you're going to hear from witnesses who aren't
12 credible, people who don't respect the law, who don't
13 respect the truth, and people who would even use the
14 judicial system for their own reasons, to set up an innocent
15 man.

16 So I'm asking you, like everyone else, to listen to
17 the evidence. And at the end, you will see that he's not
18 guilty.

19 THE COURT: All right. State, call your first
20 witness.

21 MS. LINDER: The State calls Quevas Gamble.

22 QUEVAS GAMBLE,

23 having been duly sworn, testifies as follows:

24 THE CLERK: State your first and last name, and
25 spell both your first and last name please.

1 THE WITNESS: My name is Quevas Gamble. First name
2 Q-u-e-v-a-s; last name Gamble, G-a-m-b-l-e.

3 DIRECT EXAMINATION

4
5 BY MS. LINDER:

6 Q. Good afternoon, Officer Gamble. If you could
7 please tell the jury, what's your occupation?

8 A. Police officer for the City of Charleston Police
9 Department.

10 Q. And what are your current duties with the city
11 police department?

12 A. I'm currently on the Community Action Team.

13 Q. And what team is that?

14 A. That's in Team 1.

15 Q. Where is Team 1? Can you kind of explain to the
16 jury how the city breaks up their police department?

17 A. That's everything north of Calhoun Street, east to
18 Morrison Drive and East Bay Street, and it goes all the way
19 to the West Ashley side. Before you go over the bridge is
20 considered Team 1.

21 Q. All right. And you said you're on the Community
22 Action Team. Can you explain to the jury what Community
23 Action Team is?

24 A. Community Action Team is a unit that's been put
25 together to build a rapport with the community on a

1 day-to-day basis. We interact with everyone that lives in
2 the community, especially on the East Side. We get out
3 with, you know, citizens in the community that, you know,
4 play basketball, play sports, interact with the kids,
5 interact with everyone that's in that area, in that
6 community.

7 Q. And how long have you been employed by the city
8 police department?

9 A. Five years.

10 Q. And were you involved with any other law
11 enforcement or military before that?

12 A. Yes.

13 Q. What was that?

14 A. I was in the Air Force for four years.

15 Q. All right.. Can you tell the jury a little bit
16 about your educational background?

17 A. I have a Bachelor's Degree from Charleston Southern
18 in social science and minor in teaching education.

19 Q. And are you currently in any school?

20 A. Currently at Charleston Southern getting my MBA.

21 Q. And could you tell the jury about any kind of
22 education or training or background that you have in law
23 enforcement?

24 A. I have a criminal patrol school in my background.
25 Also have a Community Action Team. I have a Active Shooter

1 Response Team. I have a basic law enforcement academy
2 training.

3 Q. And have you ever received any sort of recognitions
4 through the police department?

5 A. 2011 we won team of the year for the Community
6 Action Team.

7 Q. And that was in 2011; is that what you said?

8 A. Correct, yes.

9 Q. I would just like to kind of direct your focus to
10 why exactly we're here today. Did you have the occasion to
11 be working back on October the 27th of 2011?

12 A. Yes, ma'am.

13 Q. And in what capacity were you working back on that
14 date?

15 A. I was on the Community Action Team. And on that
16 exact specific date, I was on foot patrol on the East Side.

17 Q. And what, if anything, were you involved with that
18 day that's related to this case, the State vs. Tyrel
19 Collins?

20 A. Repeat your question.

21 Q. What were you involved with that day, or how did
22 you first become involved with this case that day?

23 A. I was on foot in the area at Line and Aiken. And
24 while I was walking in the area, I heard five gunshots in
25 the area. Once I heard though gunshots, I heard them coming

1 from the Mall Park area, which was directly in front of me.
2 I immediately started sprinting to that location to
3 investigate, see what was going on.

4 Q. And as you were running towards Mall Park, as you
5 were running toward where the shots were being fired, can
6 you describe the scene as you saw it as you were approaching
7 the park?

8 A. As I was running towards the park, I could hear
9 people screaming, shouting. As I began to get closer to the
10 park, I saw children running outside of the park. I saw
11 young juveniles hopping over fences. I saw a black male,
12 and he was standing next to a body, and he was yelling,
13 screaming, he was crying. He was waving me over, asking for
14 help.

15 Q. When you say that you saw people, for lack of a
16 better term, like just fleeing the park, did you take notes
17 to any certain group who was fleeing or indicate that to
18 other officers?

19 A. I saw some males running west out of the Mall Park
20 area. They were wearing hoodies. They were running towards
21 Columbus Street outside of the park. And as I was running
22 towards that area, I immediately call out over the radio.

23 Q. And when you first got to the park, can you
24 explain? You said there was one person there that was
25 yelling and carrying on. Can you explain what exactly was

1 happening there?

2 A. The scene was very chaotic. Not only were people
3 yelling and screaming, but this one particular individual
4 that was standing next to this body, I remember him yelling
5 and screaming at me, saying that he needs help, he needs
6 help. He was saying that individual shot -- he was crying,
7 he was waving his hands, and he was just erratic.

8 Q. And what was he pointing at exactly?

9 A. He was pointing at a body that was on the ground.

10 Q. Can you describe the position of the body or where
11 exactly the body was?

12 A. The body was on the bleachers. Part of the body
13 was -- had fell through the bleachers. Part of the body was
14 on the ground. His, I guess you would say, bottom portion
15 was still on the bleachers.

16 Q. And when you approached that individual, did you
17 notice anything? Was he holding anything in his hands?

18 A. I don't remember what he was holding in his hands.

19 Q. And was he responsive or unresponsive?

20 A. He was unresponsive.

21 Q. And what did you do immediately upon seeing the
22 body?

23 A. I immediately called for EMS, also immediately
24 called for back up.

25 Q. And then after you called dispatch, what did you

1 end up doing?

2 A. I immediately secured the scene. I communicated
3 what was going on in the area, tried to put out a further
4 description of what I saw. And I just made sure the scene
5 would stay secure, no one would enter.

6 Q. Did other officers end up coming to Mall Park?

7 A. Yes.

8 Q. Did it take awhile, or who all came and how quickly
9 was it?

10 A. It was within seconds. I would say within 15, 20
11 seconds there was probably two to three patrols on scene.

12 Q. And at this time, when all the other police
13 officers and others were coming onto the scene, what was
14 that one individual who first waved you down and alerted
15 you, what was his behavior at that point? Had he calmed
16 down completely?

17 A. No, not at all. He was crying. He was like --
18 kept saying, oh, man, I can't believe this happened, oh,
19 man, oh man. He had his hand on his face. He was looking
20 down at the body. He was pacing back and forth, yelling,
21 screaming. Wasn't really making much sense of what he was
22 saying.

23 MS. LINDER: May I approach, Your Honor?

24 BY MS. LINDER:

25 Q. At this time I show you what's been marked as

1 State's Exhibit 1 for identification purposes. Do you
2 recognize this?

3 A. Yes.

4 Q. How do you recognize this?

5 A. It's the area that I patrol.

6 Q. And does this fairly and accurately represent what
7 that area it looks like?

8 A. Yes, ma'am.

9 MS. LINDER: Judge, at this time I ask that State's
10 Exhibit 1 be admitted into evidence.

11 MR. KING: Without objection.

12 THE COURT: Admitted.

13 MS. LINDER: Judge, I would ask that -- I don't
14 know how well the jury can see, I would ask that the witness
15 be able to step down and demonstrate on this map.

16 THE COURT: That's fine.

17 (State's Exh. No. 1 is moved into evidence.)

18 BY MS. LINDER:

19 Q. What I'm showing to the jury is State's Exhibit
20 Number 1 that has already been admitted. Can you tell them
21 what exactly this is?

22 A. This is what we consider the East Side, downtown
23 Charleston. We have what we call the Mall Park area, which
24 is this area right here. It's kind of central location for
25 the community. It's where they have, you know, block

1 parties, kids come play basketball, people just hang out,
2 kind of a central location for the entire East Side.

3 Q. And what is this?

4 A. That's like a little clubhouse.

5 Q. And what is this?

6 A. It's a basketball court.

7 Q. And over here?

8 A. Little park area.

9 Q. Okay. And if you can show on the map or kind of in
10 the direction, where were you when you first heard the shots
11 being fired?

12 A. I was at Aiken and Line Street, so I was about
13 right here.

14 Q. You were at right here? And if you can show the
15 jury kind of you said you were sprinting. Stand back a
16 little bit so they can see. If you show the jury, you were
17 right around Line and Aiken, if you could kind of direct
18 them with your finger and just show them what route you took
19 to drive -- to walk or run rather to Mall Park?

20 A. I was on foot at this location, and I immediately
21 sprinted towards this location, which is the park area.

22 Q. And you mentioned seeing some black males with
23 hoodies fleeing the park, and I believe you noted west on
24 Columbus. Can you point out to the jury where you saw them
25 fleeing the park from, and what direction, and where is

1 Columbus? Show them on the map, please.

2 A. Right here is a gate. It's a fenced-in area.

3 There's a gate right here to exit to Aiken Street. Saw some
4 males with hooded sweatshirts run out the gate and run out
5 towards Columbus Street and make a right going west.

6 Q. All right. And then when you arrived on Mall Park,
7 where was the body and where was the individual who was
8 hysterically crying?

9 A. In the bleacher area right here, next to the
10 basketball court.

11 MS. LINDER: I believe that's all the questions I
12 have for you at this time. If you could take your seat.
13 Beg the Court's indulgence. That's all the questions I have
14 for you at this time. If you would please answer any
15 questions that Mr. King may have or Mr. Malloy.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q. You testified that you had training.

20 A. Yes, Your Honor.

21 Q. You're trained for one thing, to notice details; is
22 that right?

23 A. Yes, Your Honor.

24 Q. That's a big part of -- you don't have to call me,
25 Your Honor.

1 A. Yes, sir.

2 Q. It's one of those things that's important for
3 police work, but you notice things; is that right?

4 A. Yes, sir.

5 Q. And is that something that would make a good police
6 officer, to notice things?

7 A. Yes, sir.

8 Q. You were out there that night on foot patrol?

9 A. Yes, sir.

10 Q. And heard gunshots, right?

11 A. Yes, sir.

12 Q. Now, was that something that's highly unusual in
13 that area?

14 A. No.

15 Q. So it wasn't a complete surprise? It's not like it
16 happens every day, but it's something that happens and you
17 have to respond to often?

18 A. It's always a surprise to me. But I have responded
19 to gunshots in the area before, yes, sir.

20 Q. And you know what gunshots sound like?

21 A. Yes, sir.

22 Q. From your training in the Air Force and being a
23 police officer?

24 A. Correct.

25 Q. And you heard five gunshots; is that right?

1 A. Yes, sir.

2 Q. Are you certain about that number?

3 A. No, sir. From what I recall, it was five.

4 Q. Was it five all at once? Was there any break
5 inbetween them?

6 A. No, they were rapid, they followed behind each
7 other.

8 Q. So you're fairly certain that it was five rapid
9 gunshots?

10 A. I'm not 100 percent, no.

11 Q. How sure would you say you were?

12 A. I would say probably 90 percent.

13 Q. Okay. And it certainly wasn't like eight gunshots
14 or something, right?

15 A. It happened so long ago, difference between eight
16 and five gunshots when things are happening and your
17 adrenaline is pumping, it would be hard to recall exactly.

18 Q. Do you remember what you noted in your report right
19 after it happened?

20 A. I remember I noted five.

21 Q. Five? Okay. So you're nearby and you sprint
22 toward the area where you heard the gunshots?

23 A. Yes, sir.

24 Q. And you saw three black males running from the
25 scene?

1 A. Yes, sir.

2 Q. Is that right? And I'm referring to your report.

3 You saw three black males wearing black pants, black shoes,
4 and black hoodies; is that right?

5 A. Yes, sir.

6 Q. Running from the scene going west towards Columbus
7 Street?

8 A. Correct.

9 Q. And those three individuals were Dominique
10 Montgomery --

11 A. I never put names in there.

12 Q. In your incident report?

13 A. No, I don't recall.

14 Q. Would it refresh your memory if you saw your
15 incident report?

16 A. Yes, please, if you don't mind.

17 MR. KING: May I approach, Your Honor?

18 THE COURT: You may.

19 THE WITNESS: In my incident report, I didn't put
20 these additional name list; I didn't do that.

21 BY MR. KING:

22 Q. You didn't do that?

23 A. I didn't do that. Must have been someone else that
24 followed up with it, because detective also opened up my
25 case. I just do a generic report in reference to what I

1 saw. So I didn't put any names in my incident report that I
2 actually typed.

3 Q. May I approach?

4 A. I put that.

5 Q. And in addition to the three black males running
6 away, basically wearing all black, you said you saw another
7 man that was standing by the bleachers who was upset?

8 A. Correct.

9 Q. Did you know that man's name, or ever find it out?

10 A. I knew who he was.

11 Q. It was Raymond Clement?

12 A. Correct.

13 Q. Okay. Now, when you were there, you tried to talk
14 to Raymond Clement?

15 A. I did.

16 Q. Did he tell you that Tyrel Collins is the one who
17 did the shooting?

18 MS. LINDER: Objection, Your Honor, hearsay.

19 THE COURT: Sustained.

20 BY MR. KING:

21 Q. After talking to Raymond Clement, did you have any
22 suspects?

23 A. I was the initial responder. The information that
24 I got from Raymond Clement was trying to identify
25 individuals. But he was in such a state of panic, he wasn't

1 able to communicate that information to me.

2 Q. Did you search him?

3 A. No, I didn't search him.

4 Q. Did you notice any kind of wound on his leg?

5 A. No.

6 Q. That he was bleeding?

7 A. No.

8 Q. Holding his pants?

9 A. No.

10 Q. Did he -- withdraw that.

11 MR. KING: That's all the questions I have.

12 THE COURT: Redirect.

13 MS. LINDER: Just briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. LINDER:

16 Q. I believe Mr. King made mention that you wrote a
17 report. Did you write a report for this case? Did you
18 write an initial incident report?

19 A. Yes.

20 Q. And Mr. King was asking you questions about numbers
21 of gunshots. Would it refresh your recollection to view
22 your report and to see what you wrote in it?

23 A. Yes.

24 MS. LINDER: May I approach, Judge?

25 THE COURT: You may.

1 BY MS. LINDER:

2 Q. You want to read this? After refreshing your
3 recollection, can you tell the jury what you wrote in your
4 report about the number of gunshots?

5 A. There were approximately five gunshots in the area
6 of Mall Park playground.

7 Q. Approximately five, could that mean four?

8 A. No.

9 Q. Could that mean more than or less than?

10 A. No.

11 Q. Is approximately the same as actually?

12 A. Correct.

13 Q. And how many gunshots did you say you heard?

14 A. Five.

15 MS. LINDDER: Thank you. No further.

16 THE COURT: Recross?

17 MR. KING: Nothing further.

18 THE COURT: You can step down. Thank you.

19 Next witness.

20 MS. LINDER: The State calls Shaun Insley.

21 SHAUN INSLEY,

22 having been duly sworn, testifies as follows:

23 THE CLERK: State your first and last name and
24 spell your last for the record.

25 THE WITNESS: Officer Shaun Insley. Last name is

1 spelled I-n-s-l-e-y.

2 DIRECT EXAMINATION,

3 BY MS. LINDER:

4 Q. And what is your occupation?

5 A. Police officer with the City of Charleston Police
6 Department.

7 Q. What are your current duties with the City of
8 Charleston Police Department?

9 A. I'm a member of the Team 1 CAT Team.

10 Q. And can you explain to the jury what the CAT Team
11 is and what your duties are?

12 A. CAT team, yes, it's the Community Action Team.
13 What we do is specializing to get to know the community,
14 know the offenders within the community, work with the
15 schools, works with the communities itself in solving their
16 problems.

17 Q. How long have you been employed by the city police
18 department?

19 A. Three years.

20 Q. And have you ever been involved with any other law
21 enforcement?

22 A. Yes, I was a probation officer in Columbia for five
23 years before.

24 Q. And any military experience?

25 A. Yes, I was a team leader for the 133rd MP Company

1 in Timmons ville.

2 Q. And can you please tell the jury a little bit about
3 your educational background?

4 A. I went to the University of South Carolina. Got my
5 Criminal Justice in Criminology, Bachelor's Degree. Went to
6 Norwich University, got my Master's in Justice
7 Administration. Went to the Criminal Justice Academy,
8 completed that. Attended several various other police
9 trainings. Also, I'm in the Army as an MP officer. So I'm
10 in training with that, also on the SWAT Team with the City
11 of Charleston Police Department.

12 Q. And have you ever received any sort of recognition
13 from the City of Charleston Police Department?

14 A. Yes, I was probationary officer of the year for
15 2011.

16 Q. Did you have the occasion to be working back on
17 October 27th of 2011?

18 A. I did.

19 Q. And in what capacity were you working back on
20 October 27th?

21 A. I was on the flex squad, which means I worked from
22 from 5 p.m. to 3 a.m.

23 Q. And how did you first become involved with this
24 case, the State vs. Tyrel Collins that day?

25 A. Well, heard over the radio that shots were fired in

1 Mall Park. And I was initially approximately three or four
2 blocks away at 9 Nassau Street. I was going towards the
3 shots. When I heard over the radio that there were three
4 black males running west on Columbus Street, and I initially
5 caught up with those black males.

6 Q. So did you end up finding those three individuals?

7 A. I did.

8 Q. And where exactly were they?

9 A. I found them at Hanover Street and Columbus Street.

10 Q. And what happened when you found them?

11 A. Well, I told them to stop, and they stopped
12 running. And I asked for consent to search their person.
13 They allowed it. Did not find any contraband or weapons on
14 them at the time.

15 Q. Do you recall the three people who you stopped and
16 got out with?

17 A. I do.

18 Q. Who are they?

19 A. Waukeem Madison, Dominique Montgomery, and Lavar
20 Anderson.

21 Q. Did you notice anything of interest on the ground
22 around that area?

23 A. I did. I noticed that near Lavar Anderson's feet,
24 there were playing cards on the sidewalk.

25 MS. LINDER: May I approach the witness?

1 Q. At this time I show you what's been marked as
2 State's Exhibit 24, 25, and 26 for identification purposes.
3 Can you just look at those please? Do you recognize them?

4 A. I do.

5 Q. How do you recognize them?

6 A. Well, this is the area in which I stopped those two
7 parties.

8 Q. Do those appear to be a fair and accurate depiction
9 of that evening?

10 A. Yes.

11 Q. And what you saw?

12 A. Though when I stopped them, it was lighter out, the
13 sun was still up.

14 MS. LINDER: Your Honor, at this time we ask that
15 State's 24, 25, and 26 be admitted into evidence.

16 MR. KING: Without objection, Your Honor.

17 THE COURT: Admitted.

18 (State's Exh. Nos. 24, 25, 26 are moved into
19 evidence.)

20 BY MS. LINDER:

21 Q. At this time, I'm going to put -- if you can just
22 kind of turn around to the screen behind you. I think it's
23 in front of you as well. If you can tell the jury, what is
24 this? This is State's Exhibit 24.

25 A. This is the corner of Columbus and Hanover.

1 Q. And is this where you got out on the night of the
2 27th?

3 A. Yes, it is.

4 Q. And this is State's Exhibit 25. We should be all
5 in focus. And State's Exhibit Number 25, can you tell me
6 what exactly this picture is?

7 A. Well, this is a picture of the sidewalk at Hanover
8 and Columbus where they were found.

9 Q. And y'all have all this back there with you so you
10 can look at it more carefully. And State's Exhibit 26, can
11 you tell me what this is?

12 A. Same as the previous exhibit, but it's closer.

13 Q. At this time, I would ask for you to step down.
14 Previously been admitted into evidence is Exhibit 1, which
15 is an aerial map, and if you can kind of talk the jury
16 through things. And if it's not on the map, just explain
17 directions. If you can please tell them where you were when
18 you first heard about the shooting?

19 A. Okay. Where I initially was is not on the map, but
20 this is Line Street. This is Hanover Street. Yes, this is
21 Hanover Street right here. So I was up here, one street
22 over, Line and Nassau, when I heard the shots go out.. I
23 went south on Nassau, to go south. And I heard that the
24 three black males were heading west on Columbus Street.
25 There's Mall Park right here. So they were running west. I

1 came down Nassau Street and found them here at Hanover and
2 Columbus just approximately a block away.

3 MS. LINDER: I have no further questions for you at
4 this time. If you could please answer any questions that
5 Mr. King may have.

6 CROSS-EXAMINATION

7 BY MR. KING:

8 Q. Officer, I just have a couple. You stopped three
9 black males wearing all black; is that right?

10 A. Correct.

11 Q. Dominique Montgomery?

12 A. Correct.

13 Q. sgl/ Waukeen and Lavar Anderson?

14 A. Correct.

15 Q. You didn't stop Tyrel Collins running away from the
16 scene, did you?

17 A. No, sir.

18 MR. KING: That's all the questions I have.

19 THE COURT: Any further? Redirect?

20 MS. LINDER: Nothing further, Your Honor.

21 THE COURT: You can step down.

22 All right. Next witness.

23 MR. VOIGT: State calls Mike Sherman.

24 THE COURT: Folks, normally, we would try to knock
25 off right at 5:00. And I don't know, we're going to go a

1 little past 5:00, because this witness we need to get in
2 today because his wife I think is having surgery tomorrow,
3 and so he can't be here. So we want to work a little past
4 what we normally do in order to get this witness on and off
5 the stand.

6 MICHAEL SHERMAN,

7 having been duly sworn, testifies as follows:

8 THE CLERK: You may be seated. If you would
9 please state your first and last name and spell your last
10 for the record.

11 THE WITNESS: Michael R. Sherman, S-h-e-r-m-a-n.

12 DIRECT EXAMINATION

13 BY MR. VOIGT:

14 Q. Mr. Sherman, welcome back to Charleston County.

15 A. Thank you.

16 Q. Can you please tell the ladies and gentlemen of the
17 jury what you do now?

18 A. I'm a retired police officer.

19 Q. And where were you a police officer?

20 A. City of Charleston.

21 Q. How long were you a police officer there?

22 A. I was with Charleston from 1977 to 2012.

23 Q. And when you left the City of Charleston's employ,
24 what were your duties? What was your role there?

25 A. At that point, I was a crime scene investigator for

1 the police department, and I was the supervisor of the Crime
2 Scene Unit.

3 Q. Okay. And what does the Crime Scene Unit do for
4 the Charleston Police Department?

5 A. We respond to various crime scenes and document
6 what we find when we get there with photographs, diagrams,
7 notes, and we recover evidence. And then, of course, we go
8 back and process some of that evidence, and send a lot of
9 the state labs.

10 Q. Is it just like TV? Is it like CSI or Fast Cars,
11 lots of dramatic moments in the life of a crime scene
12 investigator?

13 A. I have a fast car, that's about as close as it got.

14 Q. Now, when you are called out to a homicide scene,
15 is there a protocol that y'all follow in order to make sure
16 you gather as much evidence as you possibly can?

17 A. Yes, sir. We use a checklist for that particular
18 type of crime. We have what's called a major crime
19 checklist.

20 Q. And is that something that was developed by the
21 department with your assistance, or was that something that
22 they've imported from somewhere else?

23 A. Well, we borrowed information from different
24 agencies. And over a period of many years, we kept changing
25 it until we basically had one that worked well for our

1 location.

2 Q. And how many years were you a crime scene
3 investigator?

4 A. Eleven years.

5 Q. How many years were you the supervisor of the Crime
6 Scene Unit?

7 A. Eleven years.

8 Q. During the time that you were that supervisor of
9 the Crime Scene Unit, did your evidence-gathering
10 techniques, were they refined? Did they evolve? Did they
11 change at all?

12 A. Yes, sir, they changed every year.

13 Q. And was that, you know, in response to the needs of
14 what the police department may have been?

15 A. Response to the needs of the police department,
16 response to different technologies that became available,
17 digital cameras, DNA. And every year, of course, we train
18 with new information and try to upgrade.

19 Q. When you were called to a major crime scene, did
20 you try to do everything yourself, or did you have
21 assistance of other people in the unit?

22 A. We always worked with at least three people on a
23 major crime and sometimes four or five.

24 Q. And why would you use some of that?

25 A. To be able to do the task in a reasonable amount of

1 time.

2 Q. Were you called out to a crime scene at the Mall
3 Park playground on October 27th, 2011?

4 A. Yes, sir, I was.

5 Q. And do you recall approximately what time you
6 responded to that scene?

7 A. Little after seven o'clock, 7 p.m.

8 Q. Were you the first person from the Crime Scene Unit
9 to arrive?

10 A. Yes, I was.

11 Q. As the supervisor and as the first person to arrive
12 on the scene, what was your first order of business
13 regarding this particular crime scene?

14 A. Well, officers on the scene had already did a lot
15 of securing the area. We secured some additional areas with
16 crime scene tape, made sure we had people in place to
17 basically keep the crime scene secure.

18 Q. And why do you want to keep the crime scene secure?

19 A. We want to make sure that we're able to document
20 things as they are when we arrive.

21 Q. When you were -- approximately how long were you on
22 that scene that night?

23 A. I think we left about 1 a.m., and then we got other
24 people come back earlier the next morning. We did not
25 unsecure the scene. We kept the scene secured.

1 Q. And by keeping it secured, does that mean keeping
2 uniform personnel in the area to make sure nothing was
3 interfered with?

4 A. We would keep all the barricades up and make sure
5 we have people guarding the perimeter.

6 Q. And so in a major scene such as the one at the Mall
7 Park playground, this is something that you sat through for
8 hours?

9 A. Yes, sir.

10 Q. What was your first order of business when you
11 got -- what was the first thing that you did when you got
12 out?

13 A. After I made sure everything was secure and helped
14 secure a few more areas, I started calling help in.

15 Q. And those are the people that worked under your
16 supervision?

17 A. That's correct, other members of Crime Scene Unit.

18 Q. And did they have particularized skills and talents
19 that they utilized within the Crime Scene Unit?

20 A. Everybody is a general practitioner and everybody
21 generally has an area of expertise.

22 Q. Was one of the things that you wanted to do when you
23 got to the crime scene, to take pictures to document what
24 you found out there?

25 A. Yes, sir, we did video and still photography.

1 Q. And did you direct, I believe it was Rene Charles,
2 to take those photographs?

3 A. I believe that's correct.

4 Q. I'm going to show you what's been marked as State's
5 6, 7, 8, 9, and 10. Let's go 11, 12, and 13, and ask if you
6 can identify those? Take a look at them.

7 A. Yes, sir. These are overall and close-up views of
8 the scene. Some of the markers in place on the back,

9 Q. Do you recognize those as pictures that you
10 directed Rene Charles to take while y'all were on the crime
11 scene together?

12 A. Yes, sir.

13 MR. VOIGT: At this time, Your Honor, the State
14 would offer to introduce State's 6 through 13, which are
15 photographs of the crime scene.

16 MR. KING: No objection, Your Honor.

17 THE COURT: Admitted.

18 (State's Exh. Nos. 6 through 13 are moved into
19 evidence.)

20 BY MR. VOIGT:

21 Q. I'm going to put things up on the board here. It
22 will show up. I think since the last time you were here --

23 A. Technology definitely jumped forward.

24 Q. That's looking just terrible. What does that
25 picture depict?

1 A. This is a distant view showing from the opposite
2 corner of Mall Park to the bleachers where the victim is
3 lying.

4 Q. Okay. And those would have been -- now, when y'all
5 came out there, when you first got out there, was it as
6 empty as it looks from here, or were there still people
7 milling around out there?

8 A. When I got out there, there were still a lot of
9 people out in the streets outside of there. There was
10 nobody inside the park itself.

11 Q. And you wanted to make sure that that whole area
12 there around the bleachers, and it looks like even more in
13 the basketball court, was secure just in case something was
14 there?

15 A. That's correct.

16 Q. I think, reading your report, did you all divide
17 this scene into quadrants to look for things?

18 A. We divided it into sections to search it.

19 Q. And you individually searched some sections
20 yourself, did you not?

21 A. Yes, I did.

22 Q. And did people at your direction search other
23 sections?

24 A. Yes, they did.

25 Q. And what method did you use to comb for evidence in

1 those sections?

2 A. Well, we used a combination of several different
3 ones. We used a strip method. Primarily, we used the strip
4 method. We also called for some dogs to come to be brought
5 to the scene to search for ballistic evidence, and we used
6 some metal detectors.

7 Q. So why would you use metal detectors?

8 A. To find shell casings and projectiles.

9 Q. What is the strip method, so the jury knows?

10 A. Basically, you take an area two feet wide and you
11 walk looking directly down at that two feet, and then you
12 turn around and go back the other direction with it, and
13 then walk it and keep doing it back and forth. That way you
14 don't step on anything that's evidence.

15 Q. I'm going to show you what's been marked as State's
16 Exhibit 12. What does that depict?

17 A. That's a latent fingerprint that's been developed
18 with the powder technique. And the tape has been applied to
19 protect and get ready to lift it. And then a number is put
20 on there so we know what number fingerprint that is.

21 Q. And fingerprint lifting, how long has that been
22 around? That's an old technology, isn't it?

23 A. Been around for most of the 20th century. And, of
24 course, we still use it up to today. And it was used, not
25 scientifically used, but used a long time before that

1 also.

2 Q. Okay. And when you're lifting fingerprints, what
3 are you hoping to find?

4 A. The latent print residue that someone's left behind
5 when they touch an object. And then, of course, when you
6 apply the powder, it gives you the actual fingerprint. And
7 we lift it with a special type of tape.

8 Q. I'm looking for something on this table, which of
9 course I knew where it was before I started all of this.

10 Now, when you are looking for evidence, do you know
11 what's important and what's not as a crime scene
12 investigator?

13 A. I know that certain objects, such as a weathered
14 wrapper that looks like it's been there for quite some time
15 probably isn't as important as something that looks like it
16 was just dropped, or fresh.

17 Q. I'm going to show you what's been previously marked
18 as State's 42. And this was something that was seized by --
19 or not seized, but collected by somebody in your unit. Can
20 you look in that package and tell us if you recognize that
21 item?

22 A. I don't have the paperwork that comes with this
23 that would tell me what that is, so ...

24 Q. Now --

25 A. The code number on there is not the same as the

1 evidence number that I have.

2 Q. Well, let me show you some other things while I've
3 got you up here. When you find pieces of evidence, do you
4 label them in any way?

5 A. Yes, sir, they're labeled at the scene, and then we
6 also have a printout that accompanies the evidence. And I
7 can match the printout to what I have at the scene.

8 Q. Are there -- let me show you what's been previously
9 marked and introduced as State's 10. What does that depict?

10 A. That depicts a through-and-through projectile mark.
11 Actually, there's a hole where the projectile goes through
12 the top of the bleacher. And then there's an impact crater
13 in the concrete. Because there's two different reference
14 points, we can put a probe through there and then measure
15 and come up with a trajectory.

16 Q. What you do -- is it just like it looks? There's
17 -- because you have two points, you can put a stick between
18 the two point points and acts like a line in space?

19 A. That's correct.

20 Q. And you can determine --

21 A. Use a measuring device, we can determine what the
22 angle is.

23 Q. So that's later on the scene; that's something that
24 you've placed there?

25 A. That's correct.

1 Q. And that shows or indicates in some way the
2 possible trajectory of the projectile?

3 A. That's correct.

4 Q. And what's the little 28, the little yellow thing
5 there?

6 A. That would be the mark for that particular item
7 where we would know what the photograph matches.

8 Q. Okay. I'm going to show you what I previously --
9 has been previously marked as State's Exhibit 23, and ask
10 you to take a look at that. Do you recognize that?

11 A. Yes, sir. That's a diagram of the crime scene. I
12 did that.

13 Q. That was something that you authored?

14 A. Yes, sir.

15 MR. VOIGT: At this time, the State would offer to
16 introduce State's Exhibit 23.

17 MR. KING: No objection, Your Honor.

18 THE COURT: Admitted.

19 (State's Exh. No. 23 is moved into evidence.)

20 BY MR. VOIGT:

21 Q. I'm going to show you State's 23. I'm going to cut
22 off some of the numbers over here on the right side, just
23 for -- now, why do you create a diagram like that?

24 A. Because the photographs, based on where we're
25 standing at the scene and how close we are to different

1 items and the overall conditions, can create -- doesn't
2 create a good picture of how things are in relation to each
3 other. It's better to have a bird's eye view, which is what
4 the diagram shows.

5 Q. What are all those numbers and circles up there?

6 A. That's where different items of evidence were
7 recovered.

8 Q. And some of those would be like the latent prints
9 that we were talking about? And some of those would be like
10 the bullet holes that we were talking about, that sort of
11 thing?

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

13 Q. I'm going to show you what's been previously marked
14 as State's 8. Each individual markup there, are those
15 things -- are each of those yellow marks put there by the
16 police?

17 A. Yes, they are.

18 Q. And why are they put there?

19 A. It's a photo marker to tell us what each item is on
20 my report. It matches the number we have in the report.

21 Q. So, for example, two would be the glasses there?

22 A. That's correct.

23 Q. And there would be some sort of bottle there as
24 Number 1? And we've got playing cards as Number 3. It
25 looks like Mr. Chisolm has some playing card in his hand.

1 And that marker that we were talking about earlier,
2 this is going to be State's 9, where you put the rod --

3 A. We actually recovered a projectile in the crater
4 that was underneath there.

5 Q. Now, just for clarification for the jury, that
6 white spot on Mr. Chisolm's body, that wasn't originally
7 there, right?

8 A. That would be an artifact from EMS.

9 Q. So that's part of them trying to obtain his vital
10 signs or trying to resuscitate him?

11 A. Yes, sir, that's part of their equipment.

12 Q. That's part of their -- okay. I'm going to show
13 you a few things, what's been previously marked as State's
14 38 and State's 40, and ask you if you can recognize those
15 things.

16 A. Yes, sir. These are fired shell casings from the
17 crime scene, the fired projectiles that were recovered at
18 autopsy.

19 Q. Okay.

20 A. On that one, and this is also a projectile from
21 that.

22 MR. VOIGT: At this time, the State would also
23 introduce State's 38 and 40.

24 (State's Exh. No. 38 was received in evidence.)

25 (State's Exh. No. 40 was received in evidence.)

1 BY MR. VOIGT:

2 Q. As to State's 40, let's start with this one first.
3 This you said was recovered from the victim at the
4 autopsy?

5 A. Right.

6 Q. And what -- do you direct somebody from crime scene
7 to go to an autopsy?

8 A. Yes, sir. We go and attend. And when they're
9 through with the autopsy, they turn the evidence over to the
10 technician.

11 Q. I'm going to put up a more cheerful photograph just
12 so I have something to talk over. So you gather evidence
13 from the autopsy. And what else do you gather from the
14 autopsy? Do you have a protocol for things you gather?

15 A. Yes, sir. We recover hair samples, blood samples,
16 clothing that the individual was wearing, and then anything
17 that they recovered during the autopsy which would be
18 considered as evidence. Sometimes it's hairs, fibers. It's
19 anything that they do recover that's something that they
20 consider of evidentiary value.

21 Q. And sometimes blood and hair and whatnot, that's in
22 case DNA testing needs to be done further --

23 A. Yes.

24 Q. -- down the line or some other testing needs to be
25 done?

1 A. Yes, sir.

2 Q. Y'all don't do that testing in-house; that's some
3 of the things that you send to SLED?

4 A. Goes to SLED, that's correct.

5 Q. All right. As to 38, let's talk about this in
6 reference to -- I'm going to give you back 38 here for a
7 second. I'm going to put your chart back up. I'm going to
8 scoot it over just a little bit just to show what you list
9 here. What does FCC stand for?

10 A. Fired cartridge case.

11 Q. Can you show the jury --

12 THE DEPUTY: One of the jurors need a break.

13 THE COURT: You need the restroom?

14 THE DEPUTY: Yes, sir.

15 MR. VOIGT: That's fine.

16 THE COURT: Let's take a short break here while
17 everybody goes to the restroom. Don't begin deliberations
18 or discussions about the case. We'll see you back here in
19 just a few minutes.

20 (Whereupon, the jury leaves open court at 05:02
21 p.m.)

22 THE COURT: How long do you anticipate you will be
23 with this witness.

24 MR. VOIGT: I'm hoping I have no more than five
25 minutes left. There's very little things left up here.

1 THE COURT: All right. Five minutes.

2 (Whereupon, the jury returns to open court at 05:16
3 p.m.)

4 THE COURT: Let the record reflect Mr. Collins is
5 back in the courtroom.

6 All right. We will resume with the testimony of
7 the witness.

8 MR. VOIGT: Thank you very much, Your Honor.

9 BY MR. VOIGT:

10 Q. Mr. Sherman, we're talking now about State's 23.
11 And that's the diagram that you created. And over here on
12 the right-hand side is kind of a key for what was found
13 there. And I'm seeing cigarette filters and Newport packs
14 and whatnot. But you were describing what FCC stood for
15 when we left.

16 A. Fired cartridge case.

17 Q. Now, in front of you is a screen. It's actually a
18 touch screen. That's how high-tech we've gotten. If when
19 you touch that screen, it should light up red. Can you
20 touch up and show where the -- either put a red dot or red
21 circle about where those fired cartridges were?

22 A. All right, sir. (Witness indicates.)

23 THE COURT: Mr. Voigt, I notice, I think there's
24 something off to the left on this screen in front of me. It
25 might not be visible since you've got it pulled over a

1 little bit.

2 MR. VOIGT: I do, Your Honor.

3 THE COURT: Okay. If there's nothing else over
4 there, it's okay.

5 MR. VOIGT: These are large trees, according to the
6 diagram.

7 THE WITNESS: Those are fired cartridge cases.

8 BY MR. VOIGT:

9 Q. Okay. And when a firearm expels a cartridge
10 casing, does it drop immediately, just exactly where the
11 firearm is fired, or can it move some distance?

12 A. It can move some distance depending on the type of
13 firearm and the type of ammunition.

14 Q. So that just gives you a general area from which a
15 shot had taken place at best?

16 A. Yes, sir.

17 Q. Assuming nothing was kicked or moved or some
18 other -- in some other way displaced?

19 A. That's correct.

20 Q. Now, approximately how many spent cartridge cases
21 or fired cartridge casings were seized?

22 A. There were four on this diagram. And when we came
23 back the next day, there was a fifth recovered that we
24 weren't able to see that night.

25 Q. I'm going to show you what's been marked as State's

1 2, 3, 4 and 5, and hand those to you; do you recognize
2 those?

