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STATE OF SOUTH CAROLINA

ANDERS

In The Court of Appeals **No Respondent's Brief Filed**

APPEAL FROM NEWBERRY COUNTY

Donald B. Hocker, Circuit Court Judge

MAY 19 2015

NO DEFENDANT'S BRIEF

THE STATE,

RESPONDENT,

V.

CARLOS DEMONT REEDER

APPELLANT

APPELLATE CASE NO. 2014-000990

RECORD ON APPEAL

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State of South Carolina,
Plaintiff,
vs.
Carlos Demont Reeder,
Defendant.

April 21 - 24 2014
Newberry, South Carolina

B e f o r e:

The Honorable Donald B. Hocker, Judge; and a jury

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1 TRIAL DAY 1 - 04/21/14

2 (Whereupon, the proceedings were commenced at 10:58 a.m.)

3 THE COURT: Hi. How you doing? We understand that
4 you may have had a conversation with a Quentin Graham, who
5 might be a potential witness in this case just a little
6 while ago outside. Did you talk with a Quentin Graham?

7 POTENTIAL JUROR: Yeah. He was saying something he

8 ---

9 THE COURT: You need to speak up.

10 POTENTIAL JUROR: He was saying something about he
11 waiting on his lawyer or something.

12 THE COURT: Okay. Is that all that was said?

13 POTENTIAL JUROR: Yeah. I told him I was fixing to
14 go.

15 THE COURT: Okay.

16 POTENTIAL JUROR: I got to go in.

17 THE COURT: Okay.

18 POTENTIAL JUROR: And he say they got him down on some
19 bullshit.

20 THE COURT: Okay.

21 POTENTIAL JUROR: But the people or whatever -- I'm
22 kin to the people over there -- the -- the people over, I'm
23 kin to them.

24 THE COURT: You are?

25 POTENTIAL JUROR: Yeah.

1 THE COURT: Okay. All right. The fact that you're
2 kin to them, that -- would that prevent you from being fair
3 and impartial?

4 POTENTIAL JUROR: Probably would.

5 THE COURT: Okay. All right.

6 POTENTIAL JUROR: I know the -- what happened.

7 THE COURT: Okay. We're going to go ahead and excuse
8 this gentleman. Just have a seat back ---

9 POTENTIAL JUROR: Uh-huh.

10 THE COURT: --- where you were, okay? Because you may
11 -- you're going need to receive further instructions about
12 any other cases, okay?

13 POTENTIAL JUROR: Okay.

14 THE COURT: Thank you.

15 (Off the record from 11:00 a.m. until 11:03 a.m.)

16 THE COURT: Ladies and gentlemen of the jury panel, we
17 are going to begin the trial of the case -- we'll probably
18 actually start it tomorrow. But we're going go ahead and
19 pick our -- our trial jury today in the case of *State of*
20 *South Carolina v. Carlos Demont Reeder*. Mr. Reeder, would
21 ---

22 (Whereupon, Mr. Verner and the defendant conferred.)

23 THE COURT: --- you please stand with your attorney?

24 THE DEFENDANT: (Complied.)

25 THE COURT: Ladies and gentlemen of the jury panel --

1 you can be seated.

2 THE DEFENDANT: (Complied.)

3 THE COURT: Mr. Reeder has been indicted under two
4 indictments, each charging him with the crime of attempted
5 murder. And I'll explain to you, ladies and gentlemen of
6 the jury panel -- and you'll hear this again from me as we
7 go through the proceedings -- the indictments are not
8 evidence of guilt or innocence of the defendant.

9 The sole purpose for an indictment, it is the charging
10 document that gets the case to where we are today at the
11 trial stage. That's the sole purpose for an indictment.
12 It is the charging paper, the charging document, the
13 charging mechanism to get it to where we are today at the
14 trial stage.

15 So you will not -- if you're selected on this trial
16 jury, you will not give the indictments any other
17 significance or importance, other than what I've just
18 stated they -- they serve to be.

19 And I'm going to publish the indictments just so that
20 you might have a little bit better idea as far as those
21 involved in this case. Under the indictment 13-GS-36-470,
22 it states that: Carlos Demont Reeder, in Newberry County,
23 on or about October 6th, 2012, willfully and unlawfully,
24 with the intent to kill and with malice aforethought,
25 attempted to kill Vickie Davis, in violation of Section 16-

1 3-29, Code of Laws for South Carolina.

2 The other indictment is 13-GS-36-466. And it states
3 that: Carlos Demont Reeder, in Newberry County, on or
4 about October 6th, 2012, willfully and unlawfully, with the
5 intent to kill and with malice aforethought, attempted to
6 kill Dawayne Davis, in violation of Section 16-3-29, Code
7 of Laws for South Carolina.

8 Is any member of the jury panel related by blood or
9 marriage to either the defendant or the alleged victims in
10 this case? If so, please stand.

11 (Whereupon, one potential juror stood.)

12 THE COURT: You -- you don't need to. We've already
13 dealt with you, sir. But ---

14 POTENTIAL JUROR: Oh. Oh.

15 THE COURT: --- thank you anyways. Thank you anyways
16 sir.

17 And let me go ahead and state now: If there's any
18 question that I ask that you want to come down and speak
19 with me privately, this time it will be done in the
20 presence of the court reporter. And I will give you that
21 opportunity at that time.

22 Does anyone have a close, personal or social
23 relationship with either the defendant or the two alleged
24 victims in this case? If so, please stand.

25 (Whereupon, no potential juror stood.)

1 THE COURT: Now, I'm going to publish to you a list of
2 possible or potential witnesses in this case. And these
3 names are as follows: Deborica Adams, Dawayne Davis,
4 Vickie Davis, Quentin Graham, Ayesha Vance, Reginald Nance,
5 David Caldwell, Terrence Ryan Matthews -- you don't need to
6 stand -- Terrence Ryan Matthews with the Newberry P.D.,
7 Andy Rowe with the Newberry P.D., Allison Moore with the
8 Newberry P.D., Joseph Jay Brogdon with the Newberry P.D.,
9 Richard Mercer with the Newberry P.D., and Vickie Hunter.

10 Is anyone related by blood or marriage or ever have
11 been to any of the -- those individuals I've just listed;
12 or does anyone have a close, personal or social
13 relationship with any of those individuals? If that
14 applies to you, please stand.

15 (Whereupon, one potential juror stood.)

16 THE COURT: Yes, sir. Your number and your name?

17 POTENTIAL JUROR: 20, Isaac Brooks. I've worked on
18 occasion with David Caldwell.

19 THE COURT: You work on occasion with David Caldwell?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: The fact that you work on occasion with
22 David Caldwell, would that prevent you from being fair and
23 impartial to both the state and the defense in this case?

24 POTENTIAL JUROR: No, sir. No, sir.

25 THE COURT: All right. And your number and name, sir?

1 POTENTIAL JUROR: Isaac Brooks, Juror 20.

2 THE COURT: Thank you, sir. You can have a seat.

3 POTENTIAL JUROR: (Complied.)

4 THE COURT: Now, I'm going to allow at this time the
5 lawyers on both sides to introduce themselves and anyone
6 with them that they would like to introduce. Solicitor?

7 MR. SCOTT: Thank you, Your Honor. I'm Dale Scott.
8 I'm the deputy solicitor of the eighth circuit. Eighth
9 circuit's comprised of Newberry, Abbeville, Laurens, and
10 Greenwood Counties.

11 With me, assisting me is Taylor Daniel, an assistant
12 solicitor. Our job is to prosecute crimes in which the
13 state has alleged somebody has run afoul of the laws of
14 South Carolina. So if you're picked on this jury, you'll
15 be hearing more from us over the next couple days. Thank
16 you.

17 THE COURT: Mr. Verner?

18 MR. VERNER: My name is Charles Verner. I'm an
19 attorney. I'm from here in Newberry. I practice with my
20 father across the street on Boyce and College Street. Mr.
21 Reeder is my client. Again, I'm on College and Boyce
22 Street, kind of next to the Cabana.

23 THE COURT: Okay. Thank you very much. Any member of
24 the jury panel ever been represented by any of the
25 attorneys involved in this case or any of their law firms?

1 (Whereupon, no potential juror stood.)

2 THE COURT: Has anyone on the jury panel ever been
3 related by blood or marriage or have a close, personal or
4 social relationship with any of the attorneys involved in
5 this case or anyone in their respective offices? If so,
6 please stand.

7 (Whereupon, no potential juror stood.)

8 THE COURT: Has any member of the jury panel formed or
9 expressed any opinion about any issue or matter involved in
10 this case? If so, please stand.

11 (Whereupon, no potential juror stood.)

12 THE COURT: Is any member of the jury panel aware of
13 any bias or prejudice towards either the state or the
14 defendant in this case?

15 (Whereupon, no potential juror stood.)

16 THE COURT: I don't believe this applies, but I'm
17 going to ask it anyways. Is there any member of the jury
18 panel that was a member of the grand jury which issued the
19 two indictments in this case? If so, please stand.

20 (Whereupon, no potential juror stood.)

21 THE COURT: Is there any member of the jury panel who
22 is a member of, contributor to any group which has as its
23 primary concern the promotion of law enforcement or
24 victims' rights? These groups would include, but not
25 limited to, MADD, SADD, or Citizens Against Violent Crime?

1 If that applies to you, please stand.

2 (Whereupon, no potential juror stood.)

3 THE COURT: Does any member of the jury panel know of
4 any reason whatsoever why he or she should not serve as a
5 juror in this case, with particular emphasis being placed
6 on your ability to be fair and impartial to both the state
7 and the defense?

8 (Whereupon, no potential juror stood.)

9 THE COURT: Does the state have any additional voir
10 dire questions?

11 MR. SCOTT: None from the state, Your Honor.

12 THE COURT: Does the defense have any additional voir
13 dire questions?

14 MR. VERNER: No, Your Honor.

15 THE COURT: Okay. Now, if there's any particular
16 matter that you want to talk with me about -- and I'm going
17 to ask that you form a line with the assistance of the
18 bailiffs and we'll do it on the side here in the presence
19 of the court reporter. Please stand and -- and form a line
20 if -- if that applies to you.

21 (Whereupon, no potential juror stood.)

22 THE COURT: Okay. Seeing ---

23 (Whereupon, one potential juror stood.)

24 THE COURT: Oh, I've got one.

25 (Whereupon, the potential juror came forward.)

1 THE COURT: Yes, ma'am. Your number and your name?

2 POTENTIAL JUROR: 89, Candice Lominick.

3 THE COURT: Ms. Lominick, what would you like to tell
4 me?

5 POTENTIAL JUROR: I taught him. He was a student.

6 THE COURT: You taught him? Okay. The fact that he
7 was a student in your class, would that prevent you from
8 being fair and impartial to both the state and the defense?

9 POTENTIAL JUROR: No.

10 THE COURT: Thank you very much. Okay.

11 All right. Any exceptions to the voir dire conducted
12 by the Court? State?

13 MR. SCOTT: No, Your Honor.

14 THE COURT: Defense?

15 MR. VERNER: No, Your Honor.

16 THE COURT: Thank you very much.

17 All right. Now, ladies and gentlemen of the jury
18 panel, what will happen, the clerk will call out a name.
19 You will ask to come to the front, turn around, facing out
20 that way, and both sides will make a determination whether
21 or not they want you to sit on this trial jury.

22 Now, if you're not selected -- if you hear the words
23 "excuse this juror" or "strike this juror" or words to that
24 effect and you're not selected, please -- please don't take
25 any personal offense to not being selected. Don't -- don't

1 take it personally. That's -- there's no indication that
2 you would not be qualified to -- to sit on this trial jury.

3 Both sides have certain reasons why they want someone
4 or do not want someone to sit on their trial jury in this
5 particular case. So don't take it personally. Don't take
6 offense to it. Some of you may be glad that you're not
7 selected. Some of you may be disappointed. But there's
8 just a method that each side has in -- in picking jurors to
9 sit on a particular trial.

10 So we'll just -- we'll be a few minutes. And when the
11 list is compiled, your names will be called and we will
12 begin this process.

13 (Off the record briefly.)

14 THE COURT: And if you are accepted, then we want you
15 to start filling up -- I think there's ten seats per row.
16 So we'll have people in both rows, but just start this
17 first one here and work your way down. When that row's
18 filled up, then we'll start on that row there. Okay?

19 Madam clerk?

20 CLERK OF COURT: Number 141, Betty Suber.

21 (Whereupon, the potential juror came forward.)

22 CLERK OF COURT: What says the state?

23 MR. SCOTT: Please present the juror.

24 CLERK OF COURT: The defense?

25 MR. VERNER: Are they turning towards the Court or

1 away from the Court, Your Honor?

2 POTENTIAL JUROR: Away from the Court or ---

3 THE COURT: Well, probably you need to get a little
4 closer and then face out that way so both sides can -- can
5 see your smiling face.

6 POTENTIAL JUROR: (Complied.)

7 MR. VERNER: Please present the juror. Please seat
8 the juror.

9 CLERK OF COURT: Have a seat ---

10 MR. VERNER: And, Your Honor ---

11 CLERK OF COURT: --- on the ---

12 MR. VERNER: --- I ---

13 CLERK OF COURT: --- front row, please, ma'am.

14 MR. VERNER: Yeah. I don't want to disrupt it, Judge.

15 But for me it might be easier if they just stopped ---

16 THE COURT: Okay.

17 MR. VERNER: --- right at the edge ---

18 THE COURT: That'd be ---

19 MR. VERNER: --- and then ---

20 THE COURT: --- better? Okay. All right.

21 MR. VERNER: Probably ---

22 THE COURT: Just have a ---

23 MR. VERNER: --- far end, ma'am.

24 THE COURT: Okay. All right. So what's been
25 requested is if you will just come down about even with the

1 front row there, facing this way, and -- and both sides
2 maybe can take a -- get a little bit better view. Okay?

3 (Whereupon, the potential juror was seated on the
4 jury.)

5 CLERK OF COURT: 84, Jennifer Lindler.

6 (Whereupon, the potential juror came forward.)

7 CLERK OF COURT: What says the state?

8 MR. SCOTT: Please present the juror?

9 POTENTIAL JUROR: This way?

10 CLERK OF COURT: Hold on ---

11 THE COURT: And wait ---

12 CLERK OF COURT: --- just a minute.

13 THE COURT: Both sides get an opportunity to ---

14 POTENTIAL JUROR: Okay.

15 MR. VERNER: Have a seat, please.

16 CLERK OF COURT: Have a seat, please.

17 (Whereupon, the potential juror was seated on the
18 jury.)

19 CLERK OF COURT: 18, Carol Bridgham.

20 (Whereupon, the potential juror came forward.)

21 CLERK OF COURT: What says the state?

22 MR. SCOTT: Please present the juror.

23 CLERK OF COURT: The defense?

24 MR. VERNER: Please seat Ms. Bridgham.

25 CLERK OF COURT: Have a seat, please.

1 (Whereupon, the potential juror was seated on the
2 jury.)

3 CLERK OF COURT: 76, Turner Kyzer.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. SCOTT: Please present the juror.

7 CLERK OF COURT: The defense?

8 MR. VERNER: 76?

9 CLERK OF COURT: Yes, sir.

10 MR. VERNER: Have a seat, Mr. Kyzer.

11 (Whereupon, the potential juror was seated on the
12 jury.)

13 CLERK OF COURT: 148, Linda Tribble.

14 (Whereupon, the potential juror came forward.)

15 CLERK OF COURT: What says the state?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: Defense?

18 MR. VERNER: Please seat Ms. Tribble.

19 CLERK OF COURT: Have a seat, please, ma'am.

20 (Whereupon, the potential juror was seated on the
21 jury.)

22 CLERK OF COURT: 20, Isaac Brooks.

23 (Whereupon, the potential juror came forward.)

24 CLERK OF COURT: What says the state?

25 MR. SCOTT: Please excuse Mr. Brooks.

1 CLERK OF COURT: You're excused, Mr. Brooks. You may
2 have a seat.

3 (Whereupon, the potential juror returned to the jury
4 panel.)

5 CLERK OF COURT: 29, Barbara Cole.

6 (Whereupon, the potential juror came forward.)

7 CLERK OF COURT: What says the state?

8 MR. SCOTT: Please present the juror.

9 CLERK OF COURT: Defense?

10 MR. VERNER: From this case I'm going excuse you, Mrs.
11 Cole.

12 CLERK OF COURT: You may have a seat.

13 (Whereupon, the potential juror returned to the jury
14 panel.)

15 CLERK OF COURT: 111, Johnathan Ortega.

16 (Whereupon, the potential juror came forward.)

17 CLERK OF COURT: What says the state?

18 MR. SCOTT: Please excuse the juror.

19 CLERK OF COURT: You're excused, Mr. Ortega.

20 (Whereupon, the potential juror returned to the jury
21 panel.)

22 CLERK OF COURT: 101, Kandy Minick.

23 (Whereupon, the potential juror came forward.)

24 CLERK OF COURT: What says the state?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: The defense?

2 MR. VERNER: Please seat Ms. Minick.

3 CLERK OF COURT: Have a seat, please.

4 (Whereupon, the potential juror was seated on the
5 jury.)

6 CLERK OF COURT: 41, Jennifer Dowd Nichols.

7 (Whereupon, the potential juror came forward.)

8 CLERK OF COURT: What says the state?

9 MR. SCOTT: Please excuse the juror.

10 CLERK OF COURT: You're excused, Ms. Nichols.

11 (Whereupon, the potential juror returned to the jury
12 panel.)

13 CLERK OF COURT: 79, Darlene Layton.

14 (Whereupon, the potential juror came forward.)

15 CLERK OF COURT: What says the state?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: The defense?

18 MR. VERNER: Please seat Ms. Layton.

19 CLERK OF COURT: Have a seat, please.

20 (Whereupon, the potential juror was seated on the
21 jury.)

22 CLERK OF COURT: 4, James Neel Andrews.

23 (Whereupon, the potential juror came forward.)

24 CLERK OF COURT: What says the state?

25 MR. SCOTT: Please present the juror.

1 CLERK OF COURT: The defense?

2 MR. VERNER: From this case today, I'm going excuse
3 you, Mr. Andrews.

4 CLERK OF COURT: You're excused.

5 (Whereupon, the potential juror returned to the jury
6 panel.)

7 CLERK OF COURT: 110, Kelsey Odom.

8 (Whereupon, the potential juror came forward.)

9 CLERK OF COURT: What says the state?

10 MR. SCOTT: Please present the juror.

11 CLERK OF COURT: The defense?

12 MR. VERNER: Please have a seat, Ms. Odom.

13 CLERK OF COURT: Have a seat, please.

14 (Whereupon, the potential juror was seated on the
15 jury.)

16 CLERK OF COURT: 53, Debra Gray.

17 (Whereupon, the potential juror came forward.)

18 MR. VERNER: 53, Ms. Clerk?

19 CLERK OF COURT: 53. Uh-huh. What says the state?

20 MR. SCOTT: Please present the juror.

21 CLERK OF COURT: The defense?

22 MR. VERNER: Please seat Ms. Gray.

23 CLERK OF COURT: Have a seat, please.

24 (Whereupon, the potential juror was seated on the
25 jury.)

1 CLERK OF COURT: 52, Kevin Bruce Graham.

2 (Whereupon, the potential juror came forward.)

3 CLERK OF COURT: What says the state?

4 MR. SCOTT: Please present the juror.

5 CLERK OF COURT: The defense?

6 MR. VERNER: Please seat Mr. Graham.

7 CLERK OF COURT: Have a seat, please.

8 (Whereupon, the potential juror was seated on the
9 jury.)

10 CLERK OF COURT: 151, Wade Bennette Waites.

11 (Whereupon, the potential juror came forward.)

12 MR. VERNER: I apologize. I didn't hear the juror's
13 number.

14 CLERK OF COURT: 151. What says the state?

15 MR. SCOTT: Please excuse the juror.

16 CLERK OF COURT: You're excused, Mr. Waites.

17 (Whereupon, the potential juror returned to the jury
18 panel.)

19 CLERK OF COURT: 46, Wanda Fields.

20 (Whereupon, the potential juror came forward.)

21 CLERK OF COURT: What says the state?

22 MR. SCOTT: Please present the juror.

23 CLERK OF COURT: The defense?

24 MR. VERNER: Please seat Ms. Fields.

25 CLERK OF COURT: Have a seat, please.

1 (Whereupon, the potential juror was seated on the
2 jury.)

3 CLERK OF COURT: 8, Kathleen Bassett.

4 (Whereupon, the potential juror came forward.)

5 CLERK OF COURT: What says the state?

6 MR. SCOTT: Please present the juror.

7 CLERK OF COURT: The defense?

8 MR. VERNER: From this case today, I'm going excuse
9 you.

10 CLERK OF COURT: You're excused.

11 (Whereupon, the potential juror returned to the jury
12 panel.)

13 CLERK OF COURT: 126, James Albert Sanders.

14 (Whereupon, the potential juror came forward.)

15 CLERK OF COURT: What says the state?

16 MR. SCOTT: Please excuse Ms. Sanders from this trial.

17 CLERK OF COURT: You're excused, Mr. Sanders.

18 (Whereupon, the potential juror returned to the jury
19 panel.)

20 CLERK OF COURT: 31, Tammy Cooper.

21 (Whereupon, the potential juror came forward.)

22 CLERK OF COURT: Any challenge for cause by the state?

23 MR. SCOTT: Please present Ms. Cooper.

24 CLERK OF COURT: The defense?

25 MR. VERNER: Please seat Ms. Cooper.

1 CLERK OF COURT: Have a seat, please.

2 THE COURT: Okay. One alternate, gentlemen?

3 CLERK OF COURT: 161, Jennie Yon.

4 MR. VERNER: Yes, sir. Just consistently, I -- I
5 don't know if the strikes will be one and one with the
6 Court's earlier ruling.

7 THE COURT: Two and ---

8 MR. VERNER: Two and ---

9 THE COURT: --- one.

10 MR. VERNER: --- one?

11 THE COURT: Two ---

12 MR. VERNER: Okay.

13 THE COURT: --- one.

14 CLERK OF COURT: Jennie Yon.

15 (Whereupon, the potential juror came forward.)

16 CLERK OF COURT: What says the state?

17 MR. SCOTT: Please present the alternate.

18 CLERK OF COURT: The defense?

19 MR. VERNER: I'm going excuse Ms. Yon from the jury.

20 CLERK OF COURT: You're excused.

21 (Whereupon, the potential juror returned to the jury
22 panel.)

23 CLERK OF COURT: 78, Laura Lathrop.

24 (Whereupon, the potential juror came forward.)

25 CLERK OF COURT: What says the state?

1 MR. SCOTT: Please excuse Ms. Lathrop.

2 CLERK OF COURT: You're excused, Ms. Lathrop.

3 (Whereupon, the potential juror returned to the jury
4 panel.)

5 CLERK OF COURT: 83, Daniel Lindler.

6 (Whereupon, the potential juror came forward.)

7 CLERK OF COURT: Challenge for cause by the state?

8 MR. SCOTT: Please present Mr. Lindler.

9 CLERK OF COURT: The defense?

10 MR. VERNER: Please seat Mr. Lindler.

11 CLERK OF COURT: Have a seat, please.

12 (Whereupon, the potential juror was seated on the
13 jury.)

14 THE COURT: All right. Any exceptions or objections
15 to jury selection on behalf of the state?

16 MR. SCOTT: Nothing from the state, Your Honor.

17 THE COURT: And the defense?

18 MR. VERNER: Your Honor, with the exception of the
19 preselection ---

20 THE COURT: Right. Which we'll ---

21 MR. VERNER: --- ruling ---

22 THE COURT: --- get on the record. Sure.

23 MR. VERNER: --- I'm satisfied ---

24 THE COURT: Okay.

25 MR. VERNER: --- with selection ---

1 THE COURT: Okay.

2 MR. VERNER: --- process.

3 THE COURT: Okay. Thank you very much. All right.
4 Ladies and gentlemen of the remaining jury panel, you will
5 now be excused at this time. You have been provided, I
6 assume, madam clerk, a number to call or will ---

7 CLERK OF COURT: They have -- each one of you should
8 have a card that you were given when you came in. And on
9 that back card is a number. It's to the clerk of court's
10 office. And if you -- when you call back, just let the --
11 let it go through the prompts and it will prompt you to --
12 I think it's No. 9 -- to jury -- to jury instructions.

13 THE COURT: And we want you to call back sometime
14 after six o'clock this evening. And what that will do,
15 that will give you instructions of whether or not to report
16 back tomorrow or to call back at another time. So it's --
17 it's very, very important that you do call back so you can
18 get your instructions.

19 So as to the remaining jury panel, you're excused.
20 It's good seeing everybody this morning. I hope you have a
21 great remainder of the day.

22 (Whereupon, the unselected jury panel exited the
23 courtroom at 11:27 a.m.)

24 (Off the record from 11:27 a.m. until 11:29 a.m.)

25 THE COURT: All right. Ladies and gentlemen of the --

1 of -- of the jury, congratulations. I think I would have
2 to say that both the state and the defense did an excellent
3 job in picking the -- the trial jury.

4 We're not going to start until in the morning. What
5 that means is that you will be free in just a minute to --
6 to -- to leave the courthouse. And we're going to start
7 back at 9:30.

8 What I'm going to ask the bailiffs to do is to escort
9 you to the room that you will need to report to in the
10 morning. Now, understanding we -- this -- all this is kind
11 of makeshift because of the courthouse with the problems
12 that are going on over there. And so our accommodations
13 may not be as nice as we otherwise would have for you. But
14 we'll do with what we have to work with. And -- and
15 certainly, that does not lessen in any way the extreme
16 importance of this -- of this case.

17 So what I'm going to instruct you to do is -- and
18 you're going to hear this from me repeatedly throughout the
19 trial of this case -- don't start discussing amongst
20 yourselves -- even though you really don't know much about
21 it, other than just what I have read to you in the
22 indictments. But still, don't start discussing among
23 yourselves anything about this case. And especially when
24 you get home, family and -- and friends, don't discuss
25 anything about the case. You know, you can certainly tell

1 them that you have been selected on a jury, but leave it at
2 that.

3 It's real important that you keep your jury tags on.
4 I don't know how good those tags, as far as pulling them
5 off one article of clothing and putting them on another.
6 I'm not real familiar with that. If it turns to where you
7 -- you -- you need another one, we can certainly get you
8 another one. But it's real important that you keep those
9 on during the day when you get to the courthouse and, of
10 course, during the -- the trial and -- and when you leave.

11 When you break for lunch, if you go out to, you know,
12 a restaurant to eat, it's just important that you keep that
13 on, not that you're trying to stand out in any way. But,
14 you know, people that are involved in the case may not
15 recognize you, you know, automatically that you're on the
16 jury and may mention something about the case or whatever.
17 And we just don't want that to happen. So it's real
18 important that you keep those -- those tags on.

19 So I'm going to ask the bailiffs to -- to escort you
20 to your jury room, just so you can kind of get acclimated
21 to where you will need to report to and where you will
22 spend some time in. And then you'll be free to go.

23 And please be prompt -- 9:30 in the morning.
24 Promptness is so important because if you don't allow your
25 -- yourself enough time to get here, 9:30 rolls around --

1 the Court's ready to start; the lawyers are ready to start;
2 and we're missing a juror -- so that creates some problems
3 for us. So please allow yourself enough time to do
4 whatever you need to do in the morning and then to get here
5 on time.

6 It's also a good idea to leave your cell phones in
7 your cars. I know some of you may be kind of like me, that
8 you feel kind of naked if you don't have your cell phone on
9 you. But what happens is -- is that sometimes we forget to
10 turn it off. Even some phones -- the vibration is -- is --
11 is loud that you can hear. And that's disruptive.

12 I'm not like a lot of circuit judges. If the phone
13 goes off in the courtroom, they take possession of it. And
14 so that's -- that's not a good thing. But anyways, just
15 leave it in your car and that's just a better -- better way
16 of -- of doing it. Okay?

17 So with that said, we will see -- see you promptly at
18 9:30 in the morning. Have a good afternoon and good
19 evening.

20 MR. VERNER: Judge, but -- but before they walk out,
21 just one second. Could I approach?

22 THE COURT: Yeah. Solicitor?

23 (Whereupon, a bench conference was held off the
24 record in the presence of the jury.)

25 THE COURT: A -- another instruction that you'll hear.

1 from me again is -- and these will -- you'll -- you'll hear
2 -- that's what I'm going to tell you now because it's been
3 requested by one of the lawyers. And you'll hear this from
4 me again.

5 Juries cannot do any independent research on their own
6 about -- about the case. You know, we have a -- a -- a
7 wealth of available information by way of Internet, going
8 on Google, and all sorts of different resources. And it's
9 going to be really important not to start now -- don't do
10 it now and as we go through the case, as far as doing any
11 independent research on the case.

12 Because what you'll have to do -- and again, you'll
13 hear this from me when we start in the morning. Your
14 decision in this case will be based 100 percent on what is
15 brought out in the courtroom and -- and you -- and you
16 can't have any other outside information. That's just not
17 proper, and we don't want to have you unduly influenced by
18 any outside information. So don't -- don't go on the
19 Internet concerning anything related to this case. Okay?

20 Thank you very much. See you tomorrow.

21 MR. VERNER: Thank you, Your Honor.

22 (Whereupon, the jury exited the courtroom 11:34 a.m.)

23 (Off the record briefly.)

24 THE COURT: Yes, ma'am.

25 JUROR: I would like be excused because I don't feel

1 like I can judge anybody on attempted murder. My
2 conscience is not going to allow me to do that.

3 THE COURT: Okay. All right. Let -- let's put this
4 on the record. Lawyers, if you'll come over, please.

5 If you'll just come around. What is your number and
6 your name, again?

7 JUROR: 148, Linda Tribble.

8 THE COURT: Okay. And, Ms. Tribble, tell me again,
9 what you just told me?

10 JUROR: I just said that I don't feel I'm going to be
11 in a position to judge an attempted murder case. My
12 conscience is not going to allow me to do that.

13 THE COURT: Do you think that would make -- make you
14 unable to be fair and impartial?

15 JUROR: Yes.

16 THE COURT: Okay. Now, I'm not going to fuss at you,
17 okay?

18 JUROR: Okay.

19 THE COURT: But I wish you had told me that before ---

20 JUROR: Well, I ---

21 THE COURT: --- we picked the jury. Because ---

22 JUROR: I didn't realize I was going be picked.

23 THE COURT: Well, because my question was, before we
24 picked the jury, is there any reason whatsoever that -- you
25 believe that'd make you be unable to be fair and impartial.

1 So I asked that question.

2 JUROR: And I'm ---

3 THE COURT: Okay.

4 JUROR: --- sorry, Judge.

5 THE COURT: Okay.

6 JUROR: I didn't say anything.

7 THE COURT: Okay. All right. Okay. All right.

8 Well, if you believe that you cannot be fair and impartial,
9 then -- anything from the state?

10 MR. VERNER: Was -- is the question that you can't be
11 fair and impartial or just that you would prefer -- it --
12 it's not for religious reasons?

13 JUROR: Well, all of that is included.

14 MR. VERNER: Are you a Jehovah's ---

15 JUROR: Yes.

16 MR. VERNER: --- Witness?

17 JUROR: I am. Yes.

18 MR. VERNER: Okay. I -- I -- I join -- I -- I wish it
19 had been brought up by judge ---

20 THE COURT: Yeah.

21 MR. VERNER: --- in the -- when it was supposed to
22 have been brought up.

23 THE COURT: Yeah.

24 JUROR: Well, I didn't know it was supposed to have
25 been brought up earlier.

1 THE COURT: All right. Okay. Well, we -- we don't --
2 we don't have a choice. We'll have to excuse you and put
3 the alternate in -- in your place. And any objection from
4 the state?

5 MR. SCOTT: No, sir.

6 THE COURT: From the defense?

7 MR. VERNER: No, sir.

8 THE COURT: All right. You're excused.

9 JUROR: Thank you.

10 THE COURT: Next time, though, if you ever get on a
11 jury panel ---

12 JUROR: Right.

13 THE COURT: --- the next time you let that judge know
14 at the beginning ---

15 JUROR: Yeah.

16 THE COURT: --- okay?

17 JUROR: All right. Thank you so much.

18 THE COURT: All right. And your number again was
19 what?

20 JUROR: 148.

21 MR. VERNER: 148.

22 THE COURT: All right. 148 is excused.

23 JUROR: Thank you.

24 (Off the record briefly.)

25 THE COURT: Ma'am ---

1 JUROR: Yes, sir.

2 THE COURT: --- you're just excused from this trial.

3 JUROR: Uh-huh.

4 THE COURT: Call back after six o'clock this evening
5 for further instructions, okay?

6 JUROR: Okay.

7 THE COURT: So you're not excused from the whole week
8 yet, okay?

9 JUROR: Okay. That's fine. Thank you.

10 (Whereupon, the excused juror exited the courtroom at
11 11:38 a.m.)

12 THE COURT: Okay. We're going to take a -- a -- a
13 recess; give the court reporter an opportunity to set up
14 her equipment in the courtroom and then we can deal with
15 the -- whatever we need to deal with. So ---

16 MR. VERNER: Judge, may -- but before we're off the
17 record, could I just bring up the -- the pretrial motion we
18 had was -- the Court's ruling was that this was a five-and-
19 five ---

20 THE COURT: Right.

21 MR. VERNER: --- strike case. The -- I didn't
22 exercise five peremptory strikes anyway. So I think that's
23 going to procedurally bar us from raising it. But ---

24 THE COURT: Right.

25 MR. VERNER: --- I just wanted to address the Court

1 so ---

2 THE COURT: Sure.

3 MR. VERNER: We had asked for ten strikes ---

4 THE COURT: Right.

5 MR. VERNER: --- and the Court had ruled five strikes.

6 THE COURT: The Court had ruled five strikes because
7 the -- the offense of attempted murder is not one of the
8 specific-enumerated offenses in the statute. Certainly,
9 the point from the defense is well taken. But that request
10 was denied.

11 Okay. We'll be at ease for just a little bit.

12 MR. VERNER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Off the record from 11:39 a.m. until 12:16 p.m.)

15 THE COURT: Okay, Solicitor. You want to call the --
16 the first matter up?

17 MR. SCOTT: Yes, sir, Judge. This is *State v. Carlos*
18 *Reeder* -- I don't have the indictment numbers in front of
19 me -- two counts of attempted murder. There was an out-of-
20 court identification procedure used in this case in
21 identifying Carlos Reeder as the suspect involved with the
22 shootings. And a photographic lineup was shown to two
23 different witnesses ---

24 THE COURT: Okay.

25 MR. SCOTT: --- who -- who did identify Mr. Reeder;

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1 therefore, probably appropriate to have a *Neil v. Biggers*
2 hearing.

3 THE COURT: Okay.

4 MR. SCOTT: And we are ready. The first witness the
5 state would call will be Terrence Ryan Matthews.

6 THE COURT: Okay. Mr. Verner, you're -- you're
7 challenging the -- the potential in-court identification
8 that ---

9 MR. VERNER: Yes.

10 THE COURT: Okay. Very good, sir.

11 (Whereupon, the witness came forward.)

12 RYAN MATTHEWS, having been first duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q Okay. Officer Matthews, you -- October 6th, 2012, you
17 were with the City of Newberry?

18 A Yes, sir.

19 Q And now you're at the Department of Probation, Pardon,
20 and Parole?

21 A That's correct.

22 Q Over in Greenwood?

23 A Yes, sir.

24 Q All right. Approximately 5 p.m. on October 6th, 2012,
25 were you on shift?

1 A Yes, sir.

2 Q Did you have an occasion to respond to [REDACTED]

3 Rodelsperger Street in Newberry?

4 A Yes, sir.

5 Q And what was the nature of the call?

6 A The call was dispatched out as a shots-fired call at
7 that residence.

8 Q Okay. What did you observe when you arrived there?

9 A When I arrived on scene, there were several people in
10 the backyard of the residence. It borders the street of
11 Charles Street and Rodelsperger and most of which were
12 either in the backyard at the residence or on Charles
13 Street itself. They were in a very panicked, hectic state.
14 And one of the subjects of the -- the two claimed at the
15 scene was still on scene when we arrived.

16 Q Okay. So this house was at the corner of Charles and
17 Rodelsperger?

18 A Yes, sir.

19 Q About how many people were out there, you think?

20 A I would approximate with children around ten to
21 twelve.

22 Q Daytime? Nighttime?

23 A It was -- when we received the call, I believe it was
24 right around 5:45 in October, so the -- the sun was still
25 out.

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1 Q Okay. And you were able to clearly see?

2 A Yes, sir.

3 Q Did you observe any signs that there had, in fact,
4 been gunfire?

5 A Yes, sir. As it was pointed out by several of the
6 subjects -- excuse me -- and persons on the scene, the back
7 window of a vehicle had been shot out, as well as a -- a
8 bullet hole in the rear of the vehicle. And there were
9 several located that had damaged that residence that you
10 could clearly see.

11 Q Okay. Who did that automobile belong to?

12 A I believe it was Mr. Davis. I -- I'm not 100 percent.

13 Q Was that Dawayne Davis you're speaking of?

14 A Yes, sir.

15 Q Did you get a general -- what was your understanding
16 of how this transpired?

17 A When we arrived on scene, we -- we first spoke with
18 the subject that was pointed out to us as assisting Mr.
19 Reeder as Quentin Graham. He was the -- the first person
20 questioned on scene. We -- we showed up, spoke with him.
21 Several officers arrived all at the same time: myself,
22 Corporal Neveready (phonetic), several others.

23 We spoke with Mr. Graham first, since he was pointed
24 out by several persons at the residence as assisting the
25 gentleman to what happened. And he stated that, you know,

1 they showed up at the party; had -- had come by earlier in
2 the day, asking for a gentleman by the name of Smoke. No
3 one was aware of the subject by the nickname Smoke. Since
4 no one knew Mr. Reeder or Mr. Graham very well, they were
5 asked to leave and they did so.

6 They later came back approximately 30 minutes later to
7 the scene; came back in; started speaking with some of the
8 subject at the -- the cookout. They were again asked to
9 leave due to no one having a -- a very large acquaintance
10 with either subject. At that time they started walking
11 down the street.

12 Mr. Graham stated that Mr. Reeder opened fire at the
13 residence. And then Mr. Graham stayed on scene and Mr.
14 Reeder fled the scene.