3 A. Yes, sir. These are daylight pictures that would
4 have been shot the following morning.

5 Q. Okay. May I have those back? Before I let you get
6 off this, Number 35 up there, can you mark that as well,
7 because that's again another --

8 A. That's the one that was from the next day.

9 Q. That's from the next day? Okay.

10 A. Yeah.

11 Q. And so --

12 A. That would have been right here. You notice it's
13 got a different arrow on it.

14 Q. Okay. It's got a different arrow on it. And when
15 we're talking about the next day, this is State's 2. I will
16 remove those red things. That's what it looked like the
17 next day; is that correct?

18 A. That's correct.

19 Q. So the next day -- why did you all come out the
20 next morning?

21 A. Exactly the reason that we found that shell casing,
22 when you're looking in the dark and some of the shell
23 casings are not nice and bright and shiny like you would
24 think they would be, hard to find under a light, and even
25 with a metal detector, you have so much metal in the ground

1 and so much metal around that you can miss it, which we did.

2 Q. I'm going to show you what's been previously marked
3 as State's 36 and ask you if you can identify that?

4 A. That's a deck of playing cards that was on the top
5 of the bleachers.

6 MR. VOIGT: At this time, the State would offer
7 State's Exhibit 36.

8 MR. KING: Without objection.

9 THE COURT: Admitted.

10 (State's Exh. No. 36 was received in evidence.)

11 BY MR. VOIGT:

12 Q. What do you have in your hand?

13 A. This is Item 120, which was handed me earlier,
14 that's the cigar wrapper, chip bag, and some cards that were
15 found in the same place under the bleachers.

16 MR. VOIGT: At this time, the State would offer,
17 file, and introduce State's Exhibit 42.

18 MR. KING: No, objection, Your Honor.

19 THE COURT: Admitted.

20 (State's Exh. No. 42 is moved into evidence.)

21 BY MR. VOIGT:

22 Q. Now, I'm also going to show what's been marked as
23 State's 30 -- State's 29, 30 and 31, and ask you if you can
24 identify those as well?

25 A. This would be a report from the latent examiners

1 when we recovered latent prints. They're turned into
2 fingerprint, examiners who run them through the AFIS system
3 do individual comparisons to match them with individuals.

4 Q. So during the course of your evidence gathering,
5 you developed prints from at least -- that required three
6 different reports?

7 A. Correct. Some of these would have been from the
8 same. Some of these would have been recovered in our lab
9 and crime scene from objects recovered from the scene.

10 Q. One of the things that you did after you cleared
11 the scene was you also assisted in a search warrant; was
12 that correct?

13 A. Yes, sir.

14 Q. I'm going to show you what's been previously marked
15 as State's 18, 19, 20 and 21.

16 A. This is an apartment on America Street, listed as
17 [REDACTED]. I responded there and recovered evidence and take
18 photographs.

19 Q. Why did they have you respond to search warrants?

20 A. At that particular moment, all the other crime
21 scene units were busy, and it falls under the supervisor to
22 fill in to respond to whatever call comes up.

23 Q. And do you have any role whatsoever in any of the
24 thought that goes into the search warrant or why you're
25 there?

1 A. No, sir, I don't.

2 MR. VOIGT: At this time, the State would offer,
3 file and introduce State's 18, 19, 20 and 21.

4 MR. KING: Without objection, Your Honor. Just
5 preserve my objection on State's 21 regarding the T-shirt.

6 THE COURT: All right. Admitted over defense
7 objection.

8 MR. KING: And Exhibit 20.

9 (State's Exh. No. 18, 19, 20 and 21, are moved
10 into evidence.)

11 BY MR. VOIGT:

12 Q. So just to show you what's been previously marked
13 as State's 18, I'm guessing that's the outside of ■ America
14 Street?

15 A. Yes, sir, that's the outside of ■.

16 Q. And it looks like it had Units A and B, and the
17 search warrant was directed to Unit ■?

18 A. That's correct.

19 Q. And State's 21 is a picture of the inside, and
20 that's got one of your little yellow things on it?

21 A. That's correct.

22 Q. And why does -- what's the purpose of the yellow
23 marking?

24 A. That's an evidence marker, and that would
25 correspond with Evidence Number 403. And I'll explain why

1 the numbers are single digit and why they have three
2 different evidence numbers. One hundred is our original
3 scene. Then we just keep adding 100s. So, in other words,
4 200 would be another scene. 300 would be another scene.
5 And because we can't afford to buy that many evidence
6 markers, we use the same one and just add the prefix on
7 it.

8 Q. Okay. All right. I'm going to show you what's
9 been previously marked as State's 22 and State's 41. If you
10 need to open the box, go ahead. But if you don't, don't
11 worry about it.

12 A. Okay. This is a black T-shirt.

13 Q. That would be State's 41?

14 A. That's correct.

15 MR. VOIGT: At this time, the State would offer,
16 file, and introduce State's 41 subject to the defendant's
17 previously objection.

18 THE COURT: Admitted over the objection.

19 MR. KING: I guess at this time, Your Honor, also
20 to relevance.

21 THE COURT: What is your relevance?

22 MR. VOIGT: We're going out of order here for this
23 particular witness due to the timing.

24 THE COURT: It's the T-shirt?

25 MR. KING: Yes.

1 MR. VOIGT: It's the T-shirt.

2 THE COURT: Well, I believe -- while it is relevant
3 in the pretrial motion, but to the extent that we didn't, it
4 is relevant. So it's admitted over your objection.

5 (State's Exh. No. 41 is moved into evidence.)

6 BY MR. VOIGT:

7 Q. So this State's 41, is this the same object that's
8 depicted in three above?

9 A. Yes, sir, it is.

10 Q. And that's a black T-shirt?

11 A. That's a black T-shirt that came from [REDACTED] America
12 Street.

13 Q. And do you know why you were directed to pick up
14 this particular piece of evidence?

15 A. No, I don't.

16 Q. And the other item that I handed you, State's 22,
17 do you recognize that item? This is a -- black ink mark had
18 been placed by lawyers, so --

19 A. Yeah, that's causing me -- I'm sure it's a SLED
20 form, but that's about all I could tell you about it.

21 Q. Now, is that a form that would have been -- is that
22 a photograph of a form that would have been taken pursuant
23 to this search warrant?

24 A. I'm not sure. I will be honest with you. I've
25 got -- I can hardly read it with all the black marks on it.

1 Some of the stuff I need to make an identification is not
2 there.

3 Q. I'm going to also show you what's been previously
4 marked as State's 33. Can you identify that particular
5 item?

6 A. Yeah. This would be practical lifts from the same
7 black T-shirt. In other words, it's got a submarker on
8 it.

9 MR. VOIGT: Okay. At this time, the State would
10 offer, file and introduce State's 37, subject to defense
11 pretrial objection.

12 MR. KING: Yes, Your Honor, subject to my pretrial
13 objection.

14 THE COURT: All right. Admitted over objection.

15 (State's Exh. No. 37 is moved into evidence.)

16 Q. And so these lifts, these would have been taken
17 from this T-shirt and sent to SLED for analysis?

18 A. That's correct.

19 Q. Are those lifts done kind of like lifts would have
20 been done for fingerprints? How are those done?

21 A. Those lifts have a sticky -- they have a sterile
22 surface on them, and they have a sticky glue that allows you
23 to recover particles that would be present from a weapon
24 being fired, a handgun or a long gun. When they're fired,
25 there's particles present from the unburned gun powder, from

1 the chemicals that are used in the primer, and that picks up
2 those certain chemicals.

3 And because there's a mixture of chemicals that
4 aren't present in almost anything else in nature except when
5 a gun is fired, that's useful in determining whether or not
6 that particular person or item was present when a gun was
7 fired.

8 Q. And just doing the lifts doesn't give you any of
9 that information?

10 A. Doesn't, no, sir.

11 Q. And that needs -- there needs to be further
12 analysis done?

13 A. Has to be looked at under a SIM.

14 Q. So there needs to be a laboratory setting which is
15 kind of a controlled setting?

16 A. That's correct.

17 Q. But your job is to collect the evidence and get it
18 to those people for analysis?

19 A. Submit it, yes.

20 Q. And you submitted it -- what did you submit to SLED
21 in this particular case?

22 A. Well, there were different things submitted at
23 different times. I know we submitted the lifts from the
24 T-shirt and T-shirt itself. And, of course, the shell
25 casings and the projectiles.

1 MR. VOIGT: One moment, Your Honor.

2 BY MR VOIGT:

3 Q. I'm going to show you then what I have -- what we
4 have previously marked as State's 35.

5 A. This would have been a playing card recovered by
6 Randall Unterbrink. And it wasn't exactly at the scene; it
7 was some distance from it. Someone had spotted it. And we
8 had it secured, and then he went to that location and
9 recovered it.

10 Q. At your direction?

11 A. Correct.

12 MR. VOIGT: At this time the State would offer,
13 file and, introduce State's 35.

14 MR. KING: Without objection.

15 THE COURT: Admitted.

16 (State's Exh. No. 35 is moved into evidence.)

17 MR. VOIGT: The State would tender this witness.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 MR. KING: Thank you, Your Honor.

21 BY MR. KING:

22 Q. Mr. Sherman, I'm just going to go over -- I'm going
23 to try to be quick. Pardon me if I repeat anything you
24 said.

25 Now, you didn't just search that area around the

1 bleachers in that park, right? You searched the whole park?

2 A. We searched the entire park, yes, sir.

3 Q. You and a team?

4 A. Me and a team, that's correct.

5 Q. It was a thorough search?

6 A. Yes, sir, I believe it was a very thorough search.

7 Q. And you went back in the daytime hours, or had
8 somebody go back in the daytime hours and look around
9 again?

10 A. That's correct.

11 Q. Used metal detectors and dogs as well?

12 A. Yes, sir, we did.

13 Q. And you ended up finding five cartridge casing?

14 A. That's correct.

15 Q. Now, that's the part of overall bullet? Can you
16 explain -- can you explain a little about a cartridge
17 casing?

18 A. Well, there's several elements to an unfired
19 cartridge. Unfired cartridge is the projectile, which is
20 commonly referred to as the bullet. The gunpowder which
21 ignites and sends the bullet down the barrel, the casing
22 which is left behind and the primer which is left behind
23 inside the casing, so at the moment that it's fired, the
24 projectile leaves and everything else stays behind. In some
25 guns, like a revolver, it stays in the gun.

1 In an automatic weapon, semi-automatic weapon, it's
2 ejected out of the gun.

3 Q. So you can tell if a semi-automatic weapon was used
4 in a shooting?

5 A. No, sir, I can't. I can tell a gun, either a
6 semi-automatic or an automatic.

7 Q. Okay. Based on shells being ejected?

8 A. That's correct.

9 Q. And these shells could have been held by the
10 shooter as they're loading the gun, right?

11 A. Could have been, that's correct.

12 Q. There were no fingerprints that you know of that
13 were found on the shells?

14 A. There's a big issue with closed-breach weapons,
15 which is what semi-automatic and automatic weapons are. At
16 the moment it fires, it heats the brass to very high degree
17 of temperature. And what we have found out that almost
18 every time, the fingerprints are burned off.

19 Q. And you gathered various items, soda bottles, candy
20 wrappers, et cetera, all of that stuff, and tested it for
21 prints; right?

22 A. That's correct.

23 Q. No prints from Tyrel Collins was found in any of
24 that?

25 A. No, sir.

1 Q. And you checked the bleachers for fingerprints,
2 right?

3 A. That's correct.

4 Q. And no fingerprints from Tyrel Collins found on the
5 bleachers?

6 A. That's correct.

7 Q. You tested bleachers for DNA; do you remember that?
8 Is that maybe the blood?

9 A. There was blood recovered, which would be DNA
10 evidence.

11 Q. That was not Tyrel Collins?

12 A. No, sir.

13 Q. You found some partial shoe prints maybe?

14 A. That's correct.

15 Q. Couldn't really do much, find any information out
16 from that?

17 A. They weren't of a quality we could match up with
18 anybody.

19 Q. And from the autopsy, you recovered the
20 projectiles?

21 A. That's correct.

22 Q. From the body?

23 A. That's correct.

24 Q. Five from the body; is that right?

25 A. That's correct.

1 Q. And there was one more found in the ground under
2 that bleacher where you had the projectory rod that went
3 down through the bleacher; there was a projectile down on
4 the ground?

5 A. Yes.

6 Q. So you found five cartridge casings?

7 A. Let me make sure. No, sir, I believe it's four
8 projectiles from the victim, and one that's found on the
9 ground.

10 Q. Okay. So you're saying there were five cartridge
11 casings and five bullets found?

12 A. Five projectiles, five bullets.

13 Q. You also did a search warrant at [REDACTED] America
14 Street, we talked about before, right?

15 A. That's correct.

16 Q. Now, do you know if Dominique Montgomery was
17 present at that house?

18 A. I do not.

19 Q. Do you know who owned the house?

20 A. No, sir, I don't.

21 Q. You were looking for firearms, ammunition, firearm
22 accessories?

23 A. Anything that might relate to the case, sir.

24 Q. Dark T-shirt, dark pants?

25 A. Right.

1 Q. Didn't find a gun?

2 A. No, sir.

3 Q. Didn't find any ammunition?

4 A. No, sir.

5 Q. Didn't find any dark pants?

6 A. I'm not aware of any dark pants that were
7 recovered.

8 Q. But you found the dark T-shirt?

9 A. Yes, sir.

10 Q. Was it the only T-shirt in the house, the only
11 dark-colored T-shirt in the house?

12 A. Dark colored I don't remember, but there was one at
13 the scene that matched the description we were looking for
14 that we got, felt confident we could recover.

15 Q. You say it was in a box of clothes?

16 A. Yes.

17 Q. Was it the only dark T-shirt in that box of
18 clothes?

19 A. I don't know if they there were purple, red, green,
20 I don't know. It's two years ago. I remember looking for a
21 specific T-shirt, and that shirt matched the description of
22 what I was looking for, and I felt comfortable.

23 Q. It was right there on top?

24 A. Yes, sir.

25 Q. Do you know what touch DNA is?

1 A. I'm familiar with it, yes, sir.

2 Q. If our bodies touch things, then, you know, skin
3 cells, DNA can actually rub off on another object, right?

4 A. Yes, it can.

5 Q. Such as clothes?

6 A. Correct.

7 Q. That shirt wasn't tested for DNA, was it?

8 A. I don't remember whether it was or not.

9 Q. To your knowledge, it was not?

10 A. I don't have a report on that.

11 Q. So as far as you know, it was not?

12 A. Well, I just don't have -- I don't have a report.

13 And I retired right after this took place. So someone else
14 could have made that report.

15 Q. All I'm asking is what you know.

16 A. Yeah, I don't have a report on that, so I have no
17 knowledge of that.

18 MR. KING: That's all I have.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. VOIGT:

22 Q. Mr. King asked you a little bit about the
23 fingerprints found on the bleachers. Do your reports
24 indicate whose fingerprints those were? And I may have
25 given you --

1 A. I think I have the report. Just a second.

2 Q. I may have given you things that had been
3 previously marked as State's exhibits as well.

4 A. Prints from the bleacher were identified to Lavar
5 Rashone Anderson according to this report.

6 Q. How about prints from the playing cards?

7 A. I don't see that report about the playing cards
8 here.

9 Q. Well, I may have inadvertently handed you too much
10 stuff. I'm going to direct you again to State's 29, 30, and
11 31. Do you recognize State's --

12 A. I did find the report on the playing cards.

13 Q. Oh, and whose fingerprints were on those?

14 A. It was Solomon Chisolm.

15 Q. Okay. That was the victim?

16 A. That's correct.

17 MR. VOIGT: Thank you. I have no further
18 questions.

19 THE COURT: Recross?

20 MR. KING: None, Your Honor.

21 THE COURT: All right. Folks, this is where we
22 will break for the evening. Now, the weather outside is
23 frightful. I'm told by our clerk that the courthouse will
24 be operating on the same hours that we normally do, but
25 she's gotten reports that the schools are going to be

1 delayed opening two hours in the morning because it's
2 supposed to get very, very cold. At lunchtime you probably
3 saw it got a lot colder than when I showed up today.
4 Supposed to get real cold tonight. And I suppose if there's
5 any precipitation, then there's possibility of ice on the
6 road. So as a precaution, the schools are going to open two
7 hours later they tell me. So that brings the question, do
8 any of you all -- does that cause a problem for any of y'all
9 being here tomorrow, or do you have to -- or you can make
10 other arrangements for children to get to school, I guess
11 probably around ten o'clock. We normally would start at
12 9:30, and I would say be here, you know, 9:15, 9:30 the
13 latest. If you have school issues that you have to deal
14 with tomorrow to get your kid to school by 10:00, 10:30,
15 we'll obviously need to start a little bit later. Is that a
16 problem for anybody, or if you have children, can you make
17 arrangements for somebody else to take them had? Is that a
18 problem for anybody? Doesn't look like it.

19 Okay. All right. Then we'll break for today. And
20 let's get started back tomorrow morning at 9:30. And let me
21 leave you with the reminders to not talk to anybody about
22 the case, including other members of the jury panel. Don't
23 discuss it with your family members. You can tell them
24 again that you got picked for a jury, but you're not allowed
25 to discuss the case.

1 Please don't now try to go find out anything about
2 the case. Sometimes when you get people on a jury, they get
3 invested and they want to go drive by the scene. They want
4 to start looking for stuff on the Internet, things like
5 that. They get invested. Understandable, but it's not
6 allowed. Like I told you, everything that you need to know
7 we'll tell you about in this courtroom.

8 Also, there's a very good likelihood that there
9 will be an article in the newspaper tomorrow morning about
10 this case. Please do not read the newspaper tomorrow
11 morning or any day until we get finished with this trial.

12 After it's over with, you can read all you want, do
13 anything you want on the Internet for looking up cases and
14 things like that. But please avoid the news until the case
15 is over with. Because, again, it is just not fair. That
16 would be what a reporter's feelings are about things that he
17 saw, which may or may not correlate with what you saw.

18 And I'm not trying to suggest the newspapers don't
19 have the right to be here. They're here. They can be here.
20 And we like it when they're here. But it's improper for
21 those articles to influence you.

22 So, please, if you are a regular newspaper reader,
23 please just avoid the newspaper for the next couple of days
24 until we're finished with the trial.

25 All right? Thank you so much for your patience

1 today. We'll see you tomorrow morning at 9:30.

2 (Whereupon, the jury leaves open court at 05:47
3 p.m.)

4 THE COURT: All right. Mr. Sherman, you're free to
5 go. I understand you've got a wife having surgery tomorrow,
6 so you'll want to head on out of here.

7 THE WITNESS: Thank you, sir.

8 THE COURT: All right. So tomorrow morning 9:30,
9 the State will be ready with the next witness?

10 MS. LINDER: Yes, Judge.

11 THE COURT: All right. Anything we need to deal
12 with before we break for the day?

13 MR. KING: No, Your Honor.

14 THE COURT: All right. See you tomorrow morning.
15 (Whereupon, the proceedings adjourn for the day.)

16 *****

17 (Whereupon, the proceedings continue on January 7,
18 2014.)

19 THE COURT: All right. Let the record reflect the
20 defendant is in the courtroom. They tell me the last juror
21 has just arrived. Do we have anything we need to deal with
22 before we bring the jury in.

23 MS. LINDER: Yes, Judge. I had e-mailed your clerk
24 earlier today.

25 THE COURT: She's at the doctor's right now.

1 MS. LINDER: If we may approach briefly.

2 THE COURT: Sure.

3 (Whereupon, a bench conference takes place off the
4 record.)

5 THE COURT: Are you ready for your first witness?

6 MS. LINDER: Yes, Judge.

7 THE COURT: Okay. Bring the jury in. Let the
8 record reflect the defendant is in the courtroom.

9 (Whereupon, the jury returns to open court at 10:02
10 a.m.)

11 THE COURT: All right. Welcome back, folks. We
12 are going to resume this morning with the State calling the
13 next witness.

14 MS. LINDER: The State calls Kevin Sherbine.

15 KEVIN SHERBINE,

16 having been duly sworn, testifies as follows:

17 THE CLERK: State your first and last name and
18 spell your last for the record.

19 THE WITNESS: My name is Kevin Sherbine,
20 S-h-e-r-b-i-n-e.

21 DIRECT EXAMINATION

22 BY MS. LINDER:

23 Q. Good morning. Can you please tell the jury what
24 your occupation is?

25 A. I'm a professional visitation officer at the

1 Sheriff Al Cannon Detention Center.

2 Q. And what do some of your duties include at the
3 detention center?

4 A. I am the primary point of contact for the public
5 defenders, attorneys, various other law enforcement
6 agencies, as well as DSS, agencies like that, as well as I
7 handle all other subpoenas for inmates' records, as well as
8 do various other duties back to back.

9 Q. And with regard to your duty about inmate jail
10 records, can you explain to the jury kind of the
11 recordkeeping and the system that's in place to keep inmate
12 jail records, jail phone call records?

13 A. To obtain a jail record, I receive a subpoena, at
14 which point I check the records. And through our internal
15 computer system, at that point then I print out a card phone
16 log and then a CD with jail calls on them. Once this is
17 completed, they are placed in a sealed envelope and then
18 kept until the requesting party picks them up from the
19 lobby.

20 Q. And can you tell me a little bit about how your
21 internal system works with recording the phone calls, what
22 information is kind of retained in that system?

23 A. Any and all phone calls made outgoing from inmates
24 are recorded and kept in a computer database for a matter of
25 several years.

1 Q. And are inmates aware that phone calls are
2 recorded?

3 A. Inmates are aware that phone calls are recorded
4 from the time they get into the booking area and assigned a
5 PIN number throughout the facility that say calls are
6 recorded, as well as when they make calls, periodically
7 throughout that time, there is a recording that says, this
8 call is being recorded.

9 Q. And you mentioned inmates are given PINs at
10 booking. What do you mean when you say they are given PINs?

11 A. When they come to the booking and processing area,
12 they are assigned a personal PIN number they have to use to
13 make outgoing phone calls. This is how phone calls are
14 tracked throughout of duration of their stay in the
15 facility.

16 Q. And is it possible for one inmate to use another
17 inmate's PIN number to place a call?

18 A. It is, yes.

19 Q. And are all these records, all the inmate jail
20 logs, are these all kept in the completed -- in the normal
21 course of business?

22 A. Yes.

23 Q. And how long are they kept?

24 A. I think they are kept for six or seven years.

25 MS. LINDER: If I may approach.

1 (State's Exh. 45, Subpoena, was marked for
2 identification.)

3 BY MS. LINDER:

4 Q. Were you recently served a subpoena in this case?
5 I'm going to show you what's been marked as State's Exhibit
6 45 for identification purposes. Do you recognize this?

7 A. Yes, I do.

8 Q. And how do you recognize it?

9 A. We receive subpoenas like this all the time.
10 Usually for phone records, they come to me or my partner.
11 So she or I are the primary ones, sometimes the only ones
12 that see these. And it also has my user name on the logs.

13 Q. And once you receive the subpoena, what do you do
14 to comply with the subpoena? What actions do you take to
15 comply with it?

16 A. I send it to myself and my partner, as well as to
17 our security sergeant, who is next in chain of command. At
18 that point then, based on what it is that they want, we go
19 ahead and get these logs printed, and the CDs made as soon
20 as possible for a quick turnaround time.

21 (State's Exh. 43, CD of Marquis, is marked for
22 identification.)

23 (State's Exh. 44, CD of Campbell, is marked for
24 identification.)

25 Q. And at this time, I show you what's been marked as

1 State's Exhibit 43 and 44 for identification purposes. Were
2 you given a subpoena in this case, the State vs. Tyrel
3 Collins?

4 A. Yes.

5 Q. And did you comply with that subpoena?

6 A. Yes, I did.

7 Q. And the disks I just handed you, do you recognize
8 those disks?

9 A. Yes, I do.

10 Q. How do you recognize them?

11 A. That's my handwriting on the disks.

12 Q. And can you tell me who filled out or compiled the
13 data for this subpoena?

14 A. I did.

15 Q. And had they been altered, to your knowledge?

16 A. They have not been.

17 MS. LINDER: Please answer any questions that the
18 defense may have.

19 THE WITNESS: Yes, ma'am.

20 MR. KING: I have no questions.

21 THE COURT: You may step down.

22 Next witness.

23 MS. LINDER: Judge, the next witness is Raymond
24 Clement, and he is on his way over from my office.

25 THE COURT: Why don't we have the jury go back to

1 the jury room while we figure out what the delay is. Don't
2 begin deliberations or discussions. We will have you back
3 in just a few minutes.

4 Oh, he's here. Send them back.

5 RAYMOND CLEMENT,

6 having been duly sworn, testifies as follows:

7 THE CLERK: If you could please state your first
8 and last name and spell your last for the record please.

9 THE WITNESS: Raymond Clement, C-l-e-m-e-n-t.

10 DIRECT EXAMINATION

11 BY MS. LINDER:

12 Q. Good morning, Ray. Can you please tell the jury
13 where are you from?

14 A. From Charleston, South Carolina.

15 Q. And what's your current education level?

16 A. Currently enrolled at Trident Technical College.

17 Q. What types of jobs have you had?

18 A. Restaurant job, warehouse job, landscaping.

19 Q. And have you ever been convicted of a crime?

20 A. Yes.

21 Q. Were you convicted of possession of a gun back in
22 2001?

23 A. Yes.

24 Q. And were you convicted of possession of cocaine
25 back in 2008?

1 A. Yes.

2 Q. Do you know why you are here today?

3 A. Yes, to tell the truth.

4 Q. And what have I told you is the most important
5 thing about you being here today?

6 A. The truth.

7 Q. I'm going to take you back to October the 27th of
8 2011. Tell me what you were doing earlier that day.

9 A. I was at work.

10 Q. And can you tell, where were you working? When did
11 you get off of work?

12 A. I was working at Waters Edge in Mount Pleasant, and
13 I got off work like around 3:30.

14 Q. And what did you do when you got off of work?

15 A. I went to my grandmother's house. And then after
16 that, I went to Mall Park.

17 Q. And what area of town is Mall Park in?

18 A. Mall Park is located on East Side of Charleston.

19 Q. And is your grandmother's house in the same area,
20 or where is she?

21 A. Yes, my grandmother lives right there on Aiken
22 Street, like three-minute walk from Mall Park.

23 Q. And about what time, if you could remember, did you
24 get to Mall Park?

25 A. Like around 4:30.

1 Q. And what did you do once you got to Mall Park?

2 A. We started -- when I got on Mall Park, we was on
3 the bleachers talking and we started playing basketball.

4 Q. And then after you were on the bleachers talking
5 and you played basketball, did Solomon Chisolm ever come to
6 the park that day?

7 A. Yes. When we was finished playing basketball, he
8 pulled up, and he was like, he wanted to play cards. So we
9 went to the bleachers and we started playing cards.

10 Q. And who is Solomon Chisolm to you?

11 A. My half brother.

12 Q. And you call him Solomon, or do you call him
13 anything for short?

14 A. Sol.

15 Q. And when Sol arrived, where all did you all go to
16 play cards?

17 A. We went to the bleachers on like Hampstead Square
18 next to the park house.

19 Q. Are those bleachers the same bleachers you were
20 talking about that you hung by earlier?

21 A. No, it was the opposite.

22 Q. And who was playing cards that day?

23 A. It was me, Sol, Lavar Anderson, and Britney
24 Anderson.

25 Q. And what do you know Lavar Anderson as?

1 A. Lavar.

2 Q. And did you ever get out of the card game? Did you
3 ever stop playing cards that day?

4 A. Yes.

5 Q. And did that make everybody else stop, or did just
6 you stop?

7 A. Just I stopped.

8 Q. When you were sitting on these bleachers, where was
9 Lavar and Britney and Sol and you? Where were you on these
10 bleachers?

11 A. I was sitting to the bottom of the bleachers facing
12 Columbus Street. Sol was sitting with his back towards me
13 facing Aiken Street. Britney was facing Sol, facing America
14 Street. And Lavar was sitting to the top facing Columbus
15 Street.

16 Q. All right. What I'm going to do here is, if you
17 look at that screen right in front of you, I don't know if
18 that helps or you can look at the big TV behind you, I'm
19 going to put this picture up. This has already been entered
20 into evidence. This is State's Exhibit 2. This is -- can
21 you tell the jury what this is?

22 A. That's the bleachers where we were playing cards
23 at.

24 Q. And what you have in front of you is -- the
25 courtroom's got pretty technology. You have the ability, if

1 you touch this screen or you, like, circle something, it
2 will show up on here. So can you kind of mark where you
3 were, where Sol was, where Britney was, and where Lavar was?

4 A. I was sitting like right here. Sol was sitting
5 right here. Lavar was sitting right here. And Britney was
6 sitting right here.

7 Q. And I'm going to show you what's already been
8 entered into evidence as State's Exhibit 1. On this map,
9 can you tell where Mall Park is?

10 A. Yes, right here.

11 Q. And can you point -- show the jury where in Mall
12 Park that set of bleachers is that we have the picture of up
13 here?

14 A. Set of bleachers under -- right here.

15 Q. Okay. So can you tell, if this is Mall Park, what
16 is this? It looks like a green roof.

17 A. That's the park house.

18 Q. And then what is this?

19 A. The entrance.

20 Q. Okay. And then what is this area?

21 A. The basketball court, playground, and the
22 bleachers.

23 Q. Okay. And I'm going to show you what's been marked
24 as State's Exhibit 3, already been admitted into evidence.
25 Can you look at this picture in front of you; what is that?

1 A. That's the bleachers where, when I first came, that
2 we was at talking.

3 Q. Okay. And where is that in comparison to those
4 metal bleachers that we just saw a picture of?

5 A. It's on the other side of the bleachers, like
6 closer to Columbus Street.

7 Q. All right. And maybe this would help. This is
8 State's Exhibit 4. Can you explain what this is right here?

9 A. This is the bleachers where we was playing cards
10 at.

11 Q. And what's this? Do you see back here in the
12 picture?

13 A. The first area where I was when I first came to the
14 park.

15 Q. Okay. So you were sitting on the bleachers, and
16 Lavar, Sol, and Britney were playing cards. Did they
17 ever -- were they ever forced to stop the card game?

18 A. Yes.

19 Q. How?

20 A. It was -- that's when Tyrel Collins came and
21 started shooting.

22 Q. And when the shooting started, what did you do?
23 What did you say?

24 A. "Oh, shit," and jumped up and ran.

25 Q. And what direction did you run?

1 A. Towards the park house on -- towards America Street
2 and the park house.

3 Q. So -- I apologize to the jury if you can't see this
4 very well. Earlier you stated that -- this is upside-down.
5 This is Mall Park, and you said this green roof is the park
6 house?

7 A. Yes.

8 Q. And over here are the bleachers that you sat?

9 A. Yes.

10 Q. And so when you say that you ran up and ran up by
11 the park house, what direction is that? Can you point
12 toward -- can you show that?

13 A. I ran toward this way.

14 Q. Okay. What was the shooter wearing?

15 A. A black T-shirt, blue jeans, with a shirt like over
16 his head like this here.

17 Q. And can you give a general physical description of
18 the shooter?

19 A. Brown skin, tall, slim.

20 Q. And did anything happen to you when you were
21 running by the park house?

22 A. Yes, I got shot in my leg.

23 Q. Did you stop at the park house, or did you run out
24 to the street, or did you run for another six blocks? How
25 far did you go?

1 A. I ran to the entrance by the park house on America
2 Street side.

3 Q. And did you see anything when you got to that
4 entrance on the America Street side; if so, what did you
5 see?

6 A. I saw Tyrel got to the white Crown Vic and was
7 about to get in, but before he got in, he looked at me and
8 shook his head like: Yeah, I did that.

9 Q. Was his shirt still up over his whole head?

10 A. No.

11 Q. How was it?

12 A. It was down. It was pulled. It was pulled down.

13 Q. And when you saw him run up to the car and nod at
14 you, what did he do next?

15 A. He got into the car and he sped off and went
16 towards Johnson Street way.

17 Q. And what did you do next?

18 A. I walked back to the park, the bleachers where we
19 were playing, and Solomon was under the bleachers. And I
20 tried to call for the police, but officers was already
21 running towards the scene.

22 Q. Do you remember -- and you may not remember their
23 names. Do you remember an Officer Gamble coming up to the
24 scene?

25 A. No, I don't remember names.

1 Q. How are you feeling -- how were you feeling? What
2 was your demeanor like when you went back up to the
3 bleachers?

4 A. Like, I was hysterical, like frantic, like ...

5 Q. When the cops came into the park, did you
6 immediately run up to them and say: Here's all the details
7 of everything that I saw that just happened?

8 A. No.

9 Q. Why not?

10 A. I mean, I didn't want to get involved at first. I
11 didn't want to talk, because I didn't want to be putting my
12 family or nobody in danger by identifying no one, anything
13 like that.

14 Q. Were you concerned about your half brother?

15 A. Yeah, very concerned.

16 Q. And after all of that happened at Mall Park, did
17 you go home?

18 A. Yes. I walked to -- I didn't walk home, but I
19 walked to my grandmother's house because my car was taped
20 off and I couldn't get my car, so I had to go down there
21 until they released my car.

22 Q. And the next day, did you come downtown?

23 A. Yes.

24 Q. And is that something you typically do?

25 A. Yes.

1 Q. Where were you going?

2 A. To my mother's house on Drake Street.

3 Q. And what route do you normally drive to get there
4 once you are downtown?

5 A. First I stop to my grandmother's house on Aiken
6 Street, get out, drive from Aiken Street south towards
7 Columbus, make a left on Columbus, then make a right on
8 America to go to South Street, and then make a left on
9 south.

10 Q. All right. I'm not worried about -- I'm going to
11 show you again State's Exhibit 1. I'm not worried about
12 where exactly. Doesn't matter where exactly they are, but
13 just so the jury can see different street names, can you
14 point out where Aiken Street is?

15 A. Aiken Street is right here. (Witness indicates.)

16 Q. And that street goes along aside Mall Park?

17 A. Yes.

18 Q. Can you point out -- I think you mentioned
19 Columbus.

20 A. Columbus is right here. (Witness indicates.)

21 Q. All right. So when your grandmother lives on
22 Aiken, you said you take Aiken to Columbus, and then you
23 said you take America. Where is America Street?

24 A. Right there. (Witness indicates.)

25 Q. And then South Street, is that even on this map?

- 1 A. No, that's farther down.
- 2 Q. And you turn on South Street, which direction do
3 you turn on South Street, coming towards me or coming that
4 way?
- 5 A. That way.
- 6 Q. This way?
- 7 A. Yes.
- 8 Q. From South Street, you turn onto Drake Street? Do
9 you see where Drake street is?
- 10 A. All the way down here.
- 11 Q. So you kind of zigzagged?
- 12 A. Yes.
- 13 Q. If Mall Park is in the center, you kind of zigzag,
14 and zig and zag and back and forth. Are any of these
15 one-way streets?
- 16 A. No.
- 17 Q. That's just the route that you take?
- 18 A. Yes.
- 19 Q. When you were driving to your mama's house on Drake
20 Street the day after this murder happened, did you see
21 anything kind of unusual?
- 22 A. Yeah, I saw Charleston Police Department at a
23 house.
- 24 Q. And what street was that house on?
- 25 A. America Street.

1 Q. Did the police approach you when they saw you?

2 A. Yes.

3 Q. And what did they tell you to do or what did you do
4 as a result of them approaching you?

5 A. They told me that they wanted me for questioning on
6 the murder that happened on Mall Park.

7 Q. Did you meet with them?

8 A. Yes.

9 Q. Did you meet with police officers at the station on
10 more than one occasion?

11 A. Yes.

12 Q. Did you tell the whole truth the first time?

13 A. No.

14 Q. Why?

15 A. Because I didn't want to get involved, you know.
16 Like the East Side is known, you know, like you tell on
17 somebody, you cooperate with the police, there's going to be
18 harm for you and your family or whatever. So I didn't want
19 to get involved at first.

20 Q. Did you ever tell the police who did the
21 shooting?

22 A. Yes.

23 Q. Did you end up doing a photo lineup with the police
24 where you identified who did the shooting?

25 A. Yes.

1 Q. Do you recall, was that lineup done with Detective
2 Osborne?

3 A. Yes.

4 Q. At this time, I show you what's been marked as
5 State's Exhibit 28. You can look at -- if you can look at
6 both of those pages, please. Do you recognize those pieces
7 of paper?

8 A. Yes.

9 Q. How do you recognize them?

10 A. My signature.

11 Q. And what do those pieces of paper show?

12 A. The instructions for the photo lineup and six
13 pictures of people.

14 Q. All right. Did you make an identification on that
15 lineup?

16 A. Yes.

17 Q. How did you indicate to police that you chose
18 somebody in that lineup?

19 A. Pointed at it and signed my signature.

20 Q. And did you make this identification quick, slow;
21 how quickly did you make it?

22 A. Quick.

23 Q. Are you certain of who you selected in this?

24 A. Yes.

25 Q. And who did you select in this picture?

1 A. Tyrel Collins.

2 Q. Along with when you met with Detective Osborne, did
3 you end up telling him about you being shot in the leg?

4 A. Yes.

5 Q. Did you later on meet with Detective Osborne and
6 give him anything, kind of showing that?

7 A. Yeah, my -- the pants that I was wearing.

8 Q. All right. And did Detective Osborne or anyone
9 from the city take a photo of your leg?

10 A. Yes.

11 Q. All right. I show you what's been marked as
12 State's Exhibit 17. Do you recognize this?

13 A. Yes, that's my leg.

14 MS. LINDER: The State would offer 17 into
15 evidence.

16 MR. KING: No objection, Your Honor.

17 THE COURT: Admitted.

18 (State's Exh. No. 17 is moved into evidence.)

19 BY MS. LINDER:

20 Q. And can you tell the jury what this picture is?

21 A. A picture of my leg with the gunshot wound.

22 Q. And what is this?

23 A. The gunshot wound.

24 Q. And who shot Sol?

25 A. Tyrel Collins.

1 Q. Do you see him in the courtroom here today?

2 A. Yes.

3 Q. What is he wearing?

4 A. Right there with the white shirt on him.

5 MR. KING: I just preserve my objection to Neil vs.
6 Biggers.

7 MS. LINDER: Your Honor, please let the record
8 reflect that Raymond Clement pointed out the defendant in
9 this case, Tyrel Collins, as the shooter.

10 BY MS. LINDER:

11 Q. How long have you known Tyrel Collins?

12 A. Since like 2006.

13 Q. And in what way did you know him? How did you know
14 him?

15 A. From the area and coming to my grandmother's house
16 with my brother.

17 Q. Was he friends with your brother?

18 A. Yes.

19 Q. He would be in your grandmother's house?

20 A. Yes.

21 Q. How often would you see him?

22 A. Probably daily, four or five times a week.

23 Q. And did you ever talk to him or hear him talking?

24 A. Yes.

25 Q. You mentioned that you at first didn't want to get

1 involved, didn't want to talk to law enforcement. Why is
2 that?

3 A. Well, like, I was scared, you know. Like, I just
4 didn't want to talk.

5 Q. All right. And have you ever been contacted by the
6 defendant, by a family member of his or by a friend?

7 A. Yes, I have been contacted by him, his cousin, his
8 brothers, his friends.

9 Q. And were you contacted on one occasion or more than
10 one occasion?

11 A. More than one occasion.

12 Q. And has the defendant's mother ever contacted
13 you?

14 A. Yes.

15 Q. And who is she?

16 A. Stacey Montgomery.

17 Q. How do you know her? When did you first meet her?

18 A. I met her a couple of years ago when I went to
19 their house in West Ashley.

20 Q. And how often would you say that you would see her?

21 A. Probably two or three times a weekend and on the
22 East Side.

23 Q. And have you ever been in a conversation with her
24 or overheard her talking before?

25 A. Yes.

1 Q. Who is the defendant's brother?

2 A. Adrienne Mitchell -- I mean, Adrienne Collins.

3 Q. How do you know him?

4 A. From the East Side.

5 Q. And how and when did you first meet him?

6 A. Like 2006, 2007.

7 Q. And about how many times a week would you see him
8 or talk to him?

9 A. Daily.

10 Q. And you've had phone conversations or in-person
11 conversations or overheard him talking in the past?

12 A. Yes.

13 Q. In what specific ways were you contacted by the
14 defendant's brother?

15 A. Phone calls, house visits to my grandmother's
16 house. Whenever we bump into each other, he will bring up
17 the situation, or whatever.

18 Q. And how were you directly contacted by the
19 defendant's mother?

20 A. By telephone, and one day they came and picked me
21 up.

22 Q. And how were you directly contacted by this
23 defendant?

24 A. By telephone call from his mother on a three-way
25 call.

1 Q. After you told the police the truth, did you ever
2 later write any sort of statement that goes against what you
3 told the police?

4 A. Yes.

5 Q. And how did that whole thing come about?

6 A. I was contacted by the defendant and his family
7 telling me to go write a statement and sign it and say I
8 didn't see anything and get a notary to sign it.

9 Q. How did they contact you? Was it in person, on the
10 phone?

11 A. On the phone, in person.

12 Q. And did you ever end up going to write a
13 statement?

14 A. Yes. At the moment in time they called me, they
15 keep calling me, yeah, I went and did it.

16 Q. Were you by yourself when you went?

17 A. No, I was with his brother and his mother.

18 Q. How did that come about? Where did you run into
19 them?

20 A. They came by my grandmother's house and picked me
21 up and took me to the library.

22 Q. When you were at the library, were you standing by
23 yourself?

24 A. No, the brother was standing with me.

25 Q. When you were at the library, did you just kind of

1 decide whatever you felt like writing you wrote down?

2 A. No, I was -- when I spoke to the defendant, he
3 already told me what to write.

4 Q. And after writing what you did at the library, do
5 you know what, if anything, was done with that? Were there
6 copies made?

7 A. Yeah. He told me to make three copies. And I gave
8 it to his brother. And he was going to give it to the
9 lawyer or whoever they had to give it to.

10 Q. And after you did this, after you rode with them,
11 went to the library, filled out the statement, where did you
12 go from there? How did you get home?

13 A. They -- his mother took me back to my grandmother's
14 house.

15 Q. You mentioned that you received a call from the
16 defendant while he was in jail and you also mentioned that
17 you received phone calls from the defendant's -- other
18 individuals in his family, talking to you about writing a
19 statement. At this time, I show you what's been marked as
20 State's Exhibit 43 and 44 for identification purposes. Do
21 you recognize these?

22 A. Yes.

23 Q. How do you recognize them?

24 A. My signature's on it.

25 Q. Have you previously listened to these disks in my

1 office?

2 A. Yes.

3 Q. And did you recognize who was on these phone calls
4 when you listened to them?

5 A. Yes.

6 Q. And who was on these phone calls that you listened
7 to?

8 A. You have one with me, with Tyrel, his mother, his
9 baby mother, and his brother.

10 MS. LINDER: Your Honor, at this time I would ask
11 State's Exhibit 43 and 44 be admitted into evidence.

12 MR. KING: Your Honor, we've discussed with the
13 solicitor, she's playing certain specific parts of the phone
14 calls, and I don't object to those coming in.

15 THE COURT: All right. They are admitted. You can
16 publish them.

17 (State's Exh. Nos. 43 and 44 are moved into
18 evidence.)

19 BY MS. LINDER:

20 Q. At this time I'm going to play some of these phone
21 calls for the jury. And I would just like for you to
22 listen, and then I will ask you some questions afterwards.

23 (Whereupon, a video is played.)

24 MR. KING: I object at this point. This was not --
25 I don't think this was the sections we agreed to play.

1 THE COURT: We'll have the jury step out so we can
2 get it straightened out. Go to the jury room. Don't begin
3 deliberations or discussions.

4 (Whereupon, the jury leaves open court at 10:52
5 a.m.)

6 MR. KING: Sorry, Judge, I apologize for that.

7 THE COURT: Well, they are probably using the
8 restroom, so why don't we take 10 and come back. All right.

9 (Whereupon, recess transpired.)

10 THE COURT: Everybody ready?

11 MS. LINDER: Yes, Judge.

12 THE COURT: All right. Bring the jury back in.

13 (Whereupon, the jury returns to open court at 11:05
14 a.m.)

15 THE COURT: All right. Folks, we will resume with
16 the playing of the audio. Go ahead.

17 (Whereupon a tape is played.)

18 BY MS. LINDER:

19 Q. Ray, who was on that phone call?

20 A. Me and Tyrel Collins.

21 Q. And what were y'all discussing in that phone call?

22 A. We was discussing what I had to do to go -- the
23 statement they wanted me to write and take it to the lawyer
24 and whatever. And we also was discussing the incident that
25 happened in the park.

1 Q. And what did you all talk about the incident on the
2 park?

3 A. He was like -- I was like: Man, the way you did
4 that, you know what I'm saying, you shouldn't have did it,
5 like that. Even though he know. And then I say: You even
6 shoot me. And he was like: Yeah, I know, that was foul,
7 man, that was foul; whatever.

8 Q. I'm going to play another phone call for you. I'm
9 going to play another phone call for you. If you could just
10 listen to it, please.

11 (Whereupon a tape is played.)

12 Q. Ray, can you tell me, who was on that phone call.

13 A. Tyrel and his mother.

14 Q. And what's going on with that phone call? What are
15 you talking about?

16 A. He got me on the other phone talking to the baby
17 mother about me going to get the statement notarized and
18 when I'm going to do it, or whatever.

19 Q. All right. I'm going to have you listen to another
20 phone call, part of it.

21 (Whereupon a tape is played.)

22 Q. And who was on that phone call, Ray?

23 A. Tyrel and his brother.

24 Q. Whose his brother?

25 A. Adrian.

1 Q. And what does Adrian go by?

2 A. Metal.

3 Q. And what are they talking about on that phone call?

4 A. They trying to get in contact with me to go through
5 the statement, but I'm holding out. I'm trying to buy some
6 time or whatever not to do it.

7 Q. And did they talk about anybody else on that phone
8 call?

9 A. Lavar Anderson.

10 Q. Where did they talk about him?

11 A. They asked if he already get out, Cookie Monster,
12 something about Cookie Monster.

13 Q. What's Cookie Monster?

14 A. I guess it's a code he's using because his baby
15 mother goes by Cookie. And he asked what is the last name.
16 He said Anderson.

17 Q. All right.

18 (Whereupon a tape is played.)

19 Q. Who was in that phone call?

20 A. Tyrel and his baby mother, Latoya.

21 Q. And what are they talking about?

22 A. He giving her instructions what to tell me, what to
23 put on the statement they wanted me to write.

24 Q. All right. I'm going to have you listen to one
25 last call.

1 (Whereupon a tape is played.)

2 Q. Who was on that phone call?

3 A. Tyrel, Adrian, and Latoya.

4 Q. And what are they talking about?

5 A. Me going to sign the paper. And he telling again
6 what to tell me to put on the paper. And his mother saying
7 when they going to pick me up.

8 Q. And on the phone call that the jury just heard with
9 you and the defendant on it, it sounds like you were kind of
10 laughing with him. Can you explain that? Why were you
11 laughing?

12 A. I mean, I had to, you know, make it look like ain't
13 nothing going on, like we all right, you know. I don't want
14 no problems.

15 Q. All right. So the phone calls that we heard about,
16 you explained were dealing a lot with this statement, the
17 statement written at the library. And did you write a
18 statement at the library?

19 A. Yes.

20 Q. And why did you write that statement?

21 A. I mean, I was getting visits, phone calls, threats,
22 and I even got shot --

23 Q. So after you got those phone calls and you did the
24 statement, you wrote that, but why are you here today?

25 A. To tell the truth.

1 Q. Now, I hate to even talk about this, but do you
2 have a pending charge in my office?

3 A. Yes.

4 Q. And am I the one handling that charge?

5 A. No.

6 Q. Have I promised you anything in relation to that
7 charge --

8 A. No.

9 Q. -- with you being here?

10 A. No.

11 Q. Have you ever cooperated with law enforcement
12 before?

13 A. Yes.

14 Q. Did you cooperate with both local and federal law
15 enforcement?

16 A. Yes.

17 Q. Did your cooperation last for a couple of years?

18 A. Yes.

19 Q. Did your cooperation lead to a lot of people
20 getting arrested?

21 A. Yes.

22 Q. And did it lead to a lot of people being
23 convicted?

24 A. Yes.

25 Q. And have you ever received any sort of benefit for

1 your cooperation on other cases in the past?

2 A. Yes.

3 Q. Back in 2009, did you have a possession of Ecstasy
4 charge dismissed by a member of the Solicitor's Office?

5 A. Yes.

6 Q. And throughout your time with federal law
7 enforcement, did you ever receive any money for your time
8 with them instead of you being at work, or other items?

9 A. Yes.

10 Q. Were you actively an informant at the time of this,
11 back on October the 27th of 2011?

12 A. No.

13 Q. And during this investigation, I believe you've
14 already talked about, did you do a photo lineup identifying
15 the shooter of your brother back on that day?

16 A. Yes.

17 MS. LINDER: I ask State's 28 be admitted.

18 (State's Exh. 28 is received in evidence.)

19 BY MS. LINDER:

20 Q. And in court today, have you identified the
21 individual who shot Solomon Chisolm over and over again,
22 killing him?

23 A. Yes.

24 Q. And who was that?

25 A. Soldier, Tyrel Collins.

1 MS. LINDER: Please answer any questions the
2 defense may have.

3 MR. KING: I would object to entering the lineup
4 in.

5 THE COURT: Well, I already admitted it, but I note
6 your objection, but it's already admitted. At least if it
7 wasn't, it is now.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Mr. Clement, you testified that you worked as an
11 informant for the police?

12 A. Yes.

13 Q. For how long?

14 A. About a year.

15 Q. You worked with federal police?

16 A. Yes.

17 Q. Local police?

18 A. No, not local police.

19 Q. And Ms. Linder was involved in some of those
20 federal prosecutions?

21 A. No.

22 Q. Not that you know of?

23 A. Not that I know of.

24 Q. And it led to numerous arrests, your cooperation?

25 A. Yes.

1 Q. And your actions as an informant?

2 A. Yes.

3 Q. And multiple convictions?

4 A. Yes.

5 Q. And you testified that you have had at least one
6 charge dismissed because of that cooperation, right?

7 A. Yes, in 2009.

8 Q. And they've offered you money?

9 A. I don't understand.

10 Q. Have you gotten money from them?

11 A. Yes.

12 Q. From the feds? So now you have pending a felony
13 charge, reckless homicide, right?

14 A. Yes.

15 Q. And that charge carries up to 10 years; are you
16 aware of that?

17 A. Yes.

18 Q. You got 10 years in prison for that?

19 A. Yes.

20 Q. And you already have a record, right, possession of
21 cocaine and gun charge?

22 A. Yes.

23 Q. And that would be taken into consideration if you
24 were convicted of reckless homicide, wouldn't it?

25 A. I mean, I don't know.

1 Q. . And you are hoping that charge is going to get
2 dismissed also, right?

3 A. No. I mean, it was an accident. It was a vehicle
4 accident.

5 Q. You would like it to be dismissed?

6 A. I've got to wait until my trial come.

7 Q. You have contacts in law enforcement?

8 A. Yes.

9 Q. In the ATF, Alcohol, Tobacco and Firearms?

10 A. Yes.

11 Q. You have contact with Jay Grill?

12 A. Yes.

13 Q. I believe he works for maybe the City of Charleston
14 in a task force that combines with federal law enforcement.

15 Do you know about that?

16 A. I mean, I didn't know him from federal.

17 Q. Okay. But he's kind of a contact for you?

18 A. Yes.

19 Q. You still keep in touch with him?

20 A. I mean, not really, not having -- only like if
21 something's like going on, if I need -- feel like I need
22 protection or whatever, yes.

23 Q. You keep in contact? After you were charged with
24 reckless homicide, you called him?

25 A. Yes.

1 Q. Solomon Chisolm was related to you?

2 A. Yes.

3 Q. Now, today you are saying that you saw Tyrel
4 Collins shoot Solomon Chisolm, right?

5 A. Yes.

6 Q. And but you've known Tyrel for years?

7 A. Yes.

8 Q. For a long time before the shooting?

9 A. Yes.

10 Q. You knew what he looked like?

11 A. Yes.

12 Q. You were on the scene when the police officers
13 first arrived after the shooting, right?

14 A. Yes.

15 Q. You didn't tell them: Tyrel Collins shot my
16 brother; did you?

17 A. Nope.

18 Q. You didn't tell Officer Gamble, first officer who
19 got there?

20 A. No.

21 Q. You didn't tell Officer Lites?

22 A. No.

23 Q. Another officer who got there?

24 A. No, I didn't.

25 Q. Even though you knew exactly who shot your

1 brother?

2 A. Yes.

3 Q. You told them you saw a black male with a hooded
4 black sweatshirt shoot your brother?

5 A. No.

6 Q. You left the scene?

7 A. After the police got there and the EMS got there,
8 yes, that's when I left.

9 Q. And then at some point, you were driving by and you
10 saw please at ■ America Street?

11 A. The next day?

12 Q. Yes.

13 A. Yes.

14 Q. And you saw Tyrel -- did you see Tyrel getting
15 arrested?

16 A. No.

17 Q. That's when you went to the police, October 28th,
18 2011? This is the day after the shooting you went down.
19 They took you down onto the police station for questioning,
20 right?

21 A. Yes.

22 Q. And you were interviewed at the station about 1:45
23 in the afternoon by Detective Osborne and Detective Fleming;
24 do you remember?

25 A. Yes, yes.

1 Q. And do you remember telling them that you left the
2 bleachers to go talk to somebody?

3 A. Yes.

4 Q. And as you were walking back to the park, you saw a
5 guy standing over your brother shooting.

6 A. Yes.

7 Q. Told them that?

8 A. Yes, I did.

9 Q. And that he had a black shirt over his face?

10 A. I said over his head.

11 Q. Black shirt over his face?

12 A. Yes.

13 Q. And that you weren't out there when he walked up
14 and did the shooting?

15 A. Yes.

16 Q. And they specifically asked you: Did you see Tyrel
17 Collins out there last night? Do you remember that?

18 A. Yes.

19 Q. And you said no?

20 A. No, they didn't ask me -- they didn't call his
21 name. They didn't call his name.

22 Q. They didn't --

23 A. They asked me if I saw who did it. That's what
24 they asked me, did I see who did it. They didn't call no
25 names.

1 MR. KING: Your Honor, at this time I would like to
2 admit a portion of the recording, a prior inconsistent
3 statement.

4 THE COURT: Go ahead. Lay a foundation for when
5 this was.

6 MR. KING: Could I just pop up the video still and
7 have him identify it, just a still photo of it without
8 playing it?

9 THE COURT: Well, what are the circumstances of the
10 statement?

11 BY MR. KING:

12 Q. This is the statement I was talking about before
13 where the police take you down to Lockwood. Right, they
14 take you in an interview room? When I was asking you about,
15 you said, yeah, you told Detective Osborne and Detective
16 Fleming, that you left to go talk to somebody, and as you
17 were walking back, you saw a guy standing over him shooting.
18 Right? Do you remember that interview?

19 A. Yes.

20 Q. That was at an interview room at the police
21 station, city police station on Lockwood, right?

22 A. Yes.

23 Q. Okay. And I'm going to show you a video of that
24 interview. All right?

25 (Whereupon, video is playing.)

1 BY MR. KING:

2 Q. All right. Do you remember that?

3 A. Yes.

4 Q. That's you?

5 A. Yes.

6 Q. You used to have dreads?

7 A. Yes.

8 Q. And that's you sitting in the interrogation room
9 with Detective Osborne and Detective Fleming?

10 A. Yes.

11 Q. On October 28th, 2011?

12 A. Yes.

13 Q. All right. So they did ask you?

14 A. Yeah. I mean, it was two years ago. I didn't
15 recall them asking me that. I can't remember everything
16 from two years ago.

17 Q. Then you continue maybe three more times insisting
18 that you weren't at the bleachers when the shooting
19 happened, but you were coming back when you had left the
20 park. You continued telling them that over the interview,
21 right?

22 A. The whole interview I told them that because I
23 didn't want to be involved.

24 Q. You told them that if you had been right there ---
25 today you are saying you were sitting right beside Solomon

1 on the bleachers?

2 A. Yes, I was.

3 Q. And back at that same interview we just watched,
4 you said, if you had been right there, you would have
5 grabbed him. Do you remember saying that?

6 A. Yes.

7 Q. And then later on that same interview, Detective
8 Fleming was asking you, you know, hoping you could be a
9 solid witness for them, and you said: If I could help, I
10 would help. I'm not going to take the stand and lie if I
11 don't know he did it.

12 Do you remember saying that?

13 A. Yes.

14 Q. After that interview, at some point, did you
15 confront Britney Washington?

16 A. Confront her?

17 Q. Go talk to her?

18 A. No.

19 Q. You didn't go talk with her about why she didn't
20 see who shot him?

21 A. No; I never asked her that. I asked her why I
22 didn't see who -- I did talk to her, not right after that,
23 because I didn't see her after that.

24 Q. But you were concerned that she didn't see who did
25 the shooting?

1 A. I mean, I knew they saw who did it. You know what
2 I'm saying? She's even -- they even said they saw who did
3 it.

4 Q. So then now it's a couple of days later, on October
5 31st, you come back to the police station and you are
6 interviewed again. I think it's the same interrogation
7 room. Do you remember that?

8 A. Yes.

9 Q. And you had called Grill, your contact with federal
10 law enforcement, and talked to him, right?

11 A. Yes.

12 Q. Put him in contact with Detective Osborne, the lead
13 detective on this case?

14 A. Yes.

15 Q. And they offered you money?

16 A. No.

17 Q. To move, either go in witness protection or to move
18 to Columbia?

19 A. Yes.

20 Q. And Osborne told you, it's your cooperation, if you
21 cooperated with them, then that would be a big deal; do you
22 remember him telling you that?

23 A. I don't recall.

24 MR. KING: Your Honor, I would like to admit
25 another clip from that video that's inconsistent with that

1 statement.

2 THE COURT: All right. Give him the time and date
3 and place of it.

4 MR. KING: This would have been October 31st in the
5 interrogation room at city of Columbia Police Department,
6 talking with Detective Osborne.

7 THE COURT: You said Columbia, do you mean
8 Charleston?

9 MR. KING: Charleston, sorry, Charleston City
10 Police Department. I think it was about one in the
11 afternoon.

12 BY MR. KING:

13 Q. Do you remember going down there and meeting with
14 them then?

15 A. Yes.

16 Q. That's when you told them that you had gotten
17 shot?

18 A. Yes.

19 Q. And that photo of your leg was taken. Now, this is
20 a different day, October 31st, right, when you are meeting
21 with Osborne?

22 (Whereupon a tape is played.)

23 Q. Do you remember that now?

24 A. Yes.

25 Q. Now, you are saying today that not only did Tyrel

1 Collins shoot your brother, that he shot you too?

2 A. Yes.

3 Q. Right? Can you describe how that happened? Well,
4 first of all, let me ask you this. Wouldn't you have been
5 sitting right beside Solomon Chisolm where the shooter was
6 coming around? Wouldn't he have walked right in front of
7 you?

8 A. He did. That's how I saw his face. He stand in
9 front of me. He shoots Solomon. I say, oh, shit. I jumped
10 up. I ran. That's when he start shooting at me and ran out
11 the entrance of the park.

12 Q. Right. When he's running right in front of you,
13 you are saying you know him, he knows you, he knows you are
14 Solomon's brother, he didn't shoot you right then, he didn't
15 shoot you because he was right in front of you?

16 A. I mean, I guess it would be for Solomon -- his beef
17 was with Solomon.

18 Q. So you jump up and run when the shooting happens,
19 right?

20 A. Yes.

21 Q. And you are running down Hampton toward Trident
22 Tech, right?

23 A. No, I'm not running down Hampstead. I'm still in
24 the park running towards the park house.

25 Q. Running toward America Street?

1 A. Yeah, America Street and the park house.

2 Q. Okay. Now, when does the shooter turn and start
3 shooting at you?

4 A. When -- I guess when he's finished shooting Sol,
5 when he was turned around and leave at the park, he seen me
6 running, he start shooting at me.

7 Q. Okay. So there would have been shooting of Sol,
8 then the shooter turns around, so there would be a break,
9 and then he shoots at you twice, would you say?

10 A. Well, I can't remember how many times he shot. My
11 mind was just to get on, to get away. I wasn't counting how
12 much time he shot.

13 Q. Do you remember back -- this is the second
14 interview I just showed you on October 31st. Do you
15 remember telling them that he shot at you twice?

16 A. I mean, I don't remember. I can't recall, but I
17 know he shot at me, he shot me.

18 MR. KING: Your Honor, may I play -- introduce into
19 evidence that portion?

20 THE COURT: Is it the same interview?

21 MR. KING: Yes, the same interview I just showed
22 you, just a little bit farther along in time.

23 (Whereupon, the video is playing.)

24 BY MR. KING:

25 Q. Does that refresh your memory that he shot at you

1 at least twice?

2 A. I say probably. You know, I just estimate,
3 guessing.

4 Q. But you are saying that pow, pow, pow, pow, pow,
5 pow, and then he turns and runs, and then two more shots
6 after a delay?

7 A. Yeah, he shot at me.

8 Q. Now, you are saying today that before the shooter
9 got in the car, you followed him down running toward America
10 Street from the park, right?

11 A. I never said I followed him.

12 Q. All right. You ran in the same direction that he
13 ran?

14 A. I ran straight by the park house. He went back out
15 the same way he came through Hampstead Square towards
16 America.

17 Q. Okay. And you are saying today that before the
18 shooter got in the car, he took the shirt off his face,
19 looked at you and nodded?

20 A. The shirt was already off his face. I guess when
21 he ran behind the park house, the shirt was off. And he
22 looked and he nodded like, yeah, I did that.

23 Q. He turned and looked back at you?

24 A. Yes, I was standing right there at the end of the
25 park house.

1 Q. Same interview I just showed you, October 31st,
2 little bit farther along in time, didn't you deny that he
3 looked back at you?

4 A. I don't recall.

5 MR. KING: Your Honor, I would ask to admit this
6 section of the video, the same interrogation that I showed
7 you the past few times.

8 THE COURT: Go ahead.

9 (Whereupon, video is playing.)

10 BY MR. KING:

11 Q. Does that refresh your memory there?

12 A. Yeah. I mean, I just say -- I didn't recall though
13 him looking back, he didn't shoot at me. That's what I was
14 saying no to.

15 Q. We can watch it again, said he didn't look back at
16 you.

17 A. I mean, like I said, that's two years ago. I can't
18 remember everything I said two years ago.

19 Q. You don't have to remember.

20 A. All I know is the incident that happened.

21 Q. But you agree you said that on the video. You
22 said, no, he didn't look back at you or try to shoot you
23 again, or anything like that, no?

24 A. I said no to he didn't shot at me again; that's
25 what I was saying no to.

1 Q. Who was out at the shooting the night it happened?
2 Around the time of the shooting, did you see Dominique
3 Montgomery?

4 A. Yes.

5 Q. Where was he?

6 A. He was on the park prior to the shooting. All of
7 us was out there playing basketball.

8 Q. Right before the shooting?

9 A. They walked -- most of them had left like off the
10 park.

11 Q. How long before the shooting?

12 A. Probably about 15, 20 minutes.

13 Q. So Dominique Montgomery left 15 minutes before the
14 shooting?

15 A. I mean, approximately, yeah. Not only him, it was
16 a group of them, so ...

17 Q. Now, April 25th, 2012, that's when you went down to
18 the library and signed an affidavit, right?

19 A. Yes.

20 MR. KING: May I approach, Your Honor.

21 (Defendant's Exh. No. 1, Affidavit, was marked for
22 identification.)

23 BY MR. KING:

24 Q. I'm showing you Defendant's Exhibit 1 for
25 identification. Do you recognize that?

1 A. Yes.

2 Q. Is that an affidavit that you filled out and signed
3 at the library?

4 A. Yes.

5 MR. KING: Your Honor, I move to admit Defendant's
6 Exhibit 1 in evidence.

7 MS. LINDER: No objection.

8 THE COURT: Admitted.

9 (Defendant's Exh. 1 is moved into evidence.)

10 BY MR. KING:

11 Q. You said in this affidavit: This statement is not
12 forced. On October 29th, 2011, on Mall Park, Columbus
13 Street, me and three others were playing cards when a black
14 suspect ran up on us and starting shooting, hitting Solomon
15 Chisolm numerous times. The suspect had a shirt over his
16 face, so it was hard to identify him. After he finished
17 shooting, he ran off and got in a white car similar to a
18 Crown Victorian. Right? That's what you wrote?

19 A. Yes.

20 Q. You were in a public library?

21 A. Yes.

22 Q. Downtown on Calhoun Street?

23 A. Calhoun Street, yes.

24 Q. Before a notary, Linda W. Stewart?

25 A. Yes.

1 Q. You didn't ask for help?

2 A. How do you mean ask for help?

3 Q. Tell her to call the police, these people are
4 forcing me to do something I don't want to do?

5 A. I mean, I still got family out there, so me asking
6 for help still put my family in danger.

7 Q. You have contacts in law enforcement?

8 A. Yes.

9 Q. Right? You have --

10 A. I have contact with them and told them everything,
11 that I was getting threats, visits. I was reporting
12 everything.

13 Q. And you called Grill up? You had his phone
14 number?

15 A. Yes.

16 Q. And they would have helped you?

17 A. Yes.

18 Q. Now, they placed some phone calls. You said there
19 was a phone call with Tyrel and you talking on the phone,
20 right?

21 A. Yes.

22 Q. And you are saying: What's up, bro, right?

23 A. Yes.

24 Q. Talking to the guy that you say shot your brother
25 and you?

1 A. Yes.

2 Q. And you are laughing?

3 A. Yes.

4 Q. And you say everything is good on my end, talking
5 about you are going to sign that statement?

6 A. Yes.

7 Q. Because he's wanting you to tell the truth?

8 A. Because he wants me to tell the truth? No. He
9 want me to tell a lie.

10 MR. KING: May I play that phone call again that
11 was admitted into evidence, April 8th?

12 THE COURT: The one that the State played?

13 MR. KING: Yes.

14 THE COURT: Sure.

15 (Whereupon, video is playing.)

16 BY MR. KING:

17 Q. Now, you had testified that Tyrel said he shot you.
18 But he says, what you did to me. You say what you did, did
19 to me?

20 A. Yeah.

21 Q. Not the word shoot?

22 A. I mean, that's what we was talking about.

23 Q. That's what you say? That's what you are
24 testifying?

25 A. All right.

1 Q. But without that, it would be difficult to know
2 what you were talking about, right?

3 A. Only me and him would know because it's our street
4 slang, whatever.

5 Q. And that's not about some other beef that you and
6 him have separate from all of this?

7 A. No. Me and him ain't never had no beef.

8 Q. And in one of those phone calls, isn't he talking
9 about getting you to tell the truth?

10 A. No, not -- I don't remember that. To get me to
11 tell the truth?

12 Q. Yeah.

13 A. No.

14 Q. And he could get in trouble for trying to contact
15 you, right?

16 A. I don't know. Can he?

17 Q. He's not supposed to try to influence you, so --
18 he's in jail and you've given a false statement about him.
19 Wouldn't he be trying to contact you to get you to change
20 your story?

21 A. I mean, yeah --

22 MS. LINDER: Objection, Your Honor. This calls for
23 speculation.

24 THE COURT: Overruled. It's cross.

25 BY MR. KING:

1 Q. I mean, if you were in jail and someone claimed
2 that you committed a murder that you didn't do, wouldn't you
3 try to contact them and get them to tell the truth and
4 change their story?

5 MS. LINDER: Objection. This is an improper
6 hypothetical.

7 THE COURT: Overruled.

8 BY MR. KING:

9 Q. Wouldn't you?

10 A. Repeat that.

11 Q. If you were in jail because somebody had lied and
12 accused you of a murder that you didn't do, wouldn't you try
13 to contact that person and get them to change their story?

14 A. How about you telling the truth, and he want to be
15 free, he want his freedom, so he's going to tell me to
16 change my story.

17 Q. Of course he wants his freedom, he's in jail.

18 A. All right. So he telling me to lie for him to get
19 him out.

20 Q. I didn't hear him say lie. I heard him say tell
21 the truth.

22 A. His truth what he want, what he want to happen.

23 Q. And you've done a little bit of lying yourself,
24 right?

25 A. I mean, I -- every shot I got, I played too.

1 Q. I'm sorry?

2 A. Anything I did, I'm guilty. I'm whatever, I did
3 it.

4 Q. And if you were in jail -- because he's contacting
5 you and you can go to your federal law enforcement contacts
6 and try to have something done about it, right, and you did
7 that?

8 A. Yes.

9 Q. So he's got to sneak and try to get to you to get
10 you to tell the truth?

11 A. Tell the truth? I am telling the truth right now.

12 Q. And he's got to be as nice to you as possible so
13 that you change your story, because you are saying that you
14 were being all nice and friendly with the guy you say shot
15 you and your brother because you just want to go along with
16 it and make sure -- make sure you are safe, right?

17 A. Yes.

18 Q. But if you are lying about him, then he would be
19 being as nice to you as possible to try to get you to change
20 your statement, to tell the truth, isn't that another way of
21 looking at it?

22 A. I mean, he was being nice. He was contacting me,
23 trying to contact me that time to talk to me. You know what
24 I'm saying? And -- but after that, I tell him whatever,
25 after that, we don't had another discussion. You know, you

1 already know I was going to testify. That's when I start
2 getting threats.

3 Q. Were you ever involved with the same girl Tyrel was
4 involved with, Kristen Royal?

5 A. Kristen Royal?

6 Q. Yeah. Were you ever involved with her?

7 A. Yeah. I wasn't involved with her, but we were
8 friends.

9 Q. Did you ever talk to her?

10 A. Yes.

11 Q. Maybe a little more than friends? She's an
12 attractive girl?

13 A. Yes, she's attractive.

14 Q. And Tyrel talked to her as well?

15 A. Not that I know of.

16 MR. KING: That's all the questions I have.

17 THE COURT: Redirect?

18 MS. LINDER: No redirect, Your Honor.

19 THE COURT: Okay. Let me get the lawyers up here
20 just a second.

21 (Whereupon, a bench conference takes place off the
22 record.)

23 THE COURT: Okay. Folks, we are going to go ahead
24 and break for lunch now at this time. Let me send you back
25 to the jury room so you can get your phones and your

1 clarify the record in that those things have been
2 introduced, 2 through 5 have been introduced without
3 objection. They are daytime photographs of the crime scene
4 and we've used those throughout.

5 MR. KING: I have no objection to the daytime
6 photos of the crime scene.

7 MR. VOIGT: And that was your court reporter
8 bringing it to my attention that she reviewed the
9 transcript.

10 THE COURT: Very good.

11 (State's Exh. No. 2 through 5 was received in
12 evidence.)

13 THE COURT: Anything further?

14 MS. LINDER: Nothing further, Your Honor.

15 (Whereupon, the jury returns to open court at 01:39
16 p.m.)

17 THE COURT: All right, folks. Welcome back. We
18 will resume now with the State calling the next witness.

19 MS. LINDER: Thank you, Your Honor. The State
20 calls Culver Kidd.

21 CULVER KIDD,

22 having been duly sworn, testifies as follows:

23 THE CLERK: State your first and last name and
24 spell your last for the record.

25 THE WITNESS: My name is Culver Kidd. Last name

1 K-i-d-d.

2 DIRECT EXAMINATION

3 BY MS. LINDER:

4 Q. Culver, can you tell the jury what your job is?

5 A. I'm an assistant solicitor with the Ninth Circuit
6 Solicitor's Office, work for Scarlet Wilson. I'm currently
7 a team leader. We kind of divide our office up into three
8 different sections. We have a North Charleston team, City
9 of Charleston team, and a county team. I'm the attorney
10 overseeing city of North Charleston.

11 Q. And do you currently have a case that you are
12 prosecuting against Raymond Clement?

13 A. I do. In September of last year, I received a
14 file -- typically, we get files shortly after someone has
15 been arrested for or been charged with a crime. I received
16 a file on Raymond Clement who had been charged with reckless
17 homicide.

18 Q. And can you explain to the jury kind of what your
19 role is as solicitor once you get that file, and anything
20 that you've done with that file, investigations or decisions
21 that you've made regarding that file?

22 A. Sure. When a case comes to us, I mean, it's not an
23 easy job that we have. We look at cases very seriously,
24 especially when they involve a death, as this one did. So
25 we look at the case from all angles and try to determine

1 what to do with it. It's incredibly taxing. And when you
2 start weighing out victims' rights and liberties of someone
3 who has been charged with a crime, we have to decide whether
4 or not we have enough to go forward and how to prosecute
5 that case. And this case specifically, it's on video. It's
6 a reckless homicide in which an old lady was crossing the
7 street, was hit by a car. And it's incredibly tragic.

8 What we did with our officer is we went back and we
9 calculated the speed of the vehicle that hit her. We did
10 that by marking different points in the video and
11 calculating the time it took for the car to travel from
12 Point A to Point B, and determined a speed.. The car was
13 going 24 miles an hour in a 20-mile-an-hour zone.

14 From a legal standpoint, we look at concepts like
15 recklessness and negligence as really being a big difference
16 on whether something is criminal or civil in nature.
17 Because there's criminal liability, sending someone to jail,
18 versus civil liability, in which they have to pay, you know,
19 some money for some damages, is very different.

20 And very early in the onset of this case, from the
21 time I got it, I've made the determination that 4 miles an
22 hour over a speed limit does not reach the level of
23 recklessness to bring it to the criminal context. It's a
24 tragic accident. There can be civil liability attach, but
25 when an accident occurs when someone is going 4 miles an

1 hour over the speed limit, in my opinion, people don't need
2 to be prosecuted criminally for that. So I made the
3 decision early on that I'm going to look at this case
4 further and investigate it further, but I do not think it
5 should be prosecuted criminally.

6 At no point -- just because I know why I'm here --
7 at no point had anyone ever reached out to me about Raymond
8 Clement. I didn't know his involvement in this case or any
9 other case, for that matter. And if I had, it would not
10 make one difference to me. Because I look at my cases on a
11 case-by-case basis and on the facts involved in those cases,
12 and that's all that I make my decisions off of.

13 And like I said, I didn't know about his
14 involvement in this case in any way until about a week ago.
15 The case is still pending with me. There is always a lot of
16 very -- kind of difficult steps that we have to go through
17 in this decision-making process because there's victims and
18 there's families. And this lady that got killed has
19 children who deserve the opportunity to sit down with me and
20 discuss this before it happens. It's a little bit
21 unfortunate they are going to have to find out this way.
22 But, you know, once I take those steps, I anticipate this
23 case being dismissed very shortly.

24 MS. LINDER: I have no further questions. Please
25 answer any questions the defense may have.

1 CROSS-EXAMINATION

2 BY MR. KING:

3 Q. Mr. Kidd, you work with Ms. Linder and Mr. Voigt?

4 A. I do.

5 Q. They are co-workers? You have the same boss? In
6 this reckless homicide case, police officers thought there
7 was probable cause to arrest and charge him?8 A. You know, it's funny that you say that, because my
9 lead detective on the case -- there's differing opinions
10 about it within the police department. I mean, you look at
11 4 miles an hour over, and you think, that's nothing. You
12 know, going 74 in a 70 is nothing. Going 24 in a 20 still
13 doesn't seem like much, but when you look at it from a
14 percentage basis, you know, like 5 miles an hour over in a
15 20, well, that's 25 percent greater than the speed limit.
16 You know, if you are looking at 25 percent greater than the
17 speed limit at 70 miles an hour, then you are looking at
18 going 85 or 90, and that starts to get close to recklessness
19 when you look at it from a percentage standpoint.20 So to say that they all believed probable cause
21 exist, I mean, there were differing opinions on it. And
22 they ultimately decided to charge him. So, yes, some people
23 believe there was probable cause.

24 Q. Police drafted a warrant?

25 A. Sure.

1 Q. A judge signed it and found probable cause?

2 A. Yes, sir.

3 Q. Raymond Clement was arrested and taken to jail?

4 A. He was.

5 Q. The charge is still pending?

6 A. It's still pending.

7 Q. Hadn't dismissed it yet?

8 A. Not yet.

9 Q. You haven't notified Raymond Clement yet?

10 A. I've never spoken to the man a day in my life.

11 Q. So he has no idea?

12 A. Well, no, nor am I allowed to talk to him. By the
13 rules, we can only speak with their attorneys, and he's
14 represented by a public defender in your office.

15 Q. So as far as -- Raymond Clement testified earlier
16 this morning. So as far as he knows, he's still facing 10
17 years for reckless homicide?

18 A. Could be. I don't know yet.

19 Q. Because you haven't told anyone until now?

20 A. Well, I've had a lot of discussions in my office.
21 I haven't told him or his attorney, no.

22 Q. There's no way he would know?

23 A. I don't know where he is.

24 MR. KING: That's all the questions I have.

25 THE COURT: Redirect.

1 MS. LINDER: No redirect, Your Honor.

2 THE COURT: You may step down.

3 (Whereupon the witness is excused.)