15 Q Okay.. So Mr. Graham -- Quentin Graham had been with
16 Carlos Reeder. Was Mr. Reeder there when you arrived?

17 A No, sir, he was not.

18 Q But Mr. Graham had remained behind?

19 A Yes, sir.

20 Q And now -- now, some of the folks who -- who were
21 gathered in the yard -- I guess, people who were -- what
22 were they doing? Were they at a ---

23 A They were ---

24 Q --- cookout or ---

25 A --- just ---

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1 Q --- something?

2 A --- generally having a grilling cookout. It was a
3 celebration for a -- like, a housewarming party.

4 Q Okay. And did you speak with any of them?

5 A Yes, sir. I spoke with several.

6 Q All right. And what did they indicate?

7 A They all stated a -- I'm -- she's in the audience
8 today. I'm -- I'm unaware of her name. If -- if you can
9 give me a -- a list of persons, I can recall. I spoke with
10 a -- a main female she -- sitting right in the -- the back
11 row there in the blue shirt.

12 She was the first person to approach me and speak.
13 She stated that the two subjects had shown up: Mr. Graham
14 and a subject by the nickname of "C-Note." And earlier,
15 she explained the situation that they came by in the car;
16 asked about the party and asked for the gentleman, Smoke;
17 left. Then they came back again, but they were walking as
18 -- as they returned the second time; spoke with police;
19 stated that they began to argue after being asked to leave,
20 Mr. Reeder and Mr. Graham arguing with the majority of the
21 persons at the residence. And then whey they -- they left
22 out, they -- Mr. Reeder opened fire at the residence.

23 Q All right. Are you speaking of Vickie -- Vickie
24 Davis? Is that who you're ---

25 A Yes, sir.

1 Q --- speaking of?

2 And she was one of the, I guess, partygoers ---

3 A Yes, sir.

4 Q --- who was in the yard when the fire -- shooting
5 occurred?

6 She didn't know Carlos Reeder, though, did she?

7 A No, sir.

8 Q All right. So you heard a nickname of "C-Note."
9 That's about all you'd been given. What other description
10 of the shooter had you ---

11 A Yes, sir.

12 Q --- been given?

13 A He was given as a average-height black male; average
14 build; with a white shirt, blue-jean pants, and a black
15 Spurs hat. They stated that he was wielding a black-in-
16 color handgun that he removed from his waist and opened
17 fire. And ---

18 Q All right.

19 A --- that was the description that several persons gave
20 to officers.

21 Q Okay. Talking about San Antonio Spurs?

22 A Yes, sir.

23 Q And who was the homeowner?

24 A The homeowner is Deborica Adams.

25 Q Okay. Was she on scene when you first arrived?

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1 A No, sir.

2 Q All right. While you were on the scene, did she
3 eventually show up?

4 A Yes, sir. Approximately thirty minutes later, she
5 arrived from work. She stated that she worked in Laurens
6 and had received the call from several party members and
7 rushed home from work to -- to see what had occurred at her
8 residence.

9 Q Okay. Did she provide a name of who she thought it
10 may have been who had fired the shots at her house?

11 A Yes, sir. Upon arriving on scene at the home,
12 speaking with several partygoers who were all in the
13 general vicinity with myself and several officers, she
14 heard the nickname of "C-Note" and had recalled the name of
15 Carlos Reeder from a -- she stated she had an earlier
16 interaction with him, I believe, the day before and had
17 known the name and due to the name and physical
18 description, had given us the name of Carlos Reeder.

19 Q Okay. Okay. And -- and from there did -- did you
20 look in -- what was the database y'all used to look up
21 individuals when you're only given a name?

22 A We use a -- in our computer system, it's known as
23 "LawTrak." We look through the database in LawTrak to
24 bring up person that we've dealt with or -- or persons
25 within the city that are all recorded and logged in that

1 system.

2 Q Okay. Well, matter of fact, though, Deborica Adams
3 showed you a picture of Carlos Reeder; is that correct?

4 A Yes, sir.

5 Q But you didn't show that to any of the witnesses?

6 A No, sir. She was on the phone. She had brought it
7 up. And she actually approached police after she had
8 mentioned the name of the subject, I'd say less than five
9 minutes later, and said, "This is what he looks like," and
10 approached us with the phone; presented it -- a picture of
11 his face so that we could have a -- a general facial
12 depiction of the subject. It did not depict clothing or
13 anything. And we asked her to not present that to the
14 other persons so that we could present a photo lineup to
15 them and have them questions without that photo tampering
16 with what they would believe that the subject looked like.

17 Q Okay. Did somebody with the police department
18 ultimately ask for a photo lineup to be generated?

19 A Yes, sir. Myself was on scene with Sgt. Andy Rowe and
20 Lt. Jay Brogdon. Jay Brogdon contacted Sgt. Moore and --
21 about the photo lineup. And she had the photo lineup
22 generated and brought it to the scene.

23 Q Okay. Sgt. Allison Moore, who's seated here at the
24 prosecution table?

25 A Yes, sir.

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1 Q Were you there when the witnesses were shown the photo
2 lineups?

3 A Yes, sir.

4 Q Who was shown the photo lineups?

5 A Both Ms. Davis and the gentleman in the white-striped
6 shirt. I believe that's Mr. Davis.

7 Q The -- Vickie Davis is who -- is one of them?

8 A Yes, sir.

9 Q And who was the other one?

10 A The -- the gentleman in the white-and-brown striped
11 shirt. I -- I'm unable to recall his name at this time.

12 Q Okay. Well, do you remember the names of the -- oh,
13 you don't remember the names of the people shown?

14 All right. Well -- but these would've been the two
15 ---

16 A From -- from approaching to the scene, Ms. Davis and
17 -- and the other gentleman, that -- they were the two at
18 most at the street and -- and having the most contact with
19 Mr. Graham and Mr. Reeder. And -- and they were the two
20 approached at -- they also approached police first to give
21 us the description of the incident that had occurred.
22 That's why they were used in the majority of the time for
23 questioning, as far as what had occurred on scene.

24 Q Okay. What about any of the other witnesses out
25 there? Were they generally cooperative or did ---

1 A Oh, yes, sir. All -- all witnesses were cooperative.
2 We -- we took several statements from several persons,
3 especially due to the damage to the vehicle. We took a
4 statement and report on that damage due to the bullets
5 damaging the vehicle. And everyone at -- on scene was
6 extremely cooperative.

7 Q Okay. Well -- now, the owner of the damaged vehicle,
8 was that Dawayne Davis?

9 A That's correct.

10 Q And he gave a statement; is that what you said?

11 A Yes, sir.

12 Q And Vickie Davis gave a statement?

13 A That's correct.

14 Q Did you ask for statements from any of the other
15 witnesses out there?

16 A I -- I believe so. I -- I'm unsure -- because
17 multiple officers were on scene, several officers took
18 statements from other persons. I'm not sure who all was
19 asked to provide a -- a written statement. I know several
20 gave a verbal statement at the time but did not provide a
21 written form.

22 Q All right. Who showed the photo lineup to Vickie
23 Davis?

24 A That would be Lt. Jay Brogdon and Sgt. Allison Moore.

25 Q All right. Did you witness?

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1 A Yes, sir. I was standing by.

2 Q And did you see the photo lineup?

3 A Yes, sir.

4 (Whereupon, Mr. Scott and Sgt. Moore conferred.)

5 THE WITNESS: Excuse me.

6 (Whereupon, Mr. Scott and Mr. Verner conferred.)

7 (Whereupon, State's Exhibits 1 and 2 were marked for
8 identification.)

9 Q This is State's -- for ID purposes -- No. 1. Do you
10 recognize that?

11 A Yes, sir.

12 Q Okay. What -- what is that?

13 A It's a photo lineup. That is generated on a computer
14 to accurately depict six persons of a similar, height,
15 weight, and physical description that we showed persons to
16 have them identify a subject.

17 Q And you specifically recognize that photo lineup?

18 A Yes, sir.

19 Q All right. And when was the last time you saw that
20 one?

21 A I -- I believe the day of the incident, October 6th.

22 Q You believe the day of the incident or -- is -- you
23 were just talking about seeing Allison Moore showing a
24 photo lineup to Vickie Davis.

25 A Yes, sir.

1 Q All right. You ---

2 A Yeah. The ---

3 Q --- you ---

4 A --- they ---

5 Q --- watched her show it to her?

6 A Yes, sir. The -- this is the -- the actual shown on
7 that date, on October 6th.

8 Q All right. Who was that lineup presented to, State's
9 No. 1?

10 A This lineup was presented to Vickie Davis.

11 Q All right. And were you able to hear any instructions
12 given by Sgt. Moore to Vickie Davis prior to her
13 identifying anyone on that lineup?

14 A Yes, sir.

15 Q All right. Did she suggest who Ms. Vickie Davis ought
16 to pick out in any way?

17 A No, sir. She merely approached Ms. Davis and
18 instructed her on what the photo lineup was; had -- had
19 explained the photo lineup to her -- that it's six persons
20 of the average, you know, height, build, weight, physical
21 description -- and if she could most accurately depict
22 which of the six persons was the person that she witnessed
23 involved in the crime.

24 Q Did you witness Ms. Vickie Davis pick anyone?

25 A Yes, sir. I was standing by as she -- she picked the

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1 subject listed as No. 2. She -- she was then asked to
2 circle it and initial.

3 Q All right. Did she show any hesitancy?

4 A No, sir. She picked it out immediately and pointed
5 out -- said this was the -- the person that she saw and
6 immediately circled and -- and signed that as instructed.

7 Q Okay. Thank you. Let me show you State's -- for ID
8 purposes -- No. 2.

9 A Yes, sir.

10 Q Ask you if you recognize that one.

11 A Yes, sir.

12 Q And what is that?

13 A It's a -- the same photo lineup that it -- was shown
14 to Ms. Vickie Davis, but in a blank form that Mr. Dawayne
15 Davis identified Mr. Reeder on.

16 Q Same question: Did you witness Sgt. Moore show that
17 to Dawayne Davis?

18 A Yes, sir. She showed it to him; presented to him;
19 gave him the instructions to pick the subject that he
20 believed to be most familiar as the subject who was
21 involved in the crime. And he selected No. 2; circled and
22 initialed by it.

23 Q All right. Did he show any hesitancy in picking No.
24 2?

25 A No, sir.

1 Q These IDs of -- by both of these witnesses, were they
2 together or were they apart? Were they separated when they
3 were shown these photo lineups?

4 A Yes, sir. Once Ms. Adams had shown us the individual
5 picture -- it's not corrupt the -- the other two subjects
6 for what they believe the subject looked like, she was
7 asked to step away. And she did so. And then both Ms.
8 Davis and Mr. Davis were separated at that time, one of
9 which we -- we brought them almost into the street,
10 standing next to our patrol vehicles, while the other one
11 waited up on the porch. And then one -- once we asked Ms.
12 Davis first, we -- we had her move to the side for us and
13 out of the way. And then we asked Mr. Davis to -- to come
14 down and also identify.

15 Q Okay. So these identifications were done outside the
16 presence of one another?

17 A That's correct.

18 Q Okay. [REDACTED] Rodelsperger, that's Newberry County?

19 A Yes, sir. That's Newberry County within the city
20 limits of Newberry.

21 Q All right.

22 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

23 Q What time were you dispatched out to the scene?

24 A We -- we were dispatched out at 5:54.

25 Q Approximately how long after you arrived the -- at

CROSS-EXAMINATION BY MR. VERNER - RYAN MATTHEWS

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1 that scene did the identification occur?

2 A I would say approximately eight o'clock.

3 Q So about two -- you were on the scene about two hours,
4 and then you were able to generate the photo ---

5 A Yes, sir.

6 Q --- lineup?

7 A Yes, sir. I arrived on scene at 5:54 p.m. and cleared
8 the scene at 8:45 p.m.

9 Q Okay. So your testimony is -- about how much time had
10 elapsed from when you arrived one the scene and when the
11 identifications were made?

12 A I would say approximately within an hour and a half to
13 two hours.

14 Q Okay.

15 A Yes, sir.

16 Q Okay. Thank you. Please answer any question Mr.
17 Verner has for you.

18 A Yes, sir.

19 THE COURT: Mr. Verner, any questions?

20 MR. VERNER: Just briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. VERNER:

23 Q The -- the -- the witness whose first name was
24 Debiorica had produced a picture from the Internet that she
25 had found on the Internet -- like Facebook site or was --

1 she already had it on her ---

2 A I -- I believed it to be. I -- I was unaware. She --
3 she didn't present how she came about the picture. She
4 only showed it to law enforcement.

5 Q Okay. And y'all still have that picture that she
6 showed you at that time?

7 A I'm -- I'm unaware. I don't believe that it was ever
8 transferred and collected as evidence.

9 Q But that was just shown to you at the scene and said,
10 "That's the one y'all need to be looking at," or, "That's
11 who I'm talking about"?

12 A Yes, sir.

13 Q Okay. Were you able to identify Carlos Reeder from
14 the photograph on her cell phone?

15 A Was I -- I personally?

16 Q Yes. Or did she say that this is -- at that time was
17 it just a nickname, C-Note, or was there an actual ---

18 A She gave the -- before she provided the picture, she
19 gave the name of Carlos Reeder and then ---

20 Q Okay.

21 A --- provided the picture.

22 Q And she said, "I -- I found a picture of him," or, "I
23 have a picture of him on the cell phone"?

24 A Yes, sir.

25 Q Okay. The -- were -- were the witnessed segregated

1 into groups at that time, or were they just kind of all in
2 their area and law enforcement was kind of in their area?

3 A Several witnesses had been divided amongst the
4 officers. I -- I believe there were about six or seven of
5 us on scene, and -- and several were speaking to each
6 officer individually at one point in time once the -- the
7 chaos had -- had, you know ---

8 Q Okay.

9 A --- quieted.

10 Q Do you know whether -- can you recall whether she was
11 in the presence of Dawayne Davis or Vickie Davis when she
12 handed you the picture?

13 A At the time of presenting it to us, I was speaking to
14 her one on one off to the side so she was nowhere near
15 those subjects at the time.

16 Q And how long before -- after she had produced the
17 picture on the cell phone do you think that the police
18 procured the official photo-lineup form?

19 A After she had procured the photo, Lt. Jay Brogdon had
20 contacted Sgt. Allison Moore to have the lineup generated
21 through SLED's Fusion Center. And it was approximately an
22 hour to an hour and a half before we -- we had the photo
23 lineup in hand.

24 Q And that was, again, brought out to the scene to
25 Rodelsperger or that was actually we asked them to come

1 back to the Nance Street ---

2 A That -- that was brought out to the scene.

3 Q Okay. So you were there at least an hour, maybe two
4 hours ---

5 A Yes, sir.

6 Q --- to -- okay.

7 But the -- the lineup that you remember being shown to
8 them was still at the scene?

9 A Yes, sir.

10 Q Okay. The -- now, are you sure Deborica did not share
11 the photograph that she had on the cell phone with the
12 other members of the -- or -- or talk about who it could
13 have been?

14 A Yes, sir. The -- the photo, once it was shown to
15 myself and other officers -- after it was shown to me, it
16 was also shown to Lt. Jay Brogdon. She was asked to not
17 provide that photo to anyone else. And from what I
18 understand, she did so. The -- the name that was mentioned
19 -- once Carlos Reeder -- his name was brought up instead of
20 the nickname of C-Note, I believe other person may have
21 been aware of the name, but they were unsure of what he
22 actually appeared, except for what they had seen while on
23 scene that day.

24 Q Okay. The -- but it's -- it's clear that she had
25 identified him as Carlos Reeder?

CROSS-EXAMINATION BY MR. VERNER - RYAN MATTHEWS

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1 A That's correct.

2 Q Or was she -- was Deborica an eyewitness to the crime,
3 or she just came afterwards and said, "I know who y'all are
4 talking about"?

5 A She came afterwards. Once she had arrived home from
6 work approximately 20 to 25 minutes after we had received
7 the call, she had came in. From hearing the nickname of C-
8 Note, she was able to ---

9 Q Okay.

10 A --- you know, immediately recall his full name of
11 Carlos Reeder.

12 Q But -- and she was the homeowner too?

13 A That's correct.

14 Q But she was not present for the actual -- what -- what
15 would be the -- the nature of this crime -- this -- this
16 charge?

17 A That's correct.

18 Q Okay. And so she heard that people were talking about
19 C-Note and she said, "C-Note is Carlos Reeder," and so she
20 is the one who initially provided your -- his name?

21 A Yes, sir.

22 Q Okay. And -- and based on her identification, that is
23 how Carlos's picture got put into the six-person photo
24 lineup?

25 A That's correct.

1 Q Okay. The -- but at some point she must have talked
2 to the people who were in the group with her if -- if she
3 was aware who they were talking about as -- as a suspect?

4 A Well, yes, sir. Be -- due to, you know, several
5 persons on scene and the approximately ten to twelve people
6 at -- at the party, the -- the nickname of C-Note was --
7 was overheard by everyone in the general area.

8 Q So -- so several people were still talking in the
9 group ---

10 A Yes, sir.

11 Q --- amongst themselves about what happened and kind of
12 recounting it ---

13 A Yes, sir.

14 Q --- and other things?

15 And -- and -- and for some period of time, she may
16 have been in that group, talking to them too?

17 A When she initially arrived, she came and spoke with
18 the police; I -- I believe spoke with the -- the group
19 briefly as we were investigating the -- the vehicle damage
20 and the home damage. And then she -- she came back in and
21 -- and spoke with myself one on one.

22 Q Okay.

23 A Yes, sir.

24 Q Thank you, officer.

25 THE COURT: Anything in redirect?

1 MR. SCOTT: Nothing from the state, Your Honor.

2 THE COURT: Okay. Thank you for your testimony,
3 officer. You can step down.

4 THE WITNESS: Thank you, sir.

5 (Whereupon, the witness exited the witness stand.)

6 MR. DANIEL: Your Honor, the state would call Deborica
7 Adams.

8 THE COURT: Okay.

9 (Whereupon, the witness came forward.)

10 DEBORICA ADAMS, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DANIEL:

14 Q Ms. Adams, you live in Newberry, correct?

15 A Yes, sir.

16 Q Are you currently employed?

17 A Yes, sir.

18 Q Do you work here in Newberry?

19 A Yes, sir.

20 Q Where do you work?

21 A It's Fashion.

22 Q All right. How long you been living in Newberry?

23 A Going on two years.

24 Q Okay. Where do you currently reside, your address?

25 A [REDACTED] Rodelsperger Street, Newberry, South Carolina

1 29108.

2 Q Okay. So you live at [REDACTED] Rodelsperger ---

3 A Uh-huh.

4 Q --- Street?

5 Do you own that house? Do you rent it?

6 A I rent it.

7 Q Okay. Who lives there with you?

8 A Me and my children and my boyfriend.

9 Q Okay. And you've been living -- and how long did you
10 say you been living at [REDACTED] Rodelsperger Street?

11 A I signed this the -- I signed the lease agreement on
12 9/27, so when September 27th get around, it'll be two --
13 two years.

14 Q Okay. So I guess about a year and a half ---

15 A Correct.

16 Q --- you been living there?

17 I want to go back to October 6th, 2012. To your
18 knowledge did a shooting occur at your residence?

19 A Yes.

20 Q Were you present when this shooting occurred?

21 A No, sir. I was at work.

22 Q Okay. Where were you working back on October 6th of
23 2012?

24 A At Agape in Laurens.

25 Q Okay. So you were working in Laurens ---

1 A Uh-huh.

2 Q --- at the time the shooting happened?

3 A Uh-huh.

4 Q Okay. How were you made aware of the shooting if you
5 weren't there?

6 A Upon leaving work, I received a telephone call that a
7 shooting had occurred at my house. As I got in the car,
8 leaving, on my way home, I receive another phone call
9 saying that a guy had came by; said that he was looking for
10 Smoke.

11 Well, the only guy that had been there -- Smoke did
12 help me move in. But the only guy that had been by there
13 was Carlos Reeder. Upon Smoke having me -- helping me move
14 in, I didn't know who the guys was that was in this Toyota
15 Corolla.

16 And when Smoke came in the house, I said, "Smoke, who
17 was those guys?"

18 And he was, like, "That's my partner. We was locked
19 up together."

20 Q Okay.

21 A I was, like, "Okay."

22 Q Let me stop you. Okay. So you received information
23 from someone at your home ---

24 A Yes.

25 Q --- that a shooting had taken place?

1 A Uh-huh.

2 Q And what was going on at your home that day? Now, you
3 were at work, but what was going on at the house?

4 A We was -- they were just having a family cookout.
5 That's all.

6 Q Relatives of ---

7 A Yes.

8 Q --- yours?

9 A Uh-huh.

10 Q Okay. Who made a phone to inform you about the
11 shooting?

12 A I can't remember who it was.

13 Q Okay. And so they give you a description of the
14 shooter, this person?

15 A Yes. They said that they was in -- in a Toyota
16 Corolla car, and that was the same car that was at my house
17 prior, the day before all of this happened.

18 Q So this -- so you get a description of a Toyota
19 Corolla ---

20 A Uh-huh.

21 Q --- at your -- that was on the scene of the shooting
22 ---

23 A Uh-huh.

24 Q --- and you -- this rings a bell to you because you're
25 familiar with this car?

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1 A Yeah. That was the same car as Smoke helping me move
2 in. These are the same guys that came and, you know, had
3 -- had a talk with Smoke.

4 Q So that car -- that Toyota Corolla you saw the day
5 before, October 5th, at ---

6 A Yes.

7 Q --- your house while ---

8 A Uh-huh.

9 Q --- you were moving in?

10 A Yes. Well, I -- I didn't move all of my stuff in. I
11 had -- by this time right here, we was just moving some of
12 the stuff in.

13 Q And you know the name Smoke because someone ---

14 A He was a friend guy from the -- from my apartment
15 complex that I was moving from.

16 Q Okay. And whomever you were speaking with on the
17 phone that told you about the shooting mentions this Smoke
18 individual?

19 A No. They was just, like, "Somebody had came to the
20 house, asking for Smoke." And I knew right then it was
21 Carlos Reeder because that's the only person that knew
22 Smoke. Didn't nobody else know Smoke.

23 Q And -- and you saw Carlos Reeder the day before at
24 your house that ---

25 A No. No. They was in the car. They was in the car.

1 He never got out the car. They was talking. Smoke was on
2 the outside of the car. He was in the inside of the car.

3 And when Smoke got done helping me move in, I said,
4 "Smoke, who was those guys?"

5 And he said, "That's my partner from jail."

6 Q Okay.

7 A And he said, "That's Carlos Reeder."

8 And I said, "Oh, okay." And I didn't never think
9 about it nothing else.

10 Q Now, just to be clear: You never actually saw Carlos
11 Reeder the day before the shooting on October 5th?

12 A No. He was in the car.

13 Q Okay. Now, the reason you're -- the reason Carlos
14 Reeder name came to mind when you were speaking with your
15 friend on the phone about the shooting ---

16 A Uh-huh.

17 Q --- was because you're saying you hear the name --
18 someone's looking for Smoke ---

19 A Uh-huh.

20 Q --- and you hear about a beige or tan ---

21 THE COURT: Solicitor ---

22 Q --- Toyota ---

23 A Uh-huh.

24 Q --- Corolla?

25 THE COURT: --- let me just stop you. I need to

DIRECT EXAMINATION BY MR. DANIEL - DEBORICA ADAMS

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1 instruct the witness two things: It's my from the court
2 reporter that sometimes you don't let the solicitor finish
3 the question before you answer.

4 THE WITNESS: Okay.

5 THE COURT: Okay. Make sure he's finished before you
6 answer. And don't say "uh-huh"; say "yes" or "no," some
7 verbal answer, as opposed to an "uh-huh." I understand
8 that's easy to do and we all do it. But you need to give
9 an actual verbal answer. So (1) let the solicitor finish
10 the question before you answer; and (2) avoid using "uh-
11 huh." Okay?

12 THE WITNESS: Okay.

13 MR. DANIEL: Thank you, Your Honor.

14 Q Ms. Adams -- okay. You hear a description from your
15 friend who was at -- on -- on scene the day of the
16 shooting. You hear the name Smoke; this individual was
17 looking for Smoke. And you hear about a vehicle that the
18 suspect's in, a tan/beige Toyota Corolla; is that correct?

19 A Yes.

20 Q And now, this rings a bell -- you associate this with
21 Carlos Reeder?

22 A Yes.

23 Q And you learn this name because a day prior to the
24 shooting, October 5th, you know Smoke, because he was
25 helping you move into your house on [REDACTED] Rodelsperger; is

1 that correct?

2 A That's correct.

3 Q Okay. And Smoke was supposedly talking to Carlos
4 Reeder when he pulled up in this tan Toyota Corolla on
5 October 5th?

6 A Yes.

7 Q And you asked Smoke, "Who were you talking to?" or
8 something to that effect?

9 A That's correct.

10 Q And Smoke gives you the name Carlos Reeder?

11 A That's correct.

12 Q So fast -- fast forward to the next day, October 6th,
13 you receive a phone call from a friend but you don't
14 remember who it is, correct?

15 A That's correct.

16 Q They say, "There a -- a shooting happened and suspect
17 was in a tan Toyota Corolla"?

18 A That's correct.

19 Q And they were looking for Smoke?

20 A Uh-huh.

21 Q And you associate those two things with Carlos Reeder?

22 A Yes.

23 Q Did you tell your friend on the phone, "That's Carlos
24 Reeder"?

25 A Yes.

DIRECT EXAMINATION BY MR. DANIEL - DEBORICA ADAMS

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1 Q You did?

2 A (Nodded head up and down.)

3 Q Okay. Did the friend on the phone know who Carlos
4 Reeder was?

5 A No.

6 Q Okay. About what time did you have this conversation
7 with this friend?

8 A It was ---

9 Q On October 6th. Excuse me.

10 A It was after -- I can't necessarily say exactly what
11 time ---

12 Q Uh-huh.

13 A --- but it was after 6:30.

14 Q And you had just gotten off work?

15 A Yes.

16 Q From -- and you were working in Laurens at the time?

17 A Yes.

18 Q Approximately what time did you arrive back at your
19 home on Rodelsperger?

20 A I can't necessarily -- I can't remember what time it
21 was.

22 Q Okay. When you arrived back at your home that evening
23 on October 6th, what'd you observe?

24 A I observe my family -- my family cookout and polices.
25 And I got the out car and wanted to know what had happened,

1 what -- you know, what was going on.

2 Q Now, did you try to get a picture at any point from
3 any friends of yours of this Carlos Reeder to show police?

4 A Yes.

5 Q And who did you contact to get a photo of Carlos
6 Reeder?

7 A One of my sons' cousin.

8 Q Okay. Do you know the name of this person you
9 contacted?

10 A Yes.

11 Q Who -- who'd you contact?

12 A Beverly.

13 Q Okay. And she -- how did you get -- how'd you get the
14 photo? Was it -- was it sent to you via text message? e-
15 mailed to you? Do you -- do you recall how you got a
16 picture of Carlos Reeder?

17 A It was through a text.

18 Q Okay. Where did your friend Beverly get this picture
19 from? Was a social-media site, anything like that?

20 A No. Unfortunately, they had already had gotten into
21 it couple of weeks before the -- all this happened. So it
22 was a big commotion in Cross Hill. And she -- I --
23 unfortunately, she already had his picture.

24 Q Okay. Now, you had this picture on your phone. It
25 was sent to you by Beverly via text message, correct?

DIRECT EXAMINATION BY MR. DANIEL - DEBORICA ADAMS

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1 A Yes.

2 Q When you arrived, did you speak with anyone from the
3 Newberry Police Department when you arrived back at your
4 home?

5 A Yes.

6 Q Who did you talk with? Can you recall the officer's
7 name?

8 A I can't remember what the officer name was.

9 Q Did you give this information about Carlos Reeder,
10 that you had a -- had a name?

11 A Yes.

12 Q And you -- did you -- did you tell them essentially
13 about the Toyota Corolla and the association with this
14 Smoke?

15 A Yes.

16 Q Did you show the officer this picture you had on your
17 phone?

18 A Yes.

19 Q Did you show anyone else on scene this picture of your
20 phone?

21 A No, sir.

22 Q Okay. Did you tell anyone else the name Carlos Reeder
23 was the shooter?

24 A No, sir.

25 Q Okay. And once -- once you showed the officer the

1 picture on your phone, what did the officer do with that
2 information? Do you recall?

3 A He just told me to put it up; don't show nobody else.

4 Q And did you comply with the officer's request?

5 A Yes.

6 Q Okay.

7 (Whereupon, Mr. Daniel and Mr. Scott conferred.)

8 Q Let me ask you: When you were on your back from --
9 from work to your house back on October 6th, 2012, did you
10 see any cars that looked familiar to you?

11 A Yes.

12 Q What -- what -- what kind of vehicles did you -- or
13 vehicle did you pass by?

14 A As I'm coming through Joanna on my way to Newberry
15 leaving Laurens, I passed by that same car, the Toyota
16 Corolla. I passed by that car by the T&D Curb Market on
17 the left-hand side. I'm going towards Newberry there at --
18 passing me in Joanna.

19 And Carlos was -- the -- it -- it was a guy on the --
20 on the right-hand side ---

21 Q Passenger ---

22 A --- passenger seat let back. And it was a female
23 driving.

24 Q This same Toyota Corolla you saw ---

25 A Yeah.

1 Q --- the day before when you were moving in ---

2 A Yes.

3 Q --- on October 5th?

4 A (Nodded head up and down.)

5 Q Okay. Did -- did you provide law enforcement that
6 information as well?

7 A I did.

8 Q Okay.

9 (Whereupon, Mr. Daniel and Mr. Scott conferred.)

10 Q Did you know this female driver in that Corolla that
11 you passed by, heading back home to Newberry?

12 A No. I didn't know her at that time. No.

13 Q Okay. Do you know her now, the -- this female driver?

14 A I don't know her. I have spoken with her. She had
15 came to my home. One day I had went to the store, and she
16 had told my boyfriend to give me her number to call her
17 because she had wanted to talk to me about this incident.

18 Q Okay. Did you ever tell Vickie Davis that the shooter
19 was Carlos Reeder?

20 A No.

21 Q Did you ever tell Dawayne Davis that Carlos Reeder was
22 the shooter?

23 A No.

24 Q Okay. Were you on scene when they identified -- were
25 you on scene when Vickie Davis identified any photo

1 lineups?

2 A I can't remember if -- I was -- I was with another
3 officer. It was a lot of officers out there. And I was
4 with another officer, doing something else. I don't know
5 if she was doing the lineup or what. I can't necessarily
6 say what -- what they was doing. But I was with another
7 officer.

8 Q So you were separated from -- from Vickie Davis?

9 A Yes.

10 Q And you were separated from Dawayne Davis?

11 A Yes.

12 Q And you never shared this information about Carlos
13 Reeder?

14 A No -- no, sir.

15 Q Did you ever show them this -- this picture of Carlos
16 Reeder on your phone?

17 A No, sir.

18 Q Okay. No further questions.

19 THE COURT: Mr. Verner?

20 CROSS-EXAMINATION

21 BY MR. VERNER:

22 Q Now, Ms. Adams, the -- the -- you had just recently
23 rented or signed a rental contract on this house?

24 A I did.

25 Q Okay. The -- and Smoke wasn't a -- a live-in with

1 you? He was just a friend who had helped you move the day
2 before or a few days before?

3 A That's correct.

4 Q Okay. The -- you said -- and you were not a witness
5 to -- whatever happened, good, bad, or ugly, you were not
6 an actual eyewitness to -- to the events of that day?

7 A No, sir. I was at work.

8 Q Okay. Everything that you heard came from one or more
9 sources of the people -- your friends or family or other
10 people that you spoke to?

11 A Yes.

12 Q Okay. The -- and Beverly is a cousin of yours?

13 A She's my -- she's my kids' cousin. That's correct.

14 Q Okay. The -- I -- I'm taking that to mean that she --
15 she's a cousin through one of your children's father's
16 side?

17 A That's correct.

18 Q She's not your cousin, but she's a cousin on the other
19 side of the family?

20 A That's correct.

21 Q Okay. And what is Beverly's name?

22 A Beverly Jones.

23 Q Jones?

24 A (Nodded head up and down.)

25 Q Could -- and she's not the -- is she here today?

1 A No, sir.

2 Q Okay. But my understanding is that she had a prior --
3 or from -- your testimony is that she had a prior beef or
4 dispute with Carlos Reeder about something that happened a
5 few weeks beforehand?

6 A That's correct.

7 Q And, in fact, she was angry at Carlos?

8 A No. I wouldn't necessarily say that. No.

9 Q She was keeping his picture in her phone because she
10 was fond of him or because she thought that he was -- well,
11 the -- what -- what was your understanding of why she was
12 keeping his photograph in her phone?

13 A I never asked her.

14 Q Okay. The -- but your understanding was that she --
15 that -- that the beef meant that she had some kind of anger
16 -- I -- I understand that she may not be holding a grudge,
17 but it certainly wasn't a good -- where Carlos was on her
18 side; it would be an adversarial -- something happened
19 where she was on the other side or she or her friends were
20 on the other side of some dispute with Carlos?

21 A I wouldn't necessarily say that. It was some -- it
22 was something that, I guess, had transpired a couple weeks
23 prior to this right here happening.

24 Q In Cross Hill?

25 A That's correct.

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS

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1 Q Okay. And -- but she was not typically a friend of
2 Carlos Reeder, was she?

3 A No, sir.

4 Q Okay. And your understanding -- I understand that you
5 were not there that event either, were you?

6 A No, sir.

7 Q But your understanding was it was in some -- where
8 either she or her friends had gotten into some kind of
9 dispute with Carlos Reeder ---

10 A That's correct.

11 Q --- or your friends?

12 A That's correct.

13 Q Okay. The -- did she tell you the reason that she had
14 his picture in her phone?

15 A No, sir.

16 Q Okay. But it wasn't -- you're pretty sure it wasn't
17 out of friendship, where they -- where they were friends or
18 close friends or were -- dating-relationship-type
19 situation?

20 A No, sir. I don't ---

21 Q Okay.

22 A --- that. No.

23 Q Did -- were you aware that she had had a -- before you
24 even asked her for the photograph, did -- were you aware of
25 the incident in Cross Hill prior to the date that this

1 incident happened at your house?

2 A I had heard about it. But I don't necessarily -- I
3 can't say what happened. But I just heard about it.

4 Q Okay. So the -- you were just aware of something
5 happened but you -- you weren't really bothered in the
6 details of what specifically happened?

7 A That's correct.

8 Q Okay. The -- is -- is that why you came to her, or
9 you just asked people in general?

10 A No. I just asked her -- who ---

11 Q Okay.

12 A --- you know, who was he.

13 Q Okay. The -- because your understanding was she --
14 she had met him or dealt with him in the past and -- and
15 might still know . . .

16 A Yeah.

17 Q Okay. When you spoke to Beverly, had you -- were you
18 already aware of his name as Carlos Reeder or were you
19 talking about C-Note?

20 A Smoke called him as Carlos Reeder. Then Smoke ---

21 Q Okay.

22 A --- said C-Note.

23 Q The -- so you remembered him by name as Carlos Reeder?

24 A Yes.

25 Q Okay. And that's how you would have brought him up to

1 Beverly?

2 A Yes.

3 Q Okay. And then Beverly just said, "Well, I've got his
4 picture on my phone too"?

5 A (No audible response.)

6 Q The -- did Beverly tell you that she was a witness to
7 the incident?

8 A Of what had happened with them?

9 Q Yes, sir. Yes, ma'am.

10 A She -- I just heard bits of pieces of what happened.

11 Q Okay. Are -- are you aware of whether Beverly was out
12 there that day as a witness or whether she showed up later
13 or may have been there but not in the -- out front yard?

14 A At my home?

15 Q Yes, ma'am.

16 A No. She wasn't at my home.

17 Q Okay. So what -- whatever happened with Carlos
18 Reeder, to you -- to the best of your knowledge, she was
19 not an eyewitness?

20 A That's true.

21 Q Okay. She came after she heard something happened or
22 she saw the commotion and walked over or ---

23 A She was never at my home.

24 Q Oh, you called her about it?

25 A I called her.

1 Q Okay. And she came over with her cell phone?

2 A No. She text me.

3 Q Okay. The -- so you -- the -- you contacted her by
4 calling her or texting her too?

5 A No. I call her.

6 Q Okay. And the -- the words were basically the -- the
7 -- what do you think you said when you called her up?

8 A I can't necessarily say how the conversation went.

9 Q But you said the -- the police are looking for Carlos
10 Reeder or you're the one who brought up Carlos Reeder?

11 A I was the one that had -- I was -- I had asked her,
12 you know, did she know who he was and ---

13 Q Okay.

14 A --- she was, like, yes.

15 Q And then she indicated that she had the picture on her
16 phone and texted the picture to you?

17 A That's correct.

18 Q And that's the photograph that you showed law
19 enforcement?

20 A That's correct.

21 Q The -- you haven't seen the picture since the date of
22 this incident?

23 A No, sir.

24 Q The -- can you recall the -- the -- was it a -- a
25 portrait-type picture up close or was it like a group --

1 what -- how do you remember the picture looking?

2 A I can't necessarily say how it was on my phone. It
3 was something with SMS text. But I can't necessarily say
4 how it was -- how she sent it.

5 Q Okay. But do you recall whether it was, like, a
6 close-up of Carlos or whether it was a group shot or a
7 distance shot?

8 A No. It was a close-up.

9 Q Okay. The -- was there anything else sent with it?

10 A No, sir.

11 Q Okay. The -- how long after -- had -- had you already
12 spoken to the police before you called Beverly?

13 A Yes.

14 Q Okay. And the -- and -- and it must've come up just,
15 you know, I -- I know somebody who might know him or you --
16 or you -- the police didn't ask you to call Beverly; you
17 were just ---

18 A No.

19 Q --- trying to get them more information on how --
20 maybe how to find him or ---

21 A That's correct.

22 Q At -- do you recall whether you had spoken to Mr.
23 Dawayne Davis prior to ---

24 A No, sir.

25 Q --- speaking to the police?

1 A No, sir.

2 Q When you came home, who was the first person you spoke
3 to?

4 A The police officer.

5 Q Okay. You went straight up to the police first?

6 A Yes, sir.

7 Q The -- and then, how long after you spoke to the
8 police do you think that you called Beverly?

9 A It wasn't even 15/20 minutes later.

10 Q Okay. The -- were you inside by that time or are you
11 still out in the front yard?

12 A No. I'm still outside. I never went inside my home.

13 Q Now, Mr. Dawayne Davis is -- he's listed as one of the
14 victims, right?

15 A Yes.

16 Q What is his relationship to you?

17 A That's my boyfriend cousin.

18 Q Okay. The -- and so just a -- were -- were you -- did
19 you know him prior to the date of this event?

20 A Yes.

21 Q Okay. So he -- I would characterize him as just a --
22 okay -- cousin of your boyfriend?

23 A Yes.

24 Q The -- how long had you known him?

25 A Going on two years.

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS

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1 Q Okay. The -- did you -- do you recall whether you
2 spoke to Mr. Dawayne Davis prior to calling Beverly?