4 THE COURT: Next witness.

5 MS. LINDER: State calls Officer Jeremy Davidson.

6 MR. KING: May I approach?

7 THE COURT: Yes.

8 (Whereupon, a bench conference takes place off the
9 record.)

10 JEREMY DAVIDSON,

11 having been duly sworn, testifies as follows:

12 THE CLERK: State your first and last name and then
13 spell your last for the record.

14 THE WITNESS: Jeremy Davidson. Last name is
15 D-a-v-i-d-s-o-n.

16 DIRECT EXAMINATION

17 BY MS. LINDER:

18 Q. Good afternoon, Officer Davidson. What is your
19 occupation?

20 A. Police officer.

21 Q. And who is your employer?

22 A. Charleston Police Department.

23 Q. What are your current duties with the city police
24 department?

25 A. I'm currently with the traffic division.

1 Q. And how long have you been employed with the city
2 police department?

3 A. Almost five years.

4 Q. Can you tell the jury a little bit about your
5 educational background and training?

6 A. Yeah. I have a bachelor's degree from Westchester
7 State College and I graduated from the South Carolina
8 Criminal Justice Academy.

9 Q. And can you tell the jury about any kind of
10 training or experience or recognition that you've received
11 through the department?

12 A. Sure. Like I said, I graduated from the South
13 Carolina Criminal Justice Academy.

14 Q. Can you speak up a little bit and get that
15 microphone closer.

16 A. Sure. I graduated from the South Carolina Criminal
17 Justice Academy. We've had various in-house training. I've
18 had community action training. And in 2011, my team was
19 awarded team of the year for the efforts on the East Side.

20 Q. You mentioned Community Action Team training. What
21 is the Community Action Team?

22 A. Community Action Team is a team of eight or so
23 police officers designated to a certain area in order to --
24 in my case, it was the East Side of Charleston, in order to
25 understand the people that live in the community, get to

1 know them, get to know the schools, and just basically be
2 their police officers for them, basically.

3 Q. And through being a member of the CAT, of CAT or
4 Community Action Team, is part of your job knowing who
5 different individuals are, who live in or frequent the
6 area?

7 A. Yes.

8 Q. Did you have the occasion to be working back on
9 October 27th of 2011?

10 A. Yes.

11 Q. And in what capacity were you working back on that
12 day?

13 A. On that day, I was working with Community Action
14 Team on the East Side of Charleston.

15 Q. And what, if anything, happened that day related to
16 this defendant?

17 A. On that day, 18:27 hours, I witnessed Tyrel Collins
18 walk from Mall Park cross America Street and through the
19 Trident Tech area towards Columbus Street.

20 Q. What time was that?

21 A. 6:27 p.m.

22 Q. 6:27 p.m. And where were you in order to be able
23 to see this?

24 A. I was stationery in my cruiser at the North
25 Hampstead exit from Trident Park at America Street, facing

1 Mall Park, first parking space on the left.

2 Q. And where was the defendant, Tyrel Collins?

3 A. He was approximately one-third of a block from me.

4 Walked from Mall Park cross America Street, looked over his
5 left shoulder, continued walking briskly towards Columbus
6 Street.

7 Q. What was he wearing?

8 A. Black shirt and jeans.

9 Q. What type of black sheet? Could you tell if it was
10 collared or had anything on it?

11 A. Just a black T-shirt.

12 Q. How was the lighting out at 6:27?

13 A. It was clear.

14 Q. Was it dark or light?

15 A. It was clear and light.

16 Q. And can you describe your view of him? Was there
17 anything in your way? Can you describe your view of him?

18 A. My view was unobstructed, clear. And I had a very
19 clear view of his face because he looked at me as he walked
20 by.

21 Q. All right. I'm going to show you what's been
22 previously marked as State's Exhibit 1. And it's already
23 been entered into evidence. Can you tell the jury what this
24 is?

25 A. Sure. This is an aerial view of the certain part

1 of East Side community.

2 Q. Can you point out Mall Park on this?

3 A. Can I go to the other side of this?

4 Q. Certainly. Can you point out Mall Park?

5 A. Sure. Mall Park would be this area right here.

6 Q. And can you describe to the jury, what is Mall
7 Park?

8 A. Mall Park is a basketball court, community center
9 right here. There's a playground right here and bleachers.
10 And there's a little stage right here where little old lady
11 will come and sing on Sundays.

12 Q. And when you were in your cruiser at 6:27 p.m.,
13 where were you? Can you show the jury where your car was
14 parked, what direction you were facing?

15 A. I was facing this way. My car was parked right
16 here. North Hemstead is the other street. And I was, like
17 I said, basically this way.

18 Q. Okay. And then can you show the jury where -- I
19 know there are trees in this picture, since it's an aerial,
20 but can you show the jury where you saw the defendant, Tyrel
21 Collins?

22 A. On this side of the park, there's only one exit
23 right here, block down from this exit. And he walked
24 through the park right about here. I'm right here. The
25 gazebo is right here. He looked over his shoulder at me

1 right there and continued walking.

2 Q. You know where my finger is, and then can you point
3 out and just show with your finger where the defendant was?

4 A. Sure. He was about right there.

5 MS. LINDER: I don't have anything further for you
6 at this time. If you can please answer any questions that
7 the defense may have.

8 CROSS-EXAMINATION

9 BY MR. KING:

10 Q. You parole this neighborhood?

11 A. Yes, sir.

12 Q. You are familiar with it?

13 A. Yes, sir.

14 Q. And you knew Tyrel Collins?

15 A. Yes, sir.

16 Q. You know he lives right in that area at ■ Blake
17 Street, right?

18 A. No, sir.

19 Q. You know that he lives right in that area?

20 A. Well, I mean, ■ Blake Street?

21 Q. Yeah.

22 A. That's not where he lived.

23 Q. You know where he lives?

24 A. Well, I know he didn't live in that area.

25 Q. Where did he live?

1 A. He lived on America Street.

2 Q. That's where his mother lives, isn't it?

3 A. Well, I mean, as far as I know, that's where he
4 lived. That was his --

5 Q. So you are sitting in your car and you are
6 watching. Is your car marked or unmarked?

7 A. Marked.

8 Q. And you saw him from about a third of a block away?

9 A. Yes, sir.

10 Q. Did he see you?

11 A. I believe so.

12 Q. Any chance you are mistaken?

13 A. No, sir.

14 Q. He was walking away from the park?

15 A. Away from Mall Park, yes, sir.

16 Q. You didn't see him get out of a car?

17 A. No, sir.

18 Q. Or get into a car?

19 A. No, sir.

20 Q. And you weren't on the park at 6:45 when the
21 shooting happened, so you have no idea where he was, if he
22 was there at that point, right?

23 A. Correct.

24 Q. You just know where he was at 6:27?

25 A. Yes, sir.

1 cross-examination to hit him up with an inconsistent prior
2 statement. So I will gladly bring him in, threaten him with
3 contempt, hold him in contempt if he refuses to testify.

4 But to get to the point of you trying to get a
5 prior inconsistent statement in through a witness who
6 refuses to testify, I believe is not going to happen. He's
7 got to be subject to cross-examination. And if he's not
8 subject to cross-examination, then it's not fair for you to
9 put it up, and they may not to be able to cross-examine him.

10 MR. VOIGT: Do I call him initially to find out if
11 he's going to testify outside of the presence of the jury?

12 THE COURT: Sure.

13 MR. VOIGT: I mean, who knows what's going to
14 happen once he gets up here. So we will call him, see what
15 he really wants to do.

16 THE COURT: Bring him in.

17 MR. VOIGT: And take it from there.

18 LAVAR ANDERSON,

19 having been duly sworn, testifies as follows:

20 THE CLERK: Sir, if you could please state your
21 first and last name and spell your last for the record
22 please.

23 THE WITNESS: Lavar Anderson, A-n-d-e-r-s-o-n.

24 DIRECT EXAMINATION

25 BY MR. VOIGT:

1 Q. Mr. Anderson, I'm going to need you to speak
2 loudly, because we have a court reporter that has to take
3 down everything you say. You are here outside the presence
4 of the jury. All right? And you are here outside the
5 presence of the jury, because in conversations with your
6 attorney, Ms. Ford, who is present, Ms. Ford indicated to us
7 that you did not wish to testify?

8 A. No, sir.

9 Q. Now, you know that you are under subpoena here to
10 testify and the subpoena is court-ordered requiring your
11 presence?

12 A. Yes, sir.

13 Q. And you know there are certain things for which you
14 have knowledge that you and I have talked about recently,
15 which is the reason why we would like you to testify?

16 A. Yes, sir.

17 Q. And you know that you are not -- there are no
18 current pending charges against you arising out of these
19 facts for which you could have some sort of legal reason to
20 not testify, such as seeking to invoke your Fifth Amendment
21 privilege?

22 A. Yes, sir.

23 Q. Do you still wish to not testify?

24 A. Yes, sir.

25 THE COURT: Do you still wish to refuse to testify?

1 THE WITNESS: Yes, sir.

2 THE COURT: Do you understand that you have no
3 charges pending against you and the charges that were
4 pending against you have been dismissed forth presence?

5 THE WITNESS: Yes, sir.

6 THE COURT: And you understand that you have no
7 legal right to assert Fifth Amendment privilege in regard to
8 your testimony in this case?

9 THE WITNESS: Yes, sir.

10 THE COURT: And you still refuse to testify?

11 THE WITNESS: Yes, sir.

12 THE COURT: Do you understand if you refuse to
13 testify, we will hold you in contempt of court?

14 THE WITNESS: Yes, sir.

15 THE COURT: Do you still wish to testify not
16 knowing that -- or knowing that?

17 THE WITNESS: No, sir.

18 THE COURT: And you've had a chance to talk with
19 your attorney about this?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. And you still refuse to
22 testify?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. I find you in contempt of
25 court, sentence you to 90 days in jail. It will run

1 consecutive to the time you are serving currently. Good
2 luck.

3 (Whereupon the witness is excused.)

4 THE COURT: All right. What do you want to do
5 next?

6 MS. LINDER: Judge, next we intend to call a
7 witness who is currently serving a sentence at SCDC who was
8 the roommate of the defendant while at the county jail.
9 This individual wrote me a letter saying that he wanted --
10 he had some information. He then went to court, got
11 sentenced, went to prison.

12 My investigator and I had a conference call with
13 him while he was in prison, and then we drove down there and
14 saw him months later. And he gave consistent statements
15 both of those times to us, and indicated that this defendant
16 told him he shot Sol, and told him he was trying to get his
17 girlfriend and others to pressure the guy who was playing
18 cards who was found with cards at his feet to change his
19 statement, which would be Lavar Anderson.

20 THE COURT: And who is this?

21 MS. LINDER: James Deangelo White.

22 MR. KING: And, Your Honor, when my investigator
23 tried to interview him, he said that he didn't want to
24 testify, like similar issue with Mr. Anderson.

25 THE COURT: Is he here?

1 Captain Tice from the detention center. There is paperwork
2 that the jail keeps, and I've already furnished it to
3 Mr. King. And it, more or less, tracks what inmates are in
4 what area. And it will show that Tyrel Collins and this
5 witness were not only in the same pod, but actual bunkmates
6 for the period of time that Mr. White said they were, which
7 is for like maybe --

8 THE COURT: What's his name?

9 MS. LINDER: Captain Tice.

10 THE COURT: Is he on here?

11 MS. LINDER: Yes, he's listed from the Charleston
12 County --

13 THE COURT: Oh, Tice, T-i-c-e.

14 MS. LINDER: T-i-c-e. And he is out in the hallway
15 and we are prepared to call him afterwards.

16 THE COURT: Assuming he testifies. Okay. When
17 he's up, bring him in.

18 JAMES WHITE,

19 having been duly sworn, testifies as follows:

20 THE CLERK: State your first and last name and
21 spell your last for the record please. Thank you.

22 THE WITNESS: James White, W-h-i-t-e.

23 DIRECT EXAMINATION

24 BY MS. LINDER:

25 Q. Mr. White, do you understand that you are here

1 today under a subpoena?

2 A. Hum-um.

3 Q. Have you previously given information and indicated
4 to myself or members of my office that you have information
5 about this case and about testifying?

6 A. Well, I mean, I don't want to testify. I mean ...

7 Q. Okay. Do you understand that you are under court
8 order to be here today?

9 A. I understand.

10 Q. And do you understand that if you refuse to
11 testify, that you could be subject to contempt charges and
12 sentenced to additional time by this judge?

13 A. Yeah.

14 THE COURT: Mr. White, what are you in jail for
15 right now?

16 THE WITNESS: Distribution and burglary.

17 THE COURT: All right. Do you understand you are
18 here today under subpoena? You have no right to not testify
19 today; do you understand that? You don't have a right to
20 assert Fifth Amendment?

21 THE WITNESS: I don't understand.

22 THE COURT: Would you like to talk to a lawyer?

23 THE WITNESS: I need to talk to somebody.

24 THE COURT: Does he have a lawyer?

25 MS. LINDER: He does not since, he's currently

1 serving time. Beforehand, he was also represented by the
2 Public Defender's office.

3 MS. LINDER: Who is his lawyer?

4 MS. LINDER: Michael Cooper.

5 THE COURT: He's not involved in this case, is he?

6 MS. LINDER: No, he's not.

7 THE COURT: All right. Well, why don't we do this.
8 Why don't we get Mr. Cooper to talk to him this evening
9 and/or go -- is Mr. Cooper available now?

10 MR. KING: Your Honor, Mr. Cooper's office is right
11 beside mine and we've been working on this case for weeks.
12 There's a possibility Mr. Cooper could know things about
13 this case. Is there a way he could be appointed an attorney
14 that is not in our office?

15 THE COURT: Well, it's real simple. You either
16 testify or I hold you in contempt of court. You don't have
17 the right to not testify.

18 THE WITNESS: I mean, Your Honor, she ain't never
19 told me that when she came and see me, he never told me
20 that.

21 THE COURT: She doesn't have to tell you that. I'm
22 telling you now that if you don't testify today, I have the
23 right and I will impose a sentence on you, hold you in
24 contempt of court and impose a sentence on you which will
25 run consecutive to the time that you are serving right now.

1 In other words, it will be added on to the end. So you need
2 to -- you either will testify or you won't testify.

3 THE WITNESS: I ain't testifying.

4 THE COURT: All right. Well, then I'm holding you
5 in contempt of court and I'm sentencing you to an additional
6 90 days. It will be added onto the time that you are
7 serving currently. Good luck.

8 (Whereupon the witness is excused.)

9 THE COURT: Do you have anybody else you want to
10 call today?

11 MS. LINDER: Judge, the other person that we could
12 potentially call today would be Detective Osborne. However,
13 I would say with it being 4:25, I would guess that my direct
14 will go past five, much less Mr. King's cross. So if we
15 wanted to start fresh with that tomorrow, we only have three
16 short witnesses after Osborne.

17 THE COURT: What would Osborne be testifying to
18 other than what he was here for earlier?

19 MS. LINDER: He will be testifying to -- that he
20 was the lead detective, kind of the process of --

21 THE COURT: He's got something to testify to other
22 than this ID issue?

23 MS. LINDER: Yes.

24 THE COURT: That's what I was trying to get to.

25 MS. LINDER: That's why I think he will take longer

1 MS. LINDER: The first item is when we spoke back
2 in chambers on Monday morning, we discussed how our witness,
3 Raymond Clement, his mother's house was shot up on late
4 Sunday night, and I had asked to get it in. And you had --
5 you said I need a link. And you specifically said something
6 like ballistics would help.

7 THE COURT: Do you really want to pursue this? Do
8 you have any authority whatsoever that you think you can get
9 this evidence in? Do you have any case law, any authority
10 whatsoever to say: Judge, something that took place outside
11 of court needs to come in today that just happened Monday
12 night or Sunday night? We've got a fresh arrest. We
13 arrested somebody. We want you to put that into evidence.
14 Do you have any authority whatsoever for the proposition
15 that supports your position?

16 MS. LINDER: Judge --

17 THE COURT: State, local, federal, any jurisdiction
18 in the United States?

19 MS. LINDER: Judge, I have not looked at the case
20 law. I just wanted to update you. You specifically
21 mentioned ballistics.

22 THE COURT: I was hoping that you would just go
23 away on that subject, because I have looked. I found none.
24 So that was a hint to just drop the subject. Obviously, you
25 didn't take the hint, but if you've got some authority, then

1 spell your last for the record.

2 THE WITNESS: My name is Nicholas Batalis,
3 B-a-t-a-l-i-s.

4 DIRECT EXAMINATION

5 BY MS. LINDER:

6 Q. Good morning, Dr. Batalis.

7 A. Good morning.

8 Q. Can you please tell the jury, what is your
9 occupation?

10 A. I'm a forensic pathologist.

11 Q. And what is a forensic pathologist?

12 A. Forensic pathology is a field of medicine that
13 specifically deals with the legal aspects of medicine and
14 performing autopsies to determine the cause and manner of
15 death, identify injuries, identify natural disease.

16 Q. And will you tell the jury about your education and
17 your training?

18 A. Sure. I did my undergraduate training at Butler
19 University in Indianapolis, Indiana. I did four years of
20 medical school also in Indiana. And then following
21 graduating from medical school, I came to the Medical
22 University of South Carolina here in Charleston where I did
23 four years of training in anatomic and clinical pathology,
24 after which I graduated, became certified, then went to do a
25 one-year fellowship specialty training in forensic pathology

1 at the Dallas County Medical Examiner's Officer in Dallas,
2 Texas, after which I then became certified again in forensic
3 pathology and took my current job.

4 Q. And do you belong to any medical or scientific
5 groups or associations?

6 A. Yes, I belong to several national forensic
7 pathology organizations, general pathology organizations,
8 and also some local pathology organizations.

9 Q. And can you explain what your duties are as your
10 role as a forensic pathologist?

11 A. The primary role of forensic pathology is in
12 performing autopsies to determine the cause and manner of
13 death, again, to determine simply how someone died.

14 Q. How many autopsies have you been involved with?

15 A. Over the last -- since I began training, over 1500
16 autopsies.

17 MS. LINDER: Your Honor, at this time I would move
18 to admit Dr. Batalis as an expert in the field of pathology.

19 MR. KING: Without objection, Your Honor.

20 THE COURT: All right. Folks, normally when
21 somebody comes in and testifies in court, we allow them to
22 testify about what they heard, they saw, they touched, they
23 felt, they smelt, their cognitive issues, whatever they saw,
24 that sort of thing. We don't normally let people come in
25 and give you their opinion about evidence. They just simply

1 convey the facts. All right.

2 Now, the law says, though, when somebody, because
3 of education or experience or specialized training in some
4 field, rises to the level of expertise within that field, we
5 let them come in and they testify not only about their
6 observations, but also they are allowed to then give you
7 their opinion about whatever it is they are testifying
8 about. You alone decide how much weight to give the
9 testimony of this witness or any other expert or any other
10 witnesses, for that matter, throughout the trial. You are
11 not required to give this witness's testimony any extra
12 credence simply by virtue of the fact that he's an expert.
13 For that matter, you are not supposed to take anything away
14 from it. You decide how much weight to give his testimony
15 based on all of the evidence that you hear throughout the
16 trial. All right.

17 So simply, because of the fact that he is an expert
18 doesn't mean that you have to blindly accept what he is
19 saying. You decide how much weight to give his testimony
20 based on all of the evidence that you hear throughout the
21 trial, after you've heard all of the evidence throughout the
22 trial. All right?

23 You may resume.

24 Q. Can you explain to the jury generally what happens
25 during an autopsy? Can you explain to them your procedure?

1 A. Sure. When a body comes through the examiner for
2 autopsy, the first thing we do is bring it into our autopsy
3 suite. We photograph the body as we receive it before we
4 make any modifications, before we clean the body, taking off
5 any clothing. We take a set of photographs. After that, we
6 will then clean the body, take the clothing off, document
7 all of the items that are -- clothing and other items that
8 are on the body, then package that away, and then take
9 another set of photographs of the body after the body is
10 nude.

11 At that point we then perform our external
12 examination, which is basically looking at the body from
13 head to toe for things as simple as height and weight, eye
14 color, hair color, some identifying-type features, but then
15 also any evidence of injury or natural disease.

16 Once we complete that external examination, we then
17 make surgical-type incisions to the body, and then examine
18 each organ internally one by one by going through each
19 organ, again looking for signs of injury or natural disease.

20 During the course of the autopsy, also we will
21 collect some fluids for toxicology testing that we submit to
22 an outside laboratory.

23 At the completion of the case, we then would put
24 together a report that we would then submit as our final
25 report.

1 Q. And did you have the occasion to perform an autopsy
2 on the victim in this case, Solomon Chisolm?

3 A. I did. It looks like we performed the autopsy on
4 October 28th of 2011.

5 Q. And where did you perform that? How long did it
6 take?

7 A. We performed it at the Medical University of South
8 Carolina. And I don't keep a documentation of exactly how
9 long this autopsy took. But, typically, it takes between
10 two and four hours to perform an autopsy.

11 Q. And based on this particular autopsy, within the
12 bounds of reasonable medical certainty, have you formed an
13 expert opinion concerning the cause of death in this case?

14 A. Yes, I have.

15 Q. And have you formed an expert opinion concerning
16 the manner of death?

17 A. Yes, I have.

18 Q. And can you please tell the jury what that opinion
19 is?

20 A. Yes. The cause of death in this case is gunshots
21 wounds of the head and trunk. And the manner of death in
22 this case is homicide.

23 Q. And can you please describe to the jury the
24 injuries the victim sustained in this case?

25 A. Sure. The main injuries on this decedent included

1 five gunshot entrance wounds. The decedent had two gunshot
2 entrance wounds that were on the back, on the left side of
3 the back; one gunshot entrance wound on the right side of
4 the neck; one gunshot entrance wound almost in the middle of
5 the forehead; and one on the left side of the abdomen.

6 Q. As part of the autopsy, I believe you mentioned
7 that toxicology is done. What were the findings of the
8 toxicology in this case?

9 A. All of the testing that we performed in this case
10 was negative, so no drugs or toxins were found in his
11 system.

12 Q. Does that mean negative for caffeine?

13 A. Yes.

14 Q. Negative for nicotine?

15 A. Yes.

16 Q. Negative for cocaine, crack, any of those illegal
17 drugs?

18 A. Yes. All the things you mentioned, our screen
19 looks for 3- to 400 different drugs, including drugs of
20 abuse, but also many kinds of medications.

21 Q. I know you kind of described where the bullets and
22 where the gunshots wounds were, but I'm a visual learner,
23 so -- if I may approach. At this time, I'm going to
24 approach and show you what's been pre-marked as State's
25 Exhibit 14, 15, and 16 for identification purposes. If you

1 could please just look at those for a moment and let me
2 know; do you recognize these?

3 A. Yes, I do.

4 Q. And how do you recognize them?

5 A. Exhibit 14 is a diagram that I prepared that shows
6 the location of the entrance wounds and where we recovered
7 the bullets from the body.

8 Exhibits 15 and 16 are duplicates of X-rays that we
9 took in order to locate the bullets.

10 MS. LINDER: Your Honor, at this time I would ask
11 State's Exhibit 14, 15, and 16 be admitted into evidence.

12 MR. KING: Without objection, Your Honor.

13 THE COURT: So ordered.

14 (State's Exh. Nos. 14, 15, and 16 were received in
15 evidence.)

16 BY MS. LINDER:

17 Q. I'm going to put up State's Exhibit 14, which is
18 the diagram up on this overhead. It shows up in front of
19 you. If you could explain by looking at this and then -- if
20 you can explain by using this diagram and then also kind of
21 showing -- can you explain the numbers 1, 2, 3, 4, and 5,
22 and explain what all these markings are?

23 A. Sure. The numbers that are there, 1, 2, 3, 4, and
24 5, those were the designations I gave to the various
25 entrance wounds. It's not possible to autopsy to determine

1 what order the bullets came in. So it was basically just as
2 I looked at the body, the first one I decided to examine was
3 No. 1. No. 2 was the next one and so on and so forth. The
4 B is where we return the bullets that's associated with that
5 entrance wound.

6 So, for instance, No. 1, this would be gunshot
7 entrance 1, so that entered the lower left side of the back.
8 And then where we have that B there, that corresponds with
9 it. So, for example, gunshot wound number 1 entered the
10 leftside of the back, traveled into the body, went through
11 the left lung, crossed the body, went through the right
12 lung. And then we recovered it from where its located on
13 the diagram on the upper part of the right shoulder.

14 Similarly, gunshot No. 2 you can see here was just
15 above gunshot No. 1 on the left side of the back. That one
16 also traveled from left to right across the body. And this
17 one, though, came to rest, penetrated into the cavity, went
18 through the left lung, and then went directly into the spine
19 and the spinal cord where we recovered that bullet.

20 So, again, gunshots No. 1 and 2 both on the left
21 side of the back, both traveling from left to right across
22 the body, just the one hit the spine and stopped there. The
23 other one continued to the shoulder.

24 Gunshot No. 3, as I mentioned earlier, that
25 entrance wound was almost in the mid-forehead. And this

1 diagram is a little bit deceiving. The B is located right
2 here. And essentially, though, that would be in the back of
3 the head. So this gunshot wound was located approximately
4 right here. And the bullet traveled through the left side
5 of the brain. And we recovered that bullet from the back of
6 the left side of the head.

7 So, again, gunshot No. 3 traveled through the left
8 side of the brain.

9 Gunshot No. 4 entered here on the right side of the
10 neck. And the bullet corresponding to that is here in the
11 left side of the chest. So gunshot No. 4 entered the right
12 side of the neck, traveled down through the chest cavity,
13 and penetrated into the right lung and/or -- sorry, left
14 lung, and then was flowing in the left pleural cavity.

15 The last gunshot wound was gunshot No. 5, which is
16 here on the left side of the abdomen. And the bullet ended
17 up in the right side of the chest up here. So this one
18 traveled up through just underneath the skin of the abdomen.
19 Didn't hit any of the intestines or internal organs. Did
20 cause some bruising there. And then went through the
21 diaphragm, which is the muscle that separates your abdomen
22 from your heart and lungs, and then penetrated into the
23 right lung. So this fifth bullet we actually recovered
24 actually in the right lung.

25 Associated with these injuries were significant

1 collections of blood in the right and left pleural cavities,
2 because if you summarized it, the right lung was struck
3 twice by the bullets. Left lung was struck three times. So
4 there was significant amount of internal bleeding associated
5 with that.

6 Q. Dr. Batalis, at this point, I'm going to put up
7 State's Exhibit 16 -- I'm going to clear off the marks for
8 you. Can you explain to the jury what is shown in this
9 picture?

10 A. Sure. So this is an X-ray or radiograph of the
11 chest. So what we are seeing here, we can see four of the
12 bullets. So this bullet here, so this is the right side of
13 the chest. So you are looking directly at the person in
14 this situation. So this one here would be the bullet from
15 No. 5, the one we just described that came down from the
16 abdomen and ended up in the right lung.

17 The one right here, there's a bullet here, which
18 you can see is in the middle of the spinal column, which is
19 the vertical structure running from top to bottom. So that
20 would correspond with the second gunshot wound, the one on
21 the back that crossed over, hit the left lung, and stopped
22 in the spine.

23 Q. Could there be other effects from that bullet that
24 hit the spine?

25 A. Yes, we did recover the bullet from the spinal

1 cord, so it's possible that it could have caused paralysis.
2 Again, you can't tell that just based on the autopsy, but
3 it's -- it has the potential that it could have made so his
4 legs would not move.

5 The last bullet we see in the mid-chest appears in
6 the left side of the chest, so that corresponds with the
7 fourth gunshot wound, the one that came from the right side
8 of the neck. So, again, that one came down this way.

9 And the one that we could barely see at the top of
10 the field here, we can see the bottom half of the bullet.
11 That's from the first gunshot wound. And, again, that
12 entrance wound was somewhere down the left side of the back.
13 And so that one crossed the body and ended up in the right
14 shoulder.

15 Q. All right. And then finally, I'm going to show you
16 State's Exhibit 15. And can you tell the jury what this
17 shows?

18 A. Yes. Again, this is an X-ray or radiograph of the
19 head. And so this would be looking at the person like
20 face-on. So the entrance wound -- you can see there's a
21 slight defect here in the skull where it's a little bit
22 lighter. So the entrance wound is almost in the middle of
23 the head. The bullet we recovered is here on the left side.
24 And, again, this is looking straight on, so you can't tell,
25 but this is actually -- this would be in the front here.

1 This would be in the back here. So the bullet traveled
2 really from front to back across the entire head, from here
3 to here.

4 MS. LINDER: Dr. Batalis, I believe that's all the
5 questions I have for you at this time. If you could please
6 just answer any questions that the defense may have.

7 THE WITNESS: Sure.

8 THE COURT: Mr. King?

9 MR. KING: I have no questions.

10 THE COURT: You may step down.

11 (Whereupon the witness is excused.)

12 THE COURT: Next witness.

13 MR. VOIGT: State calls Suzann Cromer.

14 SUZANN CROMER,

15 having been duly sworn, testifies as follows:

16 THE CLERK: If you would state your first and last
17 name and spell your last for the record.

18 THE WITNESS: My name is Suzann Cromer,
19 C-r-o-m-e-r.

20 DIRECT EXAMINATION

21 BY MR. VOIGT:

22 Q. Where are you employed?

23 A. I'm employed at the South Carolina Law Enforcement
24 Division, commonly referred to as SLED.

25 Q. And in what capacity are you employed there?

1 A. I'm a firearm and tool mark examiner.

2 Q. And what specific training do you have in firearms
3 and tool marks?

4 A. I received a bachelor's degree from Clemson
5 University. I did some graduate work at the University of
6 South Carolina in criminal justice. I have completed SLED's
7 in-house training program, which is a three- to; five-year
8 intense study program where we take written tests, oral
9 tests, practical exercises, and we work with -- or I worked
10 with five court-qualified firearms/tool work examiners.
11 Upon completion of that training program, we are given a
12 comprehensive final exam, which is graded by your training
13 officer and/or lieutenant.

14 I have taken classes through the Association of
15 Firearm and Tool Mark Examiners. That is an international
16 organization for our profession who meets once a year for a
17 week to discuss about relevant issues for our field. I've
18 also taken classes through South Carolina chapter of the
19 International Association of Identification. And I've also
20 taken classes with the Bureau of Alcohol, Tobacco and
21 Firearms.

22 Q. Have you been qualified in any court of law as an
23 expert in the field of firearm and tool mark examination?

24 A. Yes, sir, I have.

25 Q. Approximately how many times?

1 A. Over 70.

2 Q. Have you ever failed to be qualified as an expert
3 in firearm or tool mark identification?

4 A. No, sir.

5 MR. VOIGT: At this time, the State would tender
6 Ms. Cromer as an expert in the field of firearm and tool
7 mark identification.

8 MR. KING: Without objection.

9 THE COURT: All right.

10 Folks, the same instructions that I gave you a
11 minute ago for the expert that we had qualified in pathology
12 applies to this witness as well who has now been qualified
13 as an expert in firearm and tool mark identification. She's
14 an expert because of the training, experience, specialized
15 knowledge in the field. You again decide how much weight to
16 give her testimony based on all of the testimony that you
17 will hear throughout the trial. All right?

18 MR. VOIGT: Thank you very much, Judge.

19 BY MR. VOIGT:

20 Q. Can you please tell the ladies and gentlemen of the
21 jury what exactly your field is? What is firearm and tool
22 mark examination?

23 A. What we do is called actually firearms
24 identification. What I do is I look at ammunition
25 components, bullets, cartridge cases, shotgun shells,

1 unfired cartridges, to determine whether they were fired by
2 or loaded into and extracted out of a firearm. If I don't
3 have a specific firearm, I can look at a projectile or a
4 bullet for its rifling.

5 Rifling is what's put in a gun barrel by the
6 manufacturer to put rotary motion on a bullet. Very similar
7 to a quarterback who throws a football; he wants it to go
8 into a spiral. So it will spin instead of lobbing end over
9 end toward the target. That's the premise of the rifling.

10 And rifling is made up of a series of lands and
11 grooves, raised and depressed areas. And they have
12 different numbers. You can have 2, 3, 4, 5, 6, 7, it goes
13 on and on, and it could spin to the left or the right. If I
14 have enough of the rifling, I can look at it and tell you or
15 give you a list of potential firearms that could have fired
16 that gun.

17 Q. Were you ever given a firearm to examine in this
18 particular case?

19 A. No, sir, I was not.

20 Q. So all of the tests you conducted in this case were
21 independent of whatever gun may have fired whatever
22 projectile or expended whatever cartridge?

23 A. That's correct.

24 Q. What were you given to look at?

25 A. I was given five fired cartridge cases and six

1 fired bullets.

2 Q. And what did you do with the cases? What was your
3 first level of analysis with the cartridge cases?

4 A. With cartridge cases, first I do a visual
5 inspection. I look at it. I see if there's any trace
6 material on it, such as blood or hair or dirt. And then I
7 will remove it. And then I go onto a microscopic
8 comparison. What I have is a comparison microscope. It
9 allows me to look at two objects side by side.

10 On cartridge cases, I'm looking at five different
11 areas that are marked by the firearm. You have first the
12 breech face, which is the head of the cartridge case where
13 you usually have your head stamp which contains your
14 caliber, the manufacturer of the ammunition. So that part
15 of the cartridge case can be marked by the firearm, because
16 during the firing process, that cartridge case is pushed up
17 against the breech face of the gun while the pressure from
18 the burning gasses is pushing the bullet down the barrel.
19 So we look at the breech face.

20 We also look at the firing pin itself, those firing
21 pin impressions that actually strike the primer of the
22 cartridge case to start the ignition. If there's a defect
23 on that, that could leave a mark on those cartridge cases.

24 We also have the ejector, which actually hits the
25 cartridge case to make it come out of the ejection port.

1 And then we also have the extractor, which is a claw-like
2 device that holds the cartridge case in place. And then we
3 also have what we call chamber marks, that are defects in
4 the actual end of the barrel called the chamber that can be
5 imprinted on the walls of that cartridge case.

6 Q. So when a firearm fires a weapon -- a firearm is a
7 machine of some sort. And based on how that machine is
8 functioning, it will leave some evidence on the cartridge
9 case of how the machine functions, basically?

10 A. That's correct.

11 Q. And were you able to come to any conclusion about
12 the sample cartridges that you were provided?

13 A. Yes. I concluded that all five of the cartridge
14 cases that I received were fired by one firearm.

15 Q. Now, these cartridge cases that you received, how
16 do they get to your desk?

17 A. What happens at the forensic lab is agencies from
18 all over the state bring in evidence through our evidence
19 control department. We actually call it the log-in
20 department. And it's inputted into our computer system, and
21 then I'm alerted that I have a case downstairs.

22 Q. And with these -- what's the provenance of these
23 particular cartridges; where did they come from?

24 A. They were submitted by Charleston City Police
25 Department.

1 Q. Okay. And was this in reference to the homicide of
2 Solomon Chisolm; do your records reflect?

3 A. Yes, it is.

4 Q. Now, you examined some other things as well
5 relative to the homicide of Solomon Chisolm; is that not
6 correct?

7 A. That's correct.

8 Q. And what else did you examine?

9 A. I examined six fired bullets.

10 Q. Were there any of the bullets that you could come
11 to no conclusion on whatsoever?

12 A. No, sir.

13 Q. Where were these bullets recovered from, to the
14 best of your knowledge?

15 A. One was labeled from scene. The rest were labeled
16 from autopsy.

17 Q. And you weren't present at the autopsy?

18 A. No, sir.

19 Q. And you weren't present at the scene. So was this
20 information that would have been provided to you by the
21 Charleston Police Department?

22 A. Yes, sir.

23 Q. Okay. As a matter of fact, your analysis, you
24 can't tell from your analysis who fired the gun, right?

25 A. That's correct.

1 Q. So we are just talking about what the cartridges
2 showed and what the bullet showed?

3 A. That's correct.

4 Q. Okay. And what did the bullet show?

5 A. They were also all fired by one firearm.

6 Q. So all of the cartridges were fired by one firearm
7 and you examined -- did you examine the bullets the same way
8 you examined the cartridges?

9 A. Yes, I do that also under the comparison
10 microscope.

11 Q. So all the bullets, those taken from the scene,
12 those taken from Mr. Chisolm's body, those were all fired by
13 the same firearm? The bullets were fired by the same --

14 A. Yes.

15 Q. But in your analysis, you can't actually connect
16 the bullets and the cartridges; can you?

17 A. No, sir, I cannot.

18 Q. So the limit of what you can tell the jury is that
19 the cartridges that you examined were fired by the same
20 firearm?

21 A. Yes, sir, the cartridge cases.

22 Q. The cartridge cases. And the bullets recovered
23 from Mr. Chisolm at the scene where Mr. Chisolm was, they
24 were similarly fired from the same weapon consistent with
25 themselves, but not having to do with the cartridges?

1 A. I can tell you that all the cartridge cases were
2 fired from one firearm, and all the bullets were fired by
3 one firearm. But I cannot tell you whether or not they were
4 all the same firearm.

5 Q. My question was a lot more complicated than your
6 answer. Let me ask you this. Could you tell from the
7 bullet what millimeter firearm it may have been fired from?

8 A. These bullets were considered 9-millimeter Macarov
9 caliber.

10 Q. How about the cartridge?

11 A. They were also 9-millimeter Macarov.

12 MR. VOIGT: I have no further questions. Please
13 answer any questions Mr. King may have.

14 THE COURT: Cross.

15 CROSS-EXAMINATION

16 BY MR. KING:

17 Q. Ms. Cromer, it says in your report that these fired
18 bullets may be suitable for identification with a specific
19 firearm; is that right?

20 A. That's correct.

21 Q. So if you had a gun, you could take that gun and
22 these bullets and, well, possibly determine if that was the
23 gun used in the shooting?

24 A. Potentially. If there's not been a lot of damage
25 to that firearm, I may be able to match it to these

1 cartridge cases and bullets.

2 Q. Were you ever provided with a gun to do that test?

3 A. No, sir, I was not.

4 MR. KING: That's all the questions I have.

5 THE COURT: Redirect?

6 MR. VOIGT: No redirect.

7 THE COURT: You may step down.

8 (Witness is excused.)

9 THE COURT: Okay. Folks, we need to take up a
10 legal matter outside of your presence that I've got to rule
11 on before we have the next witness. So let me send you back
12 to the jury room.

13 And, again, don't deliberate or discuss the case.
14 And we will have you back in a few minutes. Thank you.

15 (Whereupon, the jury leaves open court at 10:08
16 a.m.)

17 THE COURT: Okay. How do you want to proceed on
18 this one? This is Mr. King's motion to suppress; is that
19 right?

20 MR. KING: Yes, Your Honor, that's correct.

21 THE COURT: You have this witness available?

22 MR. VOIGT: I do, Your Honor.

23 THE COURT: Why don't we go ahead and call on
24 him.

25 MR. VOIGT: I'm -- under what theory? I'm kind of

1 confused what theory we are trying to suppress this. Is it
2 just a pure relevance theory? I don't believe Mr. King has
3 argued that the science is bad. I think that he's -- so,
4 there's no sort of doubt or any sort of hearing like a
5 Thompson hearing or something like that. I thought it's
6 just -- well, I will let him explain about the theories,
7 because I can't quite get it.

8 THE COURT: Enlighten us.

9 MR. KING: It is basically two points, Judge, that
10 what was found on the shirt isn't gunshot residue.

11 THE COURT: It's gunpowder residue, correct?

12 MR. KING: No, doesn't meet the definition of what
13 gunpowder residue is.

14 THE COURT: Some elements that are present that
15 make up gunpowder?

16 MR. KING: That may be associated with or
17 consistent with. Gunshot residue comes from the primer;
18 comes when the gun is shot. Doesn't come out of the front
19 of the barrel. Comes from the cap and the bullet.

20 THE COURT: Comes from a fusion.

21 MR. KING: Yes. And it fuses three elements, lead,
22 antimony, and barium. And all three of those elements you
23 fuse together into a simple particle.

24 THE COURT: Right.

25 MR. KING: And that is the characteristic gunshot

1 residue. That was not found on the shirt. So the argument
2 is that that testimony that some elements were found on
3 there, does not assist the trier of fact.' It is sort of a
4 relevance argument that gunshot residue was not found on the
5 shirt. So it's not going to assist the trier of fact. It's
6 not relevant.

7 And even if it is probative, then whatever
8 probative value comes from that is substantially outweighed
9 by unfair prejudice, because the jury will get the
10 impression that gunshot residue was found on the shirt, and
11 it really wasn't. And I've attached -- in my motion there's
12 even a worksheet by the expert where he has a table. And
13 under particles of gunshot residue, there's a negative under
14 every one of them.

15 THE COURT: Yeah, but as I understand the State's
16 argument in this report, and you can enlighten me if I'm
17 wrong, but when the bullet gets fired, a heat fuses them
18 together, that makes gunshot residue. Prior to that, there
19 are just three elements that are present. They aren't
20 naturally occurring, dropping out of the sky. You don't
21 roll in the dirt and get those three elements on there, but
22 they were on the shirt. That just -- they have to be
23 explained or not, but it just is a matter of probabilities
24 at that point as to whether or not they ultimately have any
25 significance to them, is the way I understand this report.

1 In other words, those things are there. All right?
2 And maybe I'm -- well, maybe I should just hear what this
3 expert has to say, but my impression is when a gun goes off,
4 things get scattered out. Some of them fuse together; some
5 don't. And the ones that don't go somewhere -- and some of
6 them ended up on his shirt. Whether or not -- some of them,
7 if they get fused, become gunpowder, gunshot residue;
8 otherwise, they just remain three -- the three elements that
9 are there. And it's a matter of -- the fact that they are
10 there raises some inference.

11 MR. VOIGT: It's the classic weight versus
12 admissibility argument, Judge. And I actually don't think
13 hearing the testimony twice would be enlightening, because
14 the expert played it straight down the middle. And I don't
15 think Mr. King is disputing that these things -- I mean, the
16 expert did not find that they were gunshot residue in the
17 classic sense. We can't argue that there's classic residue
18 in the classic sense. We can't argue gunshot residue in the
19 classic sense. They are associated with gunshot residue.
20 And they may be associated with other things as well.
21 That's perfectly good fodder for cross-examination. It's a
22 weight issue. Frankly, is it the best evidence? No, but it
23 is evidence.

24 It tends to point to something. And the inferences
25 that it points to can be argued about, but it doesn't affect

1 its admissible whatsoever. There's no admissibility
2 argument here. This is just -- it's not going to confuse
3 the jury. I give them more credit than that. And it's not
4 more prejudicial than probative. I mean, I don't even know
5 how you get to that balancing test. It's not unduly
6 prejudicial at all.

7 I mean, every bit of evidence that we try to
8 introduce, of course, it's prejudicial. That's why we are
9 doing it. I mean, that's why we are here. We are trying to
10 prove something. Of course, it prejudices the defense. But
11 it's not unduly prejudicial at all.

12 THE COURT: I guess your argument would be, well,
13 yeah, these things may be here, but who doesn't have them on
14 their shirt? Is that --

15 MR. KING: Can come from other sources, fireworks,
16 brake dust. That's my understanding.

17 THE COURT: Those are all things you can bring out
18 on cross-examination. So if that's what it boils down to, I
19 don't know that we need to hear, unless he's coming up with
20 something new and different.

21 MR. VOIGT: You got it. We got the report. We
22 know what the testimony is going to be.

23 The court: So at that point, I guess it's just
24 your argument. And that's where I get back to probability.
25 You are like, well, yeah, it was there on his shirt, but

1 it's possible it had to do with a gun being fired in his
2 presence. But it's also possible that he was near fireworks
3 or he was near some other things that causes these things.
4 That's what I meant by probabilities. It's possible that
5 there's another explanation. And that's for you to come up
6 with on cross-examination. It's a piece of circumstantial
7 evidence. Okay?

8 Well, they are back using the restroom. Why don't
9 we take five, and we will come back and move right into
10 that.

11 (Recess is taken.)

12 THE COURT: The witness is available, ready to go?
13 Who is this, name of the witness?

14 MR. VOIGT: Ila Simmons.

15 THE COURT: Let the record reflect the defendant is
16 back in the courtroom. Everybody's ready.

17 Bring the jury in.

18 (Whereupon, the jury returns to open court at
19 10:25.)

20 THE COURT: Okay. Folks, we are going to resume
21 now with the State calling the next witness.

22 MR. VOIGT: The State is going to call Ila Simmons.

23 ILA SIMMONS,

24 having been duly sworn, testifies as follows:

25 THE CLERK: If you could please spell your first

1 and last name -- I'm sorry, state your first and last name,
2 and spell your first and last name.

3 THE WITNESS: My name is Ila Simmons. First name
4 is I-l-a. Last name is S-i-m-m-o-n-s.

5 DIRECT EXAMINATION

6 BY MR. VOIGT:

7 Q. Ms. Simmons, where are you employed?

8 A. I'm currently not employed.

9 Q. Oh, I'm sorry. Were you previously employed by the
10 South Carolina Law Enforcement Division?

11 A. Yes, sir, I was. I retired from there.

12 Q. Okay. And when did you retire?

13 A. In October of last year.

14 Q. Okay. I knew it had to be recently. When I talked
15 to you, I don't think you had retired.

16 A. Yes, sir.

17 Q. How long were you with SLED?

18 A. 14 years.

19 Q. Okay. And during that 14 years, what did you do
20 for SLED?

21 A. I worked in the forensics laboratory trace evidence
22 department.

23 Q. And what sort of training did you receive before
24 SLED and then with SLED regarding trace evidence, and more
25 specifically, I suppose, gunshot residue and things

1 associated with gunshot residue?

2 A. I received a bachelor's of science degree in
3 chemistry. After completing that, I went to work at SLED.
4 For my first three years, I worked with a court-qualified
5 SLED certified trace evidence examiner. During that time I
6 learned how to select and analyze trace evidence. And I had
7 to take written and practical examinations and pass them
8 with 100 percent efficiency.

9 Each year that I was at SLED, I had to take
10 proficiency tests to make sure I was competent in every
11 discipline of the trace evidence department. And I also
12 have attended numerous seminars. I'm a member of the FBI
13 Gunshot Residue Symposium where they invite gunshot residue
14 analysts from around the world to come and discuss the
15 standards and practices that everyone would follow. And we
16 also write the ASTM guideline for gunshot residue at that
17 time.

18 And since then, I have been attending seminars by
19 the Southern Association of Forensic Science, the American
20 Academy of Forensic Science, the ATF and FBI.

21 Q. Have you ever been qualified in a court of law in
22 South Carolina or elsewhere as an expert in the field of
23 trace evidence, specifically gunshot residue?

24 A. Yes, sir, in federal, state, and civil courts of
25 South Carolina, over 250 times.

1 Q. Have you ever failed to be qualified as an expert
2 in that field?

3 A. No, sir.

4 MR. VOIGT: At this time, the State would tender
5 Ms. Simmons as an expert in the field of trace evidence,
6 specifically gunshot residue associated with that.

7 MR. KING: No objection.

8 THE COURT: All right. Folks, the same
9 instructions I gave you about earlier experts apply to this
10 expert as well who has now been qualified as an expert in
11 gunshot residue. You decide how much weight to give her
12 testimony based on all of the evidence that you will hear
13 throughout the trial.

14 You may resume.

15 MR. VOIGT: Thank you, Your Honor.

16 BY MR. VOIGT:

17 Q. Now, what is trace evidence?

18 A. Trace evidence encompasses several areas of
19 forensics. We analyze gunshot residued, gunpowder residue.
20 We perform comparisons of glass and fibers. And also, we
21 analyze post-black stains for explosives and arsons.

22 Q. What is in the field of trace evidence? How does
23 gunshot residue fall into that? What is that subfield?

24 A. Gunshot residue is a mixture of microscopic
25 chemicals that come out of the gun when it is discharged.

1 It can get on anything in close proximity to the gun,
2 including the hands or clothing of the person holding the
3 gun. And being that it is a microscopic item, the way it's
4 collected, it's analyzed by the trace evidence department.
5 Because trace generally handles things that are on a
6 microscopic or very small nature.

7 Q. If you had gunshot residue, or I had gunshot
8 residue on my hands, by microscopic, that couldn't
9 necessarily be noticeable at all, would it?

10 A. You would not be able to see it with the human eye.

11 Q. You would need some sort of -- how would you detect
12 -- how would you find out if I had gunshot residue on my
13 hands?

14 A. The way the standardized testing is, it's a
15 double-sided piece of tape that has a handle, so that when
16 the sample is taken, the hand of the person taking the kit
17 never touches the sample that I'm going to analyze. And
18 that double-sided tape has a handle, and they would dab it
19 over the hands or the person or across the clothing of the
20 person they believe may have been in the vicinity of the gun
21 when it was discharged.

22 Q. And are there different types of gunshot residue?
23 Do they look differently under a microscope?

24 A. There are different types of particles that come
25 out of a gun that are all associated or consistent with

1 gunshot residue, yes, sir.

2 Q. And what kind of particles are we talking about?

3 A. We are talking about particles that -- about 100 of
4 them could fit across the diameter of human hair. So we
5 have to use a very powerful scan electron microscope to
6 analyze them. You can see down 100 times greater than the
7 human eye. And it could also tell you every chemical
8 element that is in the particles. So you can -- out of the
9 firearm, the primary components are lead, barium, and
10 antimony. When a gun is discharged, you could get a
11 combination of all three in one particle. You could get
12 just particles of lead. You could get particles of lead and
13 antimony, of barium and other components. So it's a
14 multiplicity of different types of particles that come out
15 of a gun, depending how the chemicals gel together.

16 Q. Now. SLED, though, maintains certain standards for
17 accreditation and other reasons as to what you are going to
18 call gunshot residue and what you are not going to call
19 gunshot residue?

20 A. Yes, sir.

21 Q. So there are ways of getting lead on you without
22 having anything to do with a firearm, right?

23 A. Yes.

24 Q. Lead is probably the most common?

25 A. Actually, barium is more common.

1 Q. Oh, barium is more common? Okay. And when was the
2 last time those standards were revised; do you know?

3 A. I believe we just revised them last year because we
4 are now going through accreditation again this year.

5 Q. SLED attempts to be on top of the science and be
6 ahead of the curve, so to speak, make our jobs that much
7 easier?

8 A. Yes, sir, hopefully.

9 Q. You were asked in this case to review several
10 samples, were you not?

11 A. Yes, sir.

12 Q. And I guess I will take them in order.

13 A. Okay.

14 Q. Just make it easier for you, easier for me. Now,
15 you were not present when any of these samples were taken,
16 right?

17 A. Not the gunshot residue kits; however, the samples
18 from the garment I collected myself.

19 Q. You are -- for example, in the first one, this is a
20 kit, this was submitted to you by -- the kit in the first
21 sample --

22 A. Yes, sir.

23 Q. -- who submitted that to SLED?

24 A. That would have been Charleston Police Department.

25 Q. And how does SLED get that to you? How does it go

1 through SLED to land on your desk?

2 A. It would be brought in by a representative of
3 Charleston Police Department. At that time they would bring
4 it into our central log-in area where every piece of
5 evidence that comes through SLED is given a unique
6 identification number and an item number. They would log it
7 into our computer system, put a bar code on it so we could
8 follow the chain of custody. Everybody who touches it would
9 scan it into their custody. Until I come down to get it
10 from our log-in area, it is locked in a secure area. And
11 only the four analysts that are down there can access that
12 area.

13 When I come down to get my evidence, I would ask
14 them for a specific case number and the item numbers. They
15 would scan it into my custody, my unique bar code, and then
16 I would take it upstairs, be sure that it had not been
17 tampered with in any way. When it is brought in, it has
18 tamper-resistant tape put on it by the officer that brings
19 it in from Charleston. He puts his initials or her
20 initials, and the date in which it was sealed. And I could
21 open it then and be sure that there was no one that had
22 interacted with that from the time that it was sealed until
23 the time I received it.

24 Q. It is not just a bag of samples and you reach in
25 and grab one that looks like --

1 A. No, sir.

2 Q. -- it might fit?

3 A. No, sir.

4 Q. Now the first thing you looked at, or maybe not the
5 first thing you looked at, but the first thing you list in
6 your report is a kit from Solomon Lamont Chisolm?

7 A. Yes, sir.

8 Q. And you don't know Mr. Chisolm, I'm presuming?

9 A. No, sir.

10 Q. This looks to be -- what kind of kit would this
11 have been?

12 A. This would have been a standardized kit containing
13 the double-sided sticky tape. Each one would have been
14 labeled, four samples from the skin of the palm of the right
15 hand, back of the right hand, palm of left hand, back of the
16 left hand. That is a standardized kit, every one that's
17 submitted.

18 Q. Do you know where this would have been collected?

19 A. I can look it up in my notes if you just give me a
20 moment.

21 Q. Standardized gunshot residue kit contains a form
22 that it's requested to be filled out with the person that
23 collected the kit. And I can give you that information. It
24 was collected by Rene Charles on 10/27/2011.

25 Q. That would have been at the autopsy?

1 A. Most likely was at the autopsy. Generally, if it
2 is a decedent, gunshot residue kits are collected at
3 autopsy.

4 Q. And it looks like you analyzed this using the
5 scanning electron microscope with energy-dispersive X-ray
6 detection for morphology and developmental composition.

7 A. Yes, sir.

8 Q. Tell me about that.

9 A. A scanning electron microscope, like I said before,
10 could see down 100,000 times greater than the human eye can
11 see. For every particle it finds, it can use an X-ray to
12 tell you exactly which chemical elements are present. So
13 for every particle that the instrument finds, I can put in
14 the X-ray, the X-ray will X-ray it, and tell me what the
15 particles are.

16 Q. Now, first thing listed there is the right palm.

17 A. Yes, sir.

18 Q. So that would be the right palm of Mr. Chisolm's
19 hand. What did you find there?

20 A. I found nonround particles containing lead, barium,
21 and antimony. Those are the three elements we are looking
22 for. And also I found round particles containing lead and
23 antimony.

24 Q. The nonround particles, typically, how are those
25 formed?

1 A. They would actually probably come out of the gun in
2 a round form. They come out -- it's molten. So like you
3 would throw water in the air and freeze it automatically,
4 they would be round droplets. If something were to happen
5 and somebody were to touch the hands, or sometimes during
6 collection, it can make the particles not appear to be
7 round.

8 Q. Okay. So on the right palm, they were both
9 nonround and round particles?

10 A. Yes, sir.

11 Q. On the right back, what did you find?

12 A. I found round particles containing lead and
13 antimony.

14 Q. Left palm?

15 A. The same, round particles containing lead and
16 antimony.

17 Q. Left back?

18 A. And round particles containing lead and antimony
19 were also found on the back of the left hand, yes, sir.

20 Q. Now, can you say for sure that those are -- well,
21 actually, what's the terminology you used to describe what
22 exactly those particles are?

23 A. For the particles that are nonround that contain
24 all three elements, they are considered characteristic of
25 gunshot residue, because they are the three elements that we

1 are looking for, they are just not the round particles. So
2 they are characteristic of gunshot residue.

3 If one of those elements is missing, it drops the
4 scientific certainty down slightly. So with a particle that
5 would only have lead and antimony in it, we would drop that
6 down and we would say that they are consistent with, which
7 is just a little bit -- because you can't possibly get round
8 lead antimony from other sources.

9 Q. What other sources can you get those types of
10 particles from?

11 A. You can get them from fishing weights or lathing
12 metal, things of that nature, anything that would have lead,
13 antimony, under heat and pressure.

14 Q. Okay. So there are other -- I mean, a fishing
15 weight actually sounds kind of like a leisurely thing, but
16 certainly other things, maybe brake dust, something like
17 that, or --

18 A. It used to be in older brakes, yes. The EPA, of
19 course, is taking lead out of things just to be safe, so
20 it's less and less likely to find lead in just common
21 everyday household items.

22 Q. We are finding less lead in our environment?

23 A. Yes, sir.

24 Q. What about antimony, is that normally associated
25 with where you find lead, you find antimony?

1 A. Yes, because antimony is a hardner for lead. It
2 keeps lead from being so weak it just falls apart.

3 Q. What about barium; you said that was quite common?

4 A. Barium you can find in makeup. You can find in
5 powdered gloves. It's very common.

6 Q. Let's talk a little bit about how do you -- how do
7 you get either gunshot residue or parts consistent with
8 gunshot residue on our hands?

9 A. Well, you can fire a gun and have the gun in your
10 hand when it is discharged. These particles will wrap
11 around, get on your hands, or you can be in close proximity
12 to a gun when it is discharged. If someone were standing
13 very close to a gun and it's discharged, you could get it on
14 your hands or clothing, or you could handle something that
15 has gunshot residue on it. If someone were to fire a gun
16 and lay it down, and then someone else goes behind me and
17 picks it up, you could get gunshot residue to transfer from
18 the gun onto your hands.

19 Q. Isn't that one of the kind of most studied new
20 aspect of gunshot residue, is the availability of transfer
21 of gunshot residue?

22 A. Yes, yes.

23 Q. That's where the research is going right now?

24 A. Yes, sir.

25 Q. Because how long -- all right. So gunshot residue

1 can come from firing gun, getting shot by a gun, being close
2 to a gun when it's shot, when you are firing it or being
3 shot at, or handling a gun or touching a gun some time
4 later.

5 If somebody fired a gun and had gunshot residue on
6 their hand and shook my hand, could I get gunshot residue on
7 my hand that way?

8 A. Yes, sir. Yes, sir. According to studies, it can
9 be transferred person to person.

10 Q. Okay. So there's a lot of different ways to get
11 gunshot residue on your hands?

12 A. Yes, sir.

13 Q. But there are less and less ways of getting lead
14 and antimony on your hands; in other words, lead that's not
15 from one of the sources that we've already described?

16 A. Right. When it is gunshot residue, when it is a
17 three-component particle it is specific to being a discharge
18 of a firearm, yes, sir.

19 Q. Okay. And we found some of that on Mr. Chisolm?

20 A. Yes, sir.

21 Q. And that would be consistent with him being shot, I
22 suppose, right?

23 A. It could be, yes, sir, if he was in proximity to
24 the weapon when it was discharged.

25 Q. Now, I'm going to take you here halfway down Page 3

1 of 7. Okay?

2 A. Uh-huh.

3 Q. You also looked at a GSR kit from one Dominique
4 Antoine Montgomery?

5 A. Yes, sir.

6 Q. What did you find?

7 A. I found a single round particle containing antimony
8 on the right palm. And when you only find one round
9 particle we can't say that it is definitively associated
10 with a shooting of a gun, because one round particle in
11 studies is more consistent with a transfer situation. But I
12 can't say that for certain.

13 And on the back of his hand, I did not find -- on
14 the back of the right hand, I did not find any gunshot
15 residue particles at all. On the left palm, I did not find
16 any gunshot residue particles. And on the back of the left
17 hand, I found a nonround particle containing lead, barium
18 and antimony. That's all three components, and that is
19 characteristic of gunshot residue.

20 Q. You're talking about one microscopic particle?

21 A. Yes, sir.

22 Q. And what's the surface area of these lifts?

23 A. It's about 12 millimeters, so it's about the size
24 of a dime.

25 Q. So it doesn't mean that somewhere on his person, he

1 didn't have more. It's just on that dime-sized area that
2 they chose to test, you found one?

3 A. Right. The way it should have been taken was
4 dabbed over the hand, over the entire back of the hand.

5 Q. So we are not talking about just a dime-size area
6 on his person?

7 A. No, sir.

8 Q. We are talking about a larger area where it's been
9 reapplied several times?

10 A. Correct, yes, sir.

11 Q. So we cast the net out a little wider than one
12 dime-sized area?

13 A. Yes, sir.

14 Q. But, again, that's not a lot, is it?

15 A. No, sir. In fact, that's why we have to put into
16 our report when we only find one particle that no
17 information had been provided as to how this particle was
18 deposited on this area of the hand.

19 Q. Let me direct you to the middle of Page 4 of 7 of
20 your report. You also analyzed the GSR kit from one Lavar
21 Anderson?

22 A. Yes, sir.

23 Q. And did the same method with the microscope and
24 everything. What did you find on Mr. Anderson?

25 A. Also, four samples were submitted. And on all four

1 samples, no gunshot residue was found, on the back of the
2 right hand, the palm of the right hand, back of the left
3 hand, or the palm of the left hand.

4 Q. Let me direct you to Page 6 of 7. And you analyzed
5 a kit from Waukeen Madison?

6 A. Yes, sir.

7 Q. What did you find there?

8 A. On the right palm, back of the right hand, and the
9 left palm, no gunshot residue was found.

10 On the back of the left hand, one round particle
11 containing barium was found. Like I said before, since it
12 was only one particle, we can't get any information as to
13 how it was deposited there. Could have possibly been
14 transferred.

15 Q. If a gun was fired near a park bench and you
16 touched the park bench, could you get that sort of particle
17 on your hand?

18 A. Yes, sir.

19 Q. Let me take you back now to the top of Page 3 of 7.

20 A. Yes, sir.

21 Q. Now, you said earlier that you tested the
22 T-shirt?

23 A. Yes, sir.

24 Q. And that you took the cut yourself from the
25 T-shirt?

1 A. Yeah, I took the particle lifts, which is the
2 double-sided sticky tape from the T-shirt myself, yes, sir.

3 Q. When you have an article of clothing like this, you
4 don't know who wore that clothing?

5 A. No, sir. I only go by -- when each item is
6 submitted, they give me an item description. And this
7 particular item description was one --

8 MR. KING: Objection, Your Honor.

9 THE COURT: What's your objection?

10 MR. KING: May I approach?

11 (Whereupon, a bench conference takes place off the
12 record.)

13 BY MR. VOIGT:

14 Q. Regarding this T-shirt, due to the nature, your
15 being an analyst at SLED in Columbia -- and SLED receives
16 evidence from all over the state of South Carolina?

17 A. Yes, sir.

18 Q. Correct? And you receive it in bags and boxes and
19 sealed pouches and all sorts of ways that you receive it and
20 the agencies bring it to you, and everything you know about
21 that particular item is something that the agency tells you?

22 A. That's right.

23 Q. You have no personal knowledge? You don't know for
24 a clothing sample, when you test it for gunshot residue, DNA
25 or some other substance, you don't know who wore it, where

1 it was found, under what circumstances it was found? You
2 don't know if it was tucked under a bed, stuffed into a
3 shoe? You don't know anything pertinent --

4 A. Not unless the agency makes a point of telling us.

5 Q. And so when you are asked to analyze a T-shirt for
6 gunshot residue, for you it's a T-shirt?

7 A. Yes, sir.

8 Q. Now, you took the particle lifts. What did you
9 find?

10 A. On the shirt I found round particles containing
11 barium and aluminum. That's a two-component particle. I
12 also found round particles containing antimony and round
13 particles containing lead.

14 Q. Okay. So to call it gunshot residue, it would have
15 to be lead, antimony, and barium fused together?

16 A. Correct.

17 Q. We haven't talked about aluminum. Is aluminum part
18 of this mix at all? How does aluminum come up?

19 A. It can. Usually aluminum is associated with -- in
20 the cartridge, there is a little window that separates the
21 primer from the gunpowder, and it is composed of aluminum.
22 And when the gun is discharged, the primer ignites, blows
23 through this little piece of aluminum, and then ignites the
24 gunpowder, creates pressure, pushes the projectile out of
25 the gun and strikes the target. Very small amount of

1 aluminum sometimes is found from that small window that
2 separates the two components.

3 Q. You earlier testified you could get gunshot residue
4 by being at the receiving end?

5 A. Yes, sir.

6 Q. And by being at the firing end and by being in
7 close proximity?

8 A. Yes, sir.

9 Q. The aluminum, presuming this aluminum found in a
10 cartridge -- and you can't say that it was; you just know
11 it's aluminum?

12 A. Correct.

13 Q. Do you get it at the firing end, the receiving end,
14 or just around, being near somebody firing the weapon?

15 A. You could get it in any area depending on how it's
16 exposed. But, generally, it would come out of an ejector
17 port, just because that's the closest area. On a
18 semi-automatic gun, the cartridge case that has been spent
19 is ejected from the gun. And most often, you will find it
20 near the ejector port area if you sample the gun itself.

21 Q. Okay. Now, just to be clear, these particles that
22 you found on this T-shirt, you can't say are gunshot
23 residue?

24 A. No, sir.

25 Q. The closest you can say is either that they are

1 associated with or consistent with, and that's based on
2 their chemical composition?

3 A. That's correct.

4 MR. VOIGT: Please answer any of Mr. King's
5 questions.

6 CROSS-EXAMINATION

7 BY MR. KING:

8 Q. Ms. Simmons, gunshot residue that you are talking
9 about, that's primer, gunshot residue, that's what it's
10 called?

11 A. Yes.

12 Q. That's different than what comes out of the barrel
13 of the gun, right?

14 A. The primer can also come out of the barrel of the
15 gun, but gunshot residue is a mixture of not only just the
16 primer, but it can also be gunpowder, can be soot, oil,
17 things built in the barrel.

18 Q. There are different tests that could be done as far
19 as what comes out of the barrel of the gun?

20 A. Generally, the other tests that are done on
21 gunpowder are done on clothing, yes, sir, on clothing from
22 someone who has sustained a gunshot wound.

23 Q. And you testified that gunshot residue is really
24 defined as a particle with three elements fused together?

25 A. Yes, sir.

1 Q. Barium, lead, and antimony?

2 A. Yes, sir.

3 Q. And you didn't find any of those particles on that
4 T-shirt?

5 A. No, sir.

6 Q. You mentioned aluminum. Is aluminum pretty common?

7 A. It can be common, yes, sir.

8 Q. Isn't that what's in, like, Coke cans?

9 A. Yes, sir.

10 Q. Is that more common than barium, lead, and
11 antimony?

12 A. It's probably about as common as barium, yes.

13 Q. And what you found was one tiny particle of barium
14 and aluminum?

15 A. Actually, I found multiple particles of barium and
16 aluminum, yes, sir.

17 Q. Two?

18 A. Yes, two.

19 Q. Two tiny particles of barium and aluminum?

20 A. Uh-huh.

21 Q. One particle of lead?

22 A. Yes, sir.

23 Q. Two particles of antimony?

24 A. Correct.

25 Q. So that's maybe, what, five particles?

1 A. Yes, sir.

2 Q. But no particles of what would be considered
3 gunshot residue?

4 A. No, sir.

5 Q. And are there any standards about how many
6 particles that you have to find? .

7 A. We generally have to find two particles to say that
8 we have a positive result.

9 Q. And are you aware that the FBI requires three?

10 A. The FBI no longer performs gunshot residue
11 analysis. But at the time that they would use particles --
12 three gunshot residue particles, or they would find maybe
13 one particle that contained lead, barium, and antimony. And
14 if they had a supported particle that was lead or one
15 particle of antimony, then they would call that a
16 positive -- they would use three particles, but didn't have
17 to be three particles of gunshot residue.

18 Q. You had to have three of the characteristic
19 particles?

20 A. Correct. And that's like what -- that's the same
21 way that we do it now, the way the FBI used to do it.

22 Q. And the United Kingdom, is that the same way; do
23 you know about their standards?

24 A. No, sir, I do not.

25 MR. KING: May I approach, Your Honor?

1 THE COURT: You may.

2 (Defendant's Exh. 3, SLED GSR worksheet, was marked
3 for identification.)

4 BY MR. KING:

5 Q. I'm going to show you what's been marked as
6 Defendant's Exhibit 3. Do you recognize that?

7 A. Yes, sir.

8 Q. What is that?

9 A. This is a note sheet that --

10 MR. VOIGT: Excuse me, Your Honor. Just a point of
11 order, can you show me what you are showing her so I can
12 play along?

13 THE WITNESS: Yes, sir. This is a copy of a
14 worksheet that we contain within our case file that we keep
15 up with each particle that we find on a specific gunshot
16 residue kit or item of clothing.

17 MR. KING: Your Honor, I would move to admit that
18 worksheet in evidence.

19 MR. VOIGT: No objection.

20 THE COURT: Admitted.

21 (Defendant's Exh. 3 is moved into evidence.)

22 BY MR. KING:

23 Q. This confirms what you already stated, that there
24 is a column here that says: Particles of gunshot residue.
25 And there's a negative sign --

1 A. Yes, sir.

2 Q. -- all the way down; is that right?

3 A. Yes, sir.

4 Q. And you can't tell how any of those particles got
5 on that shirt, right?

6 A. No, sir.

7 Q. You can't tell how long those particles have been
8 on the shirt, can you?

9 A. No, sir. On clothing, unlike the hands of a person
10 who is living, gunshot residue is only going to stay for
11 about six hours on someone who is living, just because of
12 the contact their hands are making with different objects.
13 On clothing, however, until it is laundered, it could
14 remain.

15 Q. Could remain a long time?

16 A. It's a possibility.

17 Q. Particles could have been on there for months, a
18 year?

19 A. That's a possibility, yes, sir.

20 Q. And those particles could come from other
21 sources?

22 A. Yes, that's a possibility.

23 Q. And that's why you put that in your report too?

24 A. Yes, sir.

25 Q. You said sources like fireworks, for example?

1 A. Yes, sir, some fireworks do have different
2 components that are similar to those in gunshot residue.

3 Q. Like pneumatic tools?

4 A. Yes, they can also contain some of these particles.

5 Q. You mentioned older brake dust?

6 A. Yes, sir.

7 Q. And these particles can be transferred from one
8 surface to another, right?

9 A. Yes, sir.

10 Q. By touch?

11 A. Yes, sir.

12 Q. By air as well?

13 A. Yes. For air, it would have to have been basically
14 walking into a situation while the gunshot residue was still
15 in the air.

16 Q. And contamination could be a possibility as well,
17 right?

18 A. Yes. If someone were to shoot a gun and touch my
19 garment, it's a possibility it could be transferred on my
20 garment.

21 Q. Police carry guns, right?

22 A. Yes, generally.

23 Q. And gunshot residue could be transferred to police
24 vehicles when they ride in their car?

25 A. Yes, sir, it has been found.

1 Q. Could be transferred in police stations?

2 A. Yes, sir.

3 Q. It could even -- you have to be careful about your
4 lab, it could even contaminate your lab?

5 A. If it isn't cleaned properly, that's a possibility.

6 Q. So if someone had touched a gun with gunshot
7 residue on it and touched that shirt, it could transfer to
8 the shirt?

9 A. Yes, sir. These particles could have transferred,
10 yes, sir.

11 Q. Similar to touch some of those other sources, like
12 fireworks, that could transfer to this shirt, if they
13 touched it?

14 A. It's a possibility.

15 Q. And let's say if that shirt was found at a certain
16 address, and Dominique Montgomery lived at that address.
17 You did find some of these particles on Dominique
18 Montgomery, right?

19 A. Yes, sir, I found two round particles on the
20 different areas of his hands, yes, sir.

21 Q. So Dominique Montgomery -- oh, and assuming if
22 Dominique Montgomery was present at the scene of a shooting,
23 he could get gunshot residue on him from being in that
24 vicinity in the air?

25 A. Yes, sir, within about six feet of a firearm, yes,

1 when it was discharged.

2 Q. So if he has any gunshot residue or any of these
3 associated particles or consistent particles, and he goes
4 back to the house where that shirt is, or he's been in the
5 house that that shirt is before with any kind of residue on
6 him, the house could be contaminated; is that right?

7 A. Yes, sir, if he touched items and had gunshot
8 residue on him, that's possible.

9 Q. Could transfer over different surfaces in the
10 house?

11 A. Yes, sir.

12 Q. And you can't determine that the shooter in this
13 trial here wore that shirt, can you?

14 A. No, sir.

15 Q. You can't say that someone wearing that shirt fired
16 a gun?

17 A. No, sir.

18 Q. You can't tell the difference between particles
19 that come from an actual gunshot and particles that are
20 transferred from surface to surface?

21 A. No, sir, I can't.

22 Q. Were you given any other black T-shirts or dark
23 clothing to test?

24 A. No, not according to my notes.

25 Q. Could you take a sample of the residue from the

1 fired cartridge cases in this case and compare it with
2 particles found in your report in making your determination?

3 A. Because the primer that we are looking for is used
4 across the board, all the chemical elements are going to be
5 the same. So if I were to discharge a Winchester cartridge
6 versus a Remington cartridge, can't tell the difference.
7 They are like identical twins. So, no, sir.

8 Q. Were you given any kits from a Raymond Clement --

9 A. No, sir.

10 Q. -- to test?

11 A. No, sir.

12 MR. KING: That's all the questions I have.

13 THE COURT: Redirect?

14 MR. VOIGT: No redirect, Your Honor.

15 THE COURT: You can step down.

16 (Whereupon the witness is excused.)

17 THE COURT: Call your next witness.

18 MS. LINDER: State calls David Osborne.

19 DAVID OSBORNE,

20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your first and last name,
22 and spell your last for the record.

23 THE WITNESS: David Osborne, O-s-b-o-r-n-e.

24 DIRECT EXAMINATION

25 BY MS. LINDER:

1 Q. Good morning. How are you today?

2 A. Good.

3 Q. Can you just tell the jury, what is your
4 occupation?

5 A. I am a police officer with the Charleston Police
6 Department.

7 Q. And how long have you been in law enforcement?

8 A. 16 years. I worked five years with the New Orleans
9 Police Department before I came here, and I've been here for
10 11.

11 Q. Can you please tell the jury a little bit about
12 your education and training and experience?

13 A. I got my bachelor's degree from USC. I have my
14 juris doctorate degree from the Charleston School of Law.
15 As far as training goes with the police department and also
16 counting my training in New Orleans, I've been on I think
17 four different homicide classes, from basic to general to
18 advanced and practical. I've been to, I think, about four
19 different interview and interrogation classes. I've been to
20 two different blood spatter classes. And I've been to
21 various other training and whatnot regarding law
22 enforcement.

23 Q. And have you received any awards or recognitions?

24 A. I have. With the New Orleans Police Department, I
25 received recognition for my contributions to Project Exile.

1 That was a project where we were targeting violent
2 offenders. I received three different -- they call it the
3 Tommy Parker Excellence in Investigation Awards. Since I
4 came to CPD, I received four different departmental
5 commendations. Also received awards for officer of the
6 year. And I was also the supervisor of the violent crimes
7 unit when we were awarded team of the year.

8 Q. What is your current role at the City of
9 Charleston?

10 A. Currently, I am the sergeant in charge of the
11 violent crime or homicide unit.

12 Q. What kind of crimes do you investigate in the
13 violent crime unit?

14 A. Typically, we work shootings, homicides, but we
15 will also work any other sort of violent crimes, shooting
16 into dwellings. We will also assist in other major crimes
17 that might come up if there's a particularly violent armed
18 robbery or break. We will assist other detectives in
19 investigations as well, death investigations also.

20 Q. About how many murders have you been involved with
21 investigating?

22 A. I have assisted or worked as the lead in over --
23 somewhere between maybe 50, 75 murders, counting both
24 agencies.

25 Q. And about how many shootings have you been involved

1 with investigating?

2 A. That's hard to say. Over 16 years, I would
3 estimate it was somewhere over a couple hundred.

4 Q. And what is your primary role as the lead detective
5 with the violent crime unit?

6 A. So as a lead detective, you will get the phone
7 call, respond to the scene, and then you will start
8 understanding what has been developed, what has been
9 ascertained so far. Then you will start directing the
10 resources that you do have and start, you know, allocating
11 the resources to try to figure out, you know, what will gain
12 the most evidence.

13 Basically, as the lead investigator, everything
14 sort of goes through you, and you make the decisions how the
15 investigations run.

16 Q. As part of that, do you direct crime scene?

17 A. In some way, I do; and some way, I don't. When
18 crime scene responds to the scene, they will have standard
19 protocols that they go through and efforts to gather
20 evidence. But if I learn specific things that are
21 pertinent, then I could direct them to maybe take
22 photographs of positions of witnesses. Maybe if I had
23 learned that, you know, a suspect might have touched a
24 certain area, I could direct them, this is something
25 important through what I learned through my interview, to

1 try to gather evidence in that location.

2 Q. And as part of being lead detective, do you
3 organize and lead interviews?

4 A. Yes, I do.

5 Q. How do you generally go about that?

6 A. Witnesses or interviews can come about a number of
7 different ways. Sometimes witnesses will approach us.
8 Sometimes, literally, we will go up to people on the street
9 and approach them. And there's the old-fashioned just
10 canvassing the area, knocking on doors, asking people what
11 they may have seen or heard.

12 Q. Is it easy to interview people as witnesses in
13 violent crimes?

14 A. No, it's not.

15 Q. Can you explain that?

16 A. Yeah. In particular, it all depends, but most of
17 our violent crimes or majority of our violent crimes in the
18 city occur on the East Side. It is very difficult to
19 interview people in that community. The community in
20 general, through my experience, is very concerned about
21 retaliation. There's a real fear there in talking to the
22 police. There are certain things that we could do, you
23 know. We try not to interview people on the scene if they
24 don't feel comfortable. Sometimes it's very obvious that
25 people don't want to talk to us.