3 A No, sir.

4 Q Do you know whether he had identified Carlos Reeder?

5 A No, sir. I can't necessarily say because I was still
6 over there with law enforcement.

7 Q Okay. Is it possible you may have spoken to him and
8 just don't recall or you definitely didn't?

9 A No. I definitely didn't speak to him.

10 Q Okay. The -- what about -- is it Vickie Davis?

11 A Vickie.

12 Q The -- how would you characterize the relationship to
13 Vickie?

14 A That's my boyfriend aunt. That's ---

15 Q Okay. The -- how long have you known Vickie?

16 A Going on two years.

17 Q Okay. The -- are -- are she and Dawayne a couple or
18 together or just they're cousins -- both just happen to be
19 cousins of your boyfriend?

20 A No. They're aunt and nephew.

21 Q Okay. Okay. But you know them both through your
22 boyfriend?

23 A Yes.

24 Q Okay. The -- did you speak to Ms. Vickie prior to
25 calling Beverly?

1 A No, sir.

2 Q The -- were you -- the -- other than through your
3 boyfriend, did you have any kind of social interaction with
4 Dawayne Davis or Vickie Davis?

5 A No, sir.

6 Q Okay. So you -- the -- you could characterize them as
7 friends through your boyfriend? I understand they're
8 family. But -- but you didn't have an independent
9 friendship ---

10 A Right.

11 Q --- other than through your boyfriend?

12 A That's correct.

13 Q Okay. The -- do -- and you don't recall speaking to
14 Beverly -- I'm sorry -- to Vickie prior to calling Beverly?

15 A No, sir.

16 Q Okay. In fact, are you sure that you didn't?

17 A I promise you I didn't.

18 Q Okay. The -- did you speak to other people out in the
19 yard about what had happened and get, you know, what
20 happened here?

21 A No, sir.

22 Q The -- other than the police, you didn't ask ---

23 A No, sir.

24 Q --- anybody else what had happened?

25 A No, sir.

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS 81

1 Q Okay. The -- so at -- until you called Beverly, your
2 testimony is the only person who -- that you got your facts
3 about what happened were the initial call when you came
4 over there and then speaking to police?

5 A That's correct.

6 Q Okay. And -- and clear it for me again: The initial
7 call to come home was from the police officer or was it
8 from a friend or family member?

9 A I can't necessarily say who it was from.

10 Q It may have been either one at this point? Just
11 somebody called and said something ---

12 A Yeah. Just somebody called and said something. I
13 can't necessarily say what name or who it was.

14 Q Okay. The -- was your boyfriend at the incident when
15 this happened?

16 A Yes. He was inside in the kitchen, cooking.

17 Q Okay. From -- from -- from what he told you
18 afterwards, he said, "I was inside; I -- I wasn't outside
19 when this thing happened"?

20 A That's correct.

21 Q Okay. But the -- your understanding would've come
22 from him, talking to you afterwards?

23 A Yes. That's the only thing he said: He was in the
24 kitchen, cooking.

25 Q Okay. The -- as -- as best you can recall, the -- how

1 -- how did you first hear the name Carlos Reeder come into
2 it? Was that over the phone or was that through the police
3 or . . .

4 A That day?

5 Q Somebody must've said, "Something's happened at your
6 house and you need to -- the police are here and you need
7 to come home." Either the police called you or somebody
8 called you and said come home.

9 A Yes.

10 Q Okay.

11 A And ---

12 Q That's why ---

13 A --- they ---

14 Q --- you were coming home: because you were aware
15 police were at your house?

16 A Yes.

17 Q Okay. The -- were you aware on the ride home that
18 Carlos Reeder had been identified or just that -- that just
19 something has happened and you need to be home?

20 A No. They just told me that it had been a shooting at
21 my house.

22 Q Okay. But at that time before you talked to the
23 police, you -- you weren't aware of any details of what
24 people were saying happened?

25 A No.

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS

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1 Q Okay. The -- and you don't recall talking to anybody
2 by cell phone on your ride home?

3 A Yeah. I remember talking to somebody. But I can't
4 necessarily say who it was. And when I got home, I was
5 talking to the officer.

6 Q Okay. So you had heard some details from, I assume,
7 one of your friend or family members over the phone about
8 what had happened?

9 A Yeah.

10 Q Okay. Do you recall when you first -- who -- who
11 first told you that Carlos Reeder was identified as the
12 person that ---

13 A I couldn't necessarily say ---

14 Q Okay.

15 A --- who it was. They just demonstrated ---

16 Q At some ---

17 A --- they had ---

18 Q --- point you just heard his name, but you ---

19 A Right.

20 Q --- don't remember who ---

21 A Unh-unh.

22 Q --- said it to you?

23 Okay. Thank you, Ms. Adams.

24 THE COURT: Anything on redirect?

25 MR. DANIEL: Yes, sir, Your Honor.

REDIRECT EXAMINATION

1
2 BY MR. DANIEL:

3 Q Ms. Adams, who did you learn -- who did you learn from
4 that there was a gold Corolla or tan Corolla at the scene
5 of this shooting?

6 A I want to say the person that was on the phone.

7 Q Okay. And who did you learn from that this individual
8 was the shooter was looking for a guy named Smoke? Who'd
9 you learn that from -- that information?

10 A From the person on the telephone.

11 Q Okay. And that's why the name Carlos Reeder came to
12 mind?

13 A Uh-huh. Because he was the only person that had come
14 to my house upon Smoke helping me move in.

15 Q All right. Just for clarification, who is Smoke?

16 A He's a friend from the neighborhood from the apartment
17 complex that I had moved from.

18 Q In the -- in Cross Hill area?

19 A No.

20 Q In Laurens?

21 A In Laurens.

22 Q Okay. And Smoke was helping you move into your new --
23 to your new home on [REDACTED] Rodelsperger?

24 A That's correct.

25 Q And that was October 5th Smoke helped you move?

REDIRECT EXAMINATION BY MR. DANIEL -- DEBORICA ADAMS

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1 A That's correct.

2 Q And that's the date you remember seeing a tan or
3 beige-type Toyota Corolla?

4 A That's correct.

5 Q And you saw this -- now, Smoke, do we -- do you know
6 his real name?

7 A No. I can't necessarily say what's his real -- what
8 is his real name. Because I just know him as "Smoke."

9 Q Is that -- do you think that's his legal name or is
10 that a nickname, if you had ---

11 A That's not -- I don't -- I don't -- I hope that's not
12 his real name.

13 Q Okay. Who is Ayesha Vance?

14 A That's Carlos's girlfriend/baby mama.

15 Q How -- and how do you know her?

16 A I mean, I don't know her. I -- I just know, when I
17 left and went to the store, my boyfriend -- it was a -- it
18 was a number on the chair. And he said, "Ayesha came here
19 and said for to call her."

20 Q And when ---

21 A And I ---

22 Q --- was this?

23 A --- said, "Who is this?"

24 Q When did this happen?

25 A That was like couple days later.

1 Q Couple days after the shooting?

2 A Uh-huh.

3 Q All right. So in October 2012?

4 A Yeah.

5 MR. VERNER: Your Honor, I'm -- Your Honor, I don't
6 mean to interrupt. But I'm going to respectfully -- I
7 believe what the state is going is they're getting into
8 issues about the -- the car that later -- after the fact,
9 that the client defendant was identified as being in was --
10 was identified as, I believe, Carlos Reeder's girlfriend's
11 car. But I submit, this goes beyond the *Neil v. Biggers*
12 lineup.

13 But they're going into testimony, I think, to kind of
14 corroborate that subsequent that he was seen in a tan
15 Corolla several days later or -- later. So -- so I would
16 object that this is beyond the grounds of a *Neil v. Biggers*
17 motion. And -- and it certainly wasn't brought up in
18 cross.

19 THE COURT: Solicitor, is it related to the *Neil v.*
20 *Biggers* issue that we're dealing with?

21 MR. DANIEL: No, sir. I'll -- I'll move on, Your
22 Honor.

23 THE COURT: Okay.

24 Q Have you ever seen Carlos Reeder before?

25 A No.

REDIRECT EXAMINATION BY MR. DANIEL - DEBORICA ADAMS

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1 Q You just know Carlos Reeder -- that name came to mind
2 based on the vehicle description and association with
3 Smoke?

4 A Yes. When Smoke was helping me move in and him and
5 some more guys came by and had hollered at Smoke. And then
6 when I had asked Smoke who -- who -- who they was.

7 Q This picture you received from Beverly of Carlos
8 Reeder, did you get that while you were en route back to
9 your home from work or did you get it once you were on
10 scene at your house?

11 A No. I got it while I was on scene at my house.

12 Q Okay. And you didn't show that picture to anyone
13 other than law enforcement; is that correct?

14 A That's correct.

15 Q Okay. No further questions.

16 THE COURT: Anything on recross?

17 MR. VERNER: No, Your Honor.

18 THE COURT: Okay. Thank you for ---

19 THE WITNESS: Uh-huh.

20 THE COURT: -- your testimony. You can step down.

21 (Whereupon, the witness exited the witness stand.)

22 THE COURT: Let me see the lawyers for just a minute,
23 please.

24 (Off the record from 1:07 p.m. until 1:12 p.m.)

25 THE COURT: Okay. We're back on the record. And

1 after the conclusion of the testimony from the last
2 witness, Deborica Adams, I informed the solicitors and Mr.
3 Verner that it was my recollection that several years ago
4 prior to my closing the law office that I had represented
5 as an attorney that witness. And I asked the solicitors
6 just to confirm that, and that was confirmed that I had
7 represented her in a family court matter.

8 So I wanted Mr. Verner to -- well, first of all, I
9 wanted to have it fully disclosed on the record to -- to
10 both sides and to make sure that there was no conflict for
11 me to preside over this trial in light of that. I -- I
12 trust that the state has no objection to my presiding in
13 this case, having represented this witness previously,
14 correct, Solicitor?

15 MR. SCOTT: That's correct, Your Honor.

16 THE COURT: Thank you. Mr. Verner, have you had an
17 opportunity to discuss this particular issue with your
18 client?

19 MR. VERNER: I have, Your Honor.

20 THE COURT: And what is the position of the defense?

21 MR. VERNER: Yeah. I -- I agree with the Court, Your
22 Honor. She would -- I -- I -- I would be in a little --
23 little different situation if she were a -- a named victim
24 or -- or that type. But I do characterize her as just a
25 witness -- possibly a little bit more in for -- because

1 she's the homeowner but -- but still, in the nature of a
2 witness. The -- I -- I have spoken to him and the -- the
3 -- we're -- we're satisfied with the Court, Your ---

4 THE COURT: Okay.

5 MR. VERNER: --- Honor. We don't see the conflict.
6 And -- and -- and we think that it would be dealt with,
7 addressed, or I would ---

8 THE COURT: Okay.

9 MR. VERNER: --- be vigilant and I would stand up if I
10 felt -- but I -- I see no conflict ---

11 THE COURT: Okay.

12 MR. VERNER: --- Your Honor. And we're prepared to go
13 forward.

14 THE COURT: Okay. Thank you, Mr. Verner. I -- I
15 appreciate that. And I just want to assure everyone: The
16 fact that I had previously represented this particular
17 witness will in no way have any effect whatsoever on any --
18 any rulings or decisions that I may make in this matter.

19 All right. With that said, it's -- it's my
20 understanding that we may be able to just -- per discussion
21 between the solicitor and Mr. Verner, that might be able to
22 maybe streamline not -- I'm certainly not requiring that --
23 but I think Mr. Verner indicated that might can streamline
24 this *Neil v. Biggers* hearing to make a ruling on the issue
25 of in-court identification. Is that correct?

DIRECT EXAMINATION BY MR. SCOTT - ALLISON MOORE

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1 MR. SCOTT: Yes, sir, Your Honor.

2 THE COURT: Okay. Solicitor aware of how to proceed,
3 then, to maybe accomplish that?

4 MR. SCOTT: I think so, Your Honor.

5 THE COURT: Okay. Very good. Call your next witness.

6 MR. SCOTT: Your Honor, the state calls Sgt. Allison
7 Moore.

8 THE COURT: Okay. Come around, officer.

9 (Whereupon, the witness came forward.)

10 ALLISON MOORE, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q Sgt. Moore, October 6th of 2012, did you have an
15 opportunity to become involved with a alleged shooting that
16 occurred at ■■■ Rodelsperger Street?

17 A Yes, I did.

18 Q And after speaking with eyewitnesses on the scene, did
19 the name Carlos Reeder come up?

20 A I didn't personally speak to any eyewitnesses on
21 scene. I was called out by the lieutenant to come in to
22 generate the photo lineup. That's -- he's the one that
23 gave me the name.

24 Q Okay. The -- the only name you were ever given, as
25 far as photo lineup, was Carlos Reeder?

DIRECT EXAMINATION BY MR. SCOTT - ALLISON MOORE

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1 A That's correct.

2 Q And then, who did you contact in order to generate the
3 photo lineup?

4 A I submitted a form to the SLED Fusion Center by e-
5 mail. And I also gave them a phone call that we would like
6 a rush -- rush job on it. And I received that e-mail back
7 within 30 to 45 minutes.

8 Q Okay. And -- well, let me show you State's ID No. 1.

9 A Uh-huh.

10 Q You recognize what that is?

11 A Yes, sir.

12 Q And what is it?

13 A This is the photo lineup they sent me through e-mail.

14 Q Okay. And you remember approximately what time you
15 would've received that lineup?

16 A Probably about 7:30/7:45, somewhere in that time
17 frame.

18 Q Okay. And the original dispatch was about six?

19 A Yes, sir.

20 Q Okay. So 7:30/7:45, is that what you just said?

21 A Yes, sir.

22 Q Okay.

23 A Uh-huh.

24 Q And then, State's No. 1, specifically, this lineup was
25 shown to who?

1 A Vickie Davis.

2 Q And Vickie Davis is one of the eyewitnesses on the
3 scene?

4 A Yes, sir.

5 Q Okay. And what, if anything, did you tell her when
6 you presented that photo lineup to her?

7 A I presented the photo lineup and I told her to -- if
8 she could recognize anyone in that lineup as who committed
9 the crime. And then I asked her to circle and initial the
10 photo.

11 Q Okay. And did she do so?

12 A Yes, she did.

13 Q She made an identification of one of the -- one of the
14 individuals listed in that six-pack lineup?

15 A That's correct.

16 Q And which one did she identify?

17 A She identified No. 2, who was Carlos Reeder.

18 Q Okay. And she initialed it?

19 A Yes, sir.

20 Q Did she show any hesitancy whatsoever ---

21 A Absolutely ---

22 Q --- in identifying ---

23 A I'm sorry. Go ahead.

24 Q Well, go ahead.

25 A Absolutely not. No hesitancy.

1 Q Okay. So she picked Carlos Reeder out of that six-
2 pack fairly quickly?

3 A Yes, sir.

4 Q Okay. Let me show you State's No. 2. That lineup,
5 who was that shown to?

6 A This lineup was shown to Dawayne Davis.

7 Q Okay. Likewise, did you suggest to him that the
8 individual who did the shooting was in that lineup?

9 A No, sir.

10 Q Did you point to any of the suspects in that lineup?

11 A No, sir.

12 Q All right. Did -- did he indicate that one of those
13 people was, in fact, the one he saw do the shooting?

14 A Yes, sir. He also circled and initialed No. 2, Carlos
15 Reeder.

16 Q Okay. Did he show any hesitancy?

17 A No, sir.

18 Q All right. Now, do you recall which one you showed
19 the lineup to first, or did you show them to both of them
20 at the same time?

21 A No, sir. I showed them separately. And I believe it
22 was to Vickie Davis first and then to Dawayne. But they
23 were ---

24 Q Okay.

25 A --- shown separately.

1 Q Were -- were they within -- was -- when you showed
2 Vickie the lineup, was Dawayne within proximity -- close
3 proximity so he could watch the -- the procedure?

4 A No, sir.

5 Q Okay.

6 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

7 Q Okay. Thank you. Please answer any questions ---

8 A Uh-huh.

9 Q --- Mr. Verner has for you.

10 THE COURT: Mr. Verner?

11 CROSS-EXAMINATION

12 BY MR. VERNER:

13 Q Officer Moore, your only role at -- at this point in
14 the case, at least, was to prepare the photo lineup that
15 SLED really prepared? You just gave a name and, I -- I
16 assume, birth date or other ---

17 A That's correct.

18 Q Did you give the other identification for Carlos
19 Reeder such as his birth date or ---

20 A Yes, sir.

21 Q --- or ---

22 A On the -- on the submittal form that we have to give
23 to SLED, it -- his -- his driver's license, his date of
24 birth, and his full name.

25 Q Okay. And you would've looked that up, I guess, just

CROSS-EXAMINATION BY MR. VERNER - ALLISON MOORE

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1 in the system?

2 A Yes, sir. Through -- uh-huh.

3 Q Okay. The -- but you hadn't spoken to any of the fact
4 witnesses or eyewitnesses in this case? You -- you were
5 just told by the lieutenant to prepare a lineup and put
6 Carlos Reeder in there?

7 A That's correct.

8 Q The -- did -- did anywhere -- did you use his -- the
9 -- the nickname C-Note to come up with the identification?

10 A I did not. No.

11 Q Okay. So it was just based entirely on name and date
12 of birth and where the ---

13 A That's correct.

14 Q Okay. The -- and you -- I think you testified it took
15 maybe 45 minutes to get the copy back from SLED?

16 A Yes, sir, approximately.

17 Q And then, did you go to the scene of Rodelsperger
18 Drive to show the lineup?

19 A Yes, sir.

20 Q Okay. The -- did you show the lineup to -- to Vickie
21 and Dawayne Davis?

22 A Yes, sir.

23 Q Or you ---

24 A Separately.

25 Q --- handed it to another officer and they actually ---

1 A No, sir. I did.

2 Q Okay. The -- and do you have a prepared speech or --
3 like, a *Miranda*-type of -- of what you tell people before
4 you do a photographic lineup?

5 A Not necessarily. No, sir.

6 Q Okay. The -- do you recall where on the property the
7 -- the witnesses were when they went through these photo
8 lineups?

9 A We were actually on the street.

10 Q Okay. On Rodelsperger Drive itself and not inside?

11 A It was either -- it was either -- I think we were on
12 Charles Street, I believe ---

13 Q Okay.

14 A --- next to ---

15 Q But you ---

16 A --- a patrol ---

17 Q --- were out ---

18 A --- car.

19 Q --- on the street?

20 A Yes, sir.

21 Q The -- did -- did you show a photo lineup to any other
22 fact witnesses?

23 A Just to Vickie and Dawayne.

24 Q Okay. The -- did -- did any of the -- did you see the
25 other photograph that we -- we've been talking about on the

CROSS-EXAMINATION BY MR. VERNER - ALLISON MOORE

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1 cell phone that the officer ---

2 A I did not.

3 Q Okay. Do you recall speaking to Ms. Deborica Adams
4 prior to ---

5 A I don't recall speaking with her. No.

6 Q The -- but how were Vickie and Dawayne Davis chosen as
7 the -- the photographic eyewitnesses -- or the eyewitnesses
8 for the purpose of the identification?

9 A I don't recall. Just Lt. Jay Brogdon said that these
10 were the two witnesses on the scene that could identify.

11 Q Okay. The -- but I'm sure there must've been -- we've
12 heard up to ten or twelve people there?

13 A I'm assuming so. But ---

14 Q Okay.

15 A --- those were ---

16 Q But ---

17 A --- the only two that I was told.

18 Q Mr. Brogdon said, "These are the two I want to look at
19 it"?

20 A Yes, sir.

21 Q Okay. The -- did -- did they tell you how close they
22 had been standing to Carlos Reeder when they made the
23 identification?

24 A No, sir.

25 Q The -- were you aware of their location on the yard at

1 all when the incident occurred?

2 A No, sir.

3 Q Okay. The -- were you aware of whether they indicated
4 they knew Carlos Reeder before the identification?

5 A I believe they said they didn't.

6 Q Okay. The -- but it -- police first responded about
7 5:45 in the evening to the scene, so you would've gotten
8 there about 6:30 at best, give or take?

9 A Yes, sir. To my office. Yes, sir.

10 Q Okay.

11 A Uh-huh.

12 Q Was it still -- was it dark when they went through the
13 identification or was it twilight or how would you
14 characterize the lighting?

15 A I believe it was dark when they did the
16 identification.

17 Q Okay. The -- would you have had your Mag flashlight
18 or how would you have ---

19 A Yes, sir.

20 Q --- really ---

21 A We were also underneath a streetlight that was lit.

22 Q Okay. The -- did -- did they indicate what the -- the
23 defendant was doing when they made their identification of
24 him, as opposed to was he running or walking or just
25 standing there? Did they characterize what their

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS

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1 opportunity to observe him was?

2 A Not to me. No.

3 Q Okay. The -- thank you, officer.

4 THE COURT: Anything on redirect?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: Thank you for your testimony, officer.

7 You can step down.

8 THE WITNESS: Thank you.

9 (Whereupon, the witness exited the witness stand.)

10 MR. SCOTT: The state calls Vickie Davis.

11 (Whereupon, the witness came forward.)

12 (Off the record briefly.)

13 VICKIE DAVIS, having been first duly sworn,

14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Vickie, you remember October 6th, 2012?

18 A Yes, sir, I do.

19 Q And were you at [REDACTED] Rodelsperger?

20 A Yes, sir, I was.

21 Q And what were you doing there?

22 A My nephew and his girlfriend lives there.

23 Q Okay.

24 A We was having a family cookout. And everybody was
25 over there.

1 Q All right. You remember at some point two guys coming
2 up in a Corolla?

3 A Yes, sir, I do.

4 Q All right. Tell -- tell us what happened when these
5 two ---

6 A When it -- when they first came up, I was sitting,
7 like, on the front side of the house where nothing was at.
8 Then they pulled up in the Corolla. And then the guy,
9 Carlos, got out. And he was, like, coming up towards the
10 house. And we was -- they was, like, I meant -- we didn't
11 know who he was, basically.

12 And they was asking, you know, "What -- what you
13 doing?" Because he was, like, going. And he was saying
14 about somebody named Smoke.

15 And then at that time the other guy, he got -- he got
16 out of the car. And then Carlos and my brother exchange
17 words because at the time he wouldn't get back in the car.
18 Like, we say, "We don't know no -- who know Smoke is. You
19 need to get in your car and leave."

20 Q Okay. Now ---

21 A So they ---

22 Q --- Carlos ---

23 A --- left.

24 Q I'm sorry. Carlos ---

25 A Oh.

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1 Q --- you -- you talking about -- you talking about the
2 defendant over here in the plaid shirt? Is that who you're
3 talking about?

4 A Yes. Carlos.

5 Q Okay. Okay.

6 A You say his name Carlos, right?

7 Q Yeah.

8 A Carlos.

9 Q But you didn't know his name, though, at the time?

10 A No. At -- this was my first -- that was my first time
11 ever seeing him.

12 Q But looking at him right now, that's the person you
13 saw who showed up in ---

14 A Yes.

15 Q --- the Corolla?

16 A That's Carlos. Yes.

17 Q Okay. And -- now, he gets up and he was looking for
18 Smoke and y'all ---

19 A Somebody ---

20 Q --- didn't know ---

21 A --- named Smoke. Because at the time I was sitting on
22 the front side of the house. But when all the commotion
23 started, I came around to where they was at. And I was
24 standing basically on the sidewalk when he got out the car
25 to go up in the yard.

1 Q Okay.

2 A But the other guy, he stood outside the car. And so
3 the -- the commotion started. Then they got back in their
4 car, the Toyota, and he left.

5 Then he came back. When he came back, they came
6 through the apartment complex.

7 Q I'm sorry. I'm ---

8 A I'm moving ---

9 Q --- sorry.

10 A --- too fast?

11 Q No, no. You're fine.

12 A Okay.

13 Q I -- well, I just want to clear something up, though.

14 A Okay.

15 Q All right. Now, you talk about there's a commotion.
16 And -- and pretty much ---

17 A No. The commotion with them in the front of the
18 house. That argument with them started in the front of the
19 house.

20 Q I'm trying to figure out: What was it about? Just
21 the fact -- they're looking for Smoke and y'all are saying,
22 "We don't know who Smoke is"?

23 A It's basically about Smoke and you know how -- the
24 attitudes flared up. I meant, because he talked -- Carlos
25 made the statement to my brother, "Nigger, I'm going see

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1 you. I'm going see you on the street."

2 And my brother told him straight up, "I'm -- you see
3 me now. If you want me, you see me now."

4 Q Okay.

5 A And then he got in the car. He was, like, "I got you.
6 Nigger, I got you," just like that.

7 Q Now, how ---

8 A So they ---

9 Q --- how close ---

10 A --- left.

11 Q --- were you to Carlos Reeder when all this fussing
12 and everything was going on?

13 A I meant, about from me to you. Me ---

14 Q All right.

15 A --- when ---

16 Q So ---

17 A --- he got out of the car, because he came around the
18 front of the car.

19 THE COURT: Ma'am, you need to -- when you testify,
20 you need ---

21 THE WITNESS: Oh.

22 THE COURT: --- to be ---

23 THE WITNESS: Oh.

24 THE COURT: --- right up ---

25 THE WITNESS: Excuse me.

1 THE COURT: --- there so the ---

2 THE WITNESS: Okay.

3 THE COURT: --- court reporter can see you.

4 A But ---

5 Q What you're demonstrating is about this distance ---

6 A Yeah.

7 Q --- is how ---

8 A Yeah.

9 Q --- close you were from ---

10 A Yes.

11 Q --- him?

12 And is it daylight out -- outside at this point?

13 A Yeah. It wasn't dark yet.

14 Q Okay. And -- and you -- you're trying to figure out
15 what's going on because he's fussing with you. Is he ---

16 A With my brother.

17 Q Your brother. I'm sorry.

18 A Uh-huh.

19 Q All right. So he said, "I'm going see you. I'm going
20 see you." And then ---

21 A Uh-huh.

22 Q --- they leave in the Corolla?

23 A Yes, they leave.

24 Q Then what happens?

25 A When he left, he came back up by the -- the apartment

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1 complex on Charles Street, it has a little park. And
2 Carlos and the other guy came back, walking through the
3 apartment complex.

4 Q How long had they been gone?

5 A They wasn't even gone 30 minutes.

6 Q Okay. But they come -- you said they walked back?

7 A Yeah. He left with the car. They left together in
8 the car; went up Charles Street. But when he came back, he
9 came back walking through the apartment complex, him and
10 the other guy.

11 Q Okay.

12 A And they was, like, right there by the park before you
13 turn the curve. They were standing right there.

14 Q Because the house is at the corner of Charles and ---

15 A Yeah.

16 Q --- Rodelsperger?

17 A Uh-huh.

18 Q Right there on the corner?

19 A Right there on the corner. If you go past the house
20 up Charles, you're going have a little curve right there.
21 They was standing right there on the curve. And they was
22 looking down towards the house.

23 And it was me and two more other guys standing in the
24 back of the Explorer that got hit. Then all of a sudden,
25 Carlos got to pacing a little bit.

1 And I was, like, "Man, y'all better watch him, man.
2 Something ain't right." I said, "Something ain't right. I
3 got a feeling something ain't right," just like that.

4 And a few minutes later when I said that, I seen him
5 stand and do like this. And I seen when the first bullet
6 came out. Because when the first one hit, the first one
7 hit the back of the truck. We all duck, and we ran around
8 the house. And then the house got hit.

9 But the whole thing about the situation, it were kids
10 in the park. When he was shooting towards the house, the
11 kids was running towards the house. Because our kids was
12 at the park.

13 Q Okay.

14 A That was the whole thing of the situation. Because I
15 the one called 911. And I followed -- when Carlos did the
16 shooting, he left. He ran.

17 But the other guy was trying to run. But I got my
18 golf club out the car. And I told him, "You ain't going
19 nowhere. You leaving with the police." I said, "You're
20 not going nowhere."

21 So everywhere he went, I was on him. And then not --
22 I was still on the phone with the 991 -- 911 dispatch at
23 the time. And she was, like, "Ms. Davis, you don't need to
24 follow him. You need to stand back."

25 I said, "He's not getting away. Because he could've

1 killed somebody out here."

2 Q Okay.

3 A I meant, that was -- that could've been bad.

4 Q But who -- who was the one you saw with the gun who
5 did fire the shots?

6 A Carlos. I seen when he pulled it -- I seen when the
7 first spark came out the barrel.

8 Q Okay. And this is the guy who had last seen 30
9 minutes before ---

10 A Yeah.

11 Q --- standing ---

12 A I meant, how could you forget ---

13 Q --- eight feet ---

14 A --- a face?

15 Q --- from you?

16 A Yeah. I mean, I seen him. I seen when he did the
17 stance and pop, pop, pop, pop, pop, just like that. I
18 looked him dead in the face.

19 Q All right.

20 A And then for months later I don't know how his
21 girlfriend got my phone number. But ---

22 Q Okay.

23 A --- she ---

24 Q All right. Yeah. Wait -- wait -- wait ---

25 A Well, we'll ---

1 Q --- let's don't ---

2 A --- wait ---

3 Q --- get into ---

4 A --- on that.

5 Q --- that now.

6 A All right. We'll wait on that one.

7 Q Now, you -- you called police ---

8 A Yes, I did.

9 Q --- told them there had been a ---

10 A Yes ---

11 Q --- shots ---

12 A --- I did.

13 Q --- fired?

14 A I sure did.

15 Q About how long did it take for them to get there?

16 A Didn't even take 15 minutes. I meant, they came from
17 everywhere.

18 Q All right. So if their report says they got there at
19 six o'clock, then the actual shooting happened . . .

20 A I say the actual shooting -- it happened a little
21 before six.

22 Q Okay.

23 A I can't give you exact time, because, hey, that was a
24 overwhelming moment.

25 Q Okay. But they got there pretty quick, is what ---

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1 A Yeah.

2 Q --- you're saying?

3 A They got there real quick ---

4 Q Okay.

5 A --- real quick.

6 Q And you -- you told them what happened?

7 A Yes, I did.

8 Q And you described the person who had done the
9 shooting?

10 A Yes, I did.

11 Q Okay. And did you -- were you the one who called
12 Deborica Adams?

13 A No, I wasn't.

14 Q You were -- you didn't? All right. Somebody ---

15 A No.

16 Q --- called her and told her what had happened.

17 A No. It ---

18 Q It wasn't ---

19 A --- was ---

20 Q --- you?

21 A --- not me.

22 Q Okay. You remember when she got there?

23 A My head was so blow -- I -- no. I really don't.

24 Q Okay.

25 A I really don't.

1 Q Well, let me ask you this: Do you remember at some
2 point -- actually, it was Sgt. Moore showing you a photo
3 lineup?

4 A Yes, sir, I do.

5 Q Okay. Let -- let me show you State's No. 1.

6 A Yes, sir. I picked No. 2. That's my handwriting.

7 Q Okay. But State's -- that -- that exhibit there,
8 State's No. 1, do you recognize that?

9 A Yes, sir, I do.

10 Q And is that the lineup that Sgt. Moore showed you?

11 A Yes, sir, it is.

12 Q Okay. And did -- what did she say to you when she
13 handed it to you? Did she -- did she suggest to you that
14 you need to pick ---

15 A No.

16 Q --- one ---

17 A She -- when she -- when she gave it to me, she told me
18 she got six guys in a lineup and one of them -- you know,
19 about my suspect. So she told me she got six people. She
20 told me to pick one that was the shooter or who I think was
21 the shooter or that looks familiar to me. And that's when
22 I picked No. 2.

23 Q All right. And ---

24 A And I didn't hesitate.

25 Q And did you put your initials on that?

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1 A Yes, sir. Because ---

2 Q Okay.

3 A --- I was real close to him.

4 Q How -- how sure were you or ---

5 A I bet ---

6 Q --- are you ---

7 A --- my life on it.

8 Q All right. You -- you see the person in the courtroom

9 -- I think I already asked you -- who -- who fired the

10 shots towards you ---

11 A Yes, sir.

12 Q --- at the house?

13 A Carlos Reeder, sitting over with the blue-plaid shirt
14 on.

15 Q Okay. All right. Thank you. Okay. That's all the
16 questions I have for you, Ms. Davis.

17 THE COURT: Mr. Verner?

18 CROSS-EXAMINATION

19 BY MR. VERNER:

20 Q The -- now, Ms. Davis, the ---

21 A Uh-huh.

22 Q --- are you generally familiar with this house on -- I
23 called it Rodelsperger. How ---

24 A It's Rodelsperger, I think ---

25 Q You call it Rodelsperger ---

1 A --- Rodelsperger ---

2 Q --- or -- okay. Oh, okay.

3 The -- the house kind of sits on the corner of
4 Rodelsperger and Charles Street; is that right?

5 A Yes, sir. Uh-huh.

6 Q The -- but the front of it faces which street?

7 A Rodelsperger.

8 Q Okay. And the house has a little bit of an L-shaped
9 -- in -- in the back of it, there's kind of a little bit of
10 a corner between the ---

11 A Yeah.

12 Q --- house or do you recall?

13 A Uh-huh. Talking about on the side where the truck was
14 -- the Explorer or the other ---

15 Q Yes, ma'am.

16 A --- side? Okay. Yes, sir.

17 Q The -- but there is kind of a -- a corner or angle?

18 A Uh-huh.

19 Q Okay. And -- and I apologize. But because the court
20 reporter writes down your answer, she ---

21 A Uh-huh.

22 Q --- needs a "yes" or "no" because it -- she can't do
23 when you make a sound, the -- the yes sound. It -- it
24 doesn't show up, so you need to try to say "yes" or "no."

25 A Okay.

1 Q The -- how long had you been out there that day, to
2 the best of your recollection?

3 A I was over there for a -- a while.

4 Q Okay. Longer ---

5 A Yeah.

6 Q --- than an hour perhaps?

7 A Yeah, longer ---

8 Q Okay.

9 A --- than a hour.

10 Q Okay. The -- and I believe when you -- the -- the --
11 the cookout portion of the -- was there an -- like, an
12 outdoor barbecue going or were they cooking from ---

13 A They was ---

14 Q --- inside?

15 A --- cooked it on both, inside and outside.

16 Q Okay. Where was the grill set up?

17 A The grill was on the opposite side while -- on the --
18 not the side where the Explorer is, but the other side of
19 the house.

20 Q On -- on the ---

21 A So basically, on the front side of the house.

22 Q Facing Rodelsperger ---

23 A Yes, sir.

24 Q --- towards Rodelsperger?

25 A Uh-huh.

1 Q Okay. The -- and -- and where were the bulk of the
2 people hanging out -- inside? outside? Or ---

3 A In the front and on the side.

4 Q Okay. The -- and I believe you testified for the
5 prosecutor just a few minutes earlier that you were towards
6 the front-porch area ---

7 A Yes, sir.

8 Q --- is that right?

9 Were you on the front porch or were you ---

10 A No, sir. I was on the ground.

11 Q Okay. Were you helping with the grill or were you
12 just ---

13 A I was just there.

14 Q Okay. The -- had you had anything to drink prior to
15 this encounter?

16 A No. I don't drink.

17 Q All right. Not -- not a single beer?

18 A I don't drink.

19 Q Okay. The -- just in -- period, or I don't drink in
20 general?

21 A I don't drink at all.

22 Q The -- were there other people possibly drinking?

23 A We had some Bud Lights.

24 Q Some of them? Some do? Some don't?

25 A Yeah, some do; some don't.

1 Q The -- the road that you're testifying that the --
2 Carlos Reeder came in the Corolla ---

3 A Uh-huh.

4 Q --- what -- that was Charles Street?

5 A No. When he first came in, he came straight up
6 Rodelsperger. You know, it's like Charles go across.

7 Q Yes, ma'am.

8 A Okay. When he got to the stop sign, he came straight
9 up and he stopped in front of the house. But when he ---

10 Q Was ---

11 A --- left ---

12 Q Was he coming from the Newberry area where he would've
13 passed the house with the passenger on the right? Or when
14 they came up originally ---

15 A When ---

16 Q --- which side ---

17 A --- when he ---

18 Q --- of the car ---

19 A --- came up -- when he came up, the passenger was at
20 the house.

21 Q Already out of the car?

22 A No. What are you talking about?

23 Q The -- well, the -- when -- when they first approached
24 the house ---

25 A Uh-huh.

1 Q --- the very first time, asking for Smoke ---

2 A Uh-huh.

3 Q --- it -- the passenger was closest to the house?

4 A Yes.

5 Q Okay.

6 A Uh-huh.

7 Q So they were going what I would say from Newberry
8 would be behind them, and -- and they were going out
9 towards Silverstreet direction?

10 A No.

11 Q Okay. The ---

12 A They was coming in like maybe they came in off of
13 Drayton Street way.

14 Q Okay. The -- and -- and if they had come from Drayton
15 Street, Newberry would be behind them, right? The town of
16 Newberry?

17 A I guess the town would be behind.

18 Q The -- they weren't going towards the apartment
19 complex?

20 A No. He went towards apartment complex after the
21 altercation.

22 Q Okay.

23 A He backed -- he backed up on Rosalyn and went up on
24 Charles Street, like the back way to the Friendly Villa,
25 where the apartments -- the little back row right there.

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- 1 Q Was that immediately after he first ---
- 2 A After ---
- 3 Q --- was at ---
- 4 A --- the argument.
- 5 Q --- the house?
- 6 A Yes, sir.
- 7 Q With -- within a few minutes of when he first arrived?
- 8 A Time he got in the car.
- 9 Q Okay. And then went back towards -- I call that -- is
- 10 that the Newberry Greens apartment complex?
- 11 A Yes. Went back up towards that way.
- 12 Q Okay. And that's on Charles Street?
- 13 A Yes.
- 14 Q The -- how far -- when -- when he initially pulled up,
- 15 how far do you think you were from the car?
- 16 A Talking about when he go out the first time?
- 17 Q Yes, ma'am.
- 18 A About probably from here maybe to that chair -- the
- 19 ---
- 20 Q The first ---
- 21 A --- glass ---
- 22 Q --- chair that you're ---
- 23 A --- chair -- the first ---
- 24 Q --- talking about ---
- 25 A --- chair.

1 Q --- or the last one?

2 A Yes. When he got out the car.

3 Q So -- but you're saying you were within ten feet ---

4 A I was ---

5 Q --- from the ---

6 A --- close.

7 Q --- road?

8 A I was close to him ---

9 Q Okay.

10 A --- when he got out the car the first time.

11 Q Well, I -- I thought you testified that you didn't
12 start walking over to the car until you heard the
13 commotion. You said ---

14 A Yeah.

15 Q --- the ---

16 A When the commotion -- when the commotion happened.
17 You ain't say when it first happened.

18 Q Okay.

19 A I'm talking about ---

20 Q Well, I was -- when -- when he first asked where --
21 whether Smoke was there ---

22 A Oh, when he first did that, I was on the side of the
23 house. But when ---

24 Q Okay.

25 A --- the commotion ---

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1 Q Okay.

2 A --- started, that's when I came around.

3 Q All right. So -- so when -- when he first came up on
4 Rodelsperger, you were on the Charles Street side of the
5 house?

6 A No. I was on the Rodelsperger side of the house. The
7 Charles Street side is where the Explorer was at.

8 Q Okay.

9 A So the Rodelsperger side was just, like, the other
10 side, which is the front of the house.

11 Q But -- and -- and that's where you saying you were
12 when he first approached?

13 A Yes.

14 Q Okay. But I -- I thought you testified I didn't come
15 close until I heard the commotion going on.

16 A Yeah. When -- when they -- when they started arguing,
17 that's when I came around. And he was getting out the car
18 then.

19 Q Okay.

20 A And when he got out the car, he came around the front
21 and he walked right past me.

22 Q But -- and that commotion was -- your brother and
23 possibly some family members were -- were in the yard side
24 of that?

25 A Yes, ma'am. We was in the -- in the yard.

1 Q But that was -- from what you saw, that was --- Carlos
2 Reeder was doing the talking or Quentin Graham or you don't
3 know? You just heard?

4 A Carlos did all the talking.

5 Q Okay. How close did you come to identify him at that
6 point?

7 A I meant, I didn't -- that was -- that was my first
8 time ever seeing him.

9 Q Okay. The -- you weren't aware of his name or ---

10 A I didn't know nothing about him ---

11 Q Okay.

12 A --- nothing.

13 Q The -- was it enough day -- plenty of day -- it
14 appears to be plenty of daylight?

15 A Yeah. It was enough daylight.

16 Q Okay. And -- and the photograph you were shown were
17 these black-and-white copies, or were you shown color
18 photographs by the officer?

19 A I can't remember. I can't remember.

20 Q Okay. The -- had you seen Deborica prior to talking
21 -- to -- to making the identification?

22 A I think whenever I seen her, everything was basically
23 over with, because, I meant, my adrenaline was still
24 running from the -- the -- you know, just -- I don't know
25 when I talked to her.

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1 Q Okay.

2 A I really don't.

3 Q The -- do you recall how you first came up with the
4 name or heard the name Carlos Reeder?

5 A No, I don't.

6 Q Okay.

7 A I don't.

8 Q The -- when the officer showed you the -- the photo
9 lineup, were -- were aware -- had -- had you been --
10 somebody, either in the crowd or the officer, mentioned the
11 name Carlos Reeder?

12 A No. I never knew his name.

13 Q Okay. Until after the ---

14 A Yeah.

15 Q --- charges were brought in this case?

16 A Yeah.

17 Q Okay.

18 A Till when I received my first papers.

19 Q The -- and I believe you testified the officers told
20 you to pick who you think the shooter was?

21 A She told me to take my time and look through that and,
22 if I see him, pick him out.

23 Q Okay. The -- did she indicate to you that he might
24 not be in the photo lineup?

25 A No. It's -- no. No, she didn't.

1 Q She said pick out which one you think was the shooter?

2 A No. She told me if I see the shooter, she want me to
3 pick the shooter out if I see him, if he's in there.

4 Q Did she expressly tell you that -- that the shooter
5 might not be in that photo lineup?

6 A She made no comments.

7 Q Okay. She just basically said see if you see the --
8 if you see the ---

9 A She was saying ---

10 Q --- person ---

11 A --- she got a lineup; if I see the shooter, pick him.

12 Q Point him out?

13 Okay. Do you recall whether you did the photo lineup
14 first or whether Dawayne ---

15 A I think I went first.

16 Q Okay. The -- do you recall how far Dawayne was from
17 you when you went to ---

18 A When we ---

19 Q --- look at ---

20 A --- did the ---

21 Q --- the lineup?

22 A --- lineup, we was basically standing by the light,
23 basically at the stop sign.

24 Q Yes, ma'am.

25 A And he was, like, over in the yard, in Deborica's

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1 yard. So when I finished, I had to come and tell him,

2 "It's your go."

3 Q Okay. From -- just -- from a person in this
4 courtroom, how far do you think, as best you can recall?

5 A Probably to the lady with the blue -- the blue shirt
6 on ---

7 Q Okay.

8 A --- if not a little farther.

9 Q But the officer's sitting in the corner?

10 A Yes, sir.

11 Q Okay. And -- and how far would you say, ballpark,
12 that distance is?

13 A Oh. I don't know measurements.

14 Q About 25 yards? Is that fair or ---

15 A I don't know measurements.

16 Q Okay. The -- do -- do you recall whether you were
17 holding the picture in your hand or was it down on the
18 police car or what were you using to bear down and circle
19 and write your initials?

20 A When I first looked at it?

21 Q Yes, ma'am.

22 A When I first looked at it, I ---

23 Q Just in your hands?

24 A Yeah. I -- I held it like this.

25 Q All right.

1 A And then I sat it down right there.

2 Q What -- what did ---

3 A And ---

4 Q --- you set it down on to identify it?

5 A The police car.

6 Q Okay. The police car?

7 A Yeah.

8 Q The -- the -- and you don't recall -- the -- the
9 people in the crowd -- I assume some of the members of the
10 -- who were at the picnic stayed after the shooting for
11 some period of time out in the yard; is that correct?
12 Certainly, you did.

13 A Yeah.

14 Q The ---

15 A Yes, sir.

16 Q The -- were y'all talking about the -- who it -- who
17 it was or what was going on?

18 A The -- the main thing we was talking about is how
19 close it was ---

20 Q Okay.

21 A --- how somebody could've got hit. That's what we --
22 that was the main subject of the yard.

23 Q Okay. And -- and certainly, when -- when he was first
24 there, you -- you said you were testifying you were out in
25 the front yard and he was too. When the shooting occurred,

1 how -- how far was he ---

2 A When the ---

3 Q --- were you from the -- whoever the person was
4 shooting?

5 A When the shooting occurred, he was standing up by the
6 park area, up like -- but in the road. And me and two more
7 people was standing, like, right at the back of the
8 Explorer that got hit.

9 Q Okay. Was he on Charles Street -- the ---

10 A Yes, sir.

11 Q --- shooter was on Charles Street?

12 A Yes, sir. Him and the other guy was standing on
13 Charles Street.

14 Q Okay. How far away would you say that was from the
15 truck?

16 A I'm trying to think. I'll say about from -- oh, boy.

17 Q Could you have thrown a baseball from where you were
18 standing and -- for him to catch it?

19 A Yeah.

20 Q Okay. So ---

21 A Yes, sir.

22 Q --- close enough to throw a baseball to?

23 A Yes, sir.

24 Q Would you have had to throw it with some force or was
25 it just a simple little toss?

1 A No. You have to throw it with some force.

2 Q Okay. The -- was he -- was -- was the person -- how
3 long after you first identified Carlos -- or the car
4 driving up and the shooting, how long of a period of time?

5 A How long a period of time of what?

6 Q Between when you're saying that you first saw Carlos
7 Reeder or the car drive up and when the shooting occurred?
8 How much time had passed between those two incidents?

9 A Talking about from the time he left till he fired the
10 first shot?

11 Q From the -- from the time you're saying the -- that
12 Carlos and the car first left until the time the first shot
13 was actually fired ---

14 A It wasn't even 30 minutes.

15 Q About half an hour later?

16 A It wasn't even 30 minutes.

17 Q And you're sure that he had the same clothes on?

18 A I'm positive.

19 Q Okay. The -- had you exchanged any words or were you
20 at part of -- any of the conversation?

21 A No, I wasn't.

22 Q Okay.

23 A Unh-unh.

24 Q So you weren't close enough where you were having a
25 conversation ---

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1 A No. I ---

2 Q --- across the ---

3 A --- I never ---

4 Q --- distance ---

5 A --- talked to him, period.

6 Q Okay. All right. Thank you, Ms. Davis.

7 A Uh-huh.

8 THE COURT: Solicitor?

9 MR. SCOTT: Nothing further from this witness, Your
10 Honor.

11 THE COURT: Okay. You can step down, ma'am.

12 (Whereupon, the witness exited the witness stand.)

13 THE COURT: How many more we got? The problem I'm
14 running into is that we're long past lunch. I've got a --
15 a civil matter that's coming in at two o'clock. And when
16 are we going to get into the -- to the streamline mode? I
17 haven't quite ---

18 MR. SCOTT: I thought I had streamlined it but ---

19 THE COURT: All right.

20 MR. SCOTT: Your Honor, I -- just one more and then
21 we're done with this motion.

22 THE COURT: Okay.

23 MR. VERNER: I anticipate, Judge, that we'd be through
24 to -- you're -- you're not going to be able to eat, Judge,
25 before two o'clock, but we'll be through before ---

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS

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(Off the record briefly.)

THE COURT: All right. Call your last witness.

MR. SCOTT: The state calls Dawayne Davis.

(Whereupon, the witness came forward.)

DAWAYNE DAVIS, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. SCOTT:

Q All right. Dawayne, the case we're talking about,
October 6th, 2012, were you at [REDACTED] Rodelsperger?

A Yes, sir.

THE COURT: Okay. I need you to speak up, sir.

A Yes, sir.

Q And Vickie Davis, that's your aunt?

A Yes, sir.

Q You were at this same cookout she was describing,
welcome to the neighborhood for Deborica Adams and her
boyfriend?

A Yes, sir.

Q All right. Tell us what happened with the -- with the
gold Corolla that you talked about.

A Well, all I know is I had pull up probably like 20
minutes before the gold Corolla pull up. And like I said,
I was on the side where they was at. And then the
commotion came. That's when we all walked around.

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 129

1 Q And what was that commotion about?

2 A I really don't know, to be honest. I just know they
3 was asking about something -- they said something about
4 some dude named Smoke somebody was looking for and couple
5 people had words back and forth.

6 Q Okay. And how close did you get to him whenever they
7 were up there with this commotion going on?

8 A Probably about from here to the door.

9 Q Okay. And how many people showed up in the gold
10 Corolla?

11 A I suppose it was two.

12 Q All right. And do you recognize these two guys?

13 A No. I mean, I've seen them but I -- I mean, I don't
14 know them like ---

15 Q They ---

16 A --- personally.

17 Q And they're -- they're looking for Smoke, and Smoke's
18 not there, to your knowledge?

19 A Yeah. I don't even have a clue who that is either.

20 Q Okay. Okay. And -- and did -- did you get -- do you
21 see the driver of the Corolla here today?

22 A Well, I mean, I -- I see my man over there. But I --
23 I can't really say. I had -- I had been under the -- I
24 can't say whether that was him or not, to be honest. I
25 mean, that been almost two years ago too, so I done ---

1 Q Okay.

2 A --- went through a lot of different things since then
3 so ---

4 Q You've spoken with me today, right?

5 A Yes, sir.

6 Q And do you -- what all's happened to you since then?
7 What do you mean?

8 A What -- since today?

9 Q You said ---

10 A When ---

11 Q --- a lot ---

12 A --- when I ---

13 Q --- has happened ---

14 A --- spoke with you today, I only told you that I
15 wanted to drop charge; I didn't care go through with ---

16 THE COURT: Sir, you're going to have to speak up.
17 I'm having a hard time hearing you and I -- if I'm ---

18 THE WITNESS: Okay.

19 THE COURT: --- having a hard time hearing you ---

20 THE WITNESS: All right.

21 THE COURT: --- then I'm ---

22 THE WITNESS: When I ---

23 THE COURT: --- sure ---

24 THE WITNESS: --- spoke with him ---

25 THE COURT: Wait a minute. Hey. I wasn't finished,

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 131

1 sir. I said if I'm having a hard time hearing you, sir,
2 then my court reporter is having a hard time hearing you.
3 So please speak up.

4 Q Do you have gum in your mouth?

5 A Yes, sir.

6 Q All right. We have a trash can.

7 A I'll put ---

8 Q She -- she ---

9 A --- it out.

10 Q You got it?

11 A Yeah.

12 Q All right. You said a lot of things have happened to
13 you since this incident.

14 A Yes, sir.

15 Q What are you talking about?

16 A No. I'm saying, like, a lot of different things have
17 happened. Like, I done had death in the family. I done --
18 you know, I -- I want -- I don't only focus on this no more
19 because I had put it behind me.

20 Q Okay. And what was the first thing you told me today,
21 as a matter of fact?

22 A That I wanted -- I didn't want to go through with it.
23 I would like to drop the charges on my behalf.

24 Q Okay. Well, what -- why? I don't understand.

25 A I mean ---

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS

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1 MR. VERNER: Your Honor, respectfully, I -- I
2 appreciate the question and the bias, but that would be
3 beyond the *Neil v. Biggers* ---

4 THE COURT: Right.

5 MR. VERNER: --- specific question.

6 THE COURT: Sustained.

7 MR. SCOTT: Okay.

8 Q The driver of the Corolla ---

9 A Yes, sir.

10 Q Did you give a statement that night?

11 A Yeah, I gave a statement.

12 Q Okay. What was the driver saying?

13 A What was the driver saying?

14 Q Of the Corolla when he came up in the yard. Was he
15 the one looking for Smoke?

16 A I suppose. It was two guys. So out of two, one of
17 them was looking for the dude Smoke ---

18 Q Okay.

19 A --- whoever the Smoke guy is.

20 Q All right. And do -- do you see the driver of the
21 Corolla?

22 A I mean, I -- I seen the dude that day. But, I mean, I
23 wasn't like all up on him or nothing like that ---

24 Q Okay.

25 A --- all up trying to narrow it directly who he is,

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 133

1 scratch for scratch, tattoo for tattoo, or nothing like
2 that.

3 Q No. I'm not asking you to do that. Do you see the
4 driver of the Corolla here today?

5 A I got a glimpse of his face. Like -- like I said, as
6 of today, I mean, the -- the person I see over there, you
7 know, he look different from two years ago the person that
8 I saw.

9 Q Who's Ayesha Vance?

10 A I suppose that's his girlfriend.

11 Q You been talking to her?

12 A Nah, not really.

13 Q Not really?

14 A Unh-unh. I mean, I see her. Hey. Bye.

15 Q Okay.

16 A I mean, if you go in a store, of course, you going see
17 -- this Newberry. You going see everybody.

18 Q Okay. But the night of October 6th, when the driver
19 of the Corolla was looking for Smoke ---

20 A Uh-huh.

21 Q --- did he leave at some point?

22 A Yeah. He -- he got back in the car and they backed
23 out and they pull off.

24 Q All right. And did they come back?

25 A I suppose. But I -- I didn't see the car. I didn't

1 see the car.

2 Q Why do you suppose? Did -- did they come back or not?

3 A I'm saying why -- why I say I suppose? Because the
4 people that came back, they wasn't in the same car. So I
5 can't tell you if that's the actual same dude that was in
6 that same car.

7 All -- I do know that my truck got shot and when the
8 dude was shooting, is started ducking. I heard a big old
9 p-f-c-h-e-w (phonetic). But the whole time the -- the
10 noise that I heard was my truck getting shot. I mean, I --
11 like I say, I didn't stand to see, okay, is he pointing at
12 me or is he pointing at them. I just was ducking when I
13 heard gunfire.

14 Q And you know you're under oath today, right?

15 A Yes, sir.

16 Q Okay. Let me show you State's No. 2. You recognize
17 that?

18 A I recognize my initials, and I recognize that I
19 circled that. Yes, sir.

20 Q Okay. And who'd you circle?

21 A I circled No. 2.

22 Q All right. And -- and who showed you that lineup?
23 Was it Sgt. Moore?

24 A Yes, sir.

25 Q And what did she show -- what did she say to you when

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1 she handed that to you?

2 A Well, she gave me -- she said, "Here's a -- a photo
3 lineup. I want you to look over it. And if you see the
4 guy that did the shooting or whatever, then circle and then
5 put your initials by it."

6 Q And did you do that?

7 A Yes, sir.

8 Q And which one did you circle?

9 A I circled No. 2.

10 Q Okay. Do you see the person your circled, the person
11 you saw doing the shooting, in the courtroom today?

12 A Like I said, I -- I see -- I see the dude over there.
13 But, I mean, this picture look kind of different from how
14 he looking now so, I mean ---

15 Q Well, is that how he looked that night, though?

16 A Sir, I really was under the influence of the alcohol.

17 Q Did you tell the cops that?

18 A What, that I was under the influence?

19 Q (Nodded head up and down.)

20 A Well, I had been drinking. I had beer when they
21 walked up in the yard.

22 Q All right. How much money you been offered?

23 A Me?

24 Q Yeah.

25 A I don't got no money.

1 Q How much money did Ayesha Vance offer you?

2 A Oh, she ain't offer me no money.

3 Q That's your testimony today?

4 A Yeah. She ain't offered me no money.

5 Q All right. But that's who you circled in ---

6 A Yes, sir.

7 Q --- October 6th, 2012?

8 A Yes, sir.

9 Q All right. Without any hesitancy that night?

10 A Yes, sir.

11 Q Now, where were you standing when you said your truck
12 got shot?

13 A Well, you had -- it was a Expedition right here and my
14 truck was behind the Expedition. So you had, like, one
15 person sitting in the passenger's side of the truck in the
16 front and one person sitting on the back side of the truck.
17 And the doors was open. And I was standing, like, on the
18 front side of the right-passenger ---

19 Q Okay.

20 A --- door. And when I heard the gunshots go off and I
21 heard the big old p-f-c-h-e-w (phonetic). So I just ducked
22 in front of the truck.

23 Q And did you see -- the two guys when they came walking
24 back, did they come through Newberry Greens parking lot or
25 they're walking up Charles?

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1 A Well, I mean, that day it was several people out,
2 because it was a pretty day. And you had people walking
3 around, the kids walking around, like I said. And the
4 shots came from back over toward the Newberry Green side,
5 which is the back side of Charles Street or whatever. And
6 so they actually came from that side.

7 Q But they were standing right over there by that
8 playground on Charles?

9 A Well, yeah. The playground is actually side the road.

10 Q Right. But when the guy who was shooting, he was
11 wearing the same clothes that he was wearing when he drove
12 up in the Corolla, right?

13 A Well, to be honest, my -- sir, like I said, when I
14 heard the shots, I just started ducking. I mean, when I
15 first came and was standing there talking, I looked over.
16 But I heard the shot -- I seen the kids run out first --
17 trying to figure out why the kids running.

18 Then I heard, "He got a gun. He got a gun." And I
19 heard the p-f-c-h-e-w (phonetic). And so I ducked.

20 Q But October 6th, you said you saw the guy pointing a
21 gun.

22 A Okay. I saw a guy. But I didn't say exactly who that
23 guy was.

24 Q Okay.

25 A I saw a guy. When I saw the guy, I heard the kid say,

1 "He got a gun." And that's when I saw the guy. And I
2 heard the shots and I was ducking. I didn't look up no
3 more until I stopped hearing shots and everybody started
4 getting up.

5 Q Okay.

6 A I'll -- I actually was fixing to get up under the
7 truck, to be honest. So, I mean, I was really ducking.

8 Q Okay. Let -- let me show you this. This will refresh
9 your memory. That's a statement.

10 A Uh-huh.

11 Q Do you recognize that statement?

12 A Yes, sir.

13 Q Okay. You read the whole thing?

14 A Did I or could I?

15 Q Yeah. Did -- I mean, do you -- just read it to
16 yourself. I just want you to refresh your memory before I
17 ask you a question.

18 A All right.

19 Q All right. So one of the two guys that came back ---

20 A Uh-huh.

21 Q --- who had been at the house earlier pointed a
22 weapon. And that's when you heard shots, right?

23 A Did it say why -- like I said, the kids was running,
24 saying, "He have a gun; he have a gun." I peeked around
25 the truck like this. I seen like this here. But when I

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1 seen that he really got a gun, it's duck and cover.

2 Q Well, was it the guy who was in the Corolla with the
3 dreadlocks or the one without the dreadlocks?

4 A Well, I don't think -- I've -- I've -- I don't really
5 know.

6 Q Was it ---

7 A Like ---

8 Q --- the one with the Spurs hat or without the Spurs
9 hat?

10 A I don't know. When I seen the gun, my man, I ain't
11 tried to see what he had one.

12 Q Well, let me ask you something, my man: Why did you
13 ---

14 A Okay.

15 Q --- circle No. 2?

16 A Because that's the person that I looked at. It looked
17 it like to me during the time ---

18 Q Okay.

19 A --- when ---

20 Q Thank you.

21 A --- that I first saw.

22 Q Thank you. Nothing further.

23 THE COURT: Mr. Verner?

24 MR. VERNER: Thank you, Your Honor. I don't have any
25 questions.

1 THE COURT: Okay. Thank you, sir. You can step down.

2 (Whereupon, the witness exited the witness stand.)

3 MR. SCOTT: Judge, that -- that's all we have, as far
4 as our witnesses.

5 THE COURT: Okay. Mr. Verner, you wanted to make an
6 argument on this particular issue?

7 MR. VERNER: Yes, sir. Two arguments. Now, the --
8 the -- however long the -- I -- I don't anticipate they'd
9 take particularly long, but just whether the Court wants to
10 take a break and then let us organize ---

11 THE COURT: Well ---

12 MR. VERNER: --- them.

13 THE COURT: --- I mean, everybody's going to be around
14 after lunch. Don't you have some other matters to -- to
15 deal with?

16 MR. VERNER: I will be here, Your Honor, whether ---

17 THE COURT: Okay.

18 MR. VERNER: --- we do it now ---

19 THE COURT: All right.

20 MR. VERNER: --- or whether ---

21 THE COURT: Let -- let's take a recess and -- and
22 we'll decide when we're going to start back. Since
23 everybody's going be here, then -- well, I -- I need to do
24 the minor settlement in just a little bit. And then we'll
25 start back in a little while. But you'll have enough time

1 to go get some lunch.

2 MR. SCOTT: Okay.

3 MR. VERNER: Thank you, Judge.

4 THE COURT: Okay. All right. Thank you very much.

5 We'll be -- we'll be -- let -- let's say we'll be adjourned
6 till -- till three o'clock.

7 (Whereupon, the proceedings were adjourned at 1:59 p.m.
8 and resumed at 3:22 p.m.)

9 THE COURT: Okay. We're back on the record in the
10 Reeder case. We've just concluded the *Neil v. Biggers*
11 identification hearing. And, Mr. Verner, I think you want
12 to put some matters on the record concerning that
13 particular issue.

14 MR. VERNER: Judge, if -- if I could -- I'm going do
15 it backwards the -- the -- as far as the second witness ---

16 THE COURT: Okay.

17 MR. VERNER: --- Dawayne Davis. The -- because he has
18 failed or -- or refused to make an in-court identification,
19 of -- of course, the only purpose of the photo lineup --
20 the *Biggers* lineup is for a witness to be able to make an
21 in-court identification as evidence at trial. I understand
22 that he's made a -- I -- an out-of-court identification.
23 But -- but the point of the photo lineup is so that a
24 witness would be able to make an in-court -- because of his
25 inability to make an in-court identification today, I would

1 ask, on that basis alone, that his -- I -- out-of-court
2 identification be suppressed.

3 THE COURT: Okay. Let's -- let me hear from the
4 solicitor before we go to your other points. Solicitor?

5 MR. SCOTT: And -- and, Judge, I -- I think that could
6 be probably fleshed out in court to -- to expose some bias
7 of why he would at a hearing, you know, a -- a year or so
8 after the actual identification, have changed his mind
9 somewhat. He -- he did identify Mr. Reeder, but then tried
10 to back off of it to some degree by saying he maybe wasn't
11 sure. But that was, in fact, who he had seen and maybe Mr.
12 Reeder's changed his look since the identification.

13 But I -- I think that would probably be a question of
14 reliability for the jury to consider. He did identify --
15 and -- and the question of the *Biggers* hearing is to
16 determine whether or not the identification process was
17 tainted or in any way the -- the person he picked was
18 suggested in any way.

19 I think we -- we surpassed that in -- in regards to
20 Sgt. Moore. The -- both of the witnesses who -- who picked
21 Mr. Reeder out of the lineup said that in no way has she
22 suggested that they pick him.

23 Your Honor, we've got -- that -- that's one of the
24 best six-pack lineups I've ever seen, as far as defendant's
25 photo not standing out from any others and all the subjects

1 being similar appearance, age, and physical
2 characteristics.

3 Judge, they -- they both -- Vickie and -- and Dawayne
4 had indicated that they were within very close range of --
5 of Mr. Reeder when he initially pulled up in the Corolla.
6 And in the commotion their degree of attention is probably
7 focused on him pretty sharply, this person coming up,
8 causing a commotion at a family gathering.

9 Then with 30 minutes he shows back up with a gun.
10 Again, in his statement, although he's tried to back off to
11 some degree at -- at the hearing, Dawayne Davis clearly
12 says that he watched him point the gun up at him at -- and
13 -- and when the gunshots sounded off, he -- he had to duck
14 behind the car. Probably going to have to use his
15 statement against him, if -- if he's going to testify that
16 way in front of the jury. Our contention is that it is
17 different from how -- the statement he gave on the night of
18 and -- and then different from officer's testimony that he
19 immediately recognized and picked Mr. Reeder out of the
20 lineup.

21 So I think that would be a question for the jury, as
22 far as reliability, how -- what -- what they believe, as
23 far as is he telling the truth now or was he telling the
24 truth then.

25 THE COURT: Well, I -- I think -- I think the question

1 -- and I'm going to have to make this decision and probably
2 can't make it now until I think about it -- is can just an
3 out-of-court identification come in. I think it's pretty
4 clear, based upon his testimony, that he would not be able
5 to make an in-court identification, for whatever reason:
6 fact that he had been drinking that -- that day or the
7 defendant appears different, for whatever reason, from how
8 he looked previously.

9 So I think the issue is: Can just an out-of-court
10 identification come in without there being a corresponding
11 in-court? And I -- and I realize the purpose for a *Neil v.*
12 -- *Neil v. Biggers* proceeding is to determine whether or
13 not the out-of-court unduly taints the in-court. We don't
14 have that here with respect to this witness.

15 So I'm going to take that under advisement whether or
16 not just the out-of-court identification come in. Mr.
17 Verner, your position is that it should not. And, of
18 course, state's position is that it can still come in. And
19 I'll just have to make that determination and let -- let
20 you folks know ruling in the morning.

21 MR. SCOTT: Yeah. Yeah.

22 THE COURT: Okay?

23 MR. SCOTT: I'm -- I mean, because I think if -- if he
24 gets up there and says, "I -- I don't know; I really can't
25 tell," then the jury will say, "I don't think he made

1 that."

2 But I -- I think I need to be given opportunity to
3 show bias in why, on October 5th -- or 6th, 2012, he -- he
4 clearly was able to identify him and -- and why he's sort
5 of wavering now.

6 THE COURT: Okay. All right.

7 MR. VERNER: And just, Judge, the -- the Court stated
8 it exactly -- if -- if I were eloquent -- exactly as I
9 would have. It -- it's the admissibility of an in-court
10 statement when -- when the out-of-court statement -- or the
11 admissibility of an out-of-court statement when the in --
12 in-court is not made.

13 And -- and I did Westlaw that over the lunch break.
14 And I couldn't find any cases in South Carolina that
15 addressed the -- an -- an -- a witness, I guess, who
16 recants an identification. I -- I searched that all during
17 the lunch break, and I couldn't find it. But I -- I'll do
18 a broader search.

19 THE COURT: Okay.

20 MR. VERNER: But the Court stated exactly. It's not a
21 *Neil v. Biggers*. It just came out during the *Neil v. ---*

22 THE COURT: Right.

23 MR. VERNER: --- *Biggers* ---

24 THE COURT: Right.

25 MR. VERNER: --- testimony.

1 THE COURT: Okay.

2 MR. VERNER: The -- and just the -- but the *Biggers*
3 case and all the cases that talk about it do talk about
4 that the *Biggers* -- that the out-of-court lineup is made
5 for the purpose so that a witness can make an in-court ---

6 THE COURT: Right.

7 MR. VERNER: --- identification.

8 The -- the second, Your Honor, issue is -- now, Ms.
9 Vickie testified that the officer said to her, "Pick who
10 you think the shooter is," without specifically saying --
11 in fact, she specifically denied that the officer told her
12 that the shooter may not be in the picture. And I
13 understand that she talked about that issue for several
14 different -- both on cross and recross. But she basically
15 said that, "The statement to me was, 'Pick out who you
16 think the -- if the shooter is in the picture.'"

17 I -- I understand the word "if" could suggest that the
18 shooter may not be in it. But I -- I would argue that
19 there would need to be a specific admonition that the
20 shooter may not -- or the suspect may not be -- the -- the
21 officer would have a duty to say that, "Don't pick somebody
22 if they're not in the picture." As -- as close as we got
23 to that is that the officer said, "Well, if the shooter is"
24 ---

25 THE COURT: Right.

1 MR. VERNER: The -- that with the testimony that the
2 picture of Mr. Reeder had been circulated on the text on --
3 and I understand the lady said, "I -- I didn't show it to
4 anybody else." Again, it's a totality of the circumstance
5 as evidence.

6 The -- we would ask for the suppression of -- both
7 Vickie and Dawayne Davis, I guess, would be treated under
8 this general ---

9 THE COURT: Okay.

10 MR. VERNER: --- the -- the *Biggers* motion. But the
11 -- Mr. Davis didn't really testify -- didn't give any real
12 helpful testimony about remembering the circumstances of
13 the identification. His testimony was almost primarily all
14 kind of -- by the state almost on attack or kind of
15 impeaching ---

16 THE COURT: Right.

17 MR. VERNER: --- him with prior statements that he did
18 give. But he didn't give any real independent details of
19 remembering even doing the lineup.

20 THE COURT: Right.

21 MR. VERNER: The -- Ms. Vickie is the only one -- and
22 -- and she basically said, "The only thing I heard her say
23 was, you know, pick out the shooter."

24 THE COURT: Okay.

25 MR. VERNER: The -- so we -- we would ask to suppress

1 the identification.

2 THE COURT: Okay. Thank you. State's response to --
3 to that motion?

4 MR. SCOTT: I must've misremembered it. Because I --
5 I don't recall -- the picture -- it's almost a red herring,
6 the picture that was sent in from the text message. It --
7 it really -- really helps in no way law enforcement or --
8 or anybody identifying Carlos Reeder. It's a picture sent
9 by a third party in Laurens who's dealt with him in the
10 past.

11 But the testimony, as I recall it, was that it was
12 shown to no one other than law enforcement, who were unable
13 to use it in any way. The name Carlos Reeder is what they
14 were able to use and get on LawTrak and find this -- or
15 actually, get with SLED Fusion and get this picture of him
16 from some prior photograph.

17 So I -- I don't -- but the testimony was that picture
18 via text message was never shown to anyone.

19 THE COURT: Right.

20 MR. SCOTT: Deborica had seen it and showed it to law
21 enforcement. So that's -- that's the way I recollect the
22 testimony.

23 And then, the other motion -- the -- Allison Moore, my
24 -- my recollection, again, was -- and I know Mr. Verner
25 asked her a number of -- I almost stood up and said, "Asked

1 and answered" -- but asked her a number of times what --
2 what did Allison Moore say to her. My recollection was it
3 was very vague, like, "Here's a photo lineup. Do you
4 recognize anyone in here?"

5 That's just -- you know, her testimony was -- "I would
6 bet my life on it," I think is what she said and she was
7 100 percent certain that it was him; picked him
8 immediately. So I don't think the identification procedure
9 in any way was unduly suggestive.

10 THE COURT: Okay. All right. The -- the -- the --
11 the Court's recollection -- she did -- the witness did, I
12 -- I guess, in kind of a paraphrasing-summary-type fashion
13 did say that the officer said, "Pick out the shooter." But
14 then she did follow it up by saying the officer said, "If
15 you see the shooter, pick the shooter out," coupled with "I
16 bet my life on it," I think would be enough to get it out
17 of the realm of being unduly suggestive or prejudicial to
18 the defendant with regards to the in-court identification.

19 And also, the -- I mean, the evidence is
20 uncontradicted, at least from what we've had today, is that
21 the -- the text picture was not shown to anyone except to
22 law enforcement. So I'm going to allow -- I'm going to
23 deny your suppression motion as -- as concerns Vickie Davis
24 and will take under advisement the matter involving Dawayne
25 Davis.

1 Anything further, Mr. Verner, on this particular
2 issue?

3 MR. VERNER: No, Your Honor.

4 THE COURT: Thank you very much. Okay. All right.
5 We -- on the Reeder case, we'll be adjourned till -- I
6 think I told the jury 9:30 in the morning. So we'll be
7 adjourned till -- till 9:30 in the morning on the Reeder
8 case. Okay.

9 (Whereupon, the proceedings were adjourned at 3:34 p.m.)
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1 TRIAL DAY 2 - 04/22/14

2 (Whereupon, State's Exhibits 3 through 13 were
3 premarked for identification prior to the resumption
4 of proceedings.)

5 (Whereupon, the proceedings were resumed at 9:51 a.m.)

6 THE COURT: Okay. We're on the record. And anything
7 we need to take up before we bring the jury out? I had --
8 I had informed the lawyers that I want to go ahead and do
9 our opening, preliminary charge, and then we'll take a
10 break and then we can deal with the issue of the pretrial
11 identification as it relates to the one witness.

12 But anything else we need to take up before we bring
13 the jury out?

14 MR. SCOTT: Nothing from the state, Your Honor.

15 THE COURT: Okay. All right. Anything from the
16 defense?

17 MR. VERNER: No, Your Honor.

18 THE COURT: Okay. Thank you very much. Let's --
19 let's bring the jury out, please.

20 (Off the record briefly.)

21 THE COURT: All exhibits agreed to go into evidence?

22 MR. VERNER: Everything that's been handed to the --
23 the -- the photographs, the slug, the shell casings, and
24 one of the -- one slug, I believe, was stipulated.

25 MR. SCOTT: But 1 and 2 would probably be stuff we're

1 going to have to -- because it's the lineups.

2 THE COURT: Okay. All right.

3 MR. VERNER: But everything from here is -- is -- is
4 without objection, Your Honor.

5 THE COURT: Okay. All right.

6 (Whereupon, State's Exhibits 3 through 13 were entered
7 into evidence.)

8 (Whereupon, the jury entered the courtroom at 9:53
9 a.m.)

10 THE COURT: Good morning.

11 JURORS: Good morning.

12 THE COURT: Hope everyone had a good and restful
13 evening. You will notice that the body is down to 12. One
14 of -- after the -- after you were selected and right after
15 you were going to the jury room yesterday, one of the
16 jurors came up to me and there were some concerns and I
17 excused her. So our alternate, Daniel Lindler, you are now
18 a -- a full-fledged member of this jury.

19 And we need to do a couple things. One, we need to
20 have you take your -- your oath as a trial jury. So let's
21 go ahead and do that now, madam clerk.

22 (Whereupon, the jury was duly sworn at 9:54 a.m.)

23 THE COURT: All right. Secondly, what we need to do,
24 we need to -- or I need to appoint a foreperson of the
25 jury. Now, a foreperson -- foreman if it's a male;

1 forelady if it's a -- a female -- has some different
2 responsibilities. But I want to emphasize that whoever is
3 the foreperson selected -- and I'm going to select in just
4 a moment -- the vote carries no greater weight than the
5 vote of all the other members of the -- of you, the jury.

6 We need to have a foreperson who will conduct the
7 deliberations once you receive this case in order to make a
8 decision -- a verdict in this case. We need someone who
9 will handle the deliberations, to conduct the
10 deliberations, and make sure that they're done in an
11 orderly fashion. And so that's one function of the -- a
12 foreperson.

13 Secondly, we need to have a spokesperson between the
14 jury and the Court. If there is a concern that arises or
15 if there is a question or anything that -- that happens
16 that there needs to be some dialog between the jury and the
17 Court, then we need to have a spokesperson for the jury.
18 So that's the second function of a foreperson.

19 Third function is -- is that we need to make -- make
20 sure that all of my instructions and rules on how you are
21 to conduct yourself are followed. And so we need to have
22 someone to -- to -- to monitor that.

23 But I just -- I can't emphasize enough that the vote
24 of the foreperson carries no greater weight than the vote
25 of -- of anyone else.

1 Now, with that said, I have decided on Betty Suber.
2 Would you please raise your hand.

3 JUROR: (Raised hand.)

4 THE COURT: Ms. Suber, you are the forelady of this
5 jury. Now, when -- the next time that you come in to the
6 courtroom, you will always seat in the front of my left,
7 your right. That -- that will be the seat that you will
8 always maintain. Okay?

9 FOREPERSON: Yes.

10 THE COURT: Everybody else on the jury, you are free
11 to sit wherever you like. Now, it's been my experience
12 that oftentimes juries -- jurors like to sit in the same
13 seat. It's kind of like in church. You know, you always
14 maintain the same pew. And hopefully, it doesn't get to
15 the situation where, you know, "Don't sit in my seat," like
16 some folks in church: "Don't sit in my pew."

17 And that's fine. If you decide that you kind of like
18 to sit in the same seat, that's fine. That's totally up to
19 -- to -- to you folks. Okay. You can make that own
20 decision. But the forelady, she maintains the same seat
21 each and every time and it'll be this seat right here.
22 Okay?

23 Now, with that said, what we -- what we do to start
24 off the case, I'm going to give you a preliminary charge,
25 some preliminary instructions on some of the things for you

1 to think about and -- and -- and how we will handle this.
2 And then secondly, the lawyers will make their opening
3 arguments or opening statements to you.

4 Madam Forelady and ladies and gentlemen of the jury,
5 we are about to begin -- or -- or are actually beginning,
6 rather, the case of the *State of the State of South*
7 *Carolina v. Carlos Demont Reeder*, who you have already met
8 previously who is represented by Charles Verner of the
9 Newberry bar.

10 And before we begin this trial, I want to tell you
11 that this trial probably will be different from what you
12 might expect. Many people do not have the chance to attend
13 actual court sessions as you're doing now and may think,
14 from watching television and movies and reading books, that
15 trials are always full of high drama, intense action, and
16 riveting circumstances.