1 I've personally have had people where I tried to
2 talk to them on the East Side where they will loudly tell
3 me, I didn't see anything, or, I didn't hear anything. And
4 then they are broadcasting it for other people to know that
5 they are not a witness.

6 Sometimes, you know, we could sort of tell people:
7 Will you meet me someplace else? In fact, you know, just
8 little general techniques that I've learned, sometimes when
9 I will shake people's hands, I try to kind of fold my card
10 up in my hand with my phone number and just kind of give it
11 to them, so that people don't see, and hope that they will
12 call me later.

13 In this case right here, we had a witness that came
14 up that didn't feel comfortable talking to me in front of
15 people that were there on the scene. So they agreed to meet
16 with me around the corner.

17 MR. KING: Objection.

18 THE COURT: Sustained. Move on to a different
19 topic area.

20 BY MS. LINDER:

21 Q. Were you working back on October 27th of 2011?

22 A. I was.

23 Q. And were you involved with this case, with the
24 murder of Solomon Chisolm?

25 A. At that time, I was a homicide detective. I was

1 the lead investigator in this case.

2 Q. And how were you first brought into this case?

3 A. I received a phone call from my supervisor,
4 Lieutenant Middleton, at about -- I guess it would have
5 probably been about 30 minutes after the murder. I got
6 there about 30 minutes later, and that's when I arrived at
7 the scene.

8 Q. Where did this murder happen?

9 A. At Mall Park.

10 Q. And is that in Charleston County?

11 A. It is.

12 Q. What time were the shots fired?

13 A. The call came into the police at 6:36 p.m. -- 6:38
14 p.m. Sorry.

15 Q. When you heard about this murder, what did you do
16 to start the investigation as lead detective that night?

17 A. When I arrived on the scene, I was first briefed by
18 the officers who were already there and responding
19 detectives. I learned that the victim was Solomon Chisolm,
20 he was found on the bleachers, and just some of the general
21 things that did come through in this case.

22 So when we arrived on the scene, the first thing we
23 did was tape off the crime scene. And in doing so, you will
24 tape off vehicles in the crime scene, unknown whether they
25 were related or not. So I had supervisors asking me if it

1 was okay to release certain vehicles that were in the scene.
2 People wanted to leave. So I said, well, let me talk to
3 them real quick.

4 So I did interviews. Found out they didn't see or
5 hear anything pertinent to the investigation, had them be
6 released. Learned we had the victim's vehicle on scene. I
7 alerted officers to do search on the vehicles. We had the
8 victim's cell phone. We had to do search warrants on that.

9 I also learned that there were three potential
10 witnesses to the incident who agreed to come back to the
11 station. So I had to determine whether I wanted to stay on
12 the scene or direct officers to the station, whether I
13 wanted to go to the station. There were other things that
14 were going on as well, but I was directing people, making
15 decisions.

16 Q. And what did you end up doing? Did you leave the
17 scene, or did you stay at the scene?

18 A. I did. I did an interview on the scene, but I also
19 left the scene and went back to the station to assist in the
20 interviews there.

21 Q. And were you ever able to identify people who were
22 located on the bench with the victim on the bleachers?

23 A. I was.

24 Q. And did you ever attempt to contact those people?

25 A. I did.

1 Q. And did you ever attempt to interview those people?

2 A. I interviewed all the people that were on the
3 bleachers with the victim.

4 Q. As a result of your investigation, prior to the
5 conclusion of the night or early morning the next day, was
6 anyone developed as a suspect?

7 A. Yes.

8 Q. And who was that?

9 A. Tyrel Collins.

10 Q. And based on your investigation that night, what
11 did you do next?

12 A. I felt we had enough evidence or probable cause to
13 go ahead and draft up an arrest warrant to charge Tyrel with
14 the murder of Solomon Chisolm.

15 Q. After that arrest warrant was signed, did you
16 consider the investigation over?

17 A. No. We still had a lot of things we had to do,
18 namely arrest Tyrel.

19 Q. And how did you go about trying to effect that
20 arrest?

21 A. So what I did was I contacted our field
22 intelligence unit, as well as our SWAT team, because of the
23 nature of the arrest and the incident, and informed them
24 that we had an arrest warrant for Tyrel. They then did some
25 research, learned that he had multiple addresses.

1 MR. KING: Objection, Your Honor. Hearsay.

2 THE COURT: Overruled.

3 THE WITNESS: Knowing that he had multiple
4 addresses in our system, not knowing where to find him, they
5 set up surveillance on two different addresses in
6 particular.

7 BY MS. LINDER:

8 Q. And what happened as a result of setting up the
9 surveillance?

10 A. So they set up the surveillance, and Tyrel was seen
11 coming out --

12 MR. KING: Objection Your Honor, lack of personal
13 knowledge.

14 THE COURT: True. Was he there for the arrest?

15 MS. LINDER: No, Your Honor.

16 THE COURT: Sustained. Hearsay, as well as lack of
17 personal knowledge.

18 BY MS. LINDER:

19 Q. And after Mr. Collins was arrested and charged with
20 this murder, did you do anything else to continue the
21 investigation?

22 A. I did. I directed Detective Kosarko, who is a
23 co-worker of mine, to prepare a search warrant for [REDACTED]
24 America Street.

25 Q. And what items were you looking for in that search

1 warrant?

2 A. Anything that could further the investigation.

3 Namely, we had witnesses that said the shooter, Tyrel, was
4 wearing a dark T-shirt. We were also looking for the murder
5 weapon, firearm, ammunition, accessories, anything that
6 might help us.

7 Q. And as part of that search warrant, were items
8 collected from that search warrant?

9 A. Yes.

10 Q. What all was collected?

11 A. Well, namely, one black T-shirt.

12 Q. After doing this search warrant, did you do any
13 additional investigation into this case? Did you interview
14 any other people?

15 A. I did. I mean, investigation continued. We
16 continued doing interviews for several weeks now and then.

17 Q. And did you interview anybody, namely Raymond
18 Clement, after the arrest was made of Tyrel Collins?

19 A. I did.

20 Q. And did you interview him more than once?

21 A. I did.

22 Q. And why is that?

23 A. Well, I interviewed him twice. The first time I
24 interviewed him, at the conclusion of that interview, I
25 received a phone call from Detective Jake Grill, and

1 Detective Grill informed me that --

2 MR. KING: Objection. Hearsay.

3 THE COURT: Sustained.

4 BY MS. LINDER:

5 Q. So you interviewed him one time and then you
6 decided to interview him a second time?

7 A. That's correct.

8 Q. And when you interviewed Mr. Clement, did you do
9 any photo lineups with him?

10 A. I did.

11 Q. And can you just kind of explain to the jury why a
12 photo lineup is created and the procedure of creating the
13 array?

14 A. So, when we have a witness that says that they
15 believe they can identify the suspect, or they are willing
16 to try to identify the suspect, we try to do it as unbiased as
17 possible. So we don't just show them a single photograph;
18 we show them a group of photographs. So the way our system
19 is set up, it's a six-pack lineup. It will be three on the
20 top, three on the bottom, photographs of pictures of
21 individuals.

22 When we do it, we try to make them similar, not
23 twins, not identical, but at least similar in nature in
24 appearance. And then when we sit down with the witness, I
25 will read to them our CPD lineup admonition form. And after

1 I do that, I will give them the lineup. They will turn it
2 over and look at it. If they can make an ID, they do. If
3 they don't, they don't.

4 Q. From what you saw, did Raymond Clement make an
5 identification?

6 A. He did.

7 Q. And do you recall what date that identification was
8 made?

9 A. I think it was two days after the shooting. If if
10 I could look at my notes, I could say for sure.

11 Q. I will show you what's previously been entered into
12 evidence as State's Exhibit 28. Can you tell the jury what
13 that is?

14 A. Yes. This is the lineup admonition form, including
15 the lineup that I presented to Raymond Clement.

16 Q. And what date was that done?

17 A. On October 31st, 2011.

18 Q. When you were with Raymond Clement, did you observe
19 anything else about his person or collect any items of
20 evidence from him?

21 A. I did.

22 Q. And what was that?

23 A. During the interview, Raymond had told me that he
24 had been shot during the incident.

25 MR. KING: Objection.

1 THE COURT: sustained.

2 BY MS. LINDER:

3 Q. What items did you collect from Raymond Clement?

4 A. I photographed an injury that Raymond pointed out
5 to me during the interview.

6 Q. And did you end up later collecting any physical
7 evidence aside from the picture?

8 A. I collected from Raymond the pants that he was
9 wearing at the time of this shooting that had a bullet hole
10 going through his pants leg.

11 Q. What did you do with those pants after you
12 collected them?

13 A. Placed them into evidence at CPD.

14 Q. At this time, I'm going to show you what's been
15 marked as State's Exhibit 39 for identification purposes.
16 Do you recognize them?

17 A. Yes, I do.

18 Q. How do you recognize them?

19 A. I recognize these as being the pants that Raymond
20 gave me. I recognize them in particular because this is my
21 handwriting on the back.

22 MS. LINDER: At this time, Your Honor, the State
23 would like to submit into evidence State's Exhibit No. 39.

24 MR. KING: No objection, Your Honor.

25 THE COURT: Admitted.

1 (State's Exh. 39 is moved into evidence.)

2 BY MS. LINDER:

3 Q. With your training and experience, why do you
4 believe it was necessary to collect those pants?

5 A. Well, I believe that it was material evidence to
6 show that -- to corroborate Raymond's statement and to show
7 that he was actually on the scene of the shooting.

8 Q. How do those pants show that to you?

9 A. Well, because they have a bullet hole in them, and
10 it's consistent with the story that was related to me by
11 Raymond.

12 Q. If you could just show the jury what is in that
13 brown paper bag.

14 A. (Witness complies.)

15 Q. What about those pants made you collect them?

16 A. If you look over here on this backside over here,
17 we can see that there's a hole in his pants leg.

18 Q. Just a couple of more questions -- thank you. Put
19 those back in the bag, please.

20 Just a couple of more questions. Why did you
21 direct Kosarko to do a search warrant at [REDACTED] America Street?

22 A. Because our system -- our system at CPD indicated
23 that that was his place of residence, or at least one of the
24 two. And when he was seen coming out of that residence --

25 MR. KING: Objection, lack of personal knowledge.

1 THE COURT: Overruled.

2 MS. LINDER: Beg the Court's indulgence.

3 Thank you very much, Detective Osborne. Please
4 answer any questions Mr. King may have.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. KING:

8 Q. Detective Osborne, you interviewed Dominique
9 Montgomery, right?

10 A. I did.

11 Q. And he is Tyrel Collins' brother. Are you aware of
12 that?

13 A. That's correct.

14 Q. He was stopped with Lavar Anderson and Waukeen
15 Madison running from the crime scene?

16 A. Correct.

17 Q. You went down to the police department and he was
18 interviewed for an hour or so. You talked to him there. A
19 gunshot residue test was performed on him?

20 A. Yes.

21 Q. And, surely, you know where his residence is? You
22 are aware that Dominique Montgomery lives at [REDACTED] America
23 Street?

24 A. A lot of individuals had multiple addresses, so I
25 would literally have to research him to see how many

1 addresses that he has listed to say that that's one of his
2 addresses, yes.

3 Q. It's not in the incident report as his address.

4 A. Dominique Montgomery's?

5 Q. Yes.

6 A. That wouldn't surprise me.

7 Q. It's in your report. You have a copy of your
8 report?

9 A. Which one?

10 Q. This will be your report dated October 27th, 2011?

11 A. What I go by when I write down the address is what
12 they tell me, because, you know, it's fluid. It changes a
13 lot.

14 Q. And what address do you have for Dominique
15 Montgomery?

16 A. He told me he lived at ■ America.

17 Q. And considering that he's Tyrel Collins' brother,
18 he was seen leaving the scene, he was present at the scene
19 of the shooting, you weren't concerned in knowing where he
20 lived?

21 A. Dominique Montgomery?

22 Q. Yes.

23 A. No, I didn't have any reason to believe that
24 Dominique was a suspect in the case.

25 Q. But you believed he was a witness in the case?

1 A. Right.

2 Q. He was?

3 A. Well, a witness -- I mean, Dominique told me he did
4 not witness the murder, so I don't know what you mean by
5 witness.

6 Q. He was present and saw some things?

7 A. That's correct.

8 Q. And you just said he said he didn't see the
9 shooting. Is that what you were saying?

10 A. He said that he could not identify the shooter. I
11 don't recall if he actually said that -- I'm pretty sure he
12 said he didn't see the shooting at all.

13 Q. And you did a -- you had a search warrant prepared
14 for Dominique's phone; is that right?

15 A. I did.

16 Q. You were trying -- I guess, you were trying to find
17 out if maybe Dominique called Tyrel before the shooting to
18 see if there was any evidence there, right?

19 A. That's right. I was trying to find a connection
20 that might have brought Tyrel to Mall Park to kill Solomon;
21 and being that Dominique is Tyrel's brother and Dominique
22 was on the park, Dominique would have had knowledge that
23 Sol, or Solomon Chisolm, was on the park. So it seemed
24 reasonable for me to believe that Dominique would have
25 called Tyrel to alert him that he was on the park.

1 Q. And you found no evidence of that, right?

2 A. I couldn't find it.

3 Q. But you did get Dominique Montgomery's phone and
4 you had -- you were able to extract information from that
5 phone?

6 A. I did.

7 MR. KING: May I approach, Your Honor? Defendant's
8 Exhibit 4.

9 (Dft. Exh. 4, Search Warrant, was marked for
10 identification.)

11 (Dft. Exh. 5, Photograph, was marked for
12 identification.)

13 (Dft. Exh. 6, Photograph, was marked for
14 identification.)

15 (Dft. Exh. 7, Photograph, was marked for
16 identification.)

17 BY MR. KING:

18 Q. Detective Osborne, I'm going to show you what's
19 been --

20 MS. LINDER: Your Honor, I'm going to object to
21 this due to lack of foundation. These are not kept within
22 the police's normal records. There's no way that Detective
23 Osborne could speak to that.

24 (Whereupon, a bench conference takes place off the
25 record.)

1 (Dft. Exh. 8, Defendant's Post-trial Voir Dire,
2 was marked for identification.)

3 (Whereupon, a bench conference takes place off the
4 record.)

5 THE COURT: All right. Let the record reflect the
6 defendant is in the courtroom and we will bring the jury
7 back in.

8 (Whereupon, the jury returns to open court at 11:46
9 a.m.)

10 THE COURT: All right. We will resume with
11 cross-examination by Mr. King, whenever you are ready.

12 BY MR. KING:

13 Q. Thank you, Your Honor. I'm going to hand you back,
14 Detective Osborne, Defendant's Exhibit Number 4. And I've
15 been asking you about search warrants you directed for
16 Dominique Montgomery's phone.

17 A. Right.

18 Q. Right? You did do that. And as part of the search
19 warrants, they extracted information from the phone,
20 photographs and everything; is that right?

21 A. That's correct.

22 Q. And you recognize what -- the exhibit I've handed
23 you as the extraction from his phone?

24 A. Well, I recognize this as being the report that was
25 generated by our CPD digital evidence unit and they gave

1 this to me after they had their examination.

2 Q. And their photos -- let me show you Defendant's 5,
3 6 and 7. I've marked them, the extraction report, with
4 little stickies, and I've marked certain photographs. Would
5 you agree that the bigger photographs I've given you are
6 basically the same photographs, just in color and larger?

7 A. I would.

8 MR. KING: Your Honor, I would move to admit
9 Defendant's 5, 6 and 7 into evidence.

10 MS. LINDER: No objection.

11 THE COURT: Admitted.

12 (Defendant's Exh. 5, 6 and 7 are moved into
13 evidence.)

14 BY MR. KING:

15 Q. So three of the photos from Dominique Montgomery's
16 phone are Dominique Montgomery taking [A/] selfie with a gun
17 on his chest, right?

18 A. Well, I never saw the photos in the phone, but the
19 report indicated that, yeah.

20 Q. You didn't -- you didn't review it?

21 A. I didn't review the phone, no.

22 Q. You testified you were the lead investigator,
23 everything goes through you. You don't review the
24 paperwork?

25 A. No, you didn't say that. You asked if I reviewed

1 the phone. I didn't review the phone; I reviewed the
2 paperwork. I count on the forensic examiners to relay to me
3 what was in the phone and assume that they could get more
4 information out of the phone than I could just from thumbing
5 through it.

6 Q. This photo was in the report from Dominique's
7 phone?

8 A. In the forensic report provided to me by CPD
9 forensic examiners, yes, it was.

10 Q. And that's a photo of Dominique with a gun?

11 A. It looks like him.

12 Q. And here's another photo of Dominique with two
13 guns?

14 A. That's correct.

15 Q. And here's another photo of two guns?

16 A. That's correct.

17 Q. You testified about Raymond's pants, right, that
18 you collected those?

19 A. I did.

20 Q. Raymond Clement came to the police station the day
21 after the shooting, October 28th, right?

22 A. He did.

23 Q. And he was interviewed. You saw him testify about
24 that. Did he tell you that he was shot on that date?

25 A. He did not.

1 Q. And then he came in October 31st and gave another
2 statement to you. You interviewed him, right?

3 A. That's correct.

4 Q. And that's when he told you he was shot?

5 A. That's correct.

6 Q. And you took a photograph of the wound?

7 A. I did.

8 Q. But he didn't have the pants with him then, did he?

9 A. He did not have the pants with him, no.

10 Q. You got the pants like on November 2nd, a couple
11 days after that, right?

12 A. That's correct.

13 Q. You don't have a murder weapon in this case?

14 A. Never recovered a murder weapon, no.

15 Q. You interviewed a Waukeen Madison?

16 A. I did.

17 Q. And that was recorded?

18 A. I think it was.

19 Q. But that recording has been lost?

20 A. That's correct.

21 Q. And did you ever request a DNA test on that black
22 T-shirt?

23 A. No; there was no need to.

24 Q. You don't think it would be important to find out
25 whose DNA is on the shirt?

1 A. The ownership of the shirt never came into
2 question. We recovered the shirt from an address in which
3 Tyrel Collins had been seen coming out of on two different
4 occasions at least. We recovered the shirt from a bedroom
5 on top of the laundromat -- on top of the dirty laundry, and
6 we also found paperwork in that room that reflected Tyrel
7 Collins's name.

8 MR. KING: I have no further questions, Your Honor.

9 THE COURT: Redirect.

10 MS. LINDER: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. LINDER:

13 Q. Detective Osborne, you mentioned there was
14 paperwork found in the bedroom of [REDACTED] America Street, which
15 is where -- the same bedroom where a T-shirt was found,
16 correct?

17 A. That's correct.

18 Q. At this time I'm going to show you what's been
19 marked as State's Exhibit 22. Do you recognize this?

20 A. I do.

21 MR. KING: Your Honor, I'm going to have an
22 objection to this as lack of personal knowledge. He was not
23 at the scene of the search warrant.

24 MS. LINDER: Judge, if we may approach.

25 THE COURT: All right.

1 (Whereupon, a bench conference takes place off the
2 record.)

3 THE COURT: It's overruled.

4 BY MS. LINDER:

5 Q. Detective Osborne, how do you recognize State's
6 Exhibit 22?

7 A. That's a photograph of some paperwork that was
8 found in the room where the black shirt was found, and the
9 paperwork shows the name of Tyrel Collins.

10 MS. LINDER: Your Honor, at this time I ask that
11 State's Exhibit 22 be admitted into evidence.

12 THE COURT: Over objection, it is.

13 (State's Exh. 22 is moved into evidence.)

14 BY MS. LINDER:

15 Q. Can you explain to the jury what this is?

16 A. Well, it's a --

17 Q. You can also note on the, I guess, TV screen in
18 front of you -- you can press things and it will show up.

19 A. Again, it's paperwork, and up here on the top,
20 right there, it lists Tyrel's name and his address. And I
21 believe -- it's kind of difficult to see here, but if I'm
22 not mistaken, I think the address is underneath that. I
23 think it says [REDACTED] America, if I'm not mistaken. I can see
24 Tyrel Collins's name clearly, but underneath that it's hard
25 to read.

1 Q. Mr. King brought up gunshot residue. He brought up
2 gunshot residue. Was there gunshot residue? Was there a
3 GSR kit done on this defendant?

4 A. No, there wasn't.

5 Q. And why is that?

6 A. SLED has guidelines that will allow us to submit a
7 gunshot residue test, and I believe the cutoff is six hours.
8 Mr. Collins was arrested longer than six hours after the
9 incident, so they would not have done an examination of
10 that, had we taken it.

11 Q. Mr. King introduced Defense Exhibit Number 4. Is
12 that up here still? Mr. King showed you a search warrant
13 and some photographs that were taken as part of your
14 investigation in this case from Montgomery's phone --
15 Dominique Montgomery's phone; is that correct?

16 A. That's correct.

17 Q. In Defense Exhibit 4, they -- was there more than
18 three photos taken from that search warrant, to your
19 knowledge?

20 A. Yes.

21 Q. If you don't mind just flipping through, this is
22 what you already looked at, Defense Exhibit Number 4 of the
23 items recovered off of Dominique Montgomery's phone. How
24 many photographs would you say in total are there, just an
25 estimate?

1 A. Okay. Let me see. It looks like maybe over 50,
2 around 50.

3 Q. And anywhere in that, can you tell the location of
4 where the photographs were taken?

5 A. No.

6 Q. And out of those maybe 50 or so photographs, are
7 there other items or subjects in some of those other photos?
8 What do some of those other photos show?

9 A. Okay. Well, children, little girls, a lot of
10 children, pictures of other individuals with kids, more
11 children. There's a picture of girls, maybe late teens,
12 early 20s.

13 Q. I would like to direct your attention to -- I
14 believe on the far left they're numbered -- Item 29,
15 Photograph 29. Do you recognize anyone in that photo?

16 A. I do.

17 Q. Can you tell where that photo is taken?

18 A. I cannot. I mean, I could tell you it's inside a
19 house. I don't know whose house.

20 Q. And who do you recognize as being in Photo No. 29?

21 A. That looks like Tyrel Collins.

22 MS. LINDER: I have no further questions.

23 THE COURT: Recross.

24 RECROSS-EXAMINATION

25 BY MR. KING:

1 Q. The arrest warrants have Tyrel Collins's address
2 listed at [REDACTED] Blake Street?

3 A. That's correct.

4 Q. The arrest report has Tyrel Collins's address
5 listed at [REDACTED] Blake Street?

6 A. That's correct; the one has [REDACTED] America.

7 Q. And you had testified about Tyrel Collins being
8 seen going in and out of [REDACTED] America Street?

9 A. That's correct.

10 Q. Isn't true that your officers were doing
11 surveillance on that house at that point, right?

12 A. That's correct.

13 Q. And what they first saw was Tyrel Collins walking
14 to the residence with a child in his arms; is that right?

15 MS. LINDER: Objection, Your Honor. This is beyond
16 the witness's personal knowledge.

17 MR. KING: He's already testified he saw him coming
18 in and out. He's already opened the door to it.

19 THE COURT: This did not come up on recross. I
20 limit redirect to recross. You can talk about whatever you
21 want on cross, but recross is limited to redirect.

22 MR. KING: That's all the questions I have.

23 THE COURT: All right. You may step down.

24 (Witness is excused.)

25 THE COURT: All right. Does the State have any

1 (Whereupon, the jury returns to open court at 02:10
2 PM.)

3 THE COURT: All right, folks. Welcome back. The
4 State has called all of their witnesses and so now the
5 defense will call their first witness.

6 Mr. King.

7 MR. KING: Defense calls Dominique Montgomery.

8 DOMINIQUE MONTGOMERY,
9 having been duly sworn, testifies as follows:

10 THE CLERK: If you could please state your first
11 and last name and spell your last for the record.

12 THE WITNESS: Dominique Montgomery. Last name is
13 M-o-n-t-g-o-m-e-r-y.

14 THE COURT REPORTER: Could I have the spelling of
15 your first name, please.

16 THE WITNESS: D-o-m-i-n-i-q-u-e.

17 DIRECT EXAMINATION

18 BY MR. KING:

19 Q. Mr. Montgomery, do you recognize this man sitting
20 at the table here?

21 A. Yes, sir.

22 Q. Who is that?

23 A. My brother.

24 Q. What's his name?

25 A. Tyrel Collins.

1 Q. Do you remember the shooting back on October 27th,
2 2011?

3 A. Yes, sir.

4 Q. Mall Park?

5 A. Yes, sir.

6 Q. You were there?

7 A. Yes, sir.

8 Q. Where did you live at that time?

9 A. ■ America Street.

10 Q. And who did you live with in that house?

11 A. My mother, and my brother, Tory Collins.

12 Q. How old is Tory?

13 A. He should be 29 now.

14 Q. Where did Tyrel live at that time?

15 A. At ■ Blake Street.

16 Q. Do you know who he lived with?

17 A. With my uncle. My grandmother was deceased, so the
18 house was left with my uncle.

19 Q. Now, did he stay there sometimes at ■ America
20 Street?

21 A. No, sir. He come visit us, but he never stayed
22 there.

23 Q. Now, I want to take you back to when the shooting
24 happened. Right around the time the shooting happened,
25 there were people out in the park?

1 A. Yes, sir.

2 Q. Do you remember who you saw out on the park?

3 A. I saw the victim, Lavar Anderson, a female that I
4 know by the name of Cat Eye.

5 Q. Cat Eye?

6 A. Yes, sir, and Mr. Clement.

7 Q. And people were playing cards?

8 A. Yes, sir.

9 Q. Who did you see playing cards?

10 A. Cat Eye, Lavar, and the victim.

11 Q. Do you remember right when the shooting happened?

12 A. Yes, sir.

13 Q. All right. Did you see the shooter?

14 A. No, sir, I was shooting my basketball and my back
15 was turned toward where the card players were.

16 Q. You said you saw Raymond Clement out there?

17 A. Yes, sir.

18 Q. Was he out there the whole time?

19 A. No, sir.

20 Q. What did he do?

21 A. Well, after -- like, I kept track of time because
22 my mother always makes me go play her lottery numbers at a
23 certain time, and the machine cuts off at 6:45. So, like,
24 around that time, I saw him like approximately six o'clock,
25 because I keep track of the time so I can know before the

1 machine cuts off. So I left and went to go play my mother's
2 number. And when I got back, he wasn't there.

3 Q. Do you know if he was there the moment the shooting
4 happened?

5 A. No, sir.

6 Q. You don't know or he wasn't there?

7 A. He wasn't there. When I came back on the park, he
8 wasn't there.

9 Q. Did you see Tyrel Collins out on the park that
10 night?

11 A. No, sir.

12 Q. I might have asked you this before, but did you see
13 the shooter?

14 A. No, sir.

15 Q. Didn't see him at all?

16 A. No, sir.

17 Q. Why didn't you see him?

18 A. My back was turned toward the benches. I was
19 shooting basketball, and when I heard the shots, I took off
20 running.

21 Q. So where did you run?

22 A. Toward Columbus Street.

23 Q. And then what happened then?

24 A. I was still running to get away from the shots, and
25 then the officer detained me. He said he got a description

1 of three black males running from the scene.

2 Q. What did the officer do then?

3 A. He detained us until they took us back to the
4 station, then interviewed us.

5 Q. Okay. Do you remember who interviewed you?

6 A. I think it was Detective Bailey and another female
7 detective.

8 Q. And after you finished the interview, where did you
9 go after that?

10 A. I began to walk home. And then another detective
11 stopped me at the corner of Nassau and Columbus Street and
12 confiscated my phone.

13 Q. On the way home from the police station?

14 A. Yes, sir.

15 Q. Where did you go after they took your phone?

16 A. I went home.

17 Q. To where; where is that?

18 A. ■ America Street.

19 Q. I'm going to show you what's been marked as
20 exhibits -- State's Exhibit 20, 21 and 19. Do you recognize
21 what that's a photo of?

22 A. Yes, sir, it's my brother Tory's room.

23 Q. What address is that?

24 A. ■ America Street.

25 Q. Now, are you aware that a shirt was taken out of

1 that room?

2 A. I wasn't aware until they told me that it was a
3 shirt taken (sic) out of the room. They said it was -- it
4 had something consistent to gunshot wounds.

5 MR. VOIGT: Objection.

6 THE COURT: What's the objection?

7 MR. VOIGT: It's hearsay as to what they may have
8 said.

9 THE COURT: All right. Sustained.

10 BY MR. KING:

11 Q. I'm not asking about what other people said, but do
12 you see a box in that photo with clothes in it?

13 A. Yes, sir.

14 Q. I think there's a number on it.

15 A. Yes, sir.

16 Q. Do you recognize that box?

17 A. Yes, sir.

18 Q. What's in that box?

19 A. Clothes.

20 Q. Okay. If there were a black T-shirt on top of that
21 box, do you know whose T-shirt that might be?

22 A. It could be either mine's or Tory's, because when
23 Tory doesn't have a shirt, he will come to my room and take
24 a shirt of mine.

25 MR. KING: Your Honor, may I have the witness

1 examine the shirt?

2 THE COURT: Yes.

3 BY MR. KING:

4 Q. I'm going to show you State's Exhibit 41 --

5 A. Yes, sir.

6 Q. -- the T-shirt entered in evidence. Can you open
7 that up?

8 THE COURT: Why don't you open it up for him?

9 Q. Now, looking at that shirt, do you recognize it at
10 all?

11 A. Yes, sir.

12 Q. Do you know what size it is?

13 A. It's a 4X.

14 Q. What size shirt do you wear?

15 A. I usually buy 3 or 2X.

16 Q. Do you know if that's your shirt or have you ever
17 seen Tory with that shirt?

18 A. I mean, it would be -- it could be either/or.

19 Q. Do you know if it's Tyrel's shirt?

20 A. No, sir, he doesn't have any belongings at our
21 house.

22 Q. You testified that the police took your phone?

23 A. Yes, sir.

24 Q. You had photographs on that phone?

25 A. Yes, sir.

1 Q. I'm going to show you Defendant's 5, 6 and 7 that's
2 been entered into evidence. Do you recognize those
3 pictures?

4 A. Yes, sir.

5 Q. Where do you recognize those from?

6 A. From my house.

7 Q. Is that you in the photo?

8 A. Yes, sir.

9 Q. Have you had guns in the house at [REDACTED] America
10 Street?

11 A. Yes, sir.

12 Q. Do you remember the last time you saw Tyrel before
13 the shooting happened?

14 A. I believe it was that morning before I left out of
15 the house.

16 Q. Do you remember when you next saw Tyrel?

17 A. The next morning when he came and brought my niece.

18 Q. Did anything happen at that point?

19 A. He left out and one of our friends came and told my
20 mother that he was being arrested.

21 MR. KING: That's all the questions I have. Please
22 answer any questions that the State may have.

23 THE COURT: Cross?

24 MR. VOIGT: Thank you, Judge..

25 CROSS-EXAMINATION

1 BY MR. VOIGT:

2 Q. Good afternoon, Mr. Montgomery.

3 A. How are you doing?

4 Q. So I can be kind of clear, how old are you?

5 A. 23.

6 Q. And how many brothers do you have? You've got

7 Tyrel. How old is he?

8 A. He should be 26.

9 Q. You've got Adrian?

10 A. Yes, sir.

11 Q. And how old is he?

12 A. He should be 25.

13 Q. And Tory, how old is he; he's about 29?

14 A. Yes, sir.

15 Q. And any other siblings, any sisters or --

16 A. No, sir.

17 Q. And you live -- you currently live with your
18 mother?

19 A. No. I had my own apartment previously until I got
20 arrested.

21 Q. Okay. But back in 2011, you lived with your
22 mother?

23 A. Yes, sir.

24 Q. And how long had you all lived at ■ America
25 Street?

1 A. Approximately, two to three years.

2 Q. And during the whole time that you lived there, did
3 Tory live there?

4 A. Yes, sir.

5 Q. And Tory kept all of his things there?

6 A. Yes, sir.

7 Q. He was an adult man, he kind of came and went as he
8 pleased, right?

9 A. Yes, sir.

10 Q. How tall are you?

11 A. I'd say 5'5", 5'4".

12 Q. How tall is Adrian?

13 A. Probably 5'8", 5'7".

14 Q. How tall is Tyrel?

15 A. I would say 6 foot.

16 Q. He's a little bit taller than that, right?

17 A. Yes, sir.

18 Q. And how about Tory?

19 A. Tory is like 5'6".

20 Q. So he's about your size?

21 A. Yeah.

22 Q. In October of 2011, who lived in that house at ■
23 America Street ■?

24 A. My mother, me and Tory.

25 Q. So Adrian didn't live there?

- 1 A. Adrian was incarcerated.
- 2 Q. Okay. Tory lived there?
- 3 A. Yes, sir. .
- 4 Q. Tory had all of his things there?
- 5 A. Yes, sir.
- 6 Q. Did Adrian have any things there?
- 7 A. Not to my knowledge. He was incarcerated.
- 8 Q. You had all of your things there?
- 9 A. Yes, sir.
- 10 Q. And how long had it been since Tyrel had lived
- 11 there?
- 12 A. Well, the last place Tyrel lived with us was in
- 13 West Ashley, I believe, because he was incarcerated too.
- 14 Q. Okay. So at some point before this, your testimony
- 15 is that Tyrel didn't live with your family?
- 16 A. Yes, sir.
- 17 Q. Okay. And Tyrel wouldn't have kept anything there,
- 18 no personal possessions, no belongings?
- 19 A. No, sir. The only thing he had was paperwork from
- 20 old cases he had.
- 21 Q. Now, why would he keep paperwork from old cases
- 22 there?
- 23 A. It was his mother's house.
- 24 Q. So did he keep other important documents there?
- 25 A. Not that I know of, other than the old paperwork.

1 Q. Okay. And how did you know about the old
2 paperwork?

3 A. Because it was in my room in a box.

4 Q. Okay. So all of the paperwork was in your room?

5 A. Yes, sir.

6 Q. Was that the same room that Mr. King showed you a
7 photo of where the T-shirt was?

8 A. No, sir.

9 Q. That was a different room?

10 A. Yes, sir.

11 Q. And what other sorts of paperwork did Tyrel keep in
12 that box?

13 A. That's it.

14 Q. That was it?

15 A. Yes, sir.

16 Q. Just that one piece of paper?

17 A. What do you mean?

18 Q. How many pieces of paper are we talking about?

19 A. There were multiple papers there.

20 Q. So there's lots of things that would have had Tyrel
21 -- you know, something identifying them with Tyrel?

22 A. Yes, sir.

23 Q. okay. Not just one, but there were lots of things?

24 A. Yes, sir.

25 Q. Okay. During the time y'all lived at America

1 Street, how many guns did you keep in that house?

2 A. I had approximately three to four.

3 Q. How about Tory?

4 A. None, to my knowledge.

5 Q. How about your mother?

6 A. None, to my knowledge.

7 Q. So you had three or four guns?

8 A. Yes, sir.

9 Q. Now, how about in October of 2011, about how many
10 guns do you think you had then?

11 A. None. I had got rid of them.

12 Q. They were all gone?

13 A. Yes, sir.

14 Q. How long earlier before October 2011 had you gotten
15 rid of them?

16 A. I'd say like two to three months.

17 Q. Okay. Now, I just have a couple pictures of the
18 inside of your mom's house. She kept it pretty clean,
19 didn't she?

20 A. Yes, sir.

21 Q. Y'all do laundry?

22 A. Yes, sir.

23 Q. So it's not like one of those things where you
24 would -- y'all aren't so wealthy that you'd wear a shirt
25 once, throw it down and go buy yourself a new shirt, right?

1 A. Hum-um.

2 Q. Did you all have to go to a laundromat or did you
3 all have equipment there? Did you have machines there?

4 A. We have equipment there.

5 Q. So you had machines there?

6 A. Yes, sir.

7 Q. And so like when the laundry was -- it was time for
8 laundry to be done, did you do your own laundry?

9 A. Yes.

10 Q. Did Tyrel do his own laundry?

11 A. Tyrel didn't live there, so he didn't do laundry
12 there.

13 Q. Oh, I'm sorry, Tory. Did Tory do his own laundry?

14 A. Yes, sir. Everyone did their own laundry.

15 Q. And from the look of it, you did it fairly
16 frequently, right?

17 A. I mean, when it was convenient.

18 Q. Okay. Now, at the time in October, to the best of
19 your knowledge, there hadn't been a gun in that house for
20 weeks, right?

21 A. Yes, sir.

22 Q. Now, you had had one earlier, because I think --
23 don't worry about -- I'll get it. I mean, this is you.
24 Let's put this up.

25 Did you take that picture yourself?

1 A. Yes, sir.

2 Q. Why? I'm just curious.

3 A. Just to take a picture.

4 Q. That was a gun that you had at the time when you
5 took the picture. Do you know when that picture was taken?

6 A. Not that I can remember.

7 Q. You look a little bit younger in the picture,
8 frankly, than you are now. So do you have any idea at all
9 when that picture was taken?

10 A. Before I got rid of it.

11 Q. Okay. So well before October 2011?

12 A. Yes, sir.

13 Q. That's a revolver, right?

14 A. Yes, sir.

15 Q. Did you ever fire that gun?

16 A. No, sir.

17 Q. Never fired that gun at all?

18 A. No, sir.

19 Q. Okay. Did you ever keep ammunition, keep it
20 loaded?

21 A. Yes, sir.

22 Q. Okay. What happens to a shell casing when you fire
23 a revolver?

24 A. I wouldn't know; I've never fired a gun.

25 Q. Okay. I'm going to show this other one here. This

1 is -- that one is Defendant's 7. This is Defendant's 6.

2 You've got more than one kind of gun here, right? These are
3 both your guns?

4 A. Yes, sir.

5 Q. Now, that top one is the revolver we were talking
6 about. It's so special you put it in its own picture, but
7 this one's got another kind of gun. Do you know what kind
8 of gun that is?

9 A. A Glock.

10 Q. A Glock. All right. Do you know what millimeter
11 it is?

12 A. No, sir.

13 Q. Did you ever fire that one?

14 A. I've never fired a gun in my life.

15 Q. Never?

16 A. No, sir.

17 Q. Okay. Did you ever clean those guns?

18 A. No, sir.

19 Q. Do you keep ammunition for those guns?

20 A. No, sir.

21 Q. Did you in 2011?

22 A. No, sir.

23 Q. Okay. So you never fired those guns or any of the
24 other guns that you had?

25 A. No, sir.

1 Q. And didn't do it in October of 2011, and you didn't
2 do it in September of 2011, and you didn't do it in August
3 of 2011, right?