17 And while all of these things may be true at times,
18 this trial is not for entertainment. It's a fundamental
19 part of our democracy, a search for the truth in an effort
20 to make sure that justice is done between the parties
21 before the Court. Searching for the truth and making sure
22 that justice done is often slow, deliberate, and
23 repetitive, the opposite of what you may have seen on
24 television or seen in movies or read in books.

25 Now, Madam Forelady and ladies and gentlemen of the

1 jury, I'll tell you that this courtroom is a place of
2 honor, dedicated to the protection and preservation of
3 citizens' rights through what many have called -- and I
4 think I mentioned this yesterday -- that many have called
5 our justice system to be the greatest justice system ever
6 created. And I fully and wholeheartedly agree with that.

7 And the attorneys appearing before you are advocates
8 for the parties they represent. But first and foremost,
9 they are officers of the Court and they're sworn to uphold
10 the integrity and fairness of our judicial system and to
11 help you in the search for the truth. You should expect
12 them to be professional, competent, and ethical in their
13 representation of their clients' interests.

14 And -- and I'm -- have no doubt that will be the case.
15 I've -- these lawyers have appeared before me many times.
16 And they are excellent attorneys. And -- and there's no
17 question they will be professional and competent. But you,
18 the jury, are expected to be professional and reasonable
19 and ethical as -- as well.

20 And I want to thank you once again for accepting this
21 very important responsibility of jury service and for your
22 contribution today and throughout whatever amount of time
23 this case takes to your contribution to our justice system.

24 Now, what I will further say is -- is -- is intended
25 to serve as just an introduction to the trial of this case.

1 And these remarks are not a charge on the law in this case.
2 I'll instruct you on what the law is that is applicable to
3 this case at the end of the trial before you retire to
4 consider your verdict.

5 This is merely an explanation of the procedure that we
6 will follow in the trial of this case so that you may
7 better understand what may be happening. And I'll tell you
8 now: You're not permitted to take any notes. So it's
9 extremely important that you be very attentive and pay
10 close attention to everything that is done and is said
11 during this proceeding.

12 Now, as I mentioned to you yesterday, we have
13 documents called "indictments." And as I told you
14 yesterday -- and I'll explain to you again today -- this is
15 not evidence as to the guilt or innocence of the defendant.
16 It is just merely the charging documents, the procedure to
17 get the case into trial as we have here today.

18 The elements of the -- of the offenses will be
19 explained to you later. So again, it's not -- it's not
20 evidence of -- of guilt or -- or innocence. The defendant
21 has exercised his constitutional right by pleading not
22 guilty to both of these indictments. Consequently, his
23 plea of not guilty places the burden on the state in order
24 to prove each and every element of both of these
25 indictments beyond a reasonable doubt.

1 And it'll be your duty, ladies and gentlemen, to
2 decide whether the -- or not the state has met that burden.
3 Your purpose as jurors is to find and determine the facts.
4 You are the sole judge of the facts. And if any time I
5 make any comment regarding the facts, which I'll try not
6 to, but if I do, you must disregard any comments I make
7 about the facts.

8 You are to determine the facts from the testimony you
9 hear and the other evidence introduced in court. It is up
10 to you to determine the inferences which you feel may
11 properly be drawn from the evidence presented. It is
12 especially important that you perform your duty of
13 determining the facts diligently and conscientiously.
14 Because ordinarily, there's no way to correct an erroneous
15 determination of the facts by a jury.

16 Now, with that said, and with equal emphasis, the same
17 law that makes you the judges of the facts makes me the
18 judge of the law. The law as given by the Court is the
19 only law you may consider. You must accept and follow it
20 even though you may disagree with it. I can't tell you
21 what the facts are. And you cannot tell me what the law
22 is. Okay?

23 Your job is to take the law as I give it to you and
24 apply it to the facts as you find them from the testimony
25 of the witnesses -- and that's the witness stand right

1 there -- and any other evidence that is introduced in this
2 case. After doing that, you will render your verdict of --
3 verdict under the solemn oath that you just took as jurors.

4 Now, again -- and I mentioned this to you yesterday,
5 and I will mention this to you again throughout this entire
6 trial. You may not discuss anything about this case
7 amongst yourselves until it's time for you to deliberate.
8 And I will tell you when that time is.

9 So during breaks or we adjourn for the day, you cannot
10 discuss this among yourselves. And when you go home in the
11 evening or when you -- we break for lunch and you come into
12 contact with friends or family or business associates or
13 whoever that may be, you cannot discuss anything about this
14 case with them as well.

15 And when you do begin your deliberations at the
16 conclusion of this case when I instruct you to begin, you
17 may only discuss this case in the jury room with your
18 fellow jurors because all of you will have seen and heard
19 the very same evidence. But if you discuss this case with
20 somebody else, they haven't seen what you've seen. They
21 have not heard what you've heard. So that's why it's
22 important that your discussions at the appropriate time
23 remain just among the 12 of you when you have received all
24 of the evidence in the case.

25 And it's also equally important that you not conduct

1 any independent research into this case or any independent
2 research into the law. You know, we have so much
3 technology today that it is very easy to go on the Internet
4 and do some research. Refrain from doing that. Please do
5 not do that.

6 Now, I'm not sure that this will be the case. But if
7 there are any news reports about this particular case in
8 the local newspaper or on the local radio -- and again, I
9 don't know if that is going to be the case. But if it is,
10 then you're not to read anything in the newspaper about
11 this case or listen to any news reports that may be on the
12 radio or even on the -- on the television.

13 Again, it's -- it's extremely important that you only
14 consider what is presented in this courtroom by way of
15 witness testimony and evidence.

16 And, too, it's -- it's very important, not only for
17 the forelady of this jury but all of you: If you become
18 aware that -- and I know this is not going to be the case,
19 but if you become aware that a fellow juror has violated
20 these instructions and have done some independent research,
21 have gone out and talked to someone about this case, or
22 read some articles in the paper or anything of that nature,
23 then it's your responsibility to report that juror to the
24 Court.

25 It's -- it's just so important and it's your solemn

1 responsibility to properly determine the guilt or innocence
2 of the defendant. And your verdict, again, must be based
3 solely on the evidence as it is presented to you in this
4 trial and on the law that I will instruct you at the close
5 of this trial.

6 Now, the -- from time to time, there may be an
7 objection made by one of the lawyers or that one of the
8 lawyer may say, "I have a matter of law to take up with the
9 -- the Court." Sometimes when that happens, we can just
10 discuss it at what we call "sidebar," where the lawyers
11 will come up and we can talk about it and we won't need to
12 excuse you.

13 But other times we may need to excuse you. And the
14 reason for that is -- is that for the Court to deal with an
15 objection or a matter of law that one of the lawyers has, I
16 may need to discuss the facts. And I don't want to discuss
17 the facts with you because, again, you are the sole judge
18 of the facts. So I don't want to say anything about the
19 facts that may influence you concerning what the facts are.
20 So it may be necessary from time to time of you to be
21 excused to the jury room.

22 Now, hopefully, this is not the case. But sometimes
23 you'll be excused and you'll be in your jury room for a --
24 maybe a longer period of time than you would like. If that
25 happens, understand that we are working in this courtroom

1 and we're dealing with matters.

2 And it's not where we're just sitting back, drinking
3 coffee, and taking -- taking it easy while you are sitting
4 in the jury room, wondering what's going on. I can assure
5 you that while you're out, we are working on the case.

6 Okay?

7 Now, in determining what the true facts of the case
8 are, you must decide whether or not the testimony of the
9 witnesses is believable. It'll be my responsibility to
10 rule as a matter of law as to whether certain testimony is
11 admissible or not. But once the testimony is admitted,
12 whether or not you believe that testimony is solely for
13 you, as a jury, to determine.

14 In deciding whether to believe a witness, you have the
15 right to consider the interest of any witness, the bias of
16 any witness, the prejudice of any witness, the opportunity
17 for the witness to have seen the matters and things about
18 which the witness may testify. And also, you can consider
19 the way the witness acts on the witness stand.

20 You have a right to consider anything that is in the
21 record that will help you evaluate the testimony of the
22 witnesses. And again, that means that you are to pay very
23 close attention to the witnesses, to observe the witnesses,
24 and listen to the witnesses, and also pay very close
25 attention to the attorneys and to the Court. Don't let

1 your thoughts wander. Give strict attention to everything
2 that goes on in this case.

3 Now, in just a moment, the lawyers will be -- will
4 give their opening statements to you. And I'll tell you
5 that the -- their statements are not evidence. It's just a
6 preliminary statement to you of what their respective
7 positions are, what they believe the -- the evidence may
8 be. But other than that, do not consider it as any
9 evidence in this case.

10 Now, I'll ask from the state: Any objections or
11 exceptions to the Court's preliminary charge?

12 MR. SCOTT: None from the state, Your Honor.

13 THE COURT: And from the defense?

14 MR. VERNER: None at all, Your Honor.

15 THE COURT: Okay. Thank you very much. Turn it over.
16 Solicitor, you may proceed.

17 MR. DANIEL: Thank you, Your Honor. May it please the
18 Court.

19 OPENING STATEMENT BY MR. DANIEL

20 MR. DANIEL: Ladies and gentlemen, about a year and a
21 half ago now, a neighborhood in this community was
22 terrorized by one man, armed with a handgun. And when I
23 say "this community," I mean right here in Newberry County.
24 And even closer to home, at least for us in this courtroom,
25 about a mile down the road is where this shooting took

1 place.

2 It was a shooting that took place at a family cookout,
3 of all things. [REDACTED] Rodelsperger Street was the scene of
4 the crime. It was a October day: October 6th, 2012.

5 Our defendant who stands before you on trial today,
6 Carlos Reeder, is the shooter. Testimony and evidence
7 that's going to be presented to this trial is going to show
8 you that Carlos Reeder was the man pulling the trigger. At
9 least six or seven shots were fired that day into a yard
10 where family and friends were gathered.

11 It's kind of reminiscent of the wild, wild west,
12 essentially. But a shootout in the City of Newberry,
13 that's this -- that's the case. That's the essence of this
14 case.

15 Now, as I've stated, it was a fall cookout; family and
16 friends were gathered. You're going to hear testimony that
17 a tan Corolla pulls up; individual, Carlos Reeder, is
18 looking for a guy named "Smoke." No one at this cookout
19 knows anyone named Smoke.

20 And you'll hear testimony from witnesses. Asked to
21 leave -- Carlos Reeder is asked to leave. He has a friend
22 with him too: Quentin Graham. Carlos Reeder -- words are
23 exchanged. He leaves.

24 But it doesn't end there, obviously. You'll hear
25 testimony that less than 30 minutes later, Carlos Reeder

1 comes back. This time he's walking. That's when the shots
2 come.

3 It's a very residential area. And what I mean is you
4 got homes, apartment complex. The shell casings that
5 Newberry P.D. found were in the roadway. Right behind that
6 is a playground with kids. Kids were out there playing.

7 It's still daylight savings time. The kids were out
8 there on the playground that day. It's a Saturday. They
9 find six -- excuse me -- seven shell casings they find in
10 the street.

11 Now, some of the partygoers, people that were in
12 attendance that day, they ducked for cover. You'll hear
13 testimony that they ducked for cover behind the vehicles
14 that were parked in the yard. But for those vehicles,
15 people probably would've gotten hit.

16 You'll see the photos. You'll see how the rear window
17 of a Ford Explorer is shot out. It's completely shot out.
18 Two bullet holes, you'll see in the Explorer. You'll see
19 more bullet holes in the house.

20 So what's that tell you? This is an attempted murder
21 case. Carlos Reeder is charged with two counts of
22 attempted murder. If those shots had actually connected,
23 hit their targets, and someone died as a result, we're
24 looking at a -- an actual homicide -- murder case.

25 It's not a situation where no harm, no foul. Just

1 because no one was hit doesn't mean there's not a crime.

2 Of course there's a crime. Someone could've gotten hit.

3 So it's up to you, at the conclusion of this case, to
4 think, What was Carlos Reeder's intent at firing shots into
5 a yard full of people? There's a grill going on. It's a
6 cookout, family and friends. Carlos Reeder is firing shots
7 into a yard full of people.

8 Could it -- people could've gotten hit. People ducked
9 for cover. By the grace of God, no one was seriously
10 injured or died.

11 And that's all it is. It's a matter of inches. Just
12 like football is a game of inches, if this -- what happened
13 there October 6th, 2012, was inches we're talking.

14 And you'll hear testimony. You'll hear -- you'll see
15 photographs. You'll hear testimony from the officers, how
16 they developed Carlos Reeder as a suspect and as the
17 shooter. That'll all come out in trial. That'll all be
18 disclosed. You'll hear from this witness box all the
19 evidence.

20 And that's -- that's the purpose of the trial. We can
21 kind of have tunnel vision today. We can be narrowly
22 focused on what happened that day. That's -- that's what
23 it's all about. It's not about the character of anyone
24 testifying or the character of Carlos Reeder. It's about
25 what happened that day.

1 That's all that we want to focus on. Want to decide
2 what really happened; what -- what's the truth; who was the
3 shooter? And that's what we're here to -- to do. We're
4 here to -- the state is here to prove that Carlos Reeder
5 was the man pulling that trigger.

6 Carlos Reeder is the one responsible for creating
7 havoc -- wreaking havoc, creating chaos that day. And
8 fortunately, no one got hurt, no one killed. But
9 nonetheless, it's a crime.

10 You'll hear instructions at the conclusion of this
11 case about what attempted murder is. It requires malice,
12 essentially. And -- and malice can be proven in a number
13 of ways. It can be inferred; it can be expressed. Like
14 "I'm going to kill you" and then firing a shot, that's
15 express malice, essentially, or inferred malice, someone's
16 conduct.

17 Well, firing shots where a group of people are
18 standing, I -- I can think of nothing more reckless or --
19 or nothing more that shows a total disregard for human life
20 than doing that. Maybe you could say driving a car at a
21 high speed through a crowded market. Maybe that -- but
22 firing a gun and if those cars hadn't been there for people
23 to duck for cover, you're looking potentially at a
24 multiperson homicide.

25 I'll be brief here. That is essentially the case.

1 That is an outline of the case. You'll hear testimony from
2 people that were there that day. You'll hear testimony
3 from the officers.

4 It's going to be up to you as the finders of fact to
5 prove -- to -- to -- state to -- to speak the truth with
6 your verdict. That -- that's what it is. "Verdict" comes
7 from Latin; it means to speak the truth.

8 His Honor is the judge of the law. You are a judge of
9 the facts. So you'll have to go back there and deliberate.
10 Look at all the evidence and use your common sense.
11 Because you have to be firmly convinced of someone's guilt.

12 Just use your common sense. That's all it is, is a
13 commonsense application. None of us were there. We don't
14 know what happened. We didn't see it with our own eyes.
15 So we have to trust, evaluate, and assess the evidence.

16 It's if -- it's as if you have a -- have your child
17 with you at your home. It's just you and your child. You
18 buy a pack of cookies. You know how many cookies are in
19 the pack. Say there's ten cookies. You put those ten
20 cookies in a cookie jar.

21 And you tell your -- tell your child, "Don't eat this
22 before dinner." So you turn; you're cooking. All of a
23 sudden, you look. You see the jar open. You see there's a
24 cookie missing; there's nine cookies now.

25 Then you go -- you look at your child. There's crumbs

1 or there's icing on -- on your kid's face. But you didn't
2 see it. What are you going to -- what are you going to
3 conclude? What are you going to infer?

4 Yeah. Your -- your kid at that cookie. There's no
5 one in the house. The cookie jar has been opened. You see
6 the crumbs. You didn't see it with your own eyes. But
7 your common sense is going to tell you, your kid at the
8 cookie.

9 Or even more, say you have an eyewitness. Say there's
10 a third person in that house sees the kid. That's more
11 evidence. So common sense will tell you that your kid ate
12 the cookie.

13 And that's what a trial is. You take, bit by bit, the
14 evidence and you reach your conclusion. And once you hear
15 all the testimony and the evidence, you're going to reach a
16 guilty verdict. That's what we're going to ask, the state.

17 Briefly, I'm Taylor Daniel. I'm assistant solicitor
18 here in Newberry County. I'm trying this case with Deputy
19 Solicitor Dale Scott. We work for David Stumbo, your
20 elected solicitor.

21 And we're prosecutors. I -- we call them "solicitors"
22 here in this state. But we enforce the criminal laws of
23 the State of South Carolina; represent victims of crime and
24 -- and really, to be more accurate, just the public at
25 large. The laws are passed for the protection of citizens.

1 That's what we're here to do today. I appreciate your
2 time. Thank you.

3 THE COURT: Thank you, Solicitor. Mr. Verner?

4 MR. VERNER: May it please the Court, Your Honor?

5 THE COURT: Certainly.

6 OPENING STATEMENT BY MR. VERNER

7 MR. VERNER: Madam Forelady in the back, members of
8 the jury, I introduced myself earlier. I'm Charles Verner.
9 I'm a lawyer here in Newberry, and I'm also the public
10 defender. Carlos, stand up for a second, Carlos.

11 THE DEFENDANT: (Complied.)

12 MR. VERNER: This is Carlos Reeder, my client today.
13 The -- just in -- in the beginning -- and -- and I don't
14 know a whole lot more about the facts than really you do.
15 I -- I've heard my client's side of it. And I've seen a
16 lot of the exhibits that are going to come in. But a lot
17 of this is coming in fresh for me too.

18 And -- and really, my job just during the trial is
19 just to try to point out stuff that I think is important,
20 as -- as a whole, that you ought to observe. At -- at the
21 end of it, I'll argue based on what I believe the law is.

22 The -- but just -- it -- it would be just during the
23 trial to try to point things out to you that I think are
24 significant. The state has chosen -- this is attempted
25 murder charge. It -- you'll never -- unless you're in

1 court for a murder charge, you're -- you're never going to
2 have a more serious obligation than today. It's an
3 attempted murder charge.

4 The Supreme Court sent a court judge from Laurens
5 County to Newberry. This is not a small-time event today.

6 The -- the -- the role of the jury is pretty simple.
7 And -- and it's nothing new. The -- the -- we've had the
8 jury system in -- in the United States for 300 years. The
9 -- they didn't invent it in -- 300 years ago.

10 A thousand years ago that they -- almost the exact
11 system was set up where the knights said the king cannot
12 convict a knight and take his property or his life without
13 convincing other knights that he has committed a crime.
14 That is basically where the -- our system of jury trial
15 started. And it actually -- I don't want to be a teacher
16 to you. But it -- it's much older than that, just where
17 the citizens come out and judge the guilt of a citizen.

18 Two thousand years ago, Jesus Christ was convicted at
19 a jury trial. That -- that -- I'm not saying that for any
20 religious reason, just historical. The incident with
21 Barabbas, that was a jury trial, where the king, or Pontius
22 Pilate, made a decision with the citizens.

23 Socrates, thousand years before Christ, that was a
24 jury trial. You're not doing anything new. You're doing
25 what people have always done, at -- at least where the king

1 or -- or the government puts a decision with the citizens.

2 The -- this is an attempted murder charge. That --
3 that's really -- the state has to prove. And -- and this
4 is the state's trial. We are collegial here. But this is
5 the state chose the charge; they have the burden, under the
6 constitution, under our system of justice of proving the
7 case, which means if there is any doubt, that there's only
8 one person with chips on the table today.

9 We -- we all walk away today. There's only one person
10 with chips on the table. That is the -- they didn't put
11 the jury system in place for you to find the truth. They
12 put the jury system in place to protect the citizen from
13 the government. And only if the government produces the
14 evidence required to reach a verdict can a citizen be
15 stripped of life, liberty, or property.

16 You know, I -- I respect the -- Judge Hocker
17 immensely. And -- and he's -- trust me. There -- very --
18 trial judges have very great power. In -- in all regards
19 he -- he is really one of the least important people at
20 parts of this trial because he's got no role in the facts.
21 By constitution he does -- he cannot be heard at all on
22 what he thinks happened.

23 I can at least give you my opinion or my arguments on
24 the facts and the prosecutor too. The judge has no role in
25 the facts of the case. That is entirely the jury's

1 province.

2 That cannot be undone. There are higher courts than
3 Judge Hocker. There -- there is nobody who can change the
4 facts about what happened or didn't happen. There is no --
5 you -- you -- it ends today. So don't think that there is
6 going to be a calvary or somebody who's going to rescue
7 people after today, because it's not. The -- this is it.

8 The -- attempted murder requires three things the
9 state has to prove to you beyond any reasonable doubt. And
10 -- and we argue -- I -- I -- incessantly about what a
11 reasonable doubt is. That -- I don't know why we do that.
12 Because reasonable doubt just means what you firmly
13 believe, giving any benefit of the doubt to Carlos Reeder.

14 It -- it's hard for me to tell you what it is because
15 you just know what it is individually. But they have the
16 burden. This side has the burden of proving three things
17 without any reasonable doubt: that -- that this was a
18 premeditated crime; that -- that -- it doesn't have to be a
19 long bit of premeditation, but there has to be an
20 intentional thought to kill somebody. That -- that has to
21 occur before the crime -- premeditated.

22 That there is malice. Malice means I hate someone. I
23 -- it's an ill will towards a person. I hate that person;
24 I want that person dead. That is what malice is. It -- it
25 is an evil intent to kill somebody.

1 And the -- the last thing is that there is an actual
2 intent to kill the person. The -- and -- and that is
3 probably where the state -- all three of those areas, I
4 submit to you, that the state's going to fail.

5 And -- and I don't know a whole lot about the facts.
6 But they're glossing over -- and -- and they're talking
7 about crimes that are not charged or what could've
8 happened: could've/would've/should've. That's not what
9 we're here for. We're here for the crime they've charged
10 in the indictment.

11 The -- the crime is attempted murder. The -- and --
12 and they've glossed it over. This is a pleasant family
13 picnic and we're -- we're just all having a great time and
14 -- and hugging the kids and then this just shoot -- the --
15 the wild-west shootout occurs. It didn't happen that way.

16 Even their witnesses are not going to tell you it
17 happened that way. What -- what happened was there was a
18 dispute amongst -- amongst some of the toughs of the
19 parties and Carlos Reeder. A crowd approached him; he got
20 scared; he fired some shots.

21 The -- what -- the solicitors talked about, Well, it
22 -- it was a matter of inches. You know, death occurred ---

23 (Whereupon, Mr. Verner and Mr. Scott conferred.)

24 MR. VERNER: Death occurred because just he was
25 shooting at somebody and, thank God, it was a matter of

1 inches. The -- there's a bullet hole. I -- I can't tell
2 you high but that -- it -- in the gable of the house, how
3 high is a window in a house? And -- and this bullet is
4 12/14 feet in the air?

5 That's not shooting at a person. That's somebody
6 shooting in -- in a scared way at -- at -- either to scare
7 other people or -- or to intimidate other people. But that
8 is not shooting at a person.

9 We -- we know there were at least six shots fired, all
10 from the street, all from a considerable distance away.
11 Intent to kill -- if I had a hatred, I wanted to kill
12 somebody, I would walk 20 feet -- if I'm the only guy armed
13 and I wanted somebody dead, what prevents me from walking
14 20 steps to get closer to kill somebody?

15 They don't have that. They have somebody fleeing and
16 shooting. I -- I submit to you, at the end of the case,
17 it's going come down to -- it -- it's self-defense. If --
18 if -- if he felt threatened and there was one group of
19 toughs threatening another group, which I submit, you're
20 going to hear some testimony about, or it's -- it's an
21 aggravated assault and battery, first-degree -- assault and
22 battery, first-degree.

23 That -- there's -- it's not an attempted murder case.
24 The -- there may be a crime. If there's a crime, it's an
25 assault and battery, first-degree. It could be self-

1 defense. And -- and I would just ask you to keep an open
2 mind until you hear all the evidence and all the testimony.

3 Thank you, Your Honor.

4 THE COURT: Thank you very much, Mr. Verner. Madam
5 Forelady and ladies and gentlemen of the jury, we have one
6 issue that I need to take up with the lawyers concerning --
7 a legal matter concerning some evidence. So I'm going to
8 ask that you retire to -- to the jury room at this time and
9 we'll bring you back out shortly.

10 (Whereupon, the jury exited the courtroom at 10:27
11 a.m.)

12 (Off the record briefly.)

13 THE COURT: Okay. Gentlemen, let's take up the issue
14 of -- we -- we left it yesterday, and I think we defined
15 the issue that I've got to rule on is whether or not
16 Dawayne Davis's pretrial identification comes into evidence
17 in light of the fact that he admittedly is unable to make
18 an in-court identification. I think that is the -- the
19 issue that -- that's before the Court, correct, Solicitor
20 and Mr. Verner?

21 MR. VERNER: Yes, sir. With this -- Your Honor, the
22 Court's already ruled -- I -- my understanding is that the
23 -- the identification of Vickie ---

24 THE COURT: Right.

25 MR. VERNER: --- comes into court.

1 THE COURT: Right.

2 MR. VERNER: The -- if I could, I just -- I would
3 bootstrap that argument by one that I had a chance to think
4 about last night.

5 THE COURT: Okay.

6 MR. VERNER: I would also argue, under the *Neil v.*
7 *Biggers* case, where the witness testified at the time he
8 made the identification he had been inebriated -- were his
9 words -- that he didn't come but he wasn't there at the
10 house for the first exchange of words; that -- that he
11 came, he said, about 20 minutes or 15 minutes before the
12 shooting. So he wasn't there to identify Carlos from the
13 initial encounter.

14 His testimony was: "I heard shooting and I ducked
15 behind a car and I didn't really look at people." So I --
16 I would argue that under his testimony, in -- in a *Neil v.*
17 *Biggers* analysis under the totality of the circumstances,
18 his testimony today -- inebriated; not -- not a real good
19 chance to look at the shooter; wasn't there long enough to
20 have seen him beforehand -- that under *Neil v. Biggers*,
21 under the totality of circumstances, it would not be a
22 sufficiently reliable identification.

23 The -- and I -- I -- I know the Court likes to break
24 up arguments or -- or have the other side respond. That
25 would be one-half of it, or I'm prepared to argue my other

1 part of it too.

2 THE COURT: Okay. Yeah. Go ahead and give me your
3 other -- other point.

4 MR. VERNER: As the Court correctly pointed out
5 yesterday, I -- I think the heart of my argument was does
6 an out-of-court identification come into evidence when the
7 witness basically recants his in-court identification, is
8 what I -- I basically think we have with the witness,
9 Dawayne Davis.

10 The -- the state is over the -- I -- I could not find
11 any South Carolina cases on point. South -- I think the
12 state is over the federal constitutional rights issue,
13 because there is a U.S. Supreme Court case the -- that
14 indicates it's not a constitutional problem under the Sixth
15 Amendment.

16 The -- as long as the witness who made the
17 identification appears in court, testifies in court, and is
18 subject -- submits to cross-examination, then the U.S.
19 Supreme Court has indicated it's not a federal
20 constitutional problem. And I -- I know the state's found
21 that case too. And I -- the -- maybe that's the *Owens*
22 case. Is that correct, Solicitor?

23 MR. SCOTT: Yes, sir.

24 MR. VERNER: The *Owens* case?

25 The -- amongst other states, Your Honor, there is a

1 split -- and -- and I don't know the exact number, but it
2 seems to be about a two-thirds/one-third split, where the
3 majority lets the out-of-court admission come in, kind of
4 under prior-inconsistent-argument rulings. And the
5 minority does not let it come in.

6 The -- at issue, however, I -- I don't -- I think the
7 state -- the prosecutors in this case still have a problem
8 because then the -- the rules of evidence were changed.
9 The -- the model rules of evidence that the ABA, I guess,
10 submits and the -- the states accept, South -- most other
11 states -- one of the hearsay exceptions is a prior out-of-
12 court identification, under the rules of evidence, comes in
13 as an exception to hearsay.

14 The -- and most other states that ruled under that
15 analysis have -- have enacted that in their rules of
16 evidence were out-of-court -- prior out-of-court admissions
17 come in under the rules. South Carolina -- our Supreme
18 Court did not accept that provision. When -- when we
19 accepted the rules -- I don't know the reason, Judge. But
20 the -- when -- when our Supreme Court accepted the rules of
21 evidence, that exception was not put into the rules of
22 hearsay.

23 So it -- is it a federal constitutional question? No.
24 About whether or not -- as -- as long as Dawayne Davis
25 testifies, the -- the -- the federal constitution is

1 satisfied. The -- the -- our -- our Supreme Court has
2 never let out-of-court statements come in -- or -- or --
3 under the rules of evidence. And -- and that's odd because
4 the -- that is one portion of the rules of evidence they
5 did not, for whatever reason, accept in.

6 So I -- I -- I -- I take that as some guidance that
7 the Supreme Court had issues -- had a reason why that
8 particular provision did not get put into the South
9 Carolina rules of evidence. And that -- most states put
10 that in under the 804 -- that would, if it were in our --
11 and I double-checked today -- this morning because I didn't
12 want to make a fool of myself and argue that and it -- then
13 it had been accepted it in. But it -- it's -- it is not
14 in.

15 But the -- most states have that in as 801(d) under
16 the rules of evidence. South Carolina never did accept an
17 out-of-court -- prior out-of-court -- so I -- I --
18 constitution not an issue. I think they've got a problem
19 getting it in under the rules of evidence.

20 THE COURT: All right. Now, we did come -- and -- and
21 before I hear from -- from the state -- and I've just read
22 the e-mail, Solicitor Scott, that you -- you sent out --
23 just -- just read that, because it -- my -- my computer is
24 -- well, it's being looked at by Columbia.

25 But we came across *State v. Gambrell*, which -- and the

1 -- the cite for that is 274 S.C. 587. And I'm just reading
2 the headnote. It says: "Standard for determining
3 admissibility of both out-of-court and in-court
4 identifications is whether identification procedure was so
5 impermissibly suggestive as to give rise to a very
6 substantial likelihood of irreparable misidentification."

7 And that -- that's just one of the headnotes. And
8 then, I think there is a footnote that kind of covers that.
9 The way I understand that would be it -- the -- the *Neil v.*
10 *Biggers* -- you know, whether or not the process was so
11 unduly suggestive. And you use that process looking at the
12 out-of-court for purposes of whether or not the in-court
13 comes in.

14 And in this case the in-court identification's not
15 going to be made. So -- so the out-of-court kind of stands
16 on its own, the way I read this. And I determined whether
17 or not it was -- the process was unduly suggestive.

18 Now, the argument as far as reliability -- because of
19 opportunity or lack of opportunity to -- to view the
20 defendant, the fact that this witness claimed that he was
21 under the influence would seem to me to go more towards the
22 weight of his testimony that you could beat him up on in
23 cross-examination, as opposed to admissibility.

24 Now, with that said, what I want to do is do -- and
25 we'll just all be at ease; be off the record. And I want

1 to kind of look at this *State v. Gambrell* a little bit
2 closer.

3 (Off the record from 10:36 a.m. until 10:39 a.m.)

4 (Whereupon, State's Exhibits 14 and 15 were marked for
5 identification off the record.)

6 THE COURT: All right. Let's go back on the record.
7 As I -- and -- and I'm going to hear from the state. And
8 certainly, Mr. Verner, I'll give you a chance to -- to
9 respond. As I understand this whole process, the analysis
10 I make -- and -- and -- and again, it applies both to the
11 admissibility of the out-of-court, admissibility of the in-
12 court.

13 I first determine whether or not the -- the -- the --
14 the identification process was suggestive or not. If I
15 determine it was not suggestive -- unduly suggestive, the
16 analysis stops right there and we allow it in. If I
17 determine that it was unduly suggestive, then I go to Part
18 2 of the analysis and look at the totality of
19 circumstances, opportunity to view the defendant, time
20 elapsed, and all those other factors involved.

21 So if I determine that this out-of-court photo lineup
22 -- six-pack, as Solicitor Scott calls it -- if I determine
23 that -- that that process was not unduly suggestive, then
24 my analysis stops there and I allow it in, okay, subject to
25 cross-examination as to opportunity to view, under the

1 influence, that sort of thing. That appears to be how I --
2 how I'm to rule on this, based upon *State v. Gambrell*. And
3 it cites several other state cases, couple of U.S. Supreme
4 Court cases.

5 Now, with that said, let me hear from the state. And
6 then, Mr. Verner, I'll allow you to -- to respond.

7 MR. SCOTT: Judge, that -- that -- that's my
8 understanding, under *Biggers* ---

9 THE COURT: Well, did I ---

10 MR. SCOTT: --- for ---

11 THE COURT: --- steal your argument? Is that what
12 you're suggesting?

13 MR. SCOTT: Well, my argument is that -- that -- that
14 if the out-of-court procedure was -- was not -- was not
15 suggestive -- not unduly suggestive, rather, and the
16 process was not tainted, then -- then in-court
17 identification would be allowed. However, in this case I
18 -- with -- at least with respect to Dawayne Davis, we're
19 seeking the out-of-court identification.

20 THE COURT: Right. Because ---

21 MR. SCOTT: And ---

22 THE COURT: --- admittedly, in our *Neil v. Biggers*
23 hearing, he admittedly indicated that, you know, he
24 couldn't really identify him in court ---

25 MR. SCOTT: Yes, sir.

1 THE COURT: --- for -- for whatever reason. And, too,
2 you know, going to the *State v. Moore* case, and it refers
3 to *Neil v. Biggers* being a two-prong inquiry to determine
4 the admissibility of an out-of-court identification.

5 Okay. Let me just -- let -- let me just stop you
6 right there.

7 (Off the record briefly.)

8 THE COURT: Yeah. In looking at *State v. Moore* -- and
9 that cite on that, fellas, is 343 S.C. 282. And it
10 specifically states it's a two-prong inquiry. But you
11 don't go to the second prong if it's determined that the
12 identification process was not unduly suggestive.

13 Anything further from the state on that before I turn
14 it over to Mr. Verner?

15 MR. SCOTT: No, sir.

16 THE COURT: Okay. Mr. Verner, anything further on
17 this?

18 MR. VERNER: Judge, just the -- because my -- my
19 opening argument -- that -- I -- I largely conceded
20 identity. So -- so I ---

21 THE COURT: Right.

22 MR. VERNER: --- the -- I -- I think I pretty much had
23 to win on -- or get -- convince the Court on both Ms.
24 Vickie and Dawayne before ---

25 THE COURT: I understand.

1 MR. VERNER: --- I could walk away from here.

2 THE COURT: Right.

3 MR. VERNER: So -- so I -- I think it -- the -- the --
4 the damage is lesser because it's coming in under at least
5 one of the witnesses. The -- on that argument, Your Honor,
6 the -- I -- I think the Court's correct that it's set up as
7 a *Neil Biggers* -- I mean, two-step process, although in --
8 in Paragraph 5, the -- they certainly suggest that the --
9 the -- the Court of Appeals actually considered the
10 totality of the circumstances as -- as a one, where they
11 say even if the identification procedure was suggestive in
12 light of the totality of the circumstances surrounding --
13 so they kind of blended it all in -- in -- into one.

14 But I -- I think the -- the -- it -- it's written up
15 as two, but the -- and, of course, the Court of Appeals can
16 do things that the trial court ---

17 THE COURT: Right.

18 MR. VERNER: --- can't. But the -- the -- the -- they
19 certainly, for their purposes, do it as one-step totality
20 of circumstances and the suggestiveness of the ---

21 THE COURT: Okay.

22 MR. VERNER: --- encounter.

23 THE COURT: Okay. And ---

24 MR. VERNER: So -- but -- but I ---

25 THE COURT: Right.

1 MR. VERNER: --- I -- I would acknowledge that the --
2 my -- my opening largely makes that at a moot point; I -- I
3 would've had to win on, really, both witnesses to ---

4 THE COURT: And -- and -- and I appreciate very much
5 your candor.

6 MR. VERNER: Well, that's all I've got at this point,
7 Judge, but we'll hopefully find some evidence to support
8 the candor.

9 THE COURT: Okay. Anything further before we ---

10 MR. SCOTT: Just the -- that -- in the argument, as
11 far as a -- us not having the hearsay exception for ID, I'm
12 noting 801(d)(1)(C), statements which are not hearsay:
13 prior statement by a witness; the declarant testifies at
14 trial or hearing and subject to cross-examination
15 concerning a statement and the statement is one of
16 identification of a person made after perceiving the
17 person. So that -- I -- I think that would come in as
18 nonhearsay ---

19 THE COURT: Right.

20 MR. SCOTT: --- also under 801 ---

21 THE COURT: Okay.

22 MR. SCOTT: --- (d)(1)(C) ---

23 THE COURT: Okay. All right.

24 MR. SCOTT: --- is my understanding that ---

25 THE COURT: Okay. Let me ---

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1 MR. SCOTT: That -- that may come up later. I --
2 that's the only reason I bring up ---

3 THE COURT: Sure.

4 MR. SCOTT: --- now.

5 THE COURT: And I appreciate that. Let me get some
6 more coffee and we'll -- we'll get started back up.

7 (Off the record from 10:45 a.m. until 10:54 a.m.)

8 THE COURT: All right. Let's bring the jury out,
9 please.

10 (Whereupon, the jury entered the courtroom at 10:54
11 a.m.)

12 THE COURT: Okay. Looks like the same seats. That's
13 good. That's good. Okay. Ready to start the state case,
14 Solicitor?

15 MR. SCOTT: Yes, sir. State calls Ryan Matthews.

16 (Whereupon, the witness came forward.)

17 RYAN MATTHEWS, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q Okay, Ryan. October 6th, 2012, where were you
22 working?

23 A The City of Newberry Police Department.

24 Q All right. You are now with Probation, Pardon, and
25 Parole; that correct?

1 A That's correct.

2 Q All right. But October 6th of 2012, what were your
3 duties with the Newberry Police Department?

4 A It was a standard patrol duty. I was, at the time, a
5 patrolman with the City of Newberry. Patrolled around the
6 city; answered any dispatched 911 calls; made traffic
7 arrests; and things of that nature.

8 Q Okay. So if a calls comes in -- 911 call that there
9 was a shooting at some street in the City of Newberry, that
10 would be something you would respond to?

11 A Yes, sir.

12 Q Okay. All right. Five o'clock, October 6th, 2012,
13 did you have an opportunity to respond to such a call?

14 A Yes, sir. We were called -- I believe the dispatch
15 time was 5:54 p.m. -- to [REDACTED] Rodelsperger in the City of
16 Newberry, which is a -- just -- the residence is just at
17 the intersection of Rodelsperger and Charles Street. We
18 were called in reference to a shooting at that residence.

19 THE COURT: Can -- can we get the spelling of that
20 street in -- into the record? Because the -- in -- in the
21 previous discussions, the name of the street has been
22 pronounced several different ways. And I think it'd be
23 helpful if we got the spelling.. So Solicitor?

24 THE BAILIFF: Rodelsperger is the correct version.

25 THE COURT: Okay. All right.

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1 MR. SCOTT: No. And correct me if I'm wrong, but the
2 spelling I have is R-o-d-e-l-s-p-e-r-g-e-r.

3 THE WITNESS: Yes, sir. To my knowledge, that's how
4 it's spelled.

5 THE COURT: Okay. All right. Very good. Thank you.

6 Q Okay. Now -- and -- and I think this probably is
7 understood. But you said it was in the City of Newberry.
8 It's also in the county of Newberry; is that correct?

9 A Yes, sir.

10 Q Now, tell us again: What was the call you were
11 responding to?

12 A The call was dispatched out as a -- a shooting call at
13 the residence of [REDACTED] Rodelsperger that a subject had opened
14 fire at a residence and several of the person at the
15 residence.

16 Q All right. And so you said you got there just before
17 6 p.m.?

18 A Yes, sir. I believe I arrived on scene at 5:56 p.m.

19 Q Okay. And -- and this is the daytime hours in
20 October?

21 A Yes, sir.

22 Q All right. What'd you observe when you got there?

23 A When I arrived on scene, there were multiple persons
24 about. It was highly chaotic. When I arrived on scene,
25 several other cop cars arrived just shortly after mine.

1 And several persons were all out and about. We had
2 first arrived on scene to check and make sure that everyone
3 was safe; no one had been struck by any of the gunfire that
4 had been allegedly shot at the residence. And once
5 everyone was deemed safe and it was told to police that the
6 shooter was not in the area, we helped to calm down the
7 chaos.

8 Q Okay. Well, how many people did you say you think
9 were out there?

10 A Including children, I'd -- I'd say approximately 10 to
11 12.

12 Q All right. What was your understanding of what had
13 occurred?

14 A When we arrived on scene, several of the persons --
15 when we had first arrived, we -- we were shown one subject
16 by the name of Quentin Graham who was still on scene who
17 was claimed to not have been the shooter as well and
18 several people at the residence who had been open-fired
19 upon had claimed that a different shooter had fled the
20 scene from the area and -- and they had opened fire at the
21 crowd who was standing behind the residence as they were
22 having a cookout. They ducked behind several of the
23 vehicles they had parked at the rear and side of the yard
24 in order to avoid being struck by gunfire.

25 Q Okay. All right. And did you observe any evidence of

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1 gunfire?

2 A Yes, sir. There was one silver-in-color Ford Explorer
3 that had been struck several times with bullets, as well as
4 a -- several bullets that had struck the residence of the
5 -- where everyone was standing above their heads.

6 Q Okay. I'm going to show you -- show you a few
7 pictures.

8 A Yes, sir.

9 Q This is State's No. 6. Do you recognize this picture?

10 A Yes, sir.

11 Q And what is it?

12 A This is the side of the residence. If you were
13 looking to the front of the residence, say, at the front
14 door, it would be the side of the house to the right.

15 Q Okay. And that side -- this home -- you said it's on
16 Rodelsperger?

17 A Yes, sir.

18 Q What is the street that runs adjacent to -- to this
19 home?

20 A It would be Charles Street.

21 Q So it's in a corner lot at the corner of Rodelsperger
22 and ---

23 A --- Charles.

24 Q --- Charles?

25 A Yes, sir.

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1 Q Okay. That picture that I'm showing you, that -- that
2 angle of the home, is that facing Rodelsperger or Charles?

3 A This side of the home would actually face Charles
4 Street.

5 Q Okay.

6 MR. SCOTT: Your Honor, the state's going to offer No.
7 6 for admission into evidence.

8 THE COURT: Is this No. 6?

9 MR. SCOTT: Yes, sir.

10 THE COURT: Okay.

11 Q With this pointer would you point to the approximate
12 areas where -- where you located bullet holes?

13 A Right there.

14 Q All right. Anywhere else?

15 A There -- there's one to the far side. I believe it's
16 right in that area.

17 Q Okay. Let me show you State's No. 4. You recognize
18 that?

19 A Yes, sir.

20 Q And what is that?

21 A Yeah. This is a zoomed-in picture of the far side of
22 the residence. The -- I'd say almost in line with the top
23 of the window to -- to slightly lower to the first -- first
24 paint line. It's a -- a bullet that was -- entered
25 sideways into the edge of the residence.

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1 Q All right.

2 MR. SCOTT: And I'm going to ask to admit State's No.
3 4 for admission and publish it as well.

4 THE COURT: Okay. Here. I think all of these
5 exhibits have already been agreed to ---

6 MR. VERNER: Yes, sir. There were ---

7 THE COURT: --- be admitted.

8 MR. VERNER: The -- there were two more we agreed to
9 at the break that by ---

10 THE COURT: Okay.

11 MR. VERNER: --- stipulation are in. But all the
12 photographs are in ---

13 THE COURT: Okay.

14 MR. VERNER: --- by agreement.

15 THE COURT: Okay. And if there's any exhibits, Mr.
16 Verner, that you had not agreed, then you just go ahead and
17 note that for the record at -- you know, whenever it ---

18 MR. VERNER: Yes, sir.

19 THE COURT: --- comes up.

20 MR. VERNER: But -- but my understanding, all these
21 photographs are in ---

22 THE COURT: Okay.

23 MR. VERNER: --- with our consent.

24 MR. SCOTT: Your Honor, 14 and 15 were the ones he was
25 referring to. Those two additional ones we've stipulated

1 to.

2 THE COURT: Okay.

3 (Whereupon, State's Exhibits 14 and 15 were entered
4 into evidence.)

5 Q Ryan, what was that?

6 A That is the -- a bullet that had entered the -- the
7 residence at a sideways angle, instead of a -- a straight-
8 front strike.

9 Q And if we refer back to State's No. 6, whereabouts is
10 that bullet hole?

11 A It -- that bullet hole would be right in this area.

12 Q Okay. Let me show you State's No. 5. What is that?

13 A I -- I believe that is a zoom-in picture of the -- the
14 large, front-facing bullet hole to the top gable corner of
15 the residence.

16 Q And again, referring back to 6, where is that?

17 A That -- that would be in this location.

18 Q Okay. All right. Were those the only, I guess,
19 bullet holes you -- you noted that were in the house?

20 A Yes, sir. Those were the only two bullets that were
21 located that had struck the residence.

22 Q All right. Let me show you State's No. 7. What is
23 that?

24 A That's the rear of a Ford Explorer.

25 Q Okay.

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1 A It was struck multiple times. We have a -- a bullet
2 that entered straight on there; a bullet that entered there
3 and actually broke away from the piece; and -- and we
4 believe a third or possibly fourth bullet that struck the
5 -- the rear glass and had shattered the glass.

6 Q Okay. Now, pictures in -- on the house, those --
7 those were, you know, some distance up but -- is that safe
8 to say?

9 A Yes, sir.

10 Q You know, I -- I think the defense attorney said 14/15
11 feet high. That's probably fairly accurate?

12 A Yes, sir. That's what I would approximate.

13 Q Well, how far off the ground are these bullet holes?

14 A The -- the first one at the -- the bottom can be no
15 more than 2 1/2 to 3 feet, I -- I'd say with the maximum
16 height being possibly 5.

17 Q Okay. Those are people-level shots there, aren't
18 they?

19 A Yes, sir.

20 Q Let me show you State's No. 10. And what is that?

21 A That would be where a bullet entered the -- the rear
22 tailgate of the vehicle.

23 Q Okay. That's just a close-up of -- of which bullet
24 hole here?

25 A That would be the bullet hole to the -- the far left,

1 almost next to the taillight.

2 Q State's No. 11?

3 A That would be where the -- the bullet entered the --
4 the bottom of the tailgate just above the bumper.

5 Q Okay. And we see the tag there. So that ---

6 A Yes, sir. That would be right in that area.

7 Q All right. Aside from the bullet holes, what other
8 evidence that gunfire had occurred did you observe?

9 A There were seven .380 ACP shell casings located and
10 found on Charles Street that were all marked and then later
11 collected as evidence.

12 Q All right. This is State's No. 14. Okay. First of
13 all, what -- what are those yellow markers there?

14 A The -- the yellow markers is what we use to help
15 determine areas that are crime scene that we find to be
16 significant. And all of those were used to mark where the
17 .380 ACP shell casings were located.

18 Q Okay. Now, in the other exhibits you just pointed to
19 that we just showed, as far as the Explorer with the
20 shattered glass and the house, do you see those in this
21 picture?

22 A Oh, yes, sir. They're ---

23 Q What's ---

24 A --- easily found ---

25 Q What is ---

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1 A --- along with ---

2 Q --- that?

3 A --- the crowd of people at the residence.

4 Q Okay. What you have your laser pointer on, is that
5 the Explorer you pointed the bullet holes at?

6 A Yes, sir.

7 Q All right. Approximately where were the bullet holes
8 in the house that -- that you noted in the prior exhibit,
9 6, I think?

10 A One of the -- the far bullet holes at the far-left
11 corner would be approximately in that area and lined with
12 the -- the window. The second one that was up above would
13 be right in that area.

14 Q Okay. And this road right here, that's Charles?

15 A Yes, sir, that's Charles Street.

16 Q And it runs along the side of the residence at [REDACTED]

17 A That's right. It -- it -- it's parallel with the side
18 of the residence.

19 Q Okay. I've got the same, but a little bit different
20 angle. This is State's 15.

21 Okay. Now, those markers -- you -- you said there
22 were seven casings?

23 A Yes, sir.

24 Q I only see six markers there.

25 A Two of the shell casings were found at -- at a very

1 close approximation, within inches. So just one marker was
2 used to mark both shell casings.

3 Q All right. Shell casings, explain -- explain to the
4 jury -- whenever -- y'all know what a bullet is. What --
5 what is a bullet casing?

6 A A -- a -- a full shell casing and a bullet is -- is
7 compromised [sic] of -- of several items. A bullet has a
8 shell-casing primer, ignition or gunpowder on the inside of
9 the shell casing, and a bullet. When you load a round into
10 the chamber of a firearm and you fire, the bullet is fired
11 through the barrel of the gun. The shell casing, which is
12 the -- the last -- mostly made of brass -- is ejected from
13 the firearm or -- ejected, say, in a lever-action or bolt-
14 action gun, you extract it manually -- and then most of
15 which are -- are found lying on the ground. Due to the
16 recoil of the firearm, it would be dropped. And the next
17 round will be loaded into the chamber so that you can pull
18 the trigger again and an additional bullet be fired.

19 Q what conclusion do you draw at the location of those
20 casings?

21 A Due to the -- the small pool area of the shell
22 casings, it -- it would appear to me and -- that the
23 subject was standing still, firing at the residence while
24 attempting to take aim. If -- if he were moving, the shell
25 casings would be a -- a broader pool or possibly in a trail

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1 away from the residence.

2 Q But that's generally where the -- whoever fired the
3 shots was standing? That's ---

4 A Yes, sir.

5 Q --- your understanding?

6 A (No audible response.)

7 Q Let me show you State's No. 12. Okay. What is
8 State's No. 12?

9 A It is seven .380 ACP shell casings.

10 Q All right. That was the caliber of the casings? It
11 was .380s?

12 A Yes, sir.

13 Q And this is what a casing is? This is what's left
14 after a -- a bullet is fired from the -- from an automatic
15 or semi-automatic weapon?

16 A That's correct.

17 Q Now, if it was a revolver, this would remain in the
18 chamber, I guess ---

19 A Yes, sir.

20 Q --- or the ---

21 A Cylinder.

22 Q --- cylinder.

23 And you located seven of these on the ground of
24 Charles Street. I -- I -- what's the distance from those
25 casings to where that home is, would you say?

1 A I would say the -- the distance from the casings to
2 the home is approximately 20 yards.

3 Q Let me show you State's No. 3.

4 A Can we turn that to the right?

5 Q What you need?

6 A If you'd turn it down a little.

7 Q Just ---

8 A There we go.

9 Q Okay. State's No. 3, do you recognize that?

10 A Yes, sir.

11 Q And what are we looking at here?

12 A That would be Rodelsperger Street ---

13 Q Okay.

14 A --- and then, Charles Street.

15 Q All right. Where is the home at [REDACTED]

16 A The -- the residence is located underneath the -- the
17 large array of trees.

18 Q Okay. You can't see it because of the oak tree there?

19 A That's correct.

20 Q Newberry Greens Apartments, is that somewhere near the
21 home at [REDACTED]

22 A Yes, sir. That -- this is actually one of the
23 Newberry Greens buildings. This is the Newberry Green
24 playground. And then, the rest of the complex runs up and
25 then around the area in ---

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1 Q All right.

2 A --- a -- a large semi-circle.

3 Q Okay. Now, can you show us a general -- just looking
4 at -- from this picture can you point generally to the area
5 where the casings were found?

6 A Yes, sir. The casings were found right in that area.

7 Q Okay. And this is just State's No. 8 for reference.
8 What is that?

9 A That would be the right side of the residence.

10 Q All right. And that's probably the oak tree right
11 there that's covered in the aerial?

12 A Yes, sir.

13 Q All right. And we're looking at it from probably the
14 stop sign at the corner of Rodelsperger and Charles; is
15 that accurate?

16 A Yes, sir.

17 Q Okay. In a .380 clip, do you know how much the
18 magazine holds, how many bullets?

19 A The majority of the time, a -- a .380 ACP handgun
20 carries around ten.

21 Q Ten?

22 A (No audible response.)

23 Q All right. Now, after you arrived on the scene -- are
24 -- are these pictures -- they were taken at the time you
25 guys were out there investigating the -- the scene?

1 A Yes, sir.

2 Q All right. So I -- appears to be daylight.

3 A Yes, sir.

4 Q Even those it's close to six o'clock in October, it's
5 still daylight that time of year?

6 A Yes, sir.

7 Q Did -- were you given a description of the person you
8 were looking for?

9 A Yes, sir. Upon arriving on scene, checking everyone's
10 safety, and finding no -- that no one had been injured in
11 the gunfire, once we had taken the subject Quentin Graham
12 into custody and got the chaos to come down, speaking with
13 several persons, they gave us the description of a -- an
14 average-height, average-built black male in a white shirt,
15 blue-jean pants, and a black San Antonio Spurs baseball cap
16 ---

17 Q Okay.

18 A --- with a black semi-automatic handgun that he had
19 used to fire at the residence that he removed from his
20 waist.

21 Q All right. And did you speak with any -- you spoke
22 with some individuals who were there and who witnessed the
23 shooting?

24 A Yes, sir. We spoke with a Vickie Davis and Dawayne
25 Davis, who gave us written statements as to what had

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1 occurred.

2 Q Okay. How did the -- what was your understanding of
3 how the shooters arrived on the scene? How did they come
4 to be there?

5 A From what they had stated to us, the -- at first they
6 had arrived about 30 minutes prior to the shooting in a
7 gold or tan Toyota Corolla; had came -- Mr. Graham ---

8 MR. VERNER: Your Honor, the ---

9 A --- and ---

10 MR. VERNER: --- I do -- I -- I think he's testifying
11 to what other witnesses should testify to.

12 THE COURT: I -- I sustain.

13 MR. SCOTT: Your Honor?

14 THE COURT: Yes.

15 MR. SCOTT: If -- if I may, this would be not for the
16 -- not for the purpose of the -- of truth of the matter
17 asserted. It would be more to explain why his
18 investigation was undertaken, how he comes to where he ends
19 up in the investigation.

20 THE COURT: Well, can't you accomplish the same thing
21 by just -- as a result of talking with the -- the various
22 witnesses, then he did such and such. Mr. Verner, you want
23 to comment as what the -- the state just stated their
24 position to be?

25 MR. VERNER: The -- well, I -- I don't quite know

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1 where he's going. But -- I -- I -- I think he's certainly
2 getting into matters that he's taken for the truth of the
3 -- of the matter -- he certainly took them as true and
4 it'll be offered as truthful. So I -- I -- I think the
5 Court's quite right that he can -- as a result of your
6 investigation, what did you do or -- would be the
7 appropriate way to ---

8 THE COURT: Sustain the objection.

9 Q At -- all right. Let me -- after you got a general
10 description of the person, what -- well, let me back up.
11 Did you have a description of an automobile?

12 A Yes, sir. The -- several subjects on scene, due from
13 noting -- seeing the subject and giving us a description of
14 him from a -- a previous encounter they had, gave us a
15 description of an automobile he might be traveling in.

16 Q Yeah. And what was the description of the car you --
17 you were on the lookout for?

18 A The -- the description of the vehicle was an older-in-
19 model either gold or tan Toyota Corolla.

20 Q Okay. Now, the homeowner of [REDACTED] Rodelsperger Street
21 was who?

22 A Deborica Adams.

23 Q Okay. Was she there when the shooting occurred?

24 A No, sir.

25 Q All right. And once you were on the scene, did she

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1 arrive home?;

2 A Yes, sir, she did.

3 Q Okay. Were you able, upon her arrival, to get a name
4 of anyone you were looking for?

5 A Yes, sir. Once she arrived on scene, upon hearing a
6 -- the nickname of the subject as "C-Note," she had
7 recalled a -- from speaking -- she stated she spoke with a
8 friend and had recalled the name of Carlos Reeder as the
9 name of the subject.

10 Q Okay. Did you receive any other information in
11 regards to who may own the Corolla?

12 A Yes. She stated, upon speaking with her friend, that
13 the baby's mother of the -- the gentleman, Carlos Reeder,
14 was an Ayesha Vance.

15 Q All right. Where'd your investigation take you from
16 there?

17 A From that investigation, we use a -- a system that we
18 keep track of all the reports, traffic citations or
19 whatnot, called "LawTrak." We looked her up in LawTrak.
20 And through a -- a previous traffic stop that she had
21 occurred, we -- we found the tag of that vehicle. When we
22 checked the tag, it brought back a -- a residence on a
23 Rosalyn Drive and an accurate year, make, and model of the
24 vehicle.

25 Q And did you respond to that location?

DIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 206

1 A Not at -- on that day. We responded on October 7th,
2 approximately 1 p.m. once we had located the vehicle at the
3 residence on Rosalyn Drive as found in the tag.

4 Q All right. And did you speak with -- was Ayesha Vance
5 there?

6 A Yes, sir, she was.

7 Q And were you able to speak with her?

8 A Yes, sir.

9 Q Did she allow you to look in her car?

10 A Yes, sir. She was extremely cooperative. When we
11 arrived on scene, we had stated that we were looking for
12 the subject known as Carlos Reeder. She stated that he was
13 not home. And they allowed us inside of the residence of
14 Rosalyn Drive to check, and he was not.

15 We had asked about the situation. She stated that she
16 was unaware of the events that had occurred on Rodelsperger
17 and Charles. She allowed us to search her vehicle, where
18 we did locate the black San Antonio Spurs hat that he was
19 wearing. And then she later allowed us to travel to her
20 residence at Indian Hills.

21 She stated that he had came to her residence, I assume
22 after the shooting occurred; entered the residence with
23 her; they then left in her vehicle. And she drove him to
24 Joanna to an aunt's residence, and then she came back home
25 from Joanna to Newberry.

DIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 207

1 Q Okay. I -- I think you -- what was your understanding
2 of her relationship with Carlos Reeder?

3 A At the time she was pregnant with Mr. Reeder's child.

4 Q Okay. And you did locate a Spurs hat in the car?

5 A Yes, sir.

6 Q And -- and that was what you said a description of the
7 shooter had been: He was wearing a black San Antonio Spurs
8 hat?

9 A Yes, sir. Multiple persons stated he was wearing a
10 white shirt, blue-jean pants, and black San Antonio Spurs
11 baseball cap.

12 Q All right. He was not at the residence where the
13 Corolla was?

14 A No, sir.

15 Q You said you went to another residence associated with
16 Ms. Vance?

17 A Yes, sir. We traveled to her apartment. I believe
18 it's No. 214 at Indian Hills Drive, which is a -- an
19 apartment complex just on the backside of Newberry Greens.
20 She also signed a consent waiver. She was extremely
21 cooperative and allowed us to search her residence for the
22 firearm.

23 Q Were you able to locate it?

24 A No, sir, we were not.

25 Q Were you able to locate Carlos Reeder?

1 A No, sir, we were not.

2 Q Did you have a listed address for Carlos Reeder in
3 Newberry?

4 A The listed address that we had recovered on LawTrak
5 was the same residence on Rosalyn Drive that Mrs. Vance's
6 vehicle was located.

7 Q Okay. He was -- he was not at that location?

8 A No, sir.

9 Q Okay.

10 A Upon speaking with Ms. Vance, she stated that he was
11 using the -- the address of the residence as a -- a means
12 for a location of employment.

13 Q Okay. Did -- did you go to the location in Joanna she
14 said she had taken him?

15 A No, sir.

16 Q Was that your jurisdiction or ---

17 A That -- that's correct. At -- within working within
18 the city limits and the county of Newberry, I'm unable to
19 travel to Joanna since it's outside of our county.

20 Q Okay. Did you contact Laurens County officials?

21 A Yes, sir. We -- we contacted Laurens County, as -- as
22 well as some units within Joanna. And they attempted to
23 locate the subject once he was placed into NCIC.

24 Q Okay. Well, what is NCIC?

25 A NCIC is a national criminal database that we place

DIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 209

1 subjects within warrants and -- and things like that so
2 that if another common officer were, say, on a traffic stop
3 to stop and find the subject and -- and run his -- his name
4 and credentials through the -- the database, they would
5 also know that he is wanted or a -- possibly a -- like a
6 violent criminal or offender.

7 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

8 MR. SCOTT: I -- I beg the Court's indulgence, Your
9 Honor.

10 THE COURT: Sure. Take your time.

11 (Whereupon, Mr. Scott and Mr. Verner conferred.)

12 MR. VERNER: Can I be heard just -- sidebar, Your
13 Honor?

14 THE COURT: Sure.

15 (Whereupon, a sidebar conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

19 (Whereupon, State's Exhibits 16 and 17 were marked for
20 identification.)

21 Q All right. You said statements were taken by Vickie
22 Davis and Dawayne Davis?

23 A Yes, sir.

24 Q And -- and you were present during these statements?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 210

1 Q All right. Without -- do you recognize 16 and 17 --
2 State's 16 and 17?

3 A Yes, sir. It's the statement given by both Vickie
4 Davis and Dawayne Davis. And I was the -- the witness to
5 their statement.

6 Q Okay. And who took those statements?

7 A Sgt. Rowe.

8 Q Okay. Do you have knowledge when Carlos Reeder was
9 picked up?

10 A To my knowledge, he was placed under arrest sometime
11 on June 6th of 2013.

12 Q Okay. So this occurred October 6th, 2012, and then he
13 was finally picked up eight months later?

14 A That's correct.

15 Q Do you know where?

16 A I believe in Joanna. But I believe it was the Laurens
17 County Sheriff's Department.

18 Q Okay.

19 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

20 Q Thank you. Please answer any question Mr. Verner has
21 for you today.

22 A Yes, sir.

23 THE COURT: Cross-examination, Mr. Verner?

24 CROSS-EXAMINATION

25 BY MR. VERNER:

CROSS-EXAMINATION BY MR. VERNER - RYAN MATTHEWS 211

1 Q Officer Matthews, good morning.

2 A Morning.

3 Q The -- now, I -- clarify for me: Your role in
4 responding in October of 2012 was as a patrol officer or as
5 an investigator?

6 A I was the primary patrol officer on scene.

7 Q Okay. The -- and typically, what happens is the --
8 the -- the -- the first responders are -- are typically
9 patrol officers?

10 A That's correct.

11 Q And -- and once the scene -- whether it's secure or
12 not, at some point the patrol officers go back to their
13 duties and the -- and the actual investigation of the case
14 is turned over to the -- the -- the investigators?

15 A Depending on the nature of the crime, a lot of the
16 times within the City of Newberry, the -- the primary
17 officer investigates the majority of the case.

18 Q Okay. In -- in a simple case, the -- disorderly
19 conduct or type, the patrol officer that -- basically does
20 it all on the scene. But that -- you would agree with me,
21 for an attempted murder, that the more serious the charge,
22 the more -- the more likely it's going to go through the
23 channels of the investigation and ---

24 A Yes, sir. That's correct.

25 Q Okay. The -- when you -- you arrived on the scene,

1 the -- I assume you were dispatched over the radio in your
2 car?

3 A Yes, sir.

4 Q And approximately how long do you think it took you to
5 respond?

6 A Approximately two minutes.

7 Q About two minutes?

8 A Yes, sir.

9 Q The -- would -- would you have responded with lights
10 on, sirens on, or just rapidly but without the ---

11 A Yes, sir. Due to the nature of the event, we
12 responded -- which is known as a Code 3 response, which is
13 full lights and sirens.

14 Q Okay. The -- were -- were any other officers on the
15 scene prior to your arrival?

16 A Prior to my arrival, no, sir.

17 Q Yes, sir. But I -- it -- certainly, other officers
18 would've -- other patrol units would have responded?

19 A Yes, sir. It was right at shift change, so a -- a
20 larger number of officers responded than normally because
21 both the day shift, which comprised of six officers, and
22 night shift, which is another six officers, most of which
23 arrived on scene.

24 Q Okay. And -- and when there's -- I assume -- I'm not
25 sure, but I -- my guess is when there's a call out for a

CROSS-EXAMINATION BY MR. VERNER - RYAN MATTHEWS 213

1 shooting, it -- it's more likely to draw more officers?

2 A That's correct.

3 Q Okay. The -- when you arrived at the house on
4 Rodelsperger, the -- and how many adult males were in the
5 yard?

6 A I'd say approximately four to five.

7 Q Okay. The -- it -- is it possible several people who
8 had been out in the yard had left following this -- this
9 occurrence?

10 A It's possible. We had several persons that had fled
11 into and inside the residence at -- at the time of the
12 shooting.

13 Q Okay. So -- so some of the people who were there
14 could have gone home before your arrival ---

15 A That's correct.

16 Q --- or even after you occurred, could have left prior
17 to speaking to you?

18 A That's correct.

19 Q And it's because of the attention, people who weren't
20 there are likely to have come to the yard to see what was
21 going on too?

22 A That's correct.

23 Q Okay. The -- the -- and it appeared to be a cookout?

24 A Yes, sir. It was a -- some form of large family
25 gathering.

1 Q The -- were -- did you see people drinking beer or
2 alcoholic drinks?

3 A Yes, sir.

4 Q Okay. The -- now, I -- I've got a question about this
5 -- your -- your statement was it -- it appeared to you or
6 your hunch was that somebody was attempting to aim. Let's
7 go back to the -- if I can, can I use your photographs?

8 A (No audible response.)

9 Q How long have you been a law enforcement officer?

10 A Approximately 3 1/2 years.

11 Q Prior to this occurrence or counting this?

12 A Oh. At the time of this occurrence, I had been a --
13 an officer for about a year and a half.

14 Q Okay.

15 A Yes, sir.

16 Q And you had gone through the police academy and the --
17 the specialized training?

18 A That's correct.

19 Q Okay.

20 MR. VERNER: Your Honor, I -- I'm putting up Exhibit
21 15.

22 THE COURT: Okay.

23 Q The -- and I believe your testimony is based on that
24 -- the -- the grouping, that it was your observation that
25 the -- the person who fired those shots may have been

1 attempting to aim?

2 A That's correct.

3 Q The -- is -- is that what you would have done as a
4 trained police officer, is when -- when you -- if -- if you
5 come to the point where you have to shoot, you need to aim
6 ---

7 A Yes, sir.

8 Q --- to hit ---

9 A The ---

10 Q --- what you're shooting at?

11 A The way that we are trained to engage in fire is at a
12 -- a certain standpoint stance and presentation of the
13 firearm to get the highest level of accuracy.

14 Q Okay. All right. Now, the -- is it possible that
15 someone who doesn't regularly train could have just been
16 shooting rapidly?

17 A Yes, sir.

18 Q Okay. Did -- did you have any understanding when you
19 investigated whether these were rapid shots or -- or
20 whether these were slow, deliberate shots?

21 A From what was presented to me, it -- it was not stated
22 whether the -- the shots were occurring at -- at a fast or
23 slow pace.

24 Q Okay.

25 A Most persons just stated that they had heard shots and

1 -- and seen the subject with a firearm and then attempted
2 to take cover.

3 Q Okay. So -- so you would defer to whatever the people
4 who were actually there testified about the ---

5 A That's correct.

6 Q --- how rapidly the shots were fired?

7 But -- but at least six of them or seven of them do
8 appear to be from the street in -- in a relatively close
9 grouping?

10 A That's correct.

11 Q From picture -- I -- I guess Shell Casing 1 and Shell
12 Casing 6, what -- what would be the distance of that
13 circle?

14 A I would approximate that about 3 feet.

15 Q Just 3 feet?

16 A Yes, sir.

17 Q Well -- well, I take 3 feet as one big step. You --
18 you go from Casing 6 to Casing 1 in just one big step? It
19 doesn't look like more like 6 feet or -- to go from the
20 bullet that's marked 6 to go to the bullet that's marked 2,
21 is that not about a step away or ---

22 A Yes, sir.

23 Q Okay. So it's a -- like maybe 2 yards or two steps?

24 A Yes, sir. About ---

25 Q Okay.

CROSS-EXAMINATION BY MR. VERNER - RYAN MATTHEWS 217

1 A --- two steps.

2 Q The -- and the -- the bullets -- you recovered at
3 least five what -- impact sites ---

4 A We ---

5 Q --- where the bullets ---

6 A Only one slug bullet was ---

7 Q Okay.

8 A --- recovered.

9 Q But -- but, I mean, in -- in terms of seeing the hole
10 of where the bullet went, you can -- you can -- we know
11 there are at least five ---

12 A Yes, sir.

13 Q --- where we hit ---

14 A Yes, sir. Bullet locations. Yeah. Five. You're
15 correct.

16 Q Two of them fairly high towards the gable area of the
17 house?

18 A That's correct.

19 Q Two in the butt or the back of the truck, the SUV?

20 A That's correct.

21 Q And we know that one must -- at least one must have
22 shattered the windshield?

23 A That's correct.

24 Q Okay. The -- okay. And that's not a tight grouping,
25 is it?

1 A No, sir.

2 Q The -- if -- if you, as an experienced officer, was
3 shooting -- or -- or somebody with experience was shooting
4 and -- and they had a specific target in mind, you would
5 expect to see a tighter grouping of where the bullets ---

6 A Yes, sir.

7 Q Okay. And I think you -- you witnessed several of the
8 witnesses out there being -- giving statements or speaking
9 to the police officers?

10 A Yes, sir. That's correct.

11 Q Okay. The -- no one was injured; is that correct?

12 A No, sir. No one was injured.

13 Q Was there any other property damage, other than the
14 damage to the man's car and -- and the damage to the side
15 of the house?

16 A No, sir. No other damage was reported.

17 Q Okay. You are not the officer who took these
18 photographs; is that correct?

19 A That is correct.

20 Q The -- are you the officer who arrested Quentin Graham
21 at the scene?

22 A Yes, sir. The -- the arrest was made by myself. But
23 he was transported by another officer to the Newberry
24 County Detention Center due to me being the primary
25 investigating officer.

CROSS-EXAMINATION BY MR. VERNER - RYAN MATTHEWS 219

1 Q Okay. And I've got my -- can you -- is -- is that --
2 I -- I'm handing you a photograph which would be one of the
3 state's exhibits, I'm sure.

4 (Whereupon, Mr. Verner and Mr. Scott conferred.)

5 MR. VERNER: Your Honor, I would move in Defendant's

6 1.

7 MR. SCOTT: Without objection.

8 THE COURT: Okay. Any objection to ---

9 MR. SCOTT: No, Your Honor.

10 THE COURT: --- Number 1? Okay.

11 Q I'm going to let her mark it in before I ask the
12 question.

13 A Yes, sir.

14 (Whereupon, Defendant's Exhibit 1 was marked and
15 entered into evidence.)

16 MR. VERNER: And, Your Honor, just let the Court have
17 a copy.

18 THE COURT: Okay.

19 Q The -- are you familiar with Quentin Graham?

20 A Yes, sir.

21 Q Did you arrest him that -- and I'll hand you the
22 actual exhibit. The -- can you identify him from the
23 photograph?

24 A No, sir.

25 Q Okay. You don't remember what he was wearing that

1 day?

2 A No, sir. Mr. Graham has very distinguished
3 dreadlocks. And no one in this picture appears to have
4 those.

5 Q Okay. The -- the -- just in general, as a -- just as
6 a general question, sometimes when people have the
7 dreadlocks, they like to wear the -- kind of the stocking
8 -- the large stocking caps that kind of keep -- you've seen
9 that style?

10 A Yes, sir. That's correct.

11 Q Okay. I'm -- I'm asking you: The -- the man kind of
12 leaning back up against the car -- I -- I -- did the -- can
13 you tell whether that's Quentin Graham or not or it's just
14 too ---

15 A No, sir. I'm positive that's not Quentin Graham.

16 Q Okay. You're sure that's not Quentin?

17 A Yes ---

18 Q Okay.

19 A --- sir.

20 Q But those were -- can you identify any of those ---

21 A The ---

22 Q --- men?

23 A --- male in the white shirt and blue shorts is Mr.
24 Caldwell. I'm ---

25 Q Okay.

REDIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 221

1 A --- unsure of the -- the other persons' names. I
2 believe the gentleman behind Mr. Caldwell is Reginald
3 Nance.

4 Q Okay. And -- but there were -- the -- those were some
5 of the men who said they were out in the yard ---

6 A Yes, sir.

7 Q --- when this occurred?

8 A Yes, sir.

9 Q Okay.

10 MR. VERNER: Thank you. I don't have more questions
11 if -- unless the prosecutor ---

12 THE COURT: Okay.

13 MR. VERNER: --- has any more.

14 THE COURT: Anything in redirect, Solicitor?

15 MR. SCOTT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. SCOTT:

18 Q Now, the slug that was recovered, how -- how did y'all
19 -- what is a slug, first of all? How is that different
20 from a casing?

21 A The -- the slug is the nickname given to a bullet
22 after it has been fired through the barrel of the firearm
23 and it impacted with an item.

24 Q Okay. That's -- that's the lead projectile that is
25 ultimately fired from a ---

REDIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 222

1 A That's correct.

2 Q --- weapon?

3 This is State's No. 13. Do you recognize that?

4 A Yes, sir. This is the ---

5 MR. VERNER: Your Honor, respectfully, I -- I believe
6 this is beyond the scope of my cross-examination. Could've
7 been brought out ---

8 MR. SCOTT: They ---

9 MR. VERNER: --- on direct, but ---

10 MR. SCOTT: --- asked about the slug that was
11 recovered, Your Honor.

12 A You just like me to open the envelope?

13 THE COURT: Wait -- wait a minute. You're probably
14 correct, Mr. Verner. I'm going to go ahead and allow it
15 in. You may proceed.

16 Q Do you recognize the -- No. 13 there?

17 A Yes, sir.

18 Q Okay. That -- now, that's been admitted into evidence
19 through prior stipulation. What is that?

20 A This is the .380 ACP projectile that was recovered
21 from the rear tailgate of the Ford Explorer.

22 Q Okay. Do you have any knowledge of where the other --
23 or the other slugs were? Were -- did y'all bother to pull
24 them out of the house or ---

25 A We did not attempt to remove them from the residence.

REDIRECT EXAMINATION BY MR. SCOTT - RYAN MATTHEWS 223

1 Q Okay. Any others located in the car?

2 A From my -- my knowledge, no. Upon impact the majority
3 of slugs fragment and the -- the small pieces are very hard
4 to locate..

5 Q Okay. Who found that slug? Do you know?

6 A That slug was actually located by Mr. Dawayne Davis in
7 the rear tailgate of his vehicle.

8 Q Okay. That's the vehicle owner?

9 A Yes, sir..

10 Q Okay. Now, Mr. Verner's asking you some questions.
11 about those casings and -- and then, some of the ones that
12 were -- in the eaves of the house. How many shots did you
13 note that hit that Explorer, which point to the Explorer
14 first.

15 A Yes, sir.

16 Q And how many shots hit that automobile?

17 A A minimum of three, possibly four.

18 Q All right. And he asked you would that have been a
19 tight grouping. What about the shots that hit the Explorer
20 ---

21 A Well ---

22 Q --- from that distance?

23 A The shot that hit the Explorer at -- at a distance are
24 -- are -- are fairly well accurate.

25 Q And where did you understand the people to have been

1 congregating during the firing?

2 A The -- the majority of the people were standing around
3 the vehicles and on the side of the house. There is a --
4 the front entrance is just around the front of the
5 residence. And then, there is a secondary entrance just at
6 -- outside of the scope of this picture. And most persons
7 were -- were in this side of the yard.

8 Q All right. Now, you -- you've talked about statements
9 being given by Vickie Davis and Dawayne Davis.

10 A Yes, sir.

11 Q What about all the other folks in the yard?

12 A Several of the other persons would give a verbal
13 statement but at the time were not willing to write a
14 written statement.

15 Q And did -- did you have an understanding of why?

16 A Some persons just were -- were so shaken and -- and
17 distraught, they -- they did not want to cooperate at the
18 time.

19 Q Okay. So the only people who were -- were cooperative
20 at the time were Vickie Davis and Dawayne Davis?

21 A It -- everyone was cooperative. They were just
22 assisting with police more so than the others.

23 Q Okay. So, I mean, how do you characterize the other
24 people? They just didn't want to get involved? Is that
25 what you're saying?

RECROSS EXAMINATION BY MR. VERNER - RYAN MATTHEWS 225

1 A Yes, sir.

2 Q Was that -- and how many shootings in Newberry do you
3 think you've responded to while you were with the police
4 department?

5 MR. VERNER: Your Honor, that's -- I -- I object. The
6 ---

7 THE COURT: Sustained.

8 Q All right. But just how many people do you think were
9 out there or -- when you arrived on the scene?

10 A With children and all, approximately ten to twelve.

11 Q Okay. But the only written statements, you got from
12 Dawayne and Vickie Davis?

13 A That's correct.

14 Q Okay.

15 MR. SCOTT: That's all, Your Honor.

16 THE COURT: Any recrosss, Mr. Verner?

17 MR. VERNER: Just one question.

18 RECROSS EXAMINATION

19 BY MR. VERNER:

20 Q Again, when you're talking about where people were
21 standing, Officer Matthews, you're relying on basically
22 your understanding from talking -- from what other people
23 told you?