4 A. Right.

5 Q. But in August of 2011, to the best of your
6 knowledge, you did laundry, right?

7 A. I mean, when it was convenient.

8 Q. When you needed clothes to wear, right?

9 A. Yes, sir.

10 Q. I mean, are you kind of like I am sometimes, when
11 you get to the bottom of the drawer, that's when you do
12 laundry?

13 A. Yes, sir.

14 Q. I mean, that's just kind of how we are, I
15 understand.' But you certainly did laundry in the months
16 before your brother's arrest, right?

17 A. Yes, sir.

18 Q. I'm not afraid of this, so I don't need gloves.
19 Did you ever fire a weapon or have someone else fire a
20 weapon in your presence while you were wearing this fairly
21 large shirt?

22 A. No, sir.

23 Q. Do you know if anybody else ever did?

24 A. I can't say.

25 Q. Did you ever work with pneumatic tools or change

1 brakes on an old car while wearing this shirt?

2 A. I fixed a bike wearing the shirt.

3 Q. Like a little bike, pedal bike?

4 A. Yeah.

5 Q. Enough about the shirt and the gun. Let's talk
6 about October 27th, the night of the murder. Okay? You
7 were interviewed by police?

8 A. Yes, sir.

9 Q. Because what you testified to is, there were
10 reports of three black men running from the park and you
11 were one of three, right?

12 A. Yes, sir.

13 Q. You went down to the station. You agreed to go
14 down there and you talked to them. You talked to a couple
15 of detectives, maybe Detective Bailey; sound about right?

16 A. Yes, sir.

17 Q. You told them you had been in the park?

18 A. Yes, sir.

19 Q. You told them -- I think you told Mr. King this as
20 well -- you didn't see the shooting because you were
21 shooting the basketball and your back was turned, right?

22 A. Yes.

23 Q. How far away from the benches were you when you
24 were shooting that basketball? Was it this far, a little
25 farther? I mean, how far back do I have to go?

1 A. Come back some.

2 Q. Come back towards you?

3 A. Yes, sir.

4 Q. About here?

5 A. Yes, sir.

6 Q. So the basket is here, right?

7 A. The basket is right in front of me.

8 Q. Further?

9 A. Yeah, further from me.

10 Q. Taking a two- or three-point shot?

11 A. Three-point.

12 Q. So the basket is maybe to the front row over there,

13 right in the corner?

14 A. Yes.

15 Q. All right. And you've got your back turned,

16 right?

17 A. Yes, sir.

18 Q. And you can't see the shooting?

19 A. No, sir.

20 Q. All right. And so at that point, you can't see --

21 was there a bike in front of the bleachers?

22 A. My bike, yes, sir.

23 Q. Okay. So that's -- is that your bike?

24 A. Yes, sir. It's a blue and white bike.

25 Q. Let's see. There might be a picture in here

1 somewhere. We might be talking about the same bike. I feel
2 bad for whoever would have had this -- I'm going to put this
3 up. This is State's Exhibit 6. That's Mall Park, right?

4 A. Yes, sir.

5 Q. Okay. Do you see that bike over there?

6 A. Yes, sir.

7 Q. Okay. And you see the bleachers?

8 A. Yes, sir.

9 Q. And you do you see the three-three-point line
10 there?

11 A. Yes, sir.

12 Q. Now, if you point at this screen here -- could we
13 put it on the screen here?

14 THE CLERK: It should be on.

15 MR. VOIGT: It's not.

16 Q. Hopefully, you're going to be able to see that
17 without turning around. Oh, there we are. All right. Now,
18 which basket were you shooting at?

19 A. This one. (Witness indicates.)

20 Q. So you're shooting at that one down there?
21 (Indicating.)

22 A. Yes, sir.

23 Q. So you are shooting -- can I put an X for you on
24 that basket?

25 A. Yes, sir.

1 Q. Okay. That's the basket where you were shooting
2 from?

3 A. Yes, sir.

4 Q. All right. Now, can you point to me, and I'll put
5 it on there, where you were located?

6 A. (Witness indicates)

7 Q. Right about here you think?

8 A. Yes, sir.

9 Q. I'm sorry, that's about as good as we can get. So
10 that bike right behind you would have been your bike?

11 A. Yes.

12 Q. So you're fairly close to the whole thing?

13 A. Yes, sir.

14 Q. And you can't see the shooter? You never do?

15 A. No, sir.

16 Q. You never do. I mean, at no point do you? And
17 that's what you tell the police that night; is that right?

18 A. Yes, sir.

19 Q. And, ultimately, they let you go, right?

20 A. Yes, sir.

21 Q. You were there. You didn't see the shooter, okay,
22 and you're gone. Did you ever go back and get that bike?

23 A. No, sir.

24 Q. You got your back towards those bleachers. You
25 don't see the person getting shot?

1 A. No, sir.

2 Q. Did you know who he is?

3 A. I didn't know him until after the investigation was
4 ongoing.

5 Q. Did you know him at all before that?

6 A. Yes, sir.

7 Q. Okay. You didn't see him get shot?

8 A. No, sir.

9 Q. As a matter of fact, when you started running, you
10 didn't know who -- you heard gunshots, but did you know
11 anybody had been shot?

12 A. No, sir.

13 Q. You just weren't going to stick around?

14 A. Yes, sir.

15 Q. They were pretty loud?

16 A. Yes, sir.

17 Q. Pretty close to you?

18 A. Yes, sir.

19 Q. You didn't see what anybody else on that bench did,
20 did you?

21 A. No, sir.

22 Q. I'll come back over here. When you ran, which way
23 did you run? Just kind of point to me and I'll --

24 A. Toward the --

25 Q. So you're going this way, more of that way?

1 A. Yes, sir.

2 Q. Okay. More that way. So you're going out that
3 way, and you don't stop until the police --

4 A. Yes, sir.

5 Q. -- say, whoa, stop; and you stop?

6 A. Yes, sir. Yes, sir.

7 Q. All right. The whole time you never looked behind
8 you?

9 A. No, sir.

10 Q. Okay. All right. Do you love your brother?

11 A. Yes, sir.

12 Q. Do you want the best for your brother?

13 A. Yes, sir.

14 MR. VOIGT: Good enough. Thank you.

15 THE COURT: Redirect?

16 MR. KING: None, Your Honor.

17 THE COURT: You may step down.

18 (Whereupon the witness is excused.)

19 THE COURT: Call your next witness.

20 MR. KING: Your Honor, defense calls Britney
21 Washington. We will get her now.

22 BRITNEY WASHINGTON,

23 having been duly sworn, testifies as follows:

24 THE CLERK: If you could just state your name for
25 the record, spelling your last name for the court reporter.

1 THE WITNESS: Britney Washington,

2 W-a-s-h-i-n-g-t-o-n.

3 DIRECT EXAMINATION

4 BY MR. KING:

5 Q. Ms. Washington, do you have any nicknames that you
6 go by?

7 A. Cat Eye.

8 Q. People call you Cat Eye?

9 A. Uh-huh.

10 Q. Do you know this man sitting at the table here?

11 A. Yeah.

12 Q. This man here with the white shirt and tie?

13 A. Uh-huh.

14 Q. Who is that?

15 A. Soldier.

16 Q. Do you know his name?

17 A. Tyrel.

18 Q. Did you know him -- do you remember the shooting
19 back on October 27th, 2011?

20 A. Uh-huh.

21 Q. Did you know him before the shooting?

22 A. Uh-huh.

23 Q. Were you out in the park that day?

24 A. Uh-huh.

25 Q. What were you doing?

- 1 A. Gambling, playing cards. .
- 2 BY MR. KING:
- 3 Q. Who were you playing cards with?
- 4 A. Me, Sol, and Lavar. .
- 5 Q. I'm sorry?
- 6 A. Sol and Lavar.
- 7 Q. By Sol, you mean Solomon Chisolm?
- 8 A. Yes.
- 9 Q. And by Lavar, you mean Lavar Anderson?
- 10 A. Uh-huh.
- 11 Q. Now, at some point -- do you remember when the
- 12 shooting happened?
- 13 A. Uh-huh.
- 14 Q. What were you doing when the shooting happened?
- 15 A. Playing cards.
- 16 Q. Did you see the shooter?
- 17 A. No. I see a dude come out with a mask on his face,
- 18 that was it.
- 19 Q. You couldn't identify who the shooter is?
- 20 A. Hum-um.
- 21 Q. When the shooting happened, was Raymond Clement out
- 22 there?
- 23 A. No.
- 24 Q. Do you know Raymond Clement?
- 25 A. Yeah. He been out there earlier, but he wasn't out

1 there during the shooting.

2 Q. He was out there earlier?

3 A. Uh-huh.

4 Q. Do you know where he went?

5 A. No.

6 Q. Do you know how soon before the shooting he left?

7 A. Hum-um. I know he had -- he been playing cards
8 with us like earlier, a couple of hands, but ...

9 Q. But when the shooting happened, is he anywhere near
10 the bleachers?

11 A. Hum-um.

12 Q. Who is near the bleachers?

13 A. Me, Lavar, and Sol.

14 Q. Did you see Tyrel Collins at the park that day?

15 A. Hum-um.

16 MR. KING: Please answer any questions the state
17 has.

18 CROSS-EXAMINATION

19 BY MR. VOIGT:

20 Q. Good afternoon, Ms. Washington.

21 A. How are you doing?

22 Q. Do you remember talking to the police about what
23 you saw out there on the 27th of November when Sol got shot?

24 A. I can remember a cop stopped me.

25 Q. You never told them who shot Sol, right?

1 A. No, because I never saw the shooter.

2 Q. Well, you saw the shooter, you just -- because you
3 described what he was wearing, right?

4 A. A black shirt over his face.

5 Q. Was it a shirt over his face or a mask?

6 A. Mask, shirt, something, whatever you want.

7 Q. Dark shirt?

8 A. It been black.

9 Q. Black shirt?

10 A. Black shirt, black mask, something.

11 Q. Black shirt like this? (Indicating.)

12 A. I don't know.

13 Q. Okay. It's a black shirt. Black shirt like that?

14 (Indicating.)

15 A. I don't know what it was, because he been -- like
16 over his face, so I don't really know.

17 Q. You could see his eyes, right?

18 A. Yeah, a little bit.

19 Q. Okay. He had to be able to see where he was going,
20 right?

21 A. No.

22 Q. Okay. Who did you go to the park with?

23 A. My cousin and her two children, I think. I think my
24 cousin and her two children.

25 Q. okay. So your cousin and her two children?

1 A. Uh-huh.

2 Q. And you stopped to play cards with Sol and Lavar?

3 A. Uh-huh.

4 Q. And how long did you play cards there?

5 A. For a couple of hours or something like that.

6 Q. Okay. There were still kids in the park, right?

7 There were lots of people in the park, right?

8 Our court reporter --

9 THE COURT: You need to say yes or no.

10 THE WITNESS: Oh, yes.

11 Q. So, was it kind of a warm evening, kind of a nice
12 evening?

13 A. I can't remember all that, sir. Yeah, it been kind
14 of warm, I think.

15 Q. You wouldn't be playing cards in weather like this,
16 would you, like what we have today, or would you? I don't
17 know.

18 A. I might.

19 Q. Okay. You saw Raymond out there? Ray was out
20 there.

21 A. Uh-huh.

22 Q. You talked to him a little bit, right?

23 A. He played with us for a little while.

24 Q. Yeah, he did. And when you looked up from your
25 cards -- you were playing Tong; is that what you were

1 playing?

2 A. Uh-huh.

3 Q. And when you looked up from your cards, that's when
4 you saw Sol eating bullets, right?

5 A. Yeah.

6 Q. And that's when you decided to run, right?

7 A. Yeah.

8 Q. Which way did you run?

9 A. To the right, to my right.

10 Q. Towards which street?

11 A. Aiken, I think, Aiken and Columbus, or wherever it
12 was.

13 Q. How did you get here today?

14 A. My mom.

15 MR. VOIGT: All right. One moment, Your Honor.

16 Thank you, Your Honor, I'm done.

17 THE COURT: Redirect?

18 MR. KING: No, Your Honor.

19 THE COURT: You can step down.

20 (Witness is excused.)

21 THE COURT: Do you have another witness you were
22 going to call at this time?

23 MR. KING: No. The defense rests, Your Honor.

24 THE COURT: All right. Let me get y'all to step
25 out back into the jury room for just a few moments. We have

1 easel set up for mine, but I'm not doing anything else that
2 will require stuff.

3 THE COURT: 'Okay. Are you geeking out on anything?

4 MR. KING: I think I'm doing it the old-fashioned
5 way. I may wave them around.

6 THE COURT: Okay. Let's bring the jury in.

7 (Whereupon, the jury returns to open court at 3:03
8 p.m.)

9 THE COURT: All right, folks.. Welcome back. We
10 are going to move into the final phase of the trial now.
11 You've heard all of the evidence that you are going to have
12 presented, and we will now have the closing arguments by the
13 lawyers. And I will charge you on the law, and then you
14 will retire to consider your verdict.

15 Now, I want to just go over a couple of things with
16 you. And the main part is to remind you, you've heard all
17 of the evidence, anything that the lawyers say now is not to
18 be considered by you as evidence. It's argument. They will
19 be reviewing the evidence that you've heard and attempting
20 to persuade you to render a verdict on their client's
21 behalf, but they are not testifying. What they say should
22 not be considered as testimony. They are only allowed to
23 comment on the testimony that you've heard, any of the
24 documents or things that you've heard and they can argue
25 about that, make any reasonable inferences that can be made

1 from that. They are not testifying. What they say is not
2 evidence. All right?

3 The State has the burden of proof. Our Rules
4 provide that they have the right to close in a criminal
5 case. So you will be hearing from the defense first,
6 Mr. King, and then the State will have the final closing
7 argument. I will then go over the law with you, and then go
8 over your verdict -- possible verdicts for you, and then you
9 will retire to consider your verdict.

10 So, Mr. King, if you are ready.

11 MR. KING: Thank you, Your Honor. How many times
12 does Raymond Clement get to lie and the State still ask you
13 to believe what he has to say? He's at the scene standing
14 by his brother who's just been shot. He claims he was shot.
15 The police arrive. He doesn't tell them anything. Says he
16 knew who Tyrel was. He doesn't say, I know who shot my
17 brother; it's Tyrel Collins. He doesn't tell them.

18 And then he goes down to the police station, meets
19 with them in an interview, with the detectives who are
20 investigating the case, trying to solve the case for the
21 murder of his brother, and he tells them he's not on the
22 park. He tells them that he was playing cards, but he
23 walked down the street for a bit, and as he was coming back,
24 he saw the shooter standing over him shooting. He was too
25 far away to see and that he had a shirt over his face.

1 That's what he tells the detectives trying to solve his
2 brother's murder. He doesn't tell them then that he was
3 shot either.

4 They even asked him: Did you see Tyrel Collins out
5 there last night? He said no. I played that because he
6 didn't remember that. So we saw him say that. Then he
7 leaves there and now he's a federal informant. So, this guy
8 is working with police and presumably working on the street.
9 Who knows what he's involved in and what kind of person he
10 is.

11 He talks to his federal contact, Grill, that he has
12 a phone number for, that he can call any time. And Osborne
13 -- Detective Osborne and Grill talk. And I played that clip
14 where Detective Osborne was talking about giving him money
15 and how if he cooperated with the murder case, then that
16 would be a big deed.

17 So at some point, the reins changed. I don't know
18 if he hears on the street who he thinks did it, but he's
19 decided that he's going to send Tyrel up for this crime. So
20 he goes back to the police station on the 31st. Now that's
21 about four days later. And he meets with detectives again,
22 and he says he's going to come clean. Then he says it was
23 Tyrel Collins.

24 But I pointed out some things that he told them
25 then that don't really make sense. He said there were two

1 sets of shots. He says that he was sitting -- well, first,
2 he's sitting right beside Solomon Chisolm. The shooter
3 would have come around, right in front of him, and had a
4 clear shot of him too, if he wanted to shoot him, that he's
5 sitting right there. Solomon was shot. He runs toward
6 America Street. And then he says the shooter turned and
7 took about two shots at him.

8 Now, we know there were five bullets found in the
9 body of Solomon Chisolm and one bullet found in the ground.
10 Officer Gamble, who is down the street, the detective
11 patrolling the area, says he heard five shots all in a row.

12 Now, in a situation like that, maybe he's wrong,
13 maybe it wasn't exactly five shots, but I think he would
14 have known if it had been -- six shots we know were fired
15 and then a pause and then two more. I think he would have
16 heard that. And he didn't hear that.

17 Where were the shells? There would be more shells
18 out there. Police didn't find those. There's something not
19 right about what Raymond Clement is saying. And when he
20 goes back for his second interview, he's supposed to be
21 coming clean and telling the truth. And he testified on the
22 stand that when he saw Tyrel getting into his car to leave,
23 that he turned around and looked back at him.

24 But in his second interview, I played that for him
25 as well, they asked him: He didn't look back or fire at you

1 again or anything? And he said no. So he's making stuff
2 up. He's not telling the truth.

3 How can you convict the man of murder based on a
4 witness like that? Because that's what you have.

5 He signed an affidavit. He went to a public
6 library, sworn before a notary, and wrote: On October 29th,
7 on Mall Park, me and three others was playing cards when a
8 black suspect ran up, started shooting, hitting Solomon
9 Chisolm numerous times. Suspect had a shirt over his face,
10 which is what he said in his first interview on October
11 28th. So it's hard to identify him.

12 After he finishes shooting, he ran off and got into
13 a white car similar to a Crown Victoria. That's one thing
14 he's been fairly specific about.

15 He claims he was, I guess, forced to do that. But
16 this is a man who has law enforcement contacts, works with
17 law enforcement, has a federal agent's number in his phone
18 he could call at any moment. He's in a public library, but
19 he doesn't say anything. The police have offered to help
20 him. They offered to give him money, to move him.

21 And something else to consider is the telephone
22 call with Tyrel -- between him and Tyrel. And did you hear
23 how he was laughing and talking on that phone? Is that the
24 way someone would talk to the man that murdered his brother
25 and shot at him? There's something else going on between

1 Raymond and Tyrel.

2 And, of course, Tyrel would be trying to contact

3 Raymond to get him to change his story. Someone's in jail

4 based on a false statement, sitting in jail on a murder

5 charge, not knowing what's going to happen. Who would blame

6 them for trying to contact that person getting them to

7 change their story and to be nice to them when they're on

8 the phone? That's why Tyrel is being nice on the phone.

9 And Raymond sounds perfectly willing to do it.

10 But something changes. Raymond holds all the power

11 in this. So he can have his police contacts backing him.

12 If he decides he wants to send Tyrel to jail, he can do

13 that. And that's a scary thing. And that's what they have,

14 that witness. You really need to believe that witness to

15 believe that Tyrel did this.

16 Would you buy a car from Raymond Clement? Would

17 you buy a car from that man? Do you think that man is

18 trustworthy? And do you think his testimony, after being

19 changed so many times, lying on October 28th, lying on the

20 31st, even changing his story again when he takes the stand,

21 it's changing constantly -- you can't convict a man of

22 murder based on that.

23 You don't have anything else to back it up on the

24 scene, no fingerprints, no other witnesses who saw him do

25 the shooting. They have this shirt. They have a black

1 T-shirt. So the police go to his mother's house. And from
2 what Sherman testified, sounds like he just grabbed the
3 first shirt on top of a box, on top of a pile of clothes.
4 He didn't check the other clothes. They take that, and they
5 test it.

6 We don't know that that was the shirt the shooter
7 was wearing. We don't know it was Tyrel's shirt. The
8 expert testified it might not even have gunshot residue on
9 it. And, technically, if you look at her worksheet, it says
10 negative. The shirt is negative for gunshot residue because
11 it requires a specific type of particle made up of three
12 different elements. That's not on the shirt.

13 So they haven't proven it's his shirt. They
14 haven't proven it had gunshot residue on it. And there
15 would be a real easy way to prove that it was his shirt.
16 When I asked Sherman, they could have tested it for DNA. If
17 it was his shirt just laying there in a box, they could have
18 tested it. If it had his DNA on it, that might be
19 different, but they didn't do that.

20 And, assuming it is some sort of particles from a
21 gunshot, there's other explanations for that. Almost every
22 one of the people tested had some kind of particles on it,
23 Solomon Chisolm, Waukeen Madison. And I tried to explain if
24 those are particles that come from firing a gun, how they
25 could get in that house. That whole house could be

1 contaminated with gunshot residue. It's about five tiny
2 particles.

3 Dominique testified, yeah, it's his brother. He
4 was there. He had one particle of actual gunshot residue on
5 him. He lives at [REDACTED] America Street. He left the police
6 station. And he was at the scene of the shooting. He was
7 in the vicinity of firing the gun. As the expert testified,
8 he possibly could get gunshot residue that way. He leaves
9 the police station, then goes to [REDACTED] America Street before
10 the house is ever searched. He had guns in the house.

11 Now, he said he didn't fire any of the guns, but he
12 said he didn't clean them either. And if those guns have
13 ever been fired, then gunshot residue will linger. The
14 expert testified it will stay on objects for a long time.
15 Skin, sweat could make it go away after a period of time,
16 but on clothing, on objects like a gun, it can stay on there
17 for a long time.

18 And finally, Britney Washington testified. She was
19 out there too. She was one of the ones playing cards. She
20 didn't really want to be here. The solicitor argued before
21 people don't want to get involved, but she was here. She
22 said that the shooter had a shirt wrapped around his face.
23 And that's exactly what Raymond Clement said the first time
24 he gave a statement to the police. And she also said she
25 didn't see Raymond at the time of the shooting. And that's

1 an important fact of what Raymond said, that he left the
2 scene, wasn't on the park at the time of the shooting, was
3 walking back and he wasn't able to see who did it.
4 Dominique said the same thing, that he didn't see Raymond
5 out there at the time of the shooting.

6 This is -- this is serious for Mr. Collins. And
7 what comes from that witness stand is important. And if the
8 only thing that comes out of that witness stand are lies,
9 that's not what you convict someone for. So I'm asking you
10 to return a verdict of not guilty, because you have to
11 believe Raymond to believe he's guilty. How can you believe
12 Raymond Clement?

13 Think about all he said and what he's involved in,
14 and if he's got something against Tyrel -- or if he thinks
15 Tyrel did it. He didn't see it, but he thinks he's the one
16 who did it. But I'm submitting to you that he did not see
17 the shooting. And the evidence shows that. He did not see
18 who did the shooting. And Mr. Collins is not guilty of
19 murder. I'm asking you to return a verdict of not guilty.

20 THE COURT: Ms. Linder.

21 MS. LINDER: The kind of person who commits this
22 crime, the kind of person who walks into a public park in
23 the daytime hours, the kind of person who walks up with a
24 gun outstretched and shoots a defenseless man playing cards,
25 not once, not twice, not three, not four, but five times, in

1 his back, in his chest, neck, and in his head, that's the
2 kind of person who knows the type of neighborhood the East
3 Side is. That's the type of person that knows that things
4 that happen in the East Side tend to stay in the East Side.

5 To that kind of person, we're outsiders. To that
6 kind of person, we are not meant to be here. To that kind
7 of person, we are not wanted to intervene. And this
8 defendant, Tyrel Collins, was counting on that. But we are
9 here. We are here. And we are here because there are laws.
10 There are laws in our society and there are laws that we are
11 here to uphold. There are laws in civilized society.

12 The laws of the State do not allow murder. The
13 laws of this State also do not allow the possession of a
14 weapon during the commission of a violent crime.

15 In the beginning of this trial, Mr. Voigt told you
16 a little history lesson about the East Side. And he told
17 you about the history and the culture of the East Side
18 neighborhood of Charleston. He explained that there was a
19 long list of witnesses that y'all heard before we started
20 this. And he also explained that you weren't going to hear
21 from a lot. He said that some of those you weren't going to
22 hear from -- you know, because we were trying to help you
23 out. We were trying to kind of streamline things. We were
24 trying to have fewer law enforcement officers to testify to
25 more items, more pieces of evidence.

1 You heard first from Officer Gamble. Officer
2 Gamble was on foot patrol back on that evening on October
3 27th of 2011. You heard that Officer Gamble was on foot
4 patrol about two blocks away, I think he said. And while he
5 was on foot patrol, he heard gunshots. He heard multiple
6 gunshots going off, one after the other. He started to run.
7 That training through the Air Force, that training through
8 the City of Charleston kicked in. He started to run. He
9 started to run toward the shots. He started to try to help
10 if someone was in need.

11 As he approached the park -- first, as soon as he
12 got to the park, he looked. And what did he see? This is
13 what he saw when he first turned to go into the park. He
14 saw the man lying on the bleachers. He saw another man
15 jumping around, waving his arms. He kept going closer.
16 What was the next thing he saw? He saw this man laying
17 halfway under the bleachers.

18 And he saw that other man, Raymond Clement, yelling
19 for help, just hysterical, couldn't even believe what he
20 saw. And then he got right up, right up there, right at the
21 scene, still going toward the action, still going to help,
22 and he saw that Solomon Chisolm was gunned down and was
23 dead. He saw he had multiple gunshots wounds. And he also
24 saw that same man right there, the only person who bothered
25 to stick around to help someone, the only person who

1 bothered to wait for police, for EMS, for any assistance for
2 another human being who was shot. He saw Raymond Clement
3 there crying, shaking his head in disbelief, not believing
4 what he just witnessed.

5 You also heard from Officer Insley. Officer Insley
6 talked about how he was also working in the area, this
7 specialized Community Action Team that was devised by the
8 city police department to try to help the East Side
9 community, to try to get to know the individuals who are
10 there. You heard from Officer Insley. He heard those shots
11 fired. He was, again, a few blocks away. He was going
12 toward the action. He was going to try to help.

13 He heard over the radio that there was dispatch
14 out, that all these people were scattered from the park.
15 And, specifically, Officer Gamble saw three guys exit the
16 gate -- it's an open area, it's called a gate -- exit the
17 gate right here (indicating) and start taking off and
18 heading down Columbus. Officer Insley acted fast. He went
19 over there.

20 He went over there. And who did he see? He saw
21 three guys. He saw Waukeen Madison. He saw Lavar Anderson.
22 And he saw Dominique Montgomery. Went up to them because
23 they were seen leaving the scene. And what's he got in
24 place? Well, my Lord, there's some playing cards right by
25 Lavar Anderson's feet. Some playing cards.

1 So it didn't stop there. He ended up talking to
2 those fellows, and he ended up helping get those guys down
3 to police headquarters over on Lockwood for interviewing.
4 They were potentially witnesses. So they went for further
5 investigation.

6 You heard from Mike Sherman, retired from the the
7 city. I think this may have been the last case that he had
8 worked beforehand -- before retiring. And you heard from
9 Mike Sherman. He explained that he was a supervisor for
10 crime scene, that a team of individuals worked under him.
11 We didn't bring every single one of those people. We just
12 brought you Mike Sherman. He directed those individuals to
13 make a video of the scene, to make photographs of the scene.

14 All of this stuff y'all will have back with you in
15 the jury deliberation room and you can look at everything.
16 You can look at the pictures that they took that night. You
17 can look at the pictures that they took the next day to make
18 sure that they saw everything they needed to see. You can
19 take all this stuff back there with you. All of this is in
20 evidence.

21 He also talked about other items that were
22 collected on the scene. They mark items. You see some of
23 the markers in this picture, as part of what a crime scene
24 does. He doesn't know what's important or what's not, so
25 there's a lot of random stuff that they mark. But he -- he

1 did it, he marked everything for collection. They collected
2 shell casings. They collected a bullet. They collected
3 everything they could that may or may not help in this case.
4 And, again, you will have all of this back there with you.
5 They collected everything they could that may be involved in
6 this case. And they sent some things out for further
7 testing, because not everything can be done at the city.

8 Some of the things that can't be done at the city
9 that Mike Sherman testified to, some fingerprints. Lavar
10 Anderson's fingerprints on the bleachers, exactly where Ray
11 told you they were going to be.

12 So other things that he talked about, aside from
13 just the bleachers, is that shell casings were collected.
14 Those were sent to SLED. There was a diagram that Mike
15 Sherman made. And you'll see this diagram shows exactly
16 what I mean by "they don't know what they're looking for,
17 they're just looking for evidence." You'll see in the key
18 on the side, there's a bottle. There is a cigarette filter.
19 There's paper bag. There's the hair extension. There's all
20 sorts of stuff. I mean, they just picked it up, and you
21 will have this. And I will ask you to go back there and you
22 look. And you know, FCC, this is a fired cartridge. And
23 you look at all these things. You look at all this stuff
24 when it's back there.

25 Another thing that he did mention that they did was

1 bullet trajectory. That's not something you need SLED to
2 do. That's something that you have someone that's been in
3 crime scene for years do. And they can only do that when
4 there's bullets. You've heard five of those were left in
5 Solomon, but one wasn't. Not the best shot. One wasn't
6 left in him, and one was found on the scene. And you can
7 see the direction right on top. You can see the bullet went
8 straight down, straight through the bleachers. You see
9 right there just underneath the Number 1 spot, the Number 1
10 marker up here -- right here, (indicating), this is the
11 bullet hole that that trajectory arrived through. I don't
12 know distances very well, but not too far, right on top.

13 You heard from Detective Osborne who has been
14 sitting here. He was assigned as lead detective in this
15 case. And he was assigned as lead detective, and he
16 explained to you all the different steps that law
17 enforcement does and that he in particular did in this case.
18 He attempted to interview people. He interviewed some
19 people, tried to locate witnesses. Some search warrants
20 were conducted that you heard about, a photo lineup you
21 heard about.

22 He told you how that night the call went out at
23 6:38 p.m. about this. That night he was doing all that
24 investigation and he developed a suspect the same night. He
25 got an arrest warrant for him. He went to a judge,

1 explained to the judge, the judge signed off, got the arrest
2 warrant.

3 The next morning, in order to effect the arrest in
4 the safest way possible, Detective Osborne gathered the
5 intelligence units, Field Intelligence Unit, FIU the City
6 police calls them, SWAT team. They kind of devised a plan
7 to let's try to take him into custody.

8 And Detective Osborne testified that, you know, in
9 their system, two addresses popped up. Surveillance was
10 done starting at 8 a.m. Warrant was -- arrest warrant was
11 signed the night before. 8 a.m. surveillance teams are out
12 there. And ultimately, the defendant was arrested at [REDACTED]
13 America Street.

14 Based upon the defendant being arrested at [REDACTED]
15 America Street, Detective Osborne thought, we need to do a
16 search warrant. We need to try to find anything we can to
17 continue the investigation, because it did not end at the
18 arrest. He kept going. He was trying to do everything he
19 could.

20 You heard from Mike Sherman, who was the one who
21 was there during the search warrant, and also Detective
22 Osborne, items that were found during the search warrant.
23 And the items that were found -- there was a black T-shirt
24 that was found, and there was some photographs that were
25 taken during the search warrant.

1 The black T-shirt and the photographs were all in
2 the bedroom. Again, these are more pictures that you will
3 have back here. Here's the exterior of the house. Here's
4 the bedroom, bright, striped comforter, all of this. Here's
5 this. You see in the corner, same comforter, same room, the
6 box with a marker. Earlier we talked about how markers are
7 used when taking -- for evidence.

8 Again, this is a closer-up version of this. They
9 don't touch when they're taking these pictures. And again,
10 what else was found there? In this -- looks like the same
11 comforter. In here you can see -- it's pretty darn faded,
12 but you can see Tyrel Collins. His paperwork, shirt, same
13 bedroom in [REDACTED] America Street.

14 The investigation didn't stop. The defendant was
15 arrested. Osborne wanted more. So at that point, he
16 started just checking around with other officers. And
17 that's when he learned that 11 minutes before the shooting,
18 11 minutes -- I'm sure I'm going to be rambling at you for
19 more than 11 minutes. Eleven minutes before the shooting,
20 Officer Davidson saw this defendant, who he recognized
21 because he also is on the community action team, he also saw
22 him on America Street, exiting Mall Park, crossing America
23 Street.

24 When we got up here the other day, Officer Davidson
25 was explaining that his car was parked here facing this

1 direction near the Trident Tech parking lot, I think he said
2 a third of a block away, I believe, he saw exit, cross the
3 street. And you know, Officer Davidson also said that the
4 defendant -- solid black T-shirt, once again.

5 So Detective Osborne was following up with some of
6 the evidence that had been collected in this case. And you
7 heard from two individuals from SLED. And those individuals
8 -- granted, I'm not a science person, so take their words
9 over mine. The first person you heard from was Suzanne
10 Cromer. She discussed how there were six bullets from the
11 incident that night and five shell casings. I mean, I could
12 do the math. They didn't find all the shell casings, so we
13 know they didn't find one. Who knows how many others they
14 didn't find, but the six bullets, the five that hit Solomon
15 Chisolm and the one that went straight down, just missed
16 him, all came from the same gun. They all had the
17 9-millimeter ammunition. They were all 9-millimeters. Then
18 you also heard that she then compared the shell casings, the
19 fired cartridges. And she said that those -- she compared
20 five of those, all five of those, same weapon. All five of
21 those, same ammunition as the bullets.

22 You heard from Ila Simmons, who also is retired.
23 And you heard her talk about gunshot residue and particles
24 and the elements that are required, and that it's a number
25 of elements that must fuse together in order for it to be

1 determined as gunshot residue, but in this case, she did not
2 find any fused particles, fused elements to where it would
3 be determined as gunshot residue. However, she found them;
4 they just hadn't fused or they did fuse and were no longer.
5 Again, she is the expert with that, I'm deferring to her.
6 But she did talk to you about the particles, the barium,
7 antimony, lead, aluminum. All those items she said were
8 consistent with gunshot residue. Those particles found on
9 the black T-shirt, the black T-shirt from the bedroom with
10 the paperwork where the defendant's name was. You know
11 what, and particles were also found on Solomon Chisolm.

12 Detective Osborne then followed up and got all the
13 autopsy reports. You heard from Dr. Batalis. You can see
14 State's Exhibit 14, 15, and 16 when you're back there. You
15 know, he did this diagram and you see the X-rays. And he
16 explained to you where bullets entered, where they stayed,
17 kind of the direction they went. That's shown on the
18 diagram. And I believe he also demonstrated it in court.
19 And he also told you, and you can sift through all of this,
20 that, you know, two were on the left side in the back. I'm
21 playing cards, somebody comes around this way, two were on
22 the left side in the back. One of those could have caused
23 paralysis, as he said, lodged in his spine, could cause your
24 legs to be paralyzed. And then, shot, shot, final.

25 Now, I say it's final. He doesn't know the order;

1 I don't know the order. You know, look at the pictures.

2 Look at the diagrams. And that's up to you.

3 So Osborne is still investigating, still
4 investigating. He talked with Dominique Montgomery. And
5 you heard some testimony about some pictures Dominique had
6 on his phone. I believe the defense entered three photos,
7 Dominique taking selfies with some guns. I believe
8 Detective Osborne said there were over 50 photos on there, a
9 lot of children, at least one of this defendant. I would
10 submit to you that that doesn't really show anything.

11 You also heard Dominique Montgomery himself.
12 That's his brother. He loves his brother. He wants things
13 to work out for his brother. He said that, yeah, those
14 pictures were his. Yeah, yeah, he had guns. Oh, yeah, he
15 had guns. But, I mean, he didn't have any within months
16 before this. No, no. And he never fired any of them, and
17 he never cleaned any of them, and he did laundry fairly
18 regularly.

19 And, you know, he was asked about what's going on.
20 And this is a 4X shirt. He talked about how he's 5'5", his
21 two other brothers are 5'6", 5'7" and his last brother is
22 six-foot tall. He even told you he buys 2X. That's 4X.

23 So he hadn't had a gun in months, did laundry
24 recently, doesn't purchase a size 4X for himself. At the
25 end of the day, that's on you to judge his credibility and

1 if you believe him or not. When it comes to what he saw, or
2 didn't see rather, that night, you will see in a
3 photograph -- I believe this is the same photograph -- it
4 is -- that Mr. Voigt used when he spoke with Dominique. And
5 on this photograph you see the bleachers. Let me point them
6 out. The bleachers where all this happened is right here.
7 (Indicating). And he said he was shooting a three-pointer
8 to this basket. He said his back to the bleachers, getting
9 ready -- I don't play basketball. His back is to the
10 bleachers. His back was to the shooter. His back was to
11 all the people who were there. So he didn't see the shooter
12 because his back was to them. But he can tell you who was
13 or was not there to have seen something.

14 And then he told you that when the shooting
15 happened, he didn't turn around. Heck, no; he was getting
16 the hell out of Dodge. He ran straight-forward toward the
17 basketball hoop out the gate. Getting away, trying to get
18 to safety, because there's a shooter on the loose.

19 You know, Detective Osborne also interviewed
20 Britney Washington. You heard from her today. I would ask
21 that you judge her demeanor. I don't know what -- you know,
22 the noises or head-rubbing, face-covering gestures she was
23 making, I don't know what that means. It may mean
24 something; it may not. But I ask that you look at her
25 demeanor.

1 Ultimately, she said that the guy had a shirt over
2 his face. Now, I'm not going to totally do this, this is
3 not over your face. (Indicating). This is what Raymond
4 Clement did. That's not over your face. She even said that
5 -- I mean, she could see a little bit of his eyes. But,
6 then again, she didn't see the shooter, because she didn't
7 see the shooter because she saw parts, you know. Take it
8 for what it is. This is the East Side.

9 Then after the defendant was already arrested,
10 Detective Osborne, he was searching for some more. He
11 wanted more. He wanted to be thorough. He interviewed
12 Raymond Clement and he collected some evidence from him. He
13 collected, as you saw earlier and you will have back there
14 with you, a pair of jeans, bullet hole through them. Took a
15 picture. I myself have never been grazed by a bullet. I
16 don't know what it looks like. I don't know what it feels
17 like. But Osborne, with his training and experience,
18 thought it was important to take a photo and to collect
19 those jeans.

20 You know, a lot of the people from the State's
21 witness list that you heard read off in the beginning were
22 not here, were not presented to you. But remember who was
23 here. Only one eyewitness for the State testified. Only
24 one person was brave enough and willing to go against the
25 East Side. Only one person, who you heard was threatened by

1 numerous people, came to court?

2 And what did you hear about or from Ray? You heard
3 he was from the East Side. I believe his mama lives on
4 Drake and his grandmama lives on Aiken. He pointed out
5 those streets on this map of where they are. All right
6 there. You heard that back on October the 27th, he had
7 worked that day at Water's Edge. He got off of work. He
8 was going to hang out, see some friends, relax for a little
9 bit. He got there. He hung out on the, like, wooden
10 benches, I guess I would call it, in Mall Park.