24 A That's correct.

25 Q Okay. Thank you.

1 THE COURT: Okay. Thank you for your testimony,
2 officer. You can step down.

3 THE WITNESS: Yes, sir.

4 (Whereupon, the witness exited the witness stand.)

5 THE COURT: Did we get that one shell casing that was
6 handed to the jury? Did that come back?

7 MR. DANIEL: Yes, Your Honor. I put it ---

8 THE COURT: Okay.

9 MR. DANIEL: --- back in there.

10 THE COURT: All right. Ladies and gentlemen, we're
11 going to take about a ten-minute break and we'll get you
12 back in shortly, okay? Take a restroom break if you need
13 to.

14 (Whereupon, the jury exited the courtroom at 11:43
15 a.m.)

16 (Off the record briefly.)

17 THE COURT: Okay. All right. Mr. Verner, you have
18 something to put on the record?

19 MR. VERNER: Yes, sir. I had objected -- the state
20 had used the last witness to identify two statements in --
21 in the presence of the jury, two documents, which I -- I --
22 for the purpose of -- I -- I guess the state's theory is
23 for the purpose of possibly admitting those documents
24 later, should the witness recant their statements, and then
25 the -- the state would anticipate in the future, possibly

1 bring them in under, I guess, a prior-inconsistent-
2 statement theory.

3 But the -- I -- I don't know that they would've been
4 required to identify or -- or lay a foundation by a witness
5 officer. The -- and -- and the fact that they were
6 identified in -- in -- in the presence of the jury but at
7 -- at -- not admitted could suggest to the jury that
8 certain statements were being admitted as evidence or -- or
9 for the veracity of them, when -- when, really, what the
10 state was doing was just laying a -- a possible foundation,
11 anticipating the defense challenging witnesses down the
12 road.

13 So I -- I -- I -- my argument is that the
14 identification in the presence of the jury was improper and
15 could imply things to the jury that were not actually
16 admitted into ---

17 THE COURT: Okay.

18 MR. VERNER: --- evidence.

19 THE COURT: All right. So noted, Mr. Verner.

20 MR. VERNER: Thank you, Judge.

21 THE COURT: Thank you. All right. Ten minutes.

22 (Off the record from 11:46 a.m. until 12:02 p.m.)

23 THE COURT: All right. Let's bring the jury out,
24 please.

25 (Whereupon, the jury entered the courtroom at 12:03

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 228

1 p.m.)

2 THE COURT: Okay. Let the record reflect jury's back
3 in. Solicitor, may proceed.

4 MR. SCOTT: Your Honor, the state calls Quentin
5 Graham.

6 (Off the record briefly.)

7 (Whereupon, the witness came forward.)

8 QUENTIN GRAHAM, having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q Quentin, where are you from?

13 A Silverstreet.

14 Q Is that where you grew up?

15 A Yeah.

16 Q Do you know where Rodelsperger Street is in Newberry?

17 A Not right offhand.

18 Q Do you remember going to a -- you know where Newberry
19 Greens is?

20 A Yeah.

21 Q That apartment complex?

22 A Yeah.

23 Q You remember showing up to a home located right near
24 Newberry Greens on October 6th, 2012?

25 A Yeah.

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 229

1 Q And did you drive there?

2 A Nah, I ain't drive.

3 Q Or -- or did you ride there?

4 A Yeah.

5 Q In a Corolla?

6 A Don't remember exactly what kind of car it was. I was
7 intoxicated. I had ---

8 Q Who were ---

9 A --- been drinking.

10 Q Okay. Who were you riding with?

11 A I was with a buddy of mine.

12 Q What was his name?

13 A I would know him. Mr. Reeder.

14 Q Mr. Reeder? You're ---

15 A Yeah.

16 Q --- talking about Carlos Reeder?

17 A Yeah.

18 Q All right. What do you call him?

19 A Carlos.

20 Q Okay. You ever had -- had a nickname for him or
21 anything?

22 A No.

23 Q Okay. You'd been drinking that day, you said?

24 A Yeah.

25 Q Let me show you State's No. 8. I'm going to put it up

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 230

1 here on the board here. All right. You recognize that
2 house? It's kind of ---

3 A Not really.

4 Q No? Just so I can get you a better view, let's just
5 ---

6 THE COURT: Mr. Graham, if you -- I know your head's
7 turning so you can look at the wall there. But you still
8 need to make sure you speak into the microphone so we can
9 hear you, okay, sir?

10 THE WITNESS: All right.

11 Q All right, Quentin. That's -- this is Defense No. 1.
12 Is that a better shot? Do you recognize that?

13 A Yeah. I know where this at.

14 Q Okay.

15 A Yeah. I know where that's at.

16 Q Okay. And is that where you went October 6th, 2012?

17 A Yeah.

18 Q Okay. And you said you first went there in a -- in a
19 car. And why were you going there the first time you went
20 out?

21 A I had seen some -- we had seen some -- I seen some
22 buddies I knew. They was out in the yard having a little
23 gathering or whatever.

24 Q All right.

25 A And we stopped by...

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 231

1 Q Okay. Now, were y'all looking for anybody
2 specifically?

3 A Yeah. Yeah.

4 Q Who ---

5 A We was ---

6 Q --- was that?

7 A --- we was looking for a guy. But I don't know the
8 guy.

9 Q Okay. Do you know -- does the name "Smoke" -- is that
10 something familiar to you?

11 A I really can't say. Because like I say, I was -- I
12 don't know the guy.

13 Q Okay. Well, is -- is it somebody Mr. Reeder knew?

14 A Yeah.

15 Q All right. What happened when y'all showed up at this
16 place looking for this guy?

17 A It was -- it was nothing, really. You know, we was
18 asked to leave. We left.

19 Q You drove off?

20 A Yeah.

21 Q All right. But you went back, didn't you?

22 A Yeah. We went back for no -- for nothing like that,
23 though, no confrontation or nothing.

24 Q Well, why ---

25 A We was ---

1 Q --- did you ---

2 A --- we was going -- we was on our -- we was minding
3 our own business.

4 Q Okay. So you left after some confrontation?

5 A Yeah. It was -- it's nothing major, though. I mean,
6 nothing like as violent, you know what I'm saying,
7 fighting.

8 Q Okay. Y'all were asked to leave, though?

9 A Yeah.

10 Q And there were some words back and forth ---

11 A Yeah.

12 Q --- is that -- okay. But no fighting?

13 A Nah.

14 Q All right. Well -- but you -- you went back a second
15 time later on, right?

16 A We walked -- we was walking through.

17 Q Okay. Walking through what?

18 A Down the street, whatever the name of the street is.
19 I don't know.

20 Q All right. Would it be Charles Street?

21 A I couldn't tell you.

22 Q Okay. What'd you do with the car?

23 A Plead the fifth.

24 THE COURT: Excuse me? I -- I couldn't hear you.

25 A The car -- I don't know. I -- like I say, I was

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 233

1 intoxicated. I don't know. I don't know what it -- what
2 happened to the car. Only thing -- next thing I know, I'm
3 -- I was in the county.

4 Q Okay. All right. So y'all -- first time you're
5 there, you're in the car. You drive off. Now, you said
6 y'all walked back to the residence?

7 A I'm guessing. Like I say, I was -- everything is not
8 everything. I have been taking pills; I had been smoking
9 marijuana; I had been drinking heavy alcohol.

10 Q Okay. And so do you have any idea how long it was
11 from the first time you left and when y'all came back?

12 A No. No, sir.

13 Q Do you know why y'all went back?

14 A We was going down -- we was going down by the store.

15 Q And so you got to pass this residence to get back to
16 the store?

17 A I mean, it's -- you can. You can. Because like I
18 said, the situation, it wasn't really that big a deal. So,
19 you know, we figured we would just -- situation was over
20 with.

21 Q Okay. This -- this came up earlier. Look at the
22 picture if you can. Do you see this -- that -- is that
23 you?

24 A Right there?

25 Q Yeah.

1 A I can't tell.

2 Q Okay.

3 A I can't tell.

4 Q All right. Well, let me -- let me ask you this: When
5 you walked back the second time and -- and you were -- were
6 you still with Mr. Reeder?

7 A Yeah.

8 Q What happened when y'all walked back over there?

9 A I don't know what happened. Like I said, I -- I
10 turned around for a second. I turned back around. I heard
11 shots. And then everybody was gone. I know -- I have no
12 idea what happened.

13 Q How many shots did you hear?

14 A Maybe three -- two or three.

15 Q Did you do the shooting?

16 A Did I do the shooting?

17 Q Did you shoot?

18 A Plead the fifth.

19 Q You heard shots?

20 A Yeah. I heard shots. That what I'm saying. I can't
21 shoot if I heard a shot.

22 Q So you're saying you didn't fire the weapon?

23 A I don't know who fired the weapon.

24 Q Well, you would know if it was you.

25 A I know it wasn't me. That's what I'm ---

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 235

1 Q Okay.

2 A --- saying. Now ---

3 Q That's what ---

4 A --- it wasn't ---

5 Q --- I'm asking you. Did you fire any shot?

6 A No.

7 Q Okay. Okay. Do you know who did fire the shots?

8 A No, sir. I seen no one with a firearm.

9 Q All right. All right. So after you heard the shots,
10 what happened?

11 A Next thing I knew, Newberry County was on the scene
12 and I was being transported to the county detention center.

13 Q Well, I -- now, you didn't run, did you? You ---

14 A I went -- I went about -- maybe about from here to the
15 other side of the door right there. It happened -- about
16 as soon as it happened, the police was on the scene in,
17 like (indicated.)

18 Q All right. Well, my -- my question is you waited for
19 the police to get there?

20 A Not necessarily. No.

21 Q Well, did you make an attempt to run away?

22 A I was -- I was leaving the scene because I didn't want
23 to be involved in it. I didn't make it far. No. I didn't
24 want to be involved in it. I ain't want to have no say-so,
25 no doing, no nothing.

1 Q Why?

2 A Why not? What you mean? I ain't had nothing to do
3 with it, you know what I'm saying. We -- like I say, I
4 don't know what happened.

5 Q Just -- okay. Mr. Graham ---

6 A I mean, it's things like that, you know what I'm
7 saying -- no part of them.

8 Q Why?

9 A What you mean, why?

10 Q That's my question. Why don't you want to have any
11 part of it?

12 A Would you ---

13 THE WITNESS: (To the Court) Can I ask you a
14 question?

15 MR. SCOTT: No.

16 THE COURT: No. You -- just answer the question, sir.

17 A Because we don't play with firearms.

18 Q Okay. You scared?

19 A Scared of what?

20 Q To testify in court today?

21 A No. Just nervous ---

22 Q Then why ---

23 A --- being in front of all these people.

24 Q Okay. I -- I guess I'm asking why don't you want to
25 get involved? That's what ---

DIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 237

1 A No. I'm ---

2 Q --- the jury ---

3 A --- talking about -- I'm talking about in what was --
4 what -- what was going on at the time, you know what I'm
5 saying.

6 Q Not really.

7 A I'm talking about with the shooting and all that
8 didn't third. That's what I'm talking about. I'm not
9 talking about -- what you talking about?

10 Q I don't know anymore.

11 THE COURT: Just try to repeat your question,
12 Solicitor.

13 Q When -- when you were on the scene, all right, you're
14 saying you didn't see who shot the weapon?

15 A No.

16 Q Okay. And when the police arrived, you didn't attempt
17 to run from them; is that correct?

18 A They was coming from all direction. Why run and get
19 put in the dirt?

20 Q Okay. Do you -- do you know what happened to Carlos
21 Reeder?

22 A No, sir. Like I said, everybody was gone. The --
23 everybody.

24 Q Okay.

25 A I was basically the only -- I -- by myself.

CROSS-EXAMINATION BY MR. VERNER - QUENTIN GRAHAM 238

1 Q All right. And you -- you stayed with them when --
2 when -- when -- you stayed on the scene till law
3 enforcement got there?

4 A Law enforcement got me on the scene. Yeah.

5 Q Okay. Thank you.

6 THE COURT: Okay. Cross-examination?

7 MR. VERNER: All right.

8 CROSS-EXAMINATION

9 BY MR. VERNER:

10 Q Mr. Graham, you are also charged with attempted
11 murder; is that correct?

12 A Yeah. Yeah.

13 Q The -- I -- I just want to clarify. The -- yeah. You
14 heard about three shots, is -- is what you -- you -- you
15 heard several shots?

16 A I heard ---

17 Q You know ---

18 A --- a couple ---

19 Q --- exactly ---

20 A --- shots.

21 Q --- how many ---

22 A Yeah.

23 Q --- you heard?

24 A Yeah.

25 Q What -- were the ---

CROSS-EXAMINATION BY MR. VERNER - QUENTIN GRAHAM 239

1 A I don't know exactly how many. Yeah. I heard some
2 shots, though. Yeah.

3 Q Okay. The -- were they -- was there a substantial
4 time between ---

5 A I know ---

6 Q --- the shots, or were they all in one burst?

7 A Like I say, everything happened so fast and so quick.
8 I can't tell you.

9 Q Okay. The -- did you hear the shots being fired
10 fairly quickly or ---

11 A As I say, I was -- I had been drinking and I was in my
12 own little zone. I don't -- I can't put no time -- no time
13 frame on ---

14 Q The -- and you had some friends in that yard, right?

15 A Yeah. I had some associates in the yard.

16 Q Okay. The -- and -- and I believe that you just
17 testified for the prosecutor that after the shots were
18 fired, you started -- it -- it was not running, but you
19 were getting out of that location quickly?

20 A Yeah.

21 Q Were you alone doing that? Were other people leaving
22 too?

23 A I was -- like I said, when I turned around, everybody
24 was gone. I was the only one left, besides the lady that
25 called 911 or the law enforcement or whatever.

1 Q So it -- it's fair to say that by the time the police
2 arrived, several other people who had been in that yard had
3 left too?

4 A I can't say. I don't know.

5 Q Did you see other people leaving too?

6 A Like I said, everybody -- everybody scattered. By the
7 time I turned around, everybody was gone every which way.
8 So I really don't know if they what -- went home or went in
9 the house or what.

10 Q Okay. The -- about how many guys -- when I say
11 "guys," I'm talking about adult men -- do -- do you
12 remember seeing, if -- if you can have a good recollection
13 of that, in the yard?

14 A It was a few.

15 Q By "few" is that more than five or less than five?

16 A I don't know. I -- I -- I would say less than five,
17 probably. I don't know.

18 Q Okay. The -- but several of them?

19 A Few.

20 Q Okay. The -- when -- when you say initially there was
21 a minor confrontation, you're talking about there were no
22 blows or ---

23 A Nah.

24 Q --- or threats ---

25 A Nothing ---

CROSS-EXAMINATION BY MR. VERNER - QUENTIN GRAHAM 241

1 Q --- to harm ---

2 A --- like that.

3 Q --- each other?

4 A It was just, you know, what -- what we call "icing it
5 out," you know.

6 Q Okay. Which is basically where one group of guys
7 intimidates a -- another ---

8 A No.

9 Q --- guy?

10 A Where -- where they kind of see what up, calm
11 everything down, chill every ---

12 Q Okay.

13 A --- put everything ---

14 Q But ---

15 A --- correct.

16 Q The -- but it -- it -- the initial meeting wasn't a
17 warm and friendly meeting where people just shook hands
18 with each other, was it?

19 A Like I say, everything happened so fast that I don't
20 know what happened.

21 Q Okay. The -- when you're walking back, the -- were
22 you walking back with Carlos or you were just kind of on
23 your own?

24 A Be honest, I was just out there. I was lost. Like I
25 say, I was -- I had been taking all kind of pills and

1 things. I don't know.

2 Q All right. The ---

3 A I just remember, you know, seeing him or whatever,
4 whatnot.

5 Q Did you remember there being a cookout?

6 A No. I don't -- don't remember a cookout. I don't
7 think it was a -- I don't know if it was a cookout or not.

8 Q You don't remember going up and getting a hamburger or
9 asking people about food or -- or seeing Carlos do that?

10 A No, never. No. No.

11 Q Okay.

12 A That -- no.

13 Q If -- if there was a cookout, y'all weren't invited
14 and y'all ---

15 A It might've ---

16 Q --- didn't ---

17 A Like I said, it might've been a cookout, but I know I
18 ain't had -- I ain't having no burger or nothing.

19 Q Okay. The ---

20 A Not that I can recall anyway.

21 Q Okay. After this happened, the -- were -- were you
22 arrested by one of the -- not officers, but one of the
23 other attendees at the party?

24 A I was arrested by a officer.

25 Q Okay. Did -- did -- did anybody who was there at the

1 party come after you with a baseball bat or any kind of
2 weapon and tell ---

3 A No.

4 Q --- you, you better not leave?

5 A No.

6 Q Okay. The ---

7 A Somebody ran out to the road and said they were going
8 call the police on me. But ain't ---

9 Q Okay.

10 A --- nobody approached me with nothing.

11 Q The -- my hunch is when that's said, several people
12 leave?

13 A Who?

14 Q Several people you saw leaving?

15 A I didn't say they leave. I don't know where they
16 went.

17 Q Okay. The -- how many friends or -- or associates do
18 you remember seeing?

19 A Maybe two.

20 Q Okay. So did -- when you saw them, did you kind of at
21 least acknowledge them by making some kind of head contact
22 or just something, you know ---

23 A Yeah.

24 Q --- what's up and ---

25 A That -- that's ---

1 Q --- that type ---

2 A --- normal.

3 Q Okay. But, I mean, might not have gone up to speak to
4 them, but would've kind of ---

5 A Yeah. A ---

6 Q --- at least ---

7 A --- head nod ---

8 Q --- acknowledged ---

9 A --- or something. Yeah. That's normal.

10 Q Okay. The -- at -- at that -- you -- you don't
11 remember a second confrontation ---

12 A Nah.

13 Q --- when y'all walked by?

14 A It wasn't -- it wasn't a -- a second confrontation.

15 Q You don't -- did -- did anybody yell at y'all while
16 y'all were walking?

17 A Only person I remember yelling was the lady that --
18 that called ---

19 Q Said "I'm calling the cops"?

20 A Yes.

21 Q Okay. The -- did you have any intention -- were y'all
22 deliberately walking back by there to -- to talk to those
23 guys ---

24 A Like ---

25 Q --- or just walking past there?

CROSS-EXAMINATION BY MR. VERNER - QUENTIN GRAHAM 245

1 A Like I said, everything seemed to be, you know, no big
2 deal. Everything was -- seemed good to go. So we was
3 heading down on the other side.

4 Q And -- and you had at least two people you were on
5 friendly terms with at the party or -- or a couple of them?

6 A Yeah. That I -- that I associated here and there.

7 Q Okay. The . . .

8 You don't recall telling the police officers that you
9 heard an argument prior to shots being fired?

10 A Like I say, I don't know.

11 Q Okay. You remember talking to the police at ---

12 A Some ---

13 Q --- at the scene?

14 A Somewhat.

15 Q Okay.

16 A Somewhat.

17 Q And you actually gave a written statement for the
18 police?

19 A Yeah.

20 Q The -- it's on -- it's -- computer version -- you got
21 -- here's the -- prosecutor's got a copy.

22 MR. VERNER: I'm going hand you, if I may, Your Honor

23 ---

24 THE COURT: Sure.

25 Q Do you recall your written statement for the officer?

1 A Somewhat of it. Yeah.

2 Q Okay. Is that your -- appears to be the statement
3 that you wrote?

4 A Yeah.

5 Q Okay. And second from the bottom -- second line from
6 the bottom (as read): "As I was walking down the road to
7 crossing, he appeared on foot and we were talking to people
8 in the yard when they began to argue. And the next thing I
9 heard were shot -- shots were fired and I started to walk
10 off."

11 Is that what you told the police at the time?

12 A Yeah. I see that.

13 Q Okay. So prior to the shots being fired, you did, at
14 the time, recall there -- there was some ---

15 A It was ---

16 Q --- kind of argument that you could hear?

17 A It was nothing like the first time. I mean, you know,
18 it was worse. But it was -- it was pretty much, like I --
19 like I was telling you earlier, pretty much icing it out.

20 Q Okay. The -- no fists were flying ---

21 A Nah.

22 Q --- but it ---

23 A None of ---

24 Q --- but it ---

25 A Nah. None ---

- 1 Q --- was certainly ---
- 2 A --- of that. No fists flying, no hollering in nobody
- 3 face, or none of that.
- 4 Q But the words being spoken were in -- in a
- 5 argumentative or hostile ---
- 6 A I mean, you know, every -- some people, you know, they
- 7 use profanity either way it go or either way they talk.
- 8 That's like I'm going try to keep back now, because I -- I
- 9 use a lot of profanity.
- 10 Q Okay.
- 11 A That don't mean, you know ---
- 12 Q The -- and -- and clarify for me, as -- as best you
- 13 can, because I just want to make sure ---
- 14 A I mean ---
- 15 Q --- I see eye ---
- 16 A --- it's ---
- 17 Q --- to eye ---
- 18 A --- it's ---
- 19 Q --- with you. When you ---
- 20 A Okay. I understand what you're saying. But it's ---
- 21 Q What -- let me finish. When -- when you use the
- 22 phrase "icing it out," what -- what ---
- 23 A That's ---
- 24 Q --- for me would -- would I ---
- 25 A Icing it out is like calming things down, seeing

REDIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 248

1 what's the -- figuring out the problem. Because it's --
2 like I said, it was no big deal from the beginning.

3 Q But when -- when you ice it out, that -- that ---

4 A This -- that ---

5 Q --- that is ---

6 A --- means -- that means whatever going on, fix it.

7 Q Okay. But that -- that assumes that there's a problem
8 and then somebody's tamping it down?

9 A Yeah.

10 Q Okay.

11 A Yeah.

12 Q Thank you. If the prosecutor has any ---

13 THE COURT: Anything in redirect?

14 REDIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q The statement that Mr. Verner handed you, did you
17 review that?

18 A Yeah. I see.

19 Q You do remember giving that statement?

20 A Yeah.

21 Q Where's Pope Circle?

22 A Over -- over by the old Food Lion.

23 Q Okay. Off Kendall?

24 A That's what that is?

25 Q I think so.

REDIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 249

- 1 A That old Food Lion across town.
- 2 Q How far away is that from this house there? Do you
- 3 know?
- 4 A That ain't far.
- 5 Q Not far?
- 6 A Nah.
- 7 Q Okay.
- 8 A Maybe about five minutes.
- 9 Q But that's where you were first picked up by Mr.
- 10 Reeder?
- 11 A I was -- yeah. I -- I think I was picked up at the
- 12 store.
- 13 Q Okay.
- 14 A Like I said, them ---
- 15 Q Well, in the statement ---
- 16 A --- them -- I -- I see the statement. But like I say,
- 17 I had been taking a lot of pills, smoking a lot of
- 18 marijuana.
- 19 Q All right. Well, if you look at the statement, when
- 20 was the statement given?
- 21 A The -- two days later.
- 22 Q Okay. Were you high then?
- 23 A Yeah. I was still on the pills. I had took a lot of
- 24 ecstasy pills, Klonopins.
- 25 Q You just stayed high?

1 A If you take -- take you -- never mind. Yeah. They
2 had you feeling pretty sporty, feeling pretty good.

3 Q Okay.

4 A It take -- it take me more than a day to come off
5 them.

6 Q Okay. Mr. Verner asked you to read, I think, the last
7 three lines. Would you just start at the beginning and
8 read the whole thing for us?

9 A (As read): "I was picked up at Pope Circle -- I
10 picked up at Pope Circle. Went down the street."

11 Q Wait a minute. Did you skip something?

12 A It's so damn -- it's so scrunched up together. "I was
13 picked up at Pope Circle -- I was picked up at Pope Circle
14 by C-Note. We went down the street; stopped at -- stopped
15 at a house, looking for a friend of his. He wasn't there.
16 The house-owner family say he ain't live there, so we left.
17 We left" ---

18 THE COURT: Speak into the microphone, sir.

19 A "We left. I got dropped off." Well, I didn't
20 necessarily get dropped off because I just went right up
21 the street, but I say I got dropped off. Okay.

22 "I was walking down the road on the crossing. He
23 appeared on foot."

24 Q Who's he?

25 A Huh?

REDIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 251

1 Q "He appeared on foot." Who's he?

2 A Yeah. That what it said right ---

3 Q But who's he?

4 A Who is he?

5 Q (Nodded head up and down.)

6 A Reeder.

7 Q Okay.

8 A Like I said, me and Reeder ---

9 Q "He appeared on foot." What does that mean?

10 A Yeah. Because we -- we was walking. We was walking.
11 We would've -- that when we walking back down to crossing.

12 Q And he dropped you off, and you were walking and then
13 he appeared ---

14 A No.

15 Q --- on foot ---

16 A I -- actually -- actually, if I ain't mistaken, I
17 think -- I think, now -- I stayed right there in the road.
18 He got -- then came back; we was going walk down the
19 street. We was going; we was going. It's on the same
20 street that that right there was on.

21 So we walked down the street. That's when the second
22 -- that when they -- you know, we was, like, Okay. We
23 going go on ahead and do what we going do with this and see
24 can we fix -- resolve this thing, you know.

25 Q Oh. So y'all were going back to resolve it?

1 A No. We was actually going to the store. But they --
2 we seen a guy standing in the yard. I'm, like, Well,
3 started talking, you know. We was like, Okay. So we cool
4 and everything all right. It ain't even that serious.

5 So that's -- next thing I know, like I say, I turned
6 around. I hear shots.

7 Q All right. I ---

8 A Everybody gone.

9 Q --- I didn't -- okay. I just want to back up a minute
10 to where you -- you're dropped off, off the road, and then
11 you talk about you're walking down the road to crossing.

12 "He appeared on foot." Does that mean Reeder caught up
13 with you or something?

14 A I mean, like I say, I was standing right there. Like
15 I said, man, I was on the pills. There's things I don't --
16 I don't -- I don't -- I don't -- I don't -- I don't want to
17 sit here and tell you the wrong thing because I put my hand
18 on the bible, you know what I'm saying?

19 Q Yeah. I ---

20 A So I'm ---

21 Q --- understand.

22 A --- trying to be as far honest as I can be.

23 Q Okay. Okay. But you don't have any explanation --

24 "He appeared on foot." What ---

25 A Yeah.

REDIRECT EXAMINATION BY MR. SCOTT - QUENTIN GRAHAM 253

1 Q --- does that mean?

2 A I don't -- like I said, we was walking. He appeared

3 ---

4 Q Okay.

5 A --- you know, walked down the street.

6 Q All right. Go on from there.

7 A Where you want me to start back at?

8 Q Where -- where he appeared on foot.

9 A "We walked; talked to the people in the yard. They
10 became to argue. Next thing I knew, shots was fired."

11 Q That's -- go ahead and finish it, the last sentence.

12 A "I walked off and stayed." Because first, I -- you
13 know what I'm saying?

14 Q So you -- you started to walk off, but then you stayed
15 and waited for law ---

16 A Because ---

17 Q --- enforcement.

18 A --- by the -- you had police coming from the top; you
19 had them coming from dizzy, and then you had them coming
20 from the other end.

21 Q Okay.

22 A So wasn't no need in me -- wasn't no -- wasn't no need
23 in me running.

24 Q Did they get a gun off of you?

25 A No.

RECROSS-EXAMINATION BY MR. VERNER - QUENTIN GRAHAM 254

1 Q Okay. Thank you.

2 THE COURT: Anything in recross, Mr. Verner?

3 MR. VERNER: Just ---

4 RECROSS-EXAMINATION

5 BY MR. VERNER:

6 Q You gave the statement, Mr. Graham, on October 8th?

7 A (No audible response.)

8 Q The -- is -- the -- the date of the statement's
9 October 8th?

10 A Yeah.

11 Q And that would be two days later?

12 A Yeah.

13 Q And the -- you were arrested on October 6th?

14 A I guess.

15 Q The -- were -- were you arrested the date of the
16 incident?

17 A Yeah.

18 Q Okay. So you had been in jail for the two days prior
19 to giving ---

20 A Yeah.

21 Q --- this statement?

22 A Yeah.

23 Q Okay. So you had had two days, I assume, to kind of
24 sober off?

25 A Sir, if you ---

DIRECT EXAMINATION BY MR. SCOTT -- DAWAYNE DAVIS 255

1 Q Okay. But you hadn't been in touch with anybody else?
2 You'd been in a cell for two days at that point?

3 A Yeah.

4 Q Okay. Thank you.

5 THE COURT: Okay. Thank you for your testimony, sir.
6 You can step down. Just leave the -- the paper on the
7 railing there.

8 (Whereupon, the witness exited the witness stand.)

9 (Whereupon, Mr. Scott and Mr. Verner conferred.)

10 THE COURT: Okay, Solicitor. Call your next witness.

11 MR. SCOTT: The state calls Dawayne Davis.

12 (Whereupon, Mr. Scott and Mr. Verner conferred.)

13 (Off the record briefly.)

14 (Whereupon, the witness came forward.)

15 DAWAYNE DAVIS, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Dawayne, are you from Newberry?

20 A Yes, sir.

21 Q Lived here your whole life?

22 A Yes, sir.

23 Q Did you go to school here?

24 A Yes, sir.

25 Q Still live here in Newberry, correct?

1 A Yes, sir.

2 Q October 6th of 2012, do you remember that day?

3 A Yes, sir.

4 Q Let's say around -- between five and six that
5 afternoon and evening. You remember where you were?

6 A I was right at Rodelsperger at a cookout.

7 Q Okay. Whose home was that?

8 A It was my cousin and his girlfriend.

9 Q What's the girlfriend's name?

10 A Deborica.

11 Q Deborica Adams, is that her name?

12 A Yes, sir.

13 Q All right. And -- and what kind of cookout was this?
14 Were y'all celebrating anything?

15 A Well, they just had moved in, so it was just like a
16 little family gathering.

17 Q Okay. Just cooking food and having beers; was that
18 pretty much what you're doing?

19 A Yes, sir.

20 Q And I've got Defense No. 1 up on the screen. Do you
21 -- you recognize what we're looking at in that picture?

22 A Yes, sir.

23 Q And whose car is that?

24 A That's mine.

25 Q And -- and what's that house there?

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 257

1 A What's the house?

2 Q Yeah.

3 A Oh, that's the house where they was cooking out at.

4 Q Okay. That's where you were hanging out October 6th,
5 having the -- it was a family get-together or just a bunch
6 of friends and ---

7 A No.

8 Q --- maybe ---

9 A It was ---

10 Q --- something ---

11 A It was mostly family out there.

12 Q Okay.

13 A Couple friends.

14 Q But tell me what happened. Do you recall two
15 individuals showing up there in a Corolla?

16 A Well, I was on the side -- the opposite side of the
17 house. And, you know, a car pull up and, well, we heard a
18 commotion. So we all came around to the front ---

19 Q What kind of ---

20 A --- of ---

21 Q --- commotion? What -- just, like, yelling and ---

22 A Like, arguing -- people having harsh words back and
23 forth.

24 Q Okay.

25 A And ---

1 Q Hold on one second. I'm sorry. I didn't mean to
2 interrupt you. This is State's No. 3. All right. Do you
3 -- do you recognize this to be Newberry Greens and this to
4 be the playground beside it?

5 A Yes, sir.

6 Q Okay.

7 (Off the record briefly.)

8 Q Do you see the -- where the home would be at the
9 corner of Rodelsperger and Charles Street?

10 A It would be, like, right up under that tree right
11 there.

12 Q Okay. All right. Now, kind of with the laser
13 pointer, show us where Charles Street is.

14 A Right here.

15 Q Okay.

16 A Right here.

17 Q All right. What side of the house were you on?

18 A I was, like, right around there ---

19 Q Okay.

20 A --- up under that tree over on that side.

21 Q All right. And the commotion, where -- where did it
22 come from: the front of the house?

23 A Like, right there where -- where his car was parked
24 at.

25 Q All right. Well, go ahead and show us where the car

1 was parked.

2 A His car was parked right there, and the truck right --
3 it was a Expedition right there where the other guy that he
4 was arguing with was right there.

5 Q Okay. But his car was on -- is that Rodelsperger that
6 -- that his car was on?

7 A Yes, sir. Right there.

8 Q And which direction did he -- did it come from? Was
9 it -- would it come from this way?

10 A Well, I actually don't know which way it came from.
11 But it was facing that way.

12 Q Oh. So it was -- so ---

13 A I don't know ---

14 Q --- it was ---

15 A --- if he ---

16 Q --- facing ---

17 A --- came ---

18 Q --- this way?

19 A Yes, sir. I don't know if he actually came from this
20 way or that way. But the front of the car was facing that
21 way.

22 Q Okay. Well, if you were on this side of the house,
23 you -- you didn't see it come from this direction; is that
24 ---

25 A No, sir.

1 Q --- correct?

2 Okay. So the first time you even see the car is when
3 you come around after hearing the commotion?

4 A Yes, sir.

5 Q And -- and it's just an argument going on?

6 A I just heard a couple harsh words, you know, like a
7 big commotion, like couple different people getting loud.
8 And so we actually walked around to see, you know, who it
9 was, because at the time it wasn't nothing but family
10 there.

11 Q Uh-huh.

12 A And that's when I came around and I -- I saw the two
13 guys standing there or whatever that wasn't there when I
14 went on the side of the house.

15 Q Okay. And those are the ones who -- who hadn't been
16 there before but did you understand that they were the ones
17 who were ---

18 A Well, they ---

19 Q --- arguing?

20 A --- were -- they was the ones that was arguing. Yes,
21 sir.

22 Q Did you recognize either of them?

23 A Well, this one had dreads and one had a hat on ---

24 Q Okay.

25 A --- you know.

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 261

1 Q Did you know the one with the dreads or did you -- if
2 you didn't know either one of them, you didn't know them.

3 But did you recognize the one with the dreads?

4 A Well, I -- I had knowed his face from -- I had went to
5 school with him, so I knew his face. But I -- I never knew
6 the -- who the other guy was.

7 Q The guy who you went to school with, do you know his
8 name?

9 A Quentin.

10 Q That was Quentin Graham?

11 A Yes, sir.

12 Q He's the one with the dreadlocks?

13 A Yes, sir.

14 Q And the other one you didn't recognize but had a hat
15 on?

16 A Yes, sir.

17 Q Okay. All right. What else did you observe? They
18 were just arguing about -- having harsh words with some of
19 the ---

20 A Well ---

21 Q --- folks ---

22 A --- actually ---

23 Q --- who were ---

24 A --- when I got there, you know, I heard the ending of
25 the harsh words or whatnot. And then, like, they was

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 262

1 getting in the car; turned around and going toward the car.
2 They got in the car. And they actually backed out right
3 here and went that way. So ---

4 Q Okay.

5 A --- that's ---

6 Q Okay.

7 A --- the last ---

8 Q Okay. So they put in reverse, go in reverse down
9 Rodelsperger, and then take a right onto Charles and go
10 that way?

11 A Yes, sir.

12 Q All right. And -- and then what'd you do: just go
13 about hanging out with everybody?

14 A Yeah. I just thought it was over with. I just start
15 back mingling, you know.

16 Q All right. Did you ever learn of the -- what the
17 commotion was all about, what they were arguing about?

18 A Well, from my understanding, when we ---

19 MR. VERNER: Your Honor ---

20 A --- started kind ---

21 MR. VERNER: --- I'm going ---

22 A --- of asking what was going on ---

23 MR. VERNER: --- I -- I'm going object unless he
24 actually was a ---

25 THE COURT: Right.

1 MR. VERNER: --- witness. We've got other witnesses

2 ---

3 THE COURT: Lay -- lay a foundation, Solicitor, to see
4 if -- if he's able to testify from personal knowledge or
5 not.

6 Q Did you personally hear what any of the commotion was
7 about, the arguing was about?

8 A I don't -- no. I didn't hear the whole thing. I just
9 heard the -- like I said, the ending of it.

10 Q What was the ---

11 A Like ---

12 Q --- ending of it?

13 A --- you know, "I'm going see you," this and that type
14 of thing.

15 Q "I'm going see you"?

16 A Yeah. "I -- I'm going see you. I'm going catch up
17 with you later" ---

18 Q Okay.

19 A --- you know, hard words.

20 Q Explain to this ---

21 A I don't know ---

22 Q --- jury who might not understand that kind of slang.
23 What does that mean, "I'm going see you"?

24 A What is that?

25 Q (Nodded head up and down.)

1 A To my understanding, what "I'm going see you" mean,
2 when I catch up with you, I'm going get you; it's on.

3 Q All right. Who made that statement?

4 A The -- the driver of the car.

5 Q The one with the dreadlocks or the other one?

6 A The -- the one that had the hat.

7 Q Okay. The one that had the dreadlocks was Quentin?

8 A Yeah. He really ain't said too much.

9 Q What -- what was -- what did you observe about him,
10 anything?

11 A About?

12 Q Quentin.

13 A Nothing. But he was just standing there and got in
14 the car.

15 Q Okay. But the driver was the other one wearing the
16 hat?

17 A Yes, sir.

18 Q Okay. After they left, did you see them again that
19 day?

20 A Well, I -- I seen them come down the street. But I
21 didn't -- you know, I -- like I say, I ain't really pay
22 attention to it because I thought it was maybe over with.

23 Q Were they -- were they in the car still?

24 A Once upon a time, when I first saw them, they came
25 down the street in the car. But after -- I said after the

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 265

1 feet thing, I didn't -- I didn't see them on feet. I just
2 saw them when the kids came in the yard and started yelling
3 ---

4 Q All right. Well ---

5 A --- "He got a gun." I peeked around, and I seen the
6 person standing there holding a gun. So I just immediately
7 started ducking.

8 Q All right. Let me back you up.

9 A And I heard -- and whole time that was my car window
10 being shot out.

11 Q Okay. All right. After they leave in the car,
12 they're gone?

13 A Yes, sir.

14 Q What'd you do: just go about hanging out with
15 everyone?

16 A Yeah. I -- yeah. I just went on and started talking
17 to, you know, the guys that was arguing.

18 Q All right. The guys who were already there who had
19 been in an argument with the other two?

20 A Yes, sir.

21 Q Okay. Now, the -- the two who left in the Corolla,
22 Quentin and then the other fellow with the hat ---

23 A Uh-huh.

24 Q --- did they come back at any point?

25 A Well, I had seen them cruise by in the car ---

1 Q Uh-huh.

2 A --- like maybe ten minutes or so -- fifteen minute
3 afterward. But that was it.

4 Q Okay. When is the next time you saw them?

5 A When I -- my aunt -- when the shooting was over with
6 and everybody, like, "Your car been shot," and I actually
7 stood up, I didn't actually see the other person. I just
8 saw Quentin standing there. And my aunt was, like, "You
9 going to jail." You know, she was on the phone with the
10 police. Like, "You going to jail."