11 After he did that for awhile, he decided to play
12 some basketball on this court that you see that Dominique
13 Montgomery referred to. After he played some basketball, he
14 ended up seeing his brother, seeing his brother, Sol. Sol
15 came on the park; hey, what's up? Hey, let's play some
16 cards. So, Sol comes on the park. They decide to play some
17 cards.

18 Ray told you who was playing cards, Lavar, Britney,
19 Sol, Brett. He told you where everyone was sitting. He
20 told you how it was they were all playing. And then Ray
21 bowed out, for whatever reason. And he told you how Lavar
22 was sitting up here, Britney was over here, Sol was over
23 here, and Ray was next to Sol. Ray was next to Sol facing
24 the basketball courts. Sol was sitting next to him with his
25 back to him, kind of leaning on him like a brother, you lean

1 on a brother. You trust your brother. You rely on your
2 brother.

3 So he explained where everyone was. He also
4 explained that then around the corner he saw the defendant.
5 He saw the defendant come from around the corner from this
6 gate, around the corner, gun outstretched, shooting,
7 shooting, shooting. Everybody ran for safety. It was too
8 late for Sol, but everyone ran for safety. He told you that
9 he saw the defendant.

10 He gave the police from day one a description
11 during his interview as six-foot tall, slim build, brown
12 skin, wearing a black T-shirt. He did a lineup. And y'all
13 will have this back there with you. You can see his
14 scribbly-scrabble signature. You can see who he circled,
15 and that he signed it again.

16 How did he know it was him? How did he recognize
17 him? Because he knew him. He knew him and he saw him. He
18 was a few feet away. He was a few feet away firing bullets
19 at his brother.

20 Ray ran for cover. You heard, he said he ran from
21 the park house on the bleachers. He ran right from the park
22 house trying to get some safety. He was right at the gate,
23 right at the gate on America Street. Do I go on America
24 Street? Do I stay here? What do I do? He looks around to
25 make sure the coast is clear. Who does he see? Who does he

1 see right there, right on the corner? He sees this
2 defendant no longer -- no longer with the shirt up. Shirt
3 is down, yeah, nodding, shaking his head, proud, bragging of
4 that execution. Nothing obstructing the view; nothing
5 obstructing the view.

6 THE COURT: Time to start winding up.

7 MS. LINDER: If you look at everything that's in a
8 crime scene, it backs up what Ray says. The defense
9 mentions how Ray should not be trusted. I will submit he
10 was extremely forthright with you; yes, he has a pending
11 charge. You heard from him and the prosecutor on that case
12 that the charge was a tragic accident that is in the process
13 of being dismissed. Yes, he has cooperated with law
14 enforcement in the past. He has cooperated with federal law
15 enforcement, local law enforcement on numerous cases that
16 resulted in convictions. Law enforcement chose to work with
17 him.

18 Yes, he gave a few statements. And he explained
19 the essence of that, that he was scared, didn't want to be
20 involved. Was that warranted? You heard that he was
21 getting threats. You heard that the defendant, his family
22 and his friends, were threatening him. You heard on those
23 jail calls just part of the threats: Yeah, you need to go
24 to the library, you need to get that done. You heard how
25 Ray was picked up by the defendant's mother and brother,

1 brought to the library, stood over as he wrote this
2 statement

3 As he wrote this statement -- you know, I ask that
4 you do look at this when you're back there. It doesn't say
5 he doesn't see who did it. It doesn't say he identified the
6 wrong guy. It says it was hard to identify him. I submit
7 that was true. But when you recognize someone because
8 you've known him since 2006, it's a little less hard.

9 So, Ray came in here. He came in here against
10 adversity. He came in here to be brave. He came in here
11 because that was his brother. He came in here to tell the
12 East Side that that is enough. Enough to the street
13 justice, enough to Tyrel Collins who cowardly walked up,
14 shot Solomon in the back without saying a word, fired again
15 and again. Enough. Enough. It's time that we all say
16 enough.

17 I would ask that you go back there and you come
18 back with a verdict of guilty, guilty that Tyrel Collins
19 killed and murdered Solomon Chisolm, and guilty that Tyrel
20 Collins possessed a weapon during the commission of that
21 violent crime.

22 Thank you.

23

24

25

1 JURY CHARGE

2 THE COURT: All right, folks. We are now to the
3 final part of the trial we will have before you retire to
4 consider your verdict. This is where I charge you on the
5 law that applies to the facts as you find them. You will
6 recall under the oath that you took at the beginning of the
7 trial, you promised that you will make your decision based
8 on the facts as you heard them in this courtroom. You also
9 took as part of your oath that you will apply the law as I
10 now charge it to you. And this is the law you must apply
11 whether or not you believe it is the correct law or wish it
12 was the law, but it is the law that you are duty bound under
13 your oath to apply.

14 Now, I want to remind you, I had certain duties to
15 adhere to during the trial. And I told you that it was my
16 responsibility to preside over the trial and to rule on
17 admissibility of evidence, those sorts of things. You are
18 only to consider the evidence that you heard before you in
19 this courtroom. You are only to consider testimony that has
20 been presented from the witness stand, any exhibits that
21 were made part of the record and any stipulations of
22 counsel. And, again, it is my duty to charge you on the law
23 that is applicable to this case. You are only -- you are
24 under your oath to have a duty to accept and apply the law
25 as I now state it to you.

1 If you think that this -- if you have any idea of
2 what the law is or, again, what you think it ought to be,
3 and it does not agree with what I tell you the law is, you
4 must forget that, because you are sworn under your oath to
5 accept the law as I now charge you, and apply it exactly as
6 I state it to you.

7 You, on the other hand, are the judges of the
8 facts. You are the sole judges of the facts and you
9 determine how much weight to give the testimony of
10 witnesses. You decide how much credibility a particular
11 witness is to be given. You can judge such things as
12 whether or not a witness has a bias, a prejudice or an
13 interest in the outcome of this case. You can judge such
14 things as appearance and demeanor on the witness stand and
15 the reasonableness of a witness's statement.

16 You are not bound to decide this case based on the
17 number of witnesses that a side produces. You can believe
18 one witness over many or many over one. You can accept all
19 of a witness's statement or you can reject it entirely. You
20 can accept part of a witness's testimony and reject part of
21 it. And if you reject part of it, you can still accept the
22 remainder of a witness's testimony.

23 I talked to you about expert witnesses during the
24 trial. And I told you that ordinarily, we don't let people
25 come in to give us their opinion about evidence. We make an

1 exception for expert witnesses. And I told you during the
2 trial that those are experts because they have certain
3 education or specialized training or experience in some
4 field. We allow them to give their opinions and state the
5 reasons for their opinions. You alone decide how much
6 weight to give an expert's testimony. And you can give it
7 as little or as much weight as you think it deserves.

8 If you don't think it is based on sufficient
9 education or experience or you conclude that the expert's
10 opinions are not sound or outweighed by other evidence, you
11 may disregard the opinion entirely. You are not compelled
12 to blindly accept an expert's opinion. You have the right
13 to consider an expert's testimony in light of all of the
14 circumstances and give it such weight, if any, that you
15 think it is entitled to.

16 Now, I want to remind you again, that the fact that
17 the defendant was arrested, charged, and indicted in this
18 case is not evidence in this case, and it cannot be
19 considered by you as evidence of guilt, nor does it create
20 any presumption or inference of guilt. The indictments,
21 again, are simply formal written notices which contain the
22 charges made against the defendant. It is the formal
23 document by which this case is brought into this court.

24 Now, I told you at the beginning of the trial, the
25 defendant pled not guilty to these indictments and that,

1 therefore, that plea of not guilty casts a burden on the
2 State to prove the defendant is guilty beyond a reasonable
3 doubt. A person who is charged with committing a criminal
4 offense in South Carolina is never required to prove his
5 innocence. This is an important rule of law in this
6 country, that the defendant in a criminal trial is always
7 presumed to be innocent of the crime for which he is
8 indicted unless, and until, his guilt has been proven by
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 This presumption of evidence is not a mere legal
12 theory. This is not just a legal phrase. This is a
13 substantial constitutional right to which every defendant is
14 entitled. This presumption of innocence accompanies the
15 defendant from the time he is charged throughout the trial
16 and until you reach a verdict of guilty based upon evidence
17 satisfying you of that guilt beyond a reasonable doubt.

18 I will also charge you, and I want to instruct and
19 emphasize to you that the fact that the defendant did not
20 testify is not a factor to be considered by you in any way
21 in your deliberation and your consideration on the question
22 of guilt or innocence of the defendant. It must not be
23 considered by you in any manner whatsoever.

24 A defendant has a constitutional right to remain
25 silent. And the assertion of this right must not be

1 considered by you in your deliberations. I repeat, under
2 your oath, you are to draw no conclusion whatsoever from the
3 fact that the defendant in this case did not testify. The
4 fact that this defendant did not testify should not even be
5 discussed in the jury room. The burden of proof, as I
6 stated to you, is on the State. The defendant is not
7 required to prove his innocence. The burden of proof
8 remains on the State to prove guilt beyond a reasonable
9 doubt.

10 So, let's talk about reasonable doubt. The State
11 has a burden of proving guilt beyond a reasonable doubt. I
12 spoke to you at the beginning of the trial and said maybe
13 some of you served as jurors in a civil case where you were
14 told that it is only necessary to prove a fact -- or prove
15 that a fact is more likely true than not true. Well, that's
16 also known as a greater weight or preponderance of the
17 evidence.

18 In criminal cases, the State's proof must be more
19 powerful than that. It must be beyond a reasonable doubt.
20 Proof beyond a reasonable doubt is proof that leaves you
21 firmly convinced of the defendant's guilt. There are very
22 few things in this world that we know with absolute
23 certainty. And in criminal cases, the law does not require
24 proof that overcomes every possible doubt. If, based on
25 your consideration of the evidence, you are firmly convinced

1 that the defendant is guilty of the crime charged, then you
2 must find the defendant guilty.

3 If, on the other hand, you think there is a real
4 possibility that the defendant is not guilty, then you must
5 give the defendant the benefit of the doubt and find him not
6 guilty.

7 Now, there are, generally speaking, two types of
8 evidence that are presented during a trial. There is direct
9 evidence and there is circumstantial evidence. Direct
10 evidence directly proves the existence of a fact and does
11 not require deduction. Circumstantial evidence is proof of
12 a chain of facts and circumstances indicating the existence
13 of a fact. Crimes may be proven by circumstantial evidence.
14 The law makes no distinction between the weight or value to
15 be given to either direct or circumstantial evidence;
16 however, to the extent that the State relies on
17 circumstantial evidence, all of the circumstances must be
18 consistent with each other, and when taken together, point
19 conclusively to the guilt of the accused beyond a reasonable
20 doubt.

21 If these circumstances merely portray the
22 defendant's behavior as suspicious, the proof has failed.
23 The State has the burden of proving the defendant guilty
24 beyond a reasonable doubt. And, again, this burden rests
25 with the State regardless of whether or not the State relies

1 on direct, circumstantial evidence, or some combination of
2 the two.

3 Again, you alone have the right or the ability to
4 determine the credibility of witnesses who have testified in
5 this case. Credibility simply means believability. And it
6 is your duty as jurors to analyze and to evaluate the
7 evidence, then determine what evidence convinces you it's
8 true.

9 In determining the believability of witnesses who
10 testified in this case, again, I told you you could believe
11 one witness over several or several over one. You may
12 believe part of the testimony of a witness and reject the
13 remaining part of the testimony of that same witness.
14 Again, you can believe the testimony of a witness of its
15 entirety or reject the testimony of a witness in its
16 entirety. And you can consider whether any witness has
17 exhibited to you any interest, bias, prejudice, or other
18 motive in this case. You can also consider such things as
19 appearance and demeanor and manner of a witness while on the
20 witness stand.

21 Now, there are two charges in this case. And the
22 first charge I'm going to go over with you is for murder.
23 The State, again, must prove beyond a reasonable doubt that
24 the defendant killed another person with malice
25 aforethought. Malice is hatred, ill will, or hostility

1 towards another person. It is the intentional doing of a
2 wrongful act without just cause or excuse and with an intent
3 to inflict an injury, or under circumstances that the law
4 will infer, an evil intent.

5 Malice aforethought does not require that malice
6 exist for any particular time before the act is committed,
7 but malice must exist in the mind of the defendant just
8 before and at the time of the act that is committed.
9 Therefore, there must be a combination of the previous evil
10 intent and the act.

11 Malice aforethought may be expressed or inferred.
12 The terms expressed and inferred does not mean different
13 kinds of malice, but merely means the manner in which malice
14 may be shown to exist, that is, either by direct evidence or
15 by inference from the facts and circumstances which are
16 proved.

17 Express malice is shown when a person speaks words
18 which express hatred or ill will for another or when a
19 person prepared beforehand to do the act which was later
20 accomplished.

21 For example, lying in wait for a person or any
22 other acts of preparation going to show that the deed was
23 within the defendant's mind, would be expressed malice.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Inferred malice may also arise

1 when the deed is done with a deadly weapon.

2 A deadly weapon is any article, instrument, or
3 substance which is likely to cause death or great bodily
4 harm. Whether any instrument has been used as a deadly
5 weapon depends on the facts and circumstances of each case.

6 The following are examples of instruments which may
7 be deadly weapons: A pistol, a shotgun, a rifle, a dirk, a
8 dagger, a knife, a slingshot, metal knuckles, a razor,
9 gasoline, a fire bomb, a molotov cocktail, lighter fluid. A
10 gun may be a deadly weapon even if it is not operating.
11 That was the charge -- or the elements of the crime of
12 murder.

13 The other charge for which the defendant is on
14 trial is the charge of possession of a firearm during a
15 violent crime. In order to prove this crime, the State must
16 prove beyond a reasonable doubt that the defendant was in
17 possession of a firearm, or visibly displayed what appeared
18 to be a firearm during the commission of a crime.

19 A firearm means: Any machine gun, automatic rifle,
20 revolver, pistol, or any weapon which is designed to or may
21 be readily converted to expel a projectile.

22 In order to find the defendant guilty of a weapon
23 during the commission of a violent crime, you must first
24 find the defendant guilty of either committing a violent
25 crime or attempting to commit a violent crime. And I charge

1 you that murder is considered a violent crime. The State
2 must prove beyond a reasonable doubt that the weapon further
3 advanced or helped in the commission of the crime.

4 I also charge you that in determining guilt or
5 innocence of the defendant, you cannot consider any possible
6 penalty for any particular crime. The matter of punishment
7 is for me alone to determine, and should never be considered
8 by you in any way whatsoever in arriving at a fair and
9 impartial verdict as to the guilt or innocence of the
10 defendant.

11 Finally, folks, your verdict must be unanimous; in
12 other words, all 12 of you must agree. In just a moment
13 we'll -- when we send you back, we'll separate out the
14 alternates, and only the 12 primary jurors will be allowed
15 to deliberate.

16 Now, Mr. Foreman, I told you I'm going to send
17 these indictments back with you. Again, these two pieces of
18 paper are the only two pieces of paper that are going back
19 with you that are not to be considered by you as evidence.
20 These are simply the indictments which charged him or told
21 him what crimes he is charged with.

22 You will see on the back of this there is this
23 column over here to the left. And at the very bottom of
24 that column is the word, verdict. On that, underneath that
25 word verdict, there are several lines. You simply write

1 what the jury's verdict is. And the two possible verdicts
2 for each of these charges are either guilty or not guilty.
3 After you have written one of those two, sign it and date
4 it. Then go to the second one, do the same thing; write the
5 verdict, sign it, date it.

6 Once you have reached a verdict on both of them,
7 then you let the bailiff know that you have reached a
8 verdict.

9 I'm going to send you back to the jury room in just
10 a second to begin your deliberations. Do not begin your
11 deliberations just yet. I have to give the lawyers, first
12 of all, an opportunity to say if I misspoke something. It
13 happens sometimes. It's a formality we go through. We also
14 get the evidence together and send it back with the bailiff.
15 When I send the evidence back with the bailiff, along with
16 the two indictments, they will tell you, the judge says you
17 can begin your deliberations at that time. But don't begin
18 your deliberations until we send the evidence back and the
19 bailiff gives you the word. Okay? See you back in a few
20 minutes.

21 (Whereupon, the jury leaves open court at 04:14
22 p.m.)

23 THE COURT: All right. Anything from the State?

24 MS. LINDER: Nothing from the State, Judge.

25 THE COURT: Anything from the defense?

1 MR. KING: No, Your Honor.

2 THE COURT: Could y'all double-check here real
3 quick and make sure we've got everything in that's going in
4 and nothing in there that's not supposed to be there.

5 (Whereupon, the jury begins deliberations at 4:20
6 p.m.)

7 THE COURT: Let the record reflect the defendant is
8 in the courtroom. They want to hear the tapes of the
9 conversation between Clement and Collins from -- it says
10 prison, which I take to mean jail. And the tapes are
11 introduced as State's evidence. I don't know which ones. I
12 will ask them when they come in, but queue up the machine
13 and we'll play back whatever sections they want to hear out
14 of that. There were several of them.

15 MS. LINDER: There were a total of five phone
16 calls, but only one phone call had Ray with the defendant.
17 And isn't that the one they said they wanted?

18 THE COURT: It says: The one between Clement and
19 Collins.

20 MS. LINDER: Yes, there's only one phone call. And
21 it's a total of about three and a half minutes of recording.

22 THE COURT: Okay.

23 MS. LINDER: I'm ready, Judge.

24 THE COURT: All right. Bring the jury in.

25 (Whereupon, the jury returns to open court at 05:25

1 p.m.)

2 THE COURT: All right. Folks, you've asked to hear
3 the telephone conversation that was taped between
4 Mr. Clement and Mr. Collins. And so we have that queued up
5 for you to listen to right now. So, Ms. Linder, when you're
6 ready.

7 (Video Playing.)

8 MS. LINDER: Judge, that's the end of the call.

9 THE COURT: All right. Was there anything else
10 that you wanted to hear? Did you need to hear it again?

11 THE FOREPERSON: One more time, Your Honor.

12 THE COURT: One more time.

13 (Video Playing.)

14 THE COURT: All right. Is that it? Okay. Go
15 back and continue deliberating. Thank you.

16 (Whereupon, the jury leaves open court at 05:34
17 p.m.)

18 (Court's Exh. 1, Jury note requesting video to be
19 played, was marked for identification.)

20 (Court's Exh. 2, Jury note asking for reasonable
21 doubt charge, was marked for identification.)

22 THE COURT: All right. They want to listen to that
23 tape again. Let the record reflect the defendant is in the
24 courtroom. Bring them back in.

25 (Whereupon, the jury returns to open court at 9:00

1 PM.)

2 THE COURT: All right. Folks, I understand you
3 want to listen to the recording again. This is the same one
4 that you listened to a little bit ago; is that right?

5 A JUROR: Yes, sir.

6 THE COURT: You got it queued up?

7 MS. LINDER: I do, Judge.

8 (Video Playing.)

9 THE COURT: Is that enough?

10 THE FOREPERSON: Yes, Your Honor.

11 THE COURT: What's that?

12 THE FOREPERSON: Yes, Your Honor.

13 THE COURT: All right. Go back and resume your
14 deliberations then. Thank you.

15 (Whereupon, the jury leaves open court at 9:03
16 p.m.)

17 THE COURT: Okay. They have sent a note back
18 indicating that they are hung and would like some guidance.
19 So I will bring them back in and talk to them for just a
20 minute.

21 Let the record reflect the defendant is in the
22 courtroom.

23 (Whereupon, the jury returns to open court at 09:49
24 p.m.)

25 THE COURT: All right. Welcome back, folks. Thank

1 you so much for your patience and your hard work. You sent
2 a note indicating that you're locked. You have voted a
3 number of times and you would like a little bit of guidance.
4 Well, here's what I can tell you. I can't really tell you
5 how to do your job or what the outcome should be. You've
6 been at it now for, I don't know, five, six hours.

7 Obviously, this is a difficult case. You have done
8 a tremendous job. And I'm going to tell you this is what
9 will happen if y'all can't come to a decision, and then I
10 will let you decide how you would like to proceed. If you
11 cannot come to a decision, cannot come to a unanimous
12 verdict, I will have to declare a mistrial. And then we
13 will come back on another week with another jury. They will
14 basically hear the same evidence that you folks have heard
15 and they will hear the same law that I charged, and then
16 they will try to come up with a verdict.

17 I've got no reason to believe that we are going to
18 get any better six -- or better twelve people than we've got
19 right now. You come from a wide cross-section of folks.
20 And there will probably be substantially the same things
21 that you've heard; same things that caused you problems will
22 cause them problems, and they will either work it out or
23 they won't.

24 So I say that to say there's no reason for me to
25 expect I'm going to get a "better jury" or a "worse jury".

1 I'm going to get a jury like you folks who will sit and
2 listen, which you clearly did, and are working hard to
3 arrive at a verdict. I'm not going to make you stay all
4 night long and try to come up with a verdict.

5 What I would like to ask you to do is this. Go
6 back and talk for a few minutes amongst yourselves and
7 listen to what the people that are not on your side have to
8 say. Keep an open mind. If you're in the minority, listen
9 to what the majority have to say. If you are in the
10 majority, listen to what the minority has to say. If you
11 take another vote and decide you still can't come up with a
12 verdict, we will live with that.

13 If you would like, on the other hand, to come back
14 tomorrow and work on it, we can do that. We can break for
15 the evening. It is entirely up to you. I will leave that
16 to your choice.

17 If you think your positions are locked in and won't
18 change, well, I'm not going to ask you to do an impossible
19 task. I would just ask that you go back and talk over for a
20 few minutes the options that I have just explained to you.
21 If you want to continue to deliberate, we'll stay here as
22 long as you want. If you want to break and come back
23 tomorrow morning, we will break and come back tomorrow
24 morning. If you come back and tell me, Judge, we've done
25 the best we can and we are locked and we don't think it will

1 do any good to go any further, then you come back and tell
2 me that, and we'll do it. Okay?

3 So just go back and talk for a little bit more.

4 Let me know what your decision is, and take all the time you
5 need.

6 (Whereupon, the jury leaves open court at 09:53
7 PM.)

8 THE COURT: Okay. All right. Let the record
9 reflect the defendant is in the courtroom. They've
10 indicated they want to come back and continue tomorrow. So
11 bring them back in.

12 (Court's Exh. 3, Request to hear CD again, was
13 marked for identification.)

14 (Court's Exhibit 4, Jury request to recess until
15 next day, was marked for identification.)

16 (Whereupon, the jury returns to open court at 10:15
17 PM.)

18 THE COURT: All right. Mr. Foreman, you sent me a
19 note back stating y'all would like to recess for the evening
20 and return tomorrow and resume your deliberations tomorrow
21 morning; is that correct?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: Excellent. All right. Well, I
24 appreciate that. And I appreciate y'all going back and
25 discussing that in the room to continue on. I'll discharge

1 you for the evening. Is 9:30 too early or would you all
2 prefer 10:00?

3 A JUROR: Ten o'clock.

4 THE COURT: All right. Ten o'clock, sleep in,
5 yeah. All right. Now, cease your deliberations. Don't
6 talk to anybody about this, including other jurors. Please
7 don't call anyone. Please don't look at today's newspaper
8 or watch the news tonight. There haven't been many TV
9 cameras, but sometimes they pick up newspaper stories and
10 run them basically. So please just avoid the news media
11 tonight and tomorrow. There will be plenty of time to read
12 whatever is in the news after the trial is over with.

13 If anyone approaches you to discuss this case,
14 would you please report that to me immediately tomorrow?
15 Thank you so much for your patience today. If you would,
16 when you come in in the morning, go straight to the jury
17 room. But don't begin your deliberations until everybody is
18 back. Once everybody is back, they'll let me know, and then
19 I will tell you you can begin your deliberations. Please
20 don't begin until everybody is back and I give the okay.

21 Thank you very much for your patience. We will see
22 you in the morning at 10:00.

23 (Whereupon, the jury leaves open court at 10:16
24 p.m.)

25 THE COURT: Okay. Folks, we will see y'all

1 Anybody have a problem with that?

2 All right. Bring the jury in.

3 (Whereupon, the jury returns to open court at 2:33
4 p.m.)

5 THE COURT: All right. Mr. Foreman, I'm informed
6 that your jury has reached a verdict; is that correct?

7 THE FOREPERSON: We have, Your Honor.

8 THE COURT: Hand it to the bailiff, please. Thank
9 you.

10 All right. Defendant did rise.

11 On Indictment 2004-GS-10-5449; State vs. Tyrel
12 Rashone Collins, indictment for murder, verdict is guilty.
13 Signed and dated by the Foreman of the jury.

14 Indictment 2012-GS-10-5452, indictment for
15 possession of a firearm during the commission of a violent
16 crime, verdict is guilty. Signed and dated by the Foreman.

17 You may be seated.

18 Now, folks, again, if you don't think you can be
19 quiet, you need to get up and leave. We will have the clerk
20 poll the jury. Go ahead.

21 THE CLERK: Ladies and gentlemen, what I'm going to
22 do is I'm going to call your juror number. Whenever I call
23 your juror number, if you could please raise your hand to
24 identify yourself. I'm going to ask you two questions, and
25 respond to each question appropriately, please.

1 THE DEFENDANT: No, sir.

2

3 SENTENCE

4 THE COURT: Well, Mr. Collins, this whole case
5 seems to be about people wanting to live outside of the law.
6 They all seem to have a belief in that part of the community
7 that you live in, that you run it by your own set of rules.
8 There's one thing that we cannot tolerate in this country,
9 is people thinking that they live above the law.

10 The other thing we cannot tolerate is terrorizing
11 people. And it is clear that y'all have a - amongst your
12 peer group - some sort of belief that you live above the
13 law, and that the way you enforce your code is through acts
14 of terror on other people. And I do not use that word
15 lightly. But it is, without a doubt, fear, intimidation,
16 and terrorism that you folks are imposing, and you are
17 clearly involved in it.

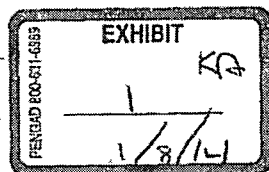
18 And by your actions in this case, you have, in my
19 opinion, forfeited your right to walk amongst this community
20 again.

21 The sentence of the Court is life without parole.
22 Because of that, there is no need to sentence you on the
23 commission of a possession of a firearm charge. Good luck.

24 (Court's Exh. 5, Court note regarding deadline,
25 was marked for identification.)

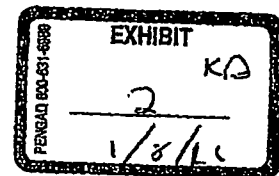
We request the tapes
and for the transcript of
the conversation between
Mr. Clement & Mr. Collins
from prison; the tapes were
introduced as State's evidence.

Blaine Doby
my foreman



Can we get the book/
judge's definition of
beyond reasonable doubt
as read in the courtroom?

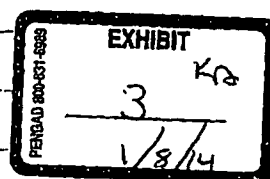
Henry Foreman

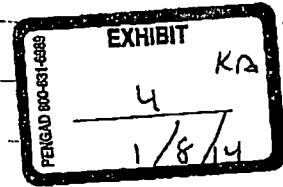


The jury would like to
hear the tape again.

This is the second call.

Minidj foreman





We, the jury, request
a recess until tomorrow
(January 9th) to reconvene
and continue deliberation.

We made points, listened to
each other as suggested, and
still do not remain unanimous
either way. We are not ready
to declare either way.

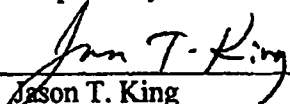
For the Foreman

FILED

STATE OF SOUTH CAROLINA PH 3: 03 IN THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON JUDGE: J. ARMSTRONG FOR THE NINTH JUDICIAL CIRCUIT
 CLERK OF COURT Case Nos: 2012-GS-10-05449; 2012-GS-10-05452
 BY MH Warrant Nos: M614495; M614496
 Charge(s): Murder; Possession of Firearm During
 Violent Crime
 STATE OF SOUTH CAROLINA)
 vs.)
 TYREL COLLINS)
 Defendant)
 MOTION TO DISMISS - DOUBLE JEOPARDY

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the
 undersigned attorney, will move before the Presiding Judge of the Court of General
 Sessions at the Charleston County Judicial Center, 100 Broad Street, Charleston, South
 Carolina, as soon as the matter may be heard for an Order dismissing the charges against
 the Defendant based on the Double Jeopardy clauses of the United States and South
 Carolina Constitutions. Defendant's case was called for trial the week of September 9,
 2013. During the Defendant's opening statement, the State made a motion for a mistrial.
 The Defense believes the mistrial was improvidently granted and not dictated by manifest
 necessity. State v. Prince, 279 S.C. 30 (1983).

Respectfully Submitted,


 Jason T. King
 Assistant Public Defender
 Attorney for Defendant

Charleston, South Carolina

Dated: 1-3-14

STATE OF SOUTH CAROLINA

2014 JUN 15 PM 4:31

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

TYREL COLLINS

Defendant

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Case Nos: 2012-GS-10-05449; 2012-GS-10-05452

) Warrant Nos: M614495; M614496

) Charge(s): Murder; Possession of Firearm During
Violent CrimeMOTION FOR RECONSIDERATION OF
SENTENCE

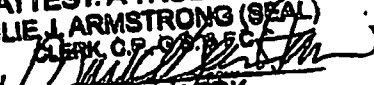
FEB 04 2014

SC Court of Appeals

PLEASE TAKE NOTICE that the above-captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentence imposed upon the defendant by the Honorable Roger Young on January 9, 2014 in the above-styled matter.

On January 9, 2014 the Defendant was found guilty of the charges of Murder and Possession of a Firearm During the Commission of a Violent Crime. The Defendant was sentenced to Life Without Parole. After receiving the verdict of guilty, prior to sentencing, the Defendant's family left the courtroom. The Defendant and his family were distraught after hearing the verdict of guilty. The Defendant at the time did not want his family present to spare them the grief of witnessing the imposition of a severe sentence. As a result of this, the Defendant's family was not present to speak on the Defendant's behalf regarding sentencing.

There was also much negative publicity surrounding the trial due to the notorious reputation of the victim and the arrest of the Defendant's brother for Intimidation of a

ATTEST: A TRUE COPY
JULIE L ARMSTRONG (SEAL)
CLERK C.P. OF S.C.
By 
DEPUTY CLERK

Witness during the trial. The case was mentioned in two front-page newspaper articles during the trial and also a front-page article the day after sentencing.

The Defendant respectfully requests a hearing at a time when the media is not saturated with negative publicity regarding the Defendant and, now that Defendant's family has had time to come to terms with the guilty verdict, an opportunity for the family to speak on his behalf regarding reconsideration of the sentence of Life Without Parole.

FILED
2014 JAN 16 11:14 AM
CLERK OF COURT
BY

Charleston, South Carolina

Dated: 1-16-14

Respectfully Submitted,

Jason T. King

Jason T. King
Assistant Public Defender
Attorney for Defendant

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. 8-101
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) Warrant Nos: M614495; M614496

BY 

-versus-

**Response to Defendant's Motion to
Reconsider Sentence**

TYREL COLLINS,

Defendant.

COMES NOW the State, by and through Stephanie Linder, Assistant Solicitor of the Ninth Judicial Circuit in the above-captioned matter with notice to the Defendant, respectfully moves before this Court to deny the Defendant's Motion to Reconsider Sentence for the reasons stated below.

In this case, the jury found the Defendant guilty of the charges of **Murder and Possession of a Firearm During the Commission of a Violent Crime** on January 9th, 2013. Following the conviction, the judge sentenced the Defendant to life without parole. In considering the motion, the Court should keep in mind the nature of the crime for which Defendant was convicted and the Defendant's lengthy record. On October 27, 2011, the Defendant approached the Victim from behind, while he was playing cards in Mall Park, pulled out a handgun and fatally shot Victim in broad daylight. The victim's wounds were twice in the back, once in the lower stomach, once in the right side area of the neck and once in the forehead for a total of five times. This was an execution. This Defendant acted as if he lives outside the law. The jury told the Defendant he does not. The imposed sentence tells the Defendant he does not. For the foregoing reasons, the State respectfully moves the court to deny the Defendant's motion to reconsider

ATTEST: A TRUE COPY
JULIE ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

sentence. The State believes that the sentence imposed is appropriate considering the violent crime committed by the Defendant.

2017 JUL 17 10 41 AM
CLERK
BY _____

Respectfully submitted,

Stephanie B. Linder

Stephanie B. Linder
Assistant Solicitor
Ninth Judicial Circuit

Charleston, South Carolina
Dated: _____

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & EG
By *[Signature]*
DEPUTY CLERK

IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2014 JAN 24 PM 11:32

STATE OF SOUTH CAROLINA

vs.

TYREL RASHONE COLLINS,

Defendant.

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

Indictment Numbers: 2012-GS-10-5449;
2012-GS-10-5452

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF SENTENCE**

RECEIVED

FEB 04 2014

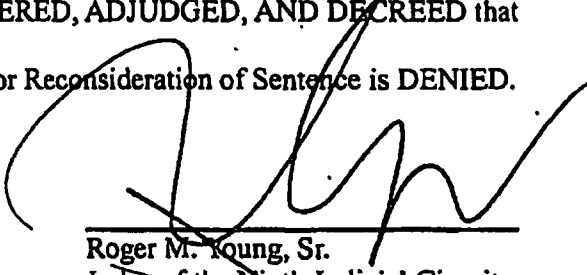
SC Court of Appeals

The Defendant through counsel, Jason King, filed a Motion to Reconsider this Court's previous sentence of life without parole imposed upon the Defendant, Tyrel Rashone Collins, on January 9, 2014.

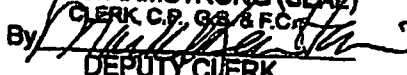
This matter originally came before this Court as a jury trial that was held from January 6, 2014 – January 9, 2014. On January 16, 2014, Defendant submitted a Motion for Reconsideration of Sentence. I have thoroughly considered Defendant's motion and supporting material, and based on same deny Defendant's Motion to Reconsider.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Tyrel Rashone Collins's Motion for Reconsideration of Sentence is DENIED.

IT IS SO ORDERED!


Roger M. Young, Sr.
Judge of the Ninth Judicial Circuit

January 23, 2014
Charleston, SC

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P., G.S. & F.C.
By 
DEPUTY CLERK

SLB20111007393

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1117606

ARREST WARRANT NUMBER

DATE OF ARREST

9, 2011

GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

January 2014

DOCKET NO. 2012GS1005449

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2012

THE STATE

vs.

TYREL RASHONE COLLINS

DOB: [REDACTED]

B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

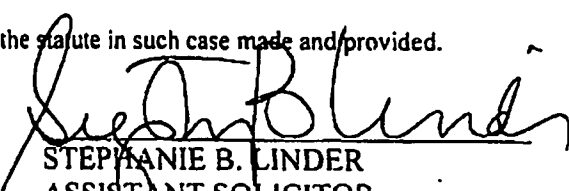
INDICTMENT

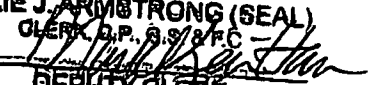
At a Court of General Sessions, convened on September 10, 2012 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about October 27, 2011, with malice aforethought, TYREL RASHONE COLLINS did kill and murder [REDACTED] by means of multiple gunshot wounds, and that [REDACTED] did die in Charleston County as a proximate result thereof on October 27, 2011; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 STEPHANIE B. LINDER
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., S.C. & C.
 By 
 DEPUTY CLERK

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2012GS1005449

A/W#: M614495

Date of Offense: 10/27/2011

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

AKA.

Race Sex: Age. 33

DOB. [REDACTED] SS# [REDACTED]

Address: [REDACTED]

City, State, Zip: 0 [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO. Murder

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST
Stephanie B. Linder 72656
Linder, Stephanie B. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life without Parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Proh)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

S paid to Public Defender Fund :

Other: _____

Clerk of Court/ Deputy Clerk

Court Reporter. Karen Andersen

SCCA/217 (03/2011)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C. J. G. P. C.
By [Signature]
DEPUTY CLERK

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

SLB20111007393

383

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1117606

ARREST WARRANT NUMBER

DATE OF ARREST

09, 2011

GRAND JURY

Foreperson of Grand Jury

Date:

SEP 11 2011

VERDICT

GUILTY

Foreperson of Petit Jury

INDICT

Date:

January 2014

DOCKET NO. 2012GS1005452

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2012

THE STATE

vs.

TYREL RASHONE COLLINS

DOB: [REDACTED]

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

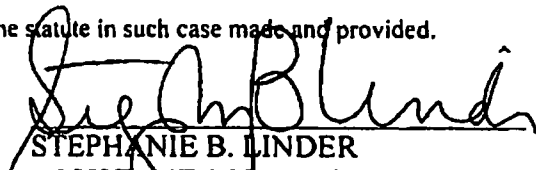
INDICTMENT

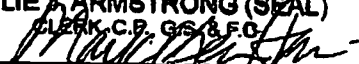
At a Court of General Sessions, convened on September 10, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about October 27, 2011, the Defendant, TYREL RASHONE COLLINS, did possess a handgun or visibly display what appeared to be a knife during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.O.
By 
DEPUTY CLERK

COUNTY OF Charleston
 STATE VS.
Tyrel Rashone Collins

AKA:

Race: [REDACTED] Sex: [REDACTED] Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Possession of a Firearm or Knife During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 72656
 Clerk, Stephanie B. SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5%) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test). \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ _____
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Sentencing on this not imposed
b/c Defendant received LWOP
on March 16-23-490

☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (03/2011)

ATTEST: A TRUE COPY

JAMES A. ARMSTRONG, SEAC

CLERK OF COURT

By [Signature] DEPUTY CLERK

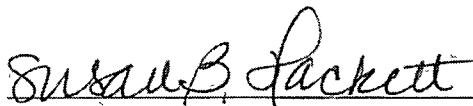
Presiding Judge

Judge Code: 2134Sentence Date: 1/9/14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 4th, 2015



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 4th, 2015


Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED
MAY 05 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

 ORIGINAL

RECEIVED
MAY 05 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

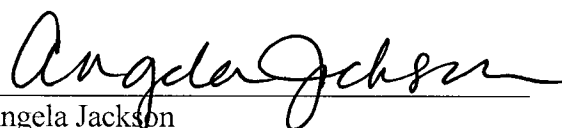
V.

TYREL R. COLLINS,

APPELLANT

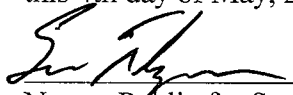
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of May, 2015



Angela Jackson
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of May, 2015

 (L S)

Notary Public for South Carolina
My Commission Expires October 30, 2022