11 Q All right. Did you hear the shots?

12 A Yes, sir.

13 Q All right. Did you know there was about to be a
14 shooting?

15 A No, sir.

16 Q Well, did you duck?

17 A Yes, sir.

18 Q How'd you know to duck?

19 A Because the little boy -- the kids came running in the
20 yard. The little boy made it first before the rest of the
21 kids. And he was yelling, "He got a gun. He got a gun."

22 And when he said that, I peeked around the truck and
23 which I was standing in front of my truck. And that's when
24 I seen somebody standing there, holding a gun, but I didn't
25 -- when I seen that, in my mind, He really got a gun. And

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 267

1 then I heard shots fired.

2 Q Okay.

3 A And, you know, right away I was ducking in front of
4 the Expedition. And when it was all over with, I knew to
5 got up when everybody started talking. And they were
6 saying, you know, "Your truck been shot." And so I got up
7 and looked at my truck. And my window was shot, and I had,
8 like, three holes in it.

9 Q You said a kid -- how old was the kid -- do you know?
10 -- who was running, saying, "He got a gun"?

11 A Probably about -- at the time he probably was about
12 maybe 10.

13 Q Where was he running from?

14 A The park -- the park where he -- all the kids was in
15 the park, because the yard is right there where grown folks
16 were standing and, like, some of them was over there. And
17 most of the kids was right there.

18 Q So they ---

19 A It was ---

20 Q --- went to run ---

21 A --- like, a pretty day outside. And, you know, it was
22 people everywhere.

23 Q All right. So they went running across the street
24 from the park towards the house?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 268

1 Q And the person who you saw in the stance, where was he
2 aimed?

3 A Well, he was actually standing about, like, right here
4 on this curb right in front of the park, pointing that way
5 right there. Because my truck was, like, right in there
6 and the Expedition was right in there where I was standing
7 during the time of the shooting.

8 Q And so the child was running from the park towards the
9 home while the shots were being fired?

10 A Well, the child ran -- soon as the child got in the
11 yard, it was, like, a couple more children followed behind
12 him. And, like, when he say he had a gun, I actually
13 looked over. And when I seen this here, I seen the barrel
14 of the gun; I just immediately started ducking and I heard
15 shots. Then I heard a p-f-c-h-e-w (phonetic). And the
16 whole time, that was my -- the back window -- the glass had
17 shot out my truck.

18 Q This is State's No. 15. All right. You see those
19 yellow markers?

20 A Yes, sir.

21 Q What road is that right there?

22 A That's Charles Street.

23 Q All right. Well, where those markers are, is -- is
24 that about where the person was standing who was aim --
25 aiming the weapon at you?

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 269

1 A Well, there was -- yeah. It -- it was right in -- it
2 was right there. But he was more, like -- the curb, like,
3 right there where you don't actually see it.

4 Q Uh-huh.

5 A But it was, like, right that -- on that curb.

6 Q He was standing right by the curb of the road?

7 A Yes, sir.

8 Q And point to your car.

9 A This my vehicle right there.

10 Q Okay. You were standing in front of that or in front
11 of the car that ---

12 A No. I was actually standing in front of the
13 Expedition right there on that side in front of the front-
14 passenger door.

15 Q All right. This is State's No. 9. Is that the car
16 you're talking about?

17 A Yes, sir. The door was open. Both of those doors
18 were open. It was somebody sitting there, somebody sitting
19 there. And I was standing in front of it. As -- when the
20 shooting happened and I heard -- you know, the little boy
21 came and I looked around that, in between that is when I
22 seen, you know, the gun pointed. And when I heard the
23 shooting, I actually came and ducked down in front of this
24 truck right here.

25 Q Okay.

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 270

1 A I never left behind the door. I just leaned over it
2 when he say he got a gun. I saw the gun, and I ducked
3 immediately behind -- in front of this Expedition.

4 Q And -- and we saw pictures of your Expedition. Do you
5 know how many times it was shot?

6 A It had, like, three holes and the back glass was
7 shattered out. It had a -- a bullet right at the gate part
8 of it and at the bottom of the tailgate.

9 Q All right. Did you get it repaired?

10 A Yes, sir.

11 Q Did they find a bullet in it?

12 A Yes, sir. They had got, like, one of them out at the
13 scene, I think. And when I took it to get repaired, they
14 had told me if they can get the bullet out, to bring it
15 down there. And so once the guy called me to pick my truck
16 up, he had the bullet and I took it down there and I let
17 them come by and get it.

18 Q Okay. Do you remember -- and -- and when the police
19 arrived, do you remember when they got there?

20 A I can't recall the time. But I -- I mean, I was
21 standing there, upset about my truck at the time.

22 Q Well, no. I -- I mean, not what time they got there,
23 but do you remember when they got there?

24 A Yes, sir.

25 Q Did you tell them what happened?

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 271

1 A Well, I told them from what I saw and what I
2 witnessed, you know, my part of it.

3 Q And do you recall -- do -- do you remember Sgt.
4 Allison Moore here?

5 A Yeah. Yes, sir.

6 Q Okay. You remember her showing you a photographic
7 lineup with ---

8 A Yes, sir.

9 Q --- six individuals in it and ---

10 A Yes, sir.

11 Q What did she say about that?

12 A Well, she just said that once -- once she did Vickie,
13 then I was told to come over there. And then she just
14 said, "Here's a -- well, a -- a lineup of six guys. See do
15 you recognize one. If you recognize one, then circle and
16 put your initials by it."

17 And so at the time I circled the one that -- who I
18 thought I saw earlier that -- you know, with the argument
19 or whatever. Far as the -- the person that was holding the
20 gun, I ain't even try to look up to see him. I just saw
21 the gun. I looked around to see. But once I actually saw
22 he had a gun, I ducked. I went in panic mode and started
23 ducking.

24 Q Okay. So really, what you were doing was circling the
25 other person who had been arguing in the yard earlier that

1 day?

2 A The person that I had saw. Yes, sir.

3 Q Driving the Corolla?

4 A Yes, sir.

5 Q Who was with Quentin Graham?

6 A Yes, sir.

7 Q And -- and it was daytime when you saw him?

8 A Yes, sir.

9 Q About how close did you get up to him when you --
10 during the commotion?

11 A By the time I actually made it around there, it was
12 about from here to the door.

13 Q And he's the one that said -- what -- what did he say:
14 "I'll see you later" or what was the word or the saying?
15 "I'll catch up with you"?

16 A Yeah. "I -- I'm going see you later."

17 Q Okay. This is State's No. 2. Do you recognize this?

18 A Yes, sir.

19 Q Okay. That -- that's what -- what is that?

20 A This the lineup that the -- the lady police officer
21 gave me that night.

22 Q All right. And -- and you said you circled the one
23 you recognized and put your initials by it?

24 A Yes, sir.

25 Q Okay.

DIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 273

1 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

2 Q Mr. Davis, the -- when the shots were fired, I see
3 where you -- you were standing sort of -- is that the side
4 of the house or are you kind of in the front or ---

5 A Well, that -- that right there, that's the side where
6 the shooting actually took place. That's, like, the side
7 and -- and the front.

8 Q Use your laser. Point -- point to what you're talking
9 about.

10 A This -- this, like, the side where the shooting was
11 at. And this kind of the front of the -- well, the left
12 side of the house.

13 Q Okay. So if we look at this picture, which is State's
14 9, you're saying the shooter was standing somewhere right
15 in here, firing towards the house?

16 A Yeah. This way, right here out to there.

17 Q Defense No. 1, sort of a closer-up, I guess, picture
18 looking from the direction where the shooter was; is that
19 right?

20 A Say that again.

21 Q Is -- is this looking where the shots came from
22 towards the house?

23 A Yes, sir.

24 Q All right. Now, whereabouts were -- were people kind
25 of hanging out when the shootings were happening?

1 A Well, like I say, it was some on the other side; it
2 was some right there up in the front. Well, that's where I
3 was at, in front of there.

4 Q Uh-huh.

5 A And, you know, it was just a couple in -- right in
6 there. And the kids came running through there.

7 Q Okay. The kids went running ---

8 A They came running through this side of the car, that
9 side of the car, and around that other side of the house.

10 Q Okay. All right. And you mentioned Vickie -- Vickie
11 Davis. She -- how is she related to you?

12 A That's my aunt.

13 Q Okay. She was there that day?

14 A Yes, sir.

15 Q Okay.

16 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

17 Q Thank you, Mr. Davis. Please answer any question Mr.
18 Verner has for you.

19 THE COURT: Let -- let -- let me see the lawyers just
20 one second before you start your cross. I just want to get
21 ---

22 (Whereupon, a bench conference was held off the record
23 in the presence of the jury, but out of the hearing of
24 the jury.)

25 (Whereupon, Mr. Scott and Mr. Verner conferred.)

CROSS-EXAMINATION BY MR. VERNER - DAWAYNE DAVIS 275

CROSS-EXAMINATION

BY MR. VERNER:

Q The -- afternoon, Mr. Davis. The -- did you have -- I -- I believe your testimony for the prosecutor in the beginning was when the car first came up with Quentin and -- and his friend, that you weren't involved at all in the initial encounter?

A No, sir.

Q But you heard a -- a commotion or an -- the tail end of a commotion or an argument?

A Yes, sir.

Q Okay. The -- so whatever happened, whether it -- it was angry words or not, that -- that you didn't have any part of that beef?

A No, sir, I did not.

Q Okay. The -- so nobody would've been angry at you?

A No, sir.

Q Okay. Specifically angry at you?

A No, sir.

Q Okay. The -- and actually, I believe you testified that you sort of knew Quentin Graham because you had been in school together years ago.

A Yes, sir.

Q And that he was relatively quiet the whole time, just

1 A Well, I didn't see him say anything.

2 Q Okay. So the argument would've been between the --
3 the driver of the car and -- and at least one of the other
4 guys at the party? Do you remember who the loudest guy
5 from the -- from the party was?

6 A Well, the guy that he was arguing with was actually my
7 uncle.

8 Q Okay. The -- and how many other people do you think
9 were at the -- how many grownups were at that ---

10 A Far as grownups it was about -- let's see -- maybe ten
11 to twelve grownups.

12 Q Okay. How -- how many of them were women, and how
13 many of them were men?

14 A Well, I can't recall exactly how many women ---

15 Q Was it ---

16 A --- and men.

17 Q --- roughly -- and -- and I assume some of them were
18 kind of inside ---

19 A At the time it was -- it was more men, though. But, I
20 mean, it was a few women there.

21 Q The -- and it was after work hours, but it was still
22 daytime?

23 A It was still daylight.

24 Q Okay. Some people were drinking?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. VERNER - DAWAYNE DAVIS

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1 Q Okay. Was there a cookout? Was -- was anybody
2 grilling meat or anything outside?

3 A Way -- well, they had the -- the meat on the grill
4 outside. But they also had the inside cooking too, like
5 the macaroni and stuff like that.

6 Q The -- and I believe you testified that -- that the
7 two people in -- who -- who originally drove up, they had
8 gotten out of their car?

9 A Well, from what I seen, they was out the car when I --
10 by the time I got around there, they was both out the car.

11 Q Okay. I thought -- did you say that one of them had
12 gone to -- to speak to somebody or -- in the yard and
13 that's when the argument -- or you don't know exactly what
14 happened?

15 A No. I saw -- I heard the ending argument of couple
16 harsh words and, like, "I'm going see you; I'm going see
17 you." And they got in the car.

18 Q Okay. And it appeared to be people were mad on both
19 ends of it, not fighting mad, but argumentative on both
20 ends of it?

21 A From my understanding, it was a -- it was a little
22 argument or could've been a misunderstanding. But from --
23 after -- when they left, the understanding that I did get
24 out of it was that he was looking of a guy named Smoke.

25 Q Okay. The -- and, in fact, Smoke is a friend of the

1 homeowner? Do you know that or ---

2 A I mean, from my understanding, sir, I don't have no
3 idea who he is, but ---

4 Q Okay.

5 A --- from my understanding.

6 Q To your understanding, Smoke is a friend of Deborica
7 Adams?

8 A Now I do. Yes, sir.

9 Q Okay. The . . .

10 MR. VERNER: May I approach, Your Honor?

11 THE COURT: Certainly.

12 MR. VERNER: Okay.

13 Q The prosecutor -- is that -- this is State's 9. This
14 is relatively -- the cars weren't moved between the time
15 that the shots were fired and the police arrived, were
16 they?

17 A No, sir.

18 Q Okay. The -- black -- is that a Ford SUV?

19 A Expedition.

20 Q Expedition? Whose car is that?

21 A That's the guy -- that's the owner of the vehicle who
22 -- that he was arguing with.

23 Q Okay. The -- and your car is the one parked behind
24 him?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. VERNER - DAWAYNE DAVIS 279

1 Q The -- you testified for the prosecutor, I thought,
2 that you were standing in -- in the area of the black SUV?

3 A I was standing right here. The door was open right
4 here ---

5 Q Okay.

6 A --- behind the front-passenger door.

7 Q The -- and who else was with you?

8 A Well, it -- like I said, the guy that he was arguing I
9 with was sitting in the car with the door open. It was
10 another guy sitting right there with the door open.

11 Q Okay.

12 A And it was a guy there. And it was the -- couple
13 people scattered out.

14 Q So this is -- when -- when you heard the shooting when
15 the shooting happened, this is your location?

16 A The door open, standing right there.

17 Q Okay. The -- and the car that was actually hit by the
18 gunfire was your car, which -- which had been parked behind
19 that, right?

20 A Yes, sir.

21 Q Okay. And actually, just for this SUV, it -- it's a
22 little bit tough to tell. But the -- this SUV is actually
23 kind of parked in front of the house -- more in front of
24 the house, isn't it?

25 A Well, it's like the -- to the right side -- the front-

1 right side.

2 Q It -- it -- it's on the side of the house, but the --
3 it -- it's almost completely in front of the house, though,
4 isn't it?

5 A No. Because the back end was actually ---

6 Q Okay.

7 A --- behind the corner of that house.

8 Q Well, let -- let's . . .

9 MR. VERNER: And, Your Honor, it -- with the agreement
10 of the solicitor, I intend to offer this hard copy of this
11 photograph.

12 THE COURT: Okay.

13 MR. VERNER: But -- but I've just got my computer
14 version now. But at -- at the -- my understanding is I'm
15 going move this picture into evidence.

16 THE COURT: Okay.

17 MR. VERNER: But the actual hard copy is going to come
18 in after I print out -- my understanding is the solicitor
19 will ---

20 THE COURT: Right.

21 MR. VERNER: --- agree to that.

22 THE COURT: The -- you ---

23 MR. SCOTT: Yes, sir.

24 THE COURT: --- you in ---

25 MR. SCOTT: I'm going ---

CROSS-EXAMINATION BY MR. VERNER - DAWAYNE DAVIS 281

1 THE COURT: --- agreement with that?

2 MR. SCOTT: --- have one ---

3 THE COURT: Okay.

4 MR. SCOTT: Yes, sir.

5 MR. VERNER: The -- and I assume this is going be

6 Defendant's 2? Is that right ---

7 THE COURT: That ---

8 MR. VERNER: --- Ms. Court ---

9 THE COURT: --- that's correct.

10 MR. VERNER: Okay.

11 Q The -- the black car is -- is almost completely --
12 from a side view, almost in the front -- more in the front
13 yard than the side yard; is that correct?

14 A Yes, sir.

15 Q Okay. And actually, the -- the pictures kind of taken
16 from behind make it appear that the cars are a little bit
17 closer together. But when you actually look from the side,
18 the -- there is at least about a car gap between them?

19 A From the looks of this picture here?

20 Q Yes, sir.

21 A Yes, sir.

22 Q Okay. The -- the -- they weren't immediately back to
23 back? There was -- it -- it appears to be the -- almost
24 that the entire width of that part of the house between the
25 two cars?

1 A No. There was actually about from me to -- to the
2 lady cop. That's how far they -- they were spread apart.

3 Q From the back end of one car until the ---

4 A Yeah.

5 Q --- front of the next car?

6 A Yes, sir.

7 Q Okay. The -- but they weren't immediately close area,
8 right?

9 A I mean, it was basically like this.

10 Q Okay. The -- are you aware of any other vehicles or
11 anything being moved -- you didn't move your car after ---

12 A No, sir. Not till the police ---

13 Q Okay.

14 A --- came and did what all they had to do.

15 Q Okay. The -- and the -- do you recall hearing shots?

16 A Yes, sir.

17 Q The -- my understanding is when you first heard the
18 first shot, you went down behind the -- the black SUV and
19 you stayed there until it was quiet or until ---

20 A Actually, the little boy came in the yard; was
21 yelling, "He got a gun; he got a gun." He was running
22 full-speed. And like I say, I glanced over from where I
23 was standing behind the door. And I looked and I seen the
24 person standing -- pointing a gun. So I immediately
25 ducked, and I heard the shots ---

CROSS-EXAMINATION BY MR. VERNER - DAWAYNE DAVIS

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1 Q Okay.

2 A --- fired. It was, like, probably ---

3 Q Was he ---

4 A --- about six ---

5 Q --- staring at ---

6 A --- seven ---

7 Q --- you or you didn't take -- you -- you didn't look
8 long enough to ---

9 A All I know is when I peeked out, the gun was aiming
10 that way. I mean, I'm pretty sure it wasn't for me, but it
11 was aiming that way. And I just immediately duck. I ain't
12 stay to see where the bullets were going or who they were
13 coming at. I just ducked.

14 Q Okay. I understand that. Can you -- as -- as best as
15 you can remember, how many shots did you hear fired?

16 A It was about probably between six and seven shots.

17 Q Okay. And as -- as best you can, for the jury, how --
18 how were they spaced out? Just try to imitate the shots of
19 the -- that were fired as you heard them.

20 A Pow, pow, pow, pow, pow ---

21 Q Okay. So ---

22 A --- like that there.

23 Q --- there were ---

24 A Repeatedly.

25 Q They -- they were all fired in pretty much one group?

- 1 A Pow, pow, pow, pow, pow ---
- 2 Q Okay.
- 3 A --- like, I guess, until the clip was empty, I guess.
- 4 Q Okay. The -- but they were rapidly being fired?
- 5 A Yes, sir.
- 6 Q Okay. The -- all right. Now, did -- did you see the
- 7 man run away, or did you ---
- 8 A When I got up, I ain't seen nothing but my aunt
- 9 talking to the other guy with the dreads.
- 10 Q Okay.
- 11 A And people were telling me that my truck been shot up.
- 12 That's when I know it was safe to come out from behind the
- 13 car -- out from in front of the -- the Expedition.
- 14 Q All right. The -- and the -- the man the dreads was
- 15 already in the yard or where was he when you saw your aunt
- 16 talk ---
- 17 A When I finally got up?
- 18 Q Yes, sir.
- 19 A He was walking down the street, trying to come toward
- 20 the yard. But my aunt wouldn't let him come in the yard.
- 21 She was on the phone with the police.
- 22 Q Okay.
- 23 A And she was fussing at him and ---
- 24 Q But he ---
- 25 A --- telling him ---

REDIRECT EXAMINATION BY MR. SCOTT - DAWAYNE DAVIS 285

1 Q --- was walking ---

2 A --- he was going ---

3 Q --- towards the ---

4 A --- to jail.

5 Q --- yard, but he was still in the street?

6 A Well, he came from that -- that angle where the person
7 was with the -- pointing the gun at. Like, he was walking
8 down the street, trying to come toward the yard. But she
9 wouldn't let him in the yard.

10 Q Okay. The . . .

11 Okay. Thank you, Mr. Davis.

12 THE COURT: Redirect?

13 MR. SCOTT: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q The -- the one who -- when you got up and you saw
17 walking towards the yard, who was that?

18 A That was Quentin Graham. He was saying, "I didn't do
19 nothing. I didn't do nothing."

20 She was, like, "Oh, you did something. You going to
21 jail."

22 Q Okay.

23 A And that was it.

24 Q Thank you.

25 THE COURT: Okay. Thank you for your testimony, sir.

1 You can step down.

2 (Whereupon, the witness exited the witness stand.)

3 THE BAILIFF: Are you excusing him?

4 MR. SCOTT: The -- yeah. Your Honor, would -- he can
5 be excused, Your Honor.

6 THE COURT: Any objections to this witness being
7 excused?

8 MR. VERNER: No, Your Honor.

9 THE COURT: Okay. You're welcome to remain with us,
10 sir, or you're free to leave the courthouse.

11 All right, ladies and gentlemen. I think this would
12 be a good time for us to take a lunch break. I would ask
13 that you be back in the jury room at two o'clock.
14 Hopefully, an hour and five minutes will be enough for you
15 to get lunch and handle whatever other business.

16 Again, I remind you, ladies and gentlemen, don't
17 discuss this case among yourselves. Don't discuss it with
18 anybody that you may come into contact with over lunch.
19 And hopefully, you have a good lunch. We'll see you back
20 at two.

21 (Whereupon, the jury exited the courtroom at 12:59
22 p.m.)

23 (Off the record briefly.)

24 THE COURT: All right. We'll be in recess till two
25 o'clock.

1 (Off the record from 1:00 p.m. until 2:10 p.m.)

2 (Whereupon, Defendant's Exhibit 2 was marked for
3 identification off the record.)

4 THE COURT: Okay. Anything we need to put on the
5 record before we bring the jury out?

6 MR. VERNER: The court reporter wanted me to remind
7 the Court that we, with the state's leave, admitted the
8 state's -- Defendant's 2, the actual physical copy of the
9 picture.

10 THE COURT: That was the one on your ---

11 MR. VERNER: Yes, sir.

12 THE COURT: --- iPad? Okay.

13 (Whereupon, Defendant's Exhibit 2 was entered into
14 evidence.)

15 THE COURT: All right. Bring the jury out, please.

16 THE BAILIFF: Judge, we got one that's stepped to the
17 restroom.

18 (Off the record briefly.)

19 (Whereupon, the jury entered the courtroom at 2:10
20 p.m.)

21 THE COURT: Okay. Let the record reflect the jury's
22 back in. Solicitor, you ready to proceed?

23 MR. SCOTT: Yes, sir, Your Honor. The state calls
24 Vickie Davis.

25 THE COURT: Okay.

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS

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1 (Whereupon, the witness came forward.)

2 VICKIE DAVIS, having been first duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q Thank you. Ms. Davis, you from Newberry?

7 A Yes, sir.

8 Q Have you lived here your whole life?

9 A Yes, sir.

10 Q You used to work at Sea Pro Boats, right?

11 A Yes. I'm now at Sea Hunt.

12 Q It's on the same ---

13 A Different companies.

14 Q Well, Sea Pro's closed. But it's some of the same
15 people, right?

16 A Yes, sir.

17 Q They just started down on Shop Road, I guess, now?

18 A Yes, sir.

19 Q You remember October 6th, 2012?

20 A Yes, sir, I do.

21 Q You know, late in the afternoon between, say, 5 and --
22 and -- and 6 p.m., what were you doing?

23 A I was at my nephew's and girlfriend's house for a
24 family get-together.

25 Q Okay. Who's your nephew?

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS

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1 A Travis Davis.

2 Q And Dawayne Davis is a ---

3 A That's my ---

4 Q --- nephew ---

5 A --- nephew.

6 Q --- as well?

7 All right. Travis's girlfriend is who?

8 A Deborica Adams.

9 Q Okay. And that -- do you know the address of that
10 house?

11 A No, I don't.

12 Q Let me show you State's Exhibit No. 3 while it warms
13 up. Do ---

14 A Okay.

15 Q --- you recognize that?

16 A Yes, sir, I do. It's the Rodelsperger and Charles --
17 Charles -- wasn't it Charles Street? This is where my
18 nephew stay.

19 Q Okay. Let's see if this is warmed up now. Is it --
20 the corner of Charles and Rodelsperger is what you're
21 saying?

22 A Yes, sir.

23 Q All right. Vickie, if you can just press that button,
24 you can point out stuff on it.

25 A Okay.

1 Q Whereabouts is the house?

2 A The house is located under this tree right here.

3 Q Okay. And it faces out towards Rodelsperger?

4 A Yes. Which is right here.

5 Q Okay. All right. On October 6th you said you were
6 over there. What -- why were you over at that house?

7 A My nephew and his girlfriend was having a -- a little
8 get-together. They had just moved into their house.

9 Q Do you know when they had moved in?

10 A No, I don't.

11 Q Okay. But that was the purpose ---

12 A Yes, sir.

13 Q --- kind of a ---

14 A Yes.

15 Q --- new-home party?

16 A Yes.

17 Q All right. What -- who all was there at the party?

18 A Family. I meant, it was a -- it's -- my nephew, his
19 kids; my little girl; my nephews; my nieces. I meant, just
20 family in general.

21 Q Okay. And at some point did -- did some strangers
22 show up?

23 A Yes, sir, they did.

24 Q All right. And tell us about that. How did that come
25 to happen?

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS

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1 A Like, when they first -- when everything first
2 started, I was sitting on the opposite side of the house
3 right here on top of my car. It -- it was, like, a grill
4 right here. When they pulled up, they came in with the
5 back end of the car facing Charles Street when they first
6 came in.

7 And I didn't get the beginning of the argument. But
8 the part that I did get, Carlos Reeder was looking for
9 somebody named Smoke.

10 Q Okay.

11 A And we didn't know nobody by that name.

12 Q Okay. Was Deborica home at that point?

13 A No, sir, she wasn't.

14 Q All right. But no one there knew who Smoke was, and
15 this is who ---

16 A That's who Carlos was looking for.

17 Q Okay. Now, you said -- you talked about him showing
18 up in a car. What -- do you remember -- do you have a
19 description of the car?

20 A It's a small -- I think it's a Toyota Corolla. It was
21 silver- or gold-color four-door ---

22 Q Okay.

23 A --- older model.

24 Q Now, who was driving it?

25 A Carlos was driving.

1 Q And did you know him before?

2 A I've never seen him. I don't know him. No ---

3 Q Okay.

4 A --- I don't.

5 Q But who -- was he with anyone?

6 A The guy that had -- he has dreads -- dark-skinned guy
7 with dreads.

8 Q Okay. And where was the guy with the dreads sitting

9 ---

10 A He was on the passenger side.

11 Q You know his name?

12 A I don't really know them like that, so ---

13 Q Okay.

14 A --- I mean ---

15 Q Okay. Well, on October 6th you didn't know who these
16 people were, is what you're saying?

17 A Yes. I don't know them.

18 Q But they just show up, looking for Smoke?

19 A Somebody named Smoke.

20 Q All right. So what -- what do they do? They park the
21 car on the curb? Just walked up to ---

22 A No.

23 Q --- the house?

24 A When they came in from this way, he parked his car,
25 like, right in here. Like, right in that area there, it's,

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS 293

1 like, a little walkway to get in the yard to get on the
2 sidewalk.

3 Q Uh-huh.

4 A So when they came in right here, like I said, when the
5 argument first started, I was sitting here on my car.

6 Okay. When it first -- I don't really know the exact,
7 exact -- what -- the argument. But then when I came around
8 to see what was happening, Carlos had got out the car.

9 And when he came around the car, I had made it to the
10 front of the car. So he let me -- when he got out the car,
11 he had to walk between me and the car to get up in the
12 yard.

13 Q Okay.

14 A And he was looking for somebody named Smoke and that
15 we don't know no Smoke. We don't know no Smoke. And, you
16 know, words were exchanged; words were exchanged. And they
17 told him to get back in his car. He got back in his car.

18 And then the -- the other guy, he got out, but he
19 really didn't do nothing. But he got out.

20 Q The guy with the dreads?

21 A The guy with the dreads. And they got back in the
22 car. And when they left back out, they backed out and they
23 came up Charles Street. And they -- they left up thataway,
24 up Charles Street.

25 Q In the Corolla?

1 A In the Corolla.

2 Q All right. Just help us understand.

3 A Uh-huh.

4 Q Do -- the argument, does it stem from him looking for
5 Smoke and everybody trying to convince him Smoke ---

6 A I think ---

7 Q --- wasn't there?

8 A --- probably the argument stemmed for, I guess, words
9 that were exchanged.

10 Q What kind of words?

11 A Because I know my brother told him he need to get his
12 -- you know, "Get your ass back in the car. We don't know
13 no Smoke. We trying to have a family get-together."

14 And Carlos made the statement -- how he said that?

15 "Motherfucker, I know you. I'm going see you. I'm going
16 see you."

17 And my brother's was, like, "You see me now. You
18 know, if you want me, you see me now."

19 Q Okay.

20 A So they still exchanging words. Carlos and the guy,
21 Quentin, got back in the car. And when they got back in
22 the car, he backed back -- I meant, he left out and he went
23 -- came up Charles Street. And it -- it's not even 30
24 minutes later when they came back. They came back walking,
25 and they were standing right here, looking over towards the

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS

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1 house. Because right in this area is where a park with
2 kids were playing.

3 Q All right. Let -- let me stop you for one second.

4 A Okay.

5 Q This is State's No. 8. What are we looking at here?

6 A This is the side of the -- the house where the
7 shooting struck out at.

8 Q Okay. And then, the automobile in the back is ---

9 A That's my nephew, the one his truck.

10 Q All right. Is that what we're seeing in State's No. 7
11 here?

12 A Yes, sir.

13 Q All right. And this is, like, the side yard that
14 faces towards Charles Street?

15 A Yes, sir.

16 Q Okay. So if we go back to this, you were -- you were
17 saying that this is the playground?

18 A Yes, sir.

19 Q And ---

20 A Playground.

21 Q --- whereabouts -- when you first noticed him or --
22 the dreadlock guy and who you're calling Carlos Reeder,
23 were they -- was it Carlos Reeder who showed back up on
24 foot?

25 A Both of them.

1 Q The same two who were in the Corolla?

2 A The same two in the Corolla left; the same two came
3 back.

4 Q Where were they when you first noticed them this
5 second time?

6 A They were standing right here. They ---

7 Q Okay. What ---

8 A --- came back walking.

9 Q Okay. What ---

10 A They wasn't ---

11 Q --- made ---

12 A --- driving.

13 Q All right. What made you notice them?

14 A Because one of the kids ran in the yard and said they
15 got a gun.

16 Q All right. And you are -- you are now on that side of
17 the house that faces Charles Street?

18 A Yes. Once -- once Carlos and them left, and once the
19 -- the little boy hollered, "They got a gun," that's when
20 we came around the side of the truck.

21 Q Uh-huh.

22 A And we was watching them. Because I told him, "Y'all
23 need to watch them because something ain't right. I got
24 bad feeling."

25 Q You came around the side of what truck?

DIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS 297

1 A The truck that -- that -- my nephew's truck that got
2 hit, the Explorer.

3 Q This is just a different picture. This is Defense No.
4 1. That's the truck you're talking about?

5 A Yes, sir.

6 Q All right. About where were you standing when you
7 first noticed them?

8 A Right in here. It was me; a friend of mine named
9 Dirt; and it was one more person. I really can't remember
10 who it ---

11 THE COURT: What ---

12 A --- was. We were ---

13 THE COURT: What was ---

14 A --- standing right ---

15 THE COURT: --- the name of the friend, ma'am?

16 THE WITNESS: They call him -- I only know him by his
17 nickname. They call him "Dirt."

18 THE COURT: Dirt?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Thank you.

21 Q All right. So you -- now, you -- you gesturing to the
22 -- the driver's rear ---

23 A Back ---

24 Q --- wheel well ---

25 A --- by the -- we was right -- standing back by the

1 back tire right here.

2 Q Okay. And then, again, let me show you State's No.

3 14. Do -- do you see that Explorer in this picture?

4 A Yes. It's ---

5 Q Okay.

6 A --- right here.

7 Q All right. And you were -- do you see these markers
8 here at the bottom?

9 A Uh-huh.

10 Q Is -- is that location significant to you in any way?

11 A (No audible response.)

12 Q Could -- pass me those. It -- from this view can you
13 -- can you describe where the shooter would've been?

14 A From that view around in this area here.

15 Q Okay. So was there anything blocking your view of
16 where the shooter was standing?

17 A No. It was open. Nothing.

18 Q All right. Again, with the laser pointer, show us
19 where you were standing.

20 A Right in here.

21 Q Okay.

22 A By the back tire.

23 Q And -- and, now, you say you -- you -- your attention
24 was first directed towards the two people from the Corolla
25 because a child said something about a gun?

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1 A Yes. Uh-huh.

2 Q All right. And then, what did you do? Just explain

3 ---

4 A No. I ---

5 Q --- step ---

6 A --- went and got my -- I keep a golf club in my trunk
7 of my car. So I got my golf club. And me and Dirt, we
8 went and we stood right here. And we was, like, just
9 standing there, looking up at them, just like this, you
10 know, like, "Y'all need to watch them because," I said,
11 "something ain't right. I got a bad feeling about it."

12 Then we stand there a few more minutes later. Then
13 that's when I see Carlos stand and reach. And I seen when
14 he did like that, and I seen the first spark come out. So
15 we all ducked down. And we ran -- we ran around the front
16 of the truck right here.

17 And as he was shooting, the kids was at the park. And
18 the -- the kid -- our kids was running towards the house.

19 Q All right. Show us in that picture where the kids
20 were.

21 A The kids was at the park.

22 Q That's that -- that's the park right there?

23 A That's the park. Uh-huh.

24 Q All right. And show us with the laser which direction
25 they were running in.

1 A They was running towards the house.

2 Q And the shooter was where?

3 A Right in that area.

4 Q And he was firing in which direction?

5 A Towards the house.

6 Q Okay. And how ---

7 A Because ---

8 Q --- do you ---

9 A --- from the sound of it, the first bullet, that's
10 what bust the glass out the back of the truck from the
11 sound of it.

12 Q The -- the truck you were standing right beside?

13 A Yes.

14 Q All right. The -- did you -- all right. You saw both
15 of these two fellas from the Corolla?

16 A Yes, sir, I did.

17 Q And the one with the dreadlocks, what was he doing?

18 A When Carlos was shooting, he was just standing there.
19 I mean, he was just standing there.

20 Q Okay.

21 A Because after Carlos got to shooting, Carlos took out
22 running. And then that's when I came from around the
23 house. And the -- the guy was still basically standing
24 there. And then he was, like, you know -- I guess he
25 wanted to move. But I didn't let him out of my sight. I

1 had ---

2 Q Who took ---

3 A --- my golf club.

4 And I'm, like, "You -- you ain't fixing to go
5 nowhere." I said, "When you leave here, you leaving here
6 with the police." I said, "You could've -- no. No. No.
7 You're not leaving here. So I ain't let ---

8 Q Wait a minute.

9 A --- him go.

10 Q Who you talking about, though? You said "the guy."

11 A With the dreads.

12 Q Okay. He's the one that stayed behind?

13 A Yeah. He ---

14 Q What ---

15 A --- ain't have ---

16 Q --- what, if ---

17 A --- a choice.

18 Q --- anything, did you observe about the way he was
19 acting?

20 A He was acting like he ain't understand.

21 Q He didn't understand?

22 A Honestly, he was acting like he was here but he wasn't
23 here.

24 Q Okay. Was it him who was shooting the weapon at you?

25 A No, it wasn't.

1 Q Any doubt in your mind?

2 A I meant, no, no doubt in my mind.

3 Q So he ---

4 A No doubt.

5 Q --- he was just standing beside the gun?

6 A He was with him.

7 Q And it was the same guy you had seen as the passenger
8 of the ---

9 A Yes ---

10 Q --- Corolla ---

11 A --- sir.

12 Q --- before?

13 A Uh-huh.

14 Q Do you have any idea how many shots you -- do you
15 remember how many shots you heard?

16 A About six to seven shots.

17 Q Okay. And, of course, when the shots were going off,
18 everybody's running around ---

19 A Yeah.

20 Q --- everywhere?

21 A Everybody in panic mode because everybody's mostly --
22 you know, mostly worried about the kids, because they was
23 running that way.

24 Q When -- when these two came walking back up Charles
25 Street ---

1 A Uh-huh.

2 Q --- and you first seen them, did anybody threaten
3 them?

4 A No. Nobody said anything to them. Wasn't nobody even
5 close to them to say anything to them. When they -- when
6 they walked back down, they just stopped right there. They
7 just stopped right there.

8 Q Okay. And would you say he was pacing around? Is
9 that what -- what you ---

10 A Little jittery, if you want call it jittery, like.

11 Q Okay. And that's why -- and you said you said,
12 "Something isn't right here"? That's what made you ---

13 A Yeah. Because ---

14 Q --- think ---

15 A --- I meant, just his -- the body -- the body action
16 wasn't right. And I just got a bad feeling about it.

17 Q Now, you said this was 30 minutes after they were
18 asked to leave the place?

19 A If 30, yeah. Yes, sir.

20 Q All right. So just so we're clear: The first time
21 they're there in a gold ---

22 A In the ---

23 Q --- or tan ---

24 A --- the ---

25 Q --- Corolla?

1 A --- the Corolla. Yes ---

2 Q Second ---

3 A --- sir. The ---

4 Q --- time ---

5 A --- four-door ---

6 Q --- 30 ---

7 A --- Corolla.

8 Q --- minutes later, they come walking ---

9 A They left ---

10 Q --- back up ---

11 A --- back -- they came back walking. And it was no
12 physical contact on no points. No -- nobody touched
13 nobody.

14 Q Just ---

15 A It was just all verbal.

16 Q Okay. And how good of a look did you get at the
17 shooter?

18 A A great look.

19 Q About how far was he from you when he was firing at
20 you?

21 A (No audible response.)

22 Q Well, let me ask you this. I'm sorry.

23 A Well, I'm -- I'm not good with feet and inches.

24 Q All right. Well, let me -- let's see. State's No. 14

25 ---

1 A Okay.

2

3 Q How far -- was -- how far would you say it was from
4 those markers to where that car is?

5 A (No audible response.)

6 Q On -- as wide as this room? Can you -- can you do
7 something like that? Or wider?

8 A I'll say about -- it probably -- maybe from the
9 entrance out here to the door, maybe. It's not -- it
10 wasn't -- it wasn't that far, though. But like I say, I'm
11 not good with measurements.

12 Q Okay. Well, just -- just do this, then: Show us
13 again about where the truck is here.

14 A The truck is right in that area.

15 Q All right. Show us about where he was standing.

16 A Right in here.

17 Q Okay. And you recognize these as the same two people
18 you had just seen with the argument in the front yard?

19 A Yes. Yes, sir.

20 Q Any doubt in your mind it was the same two people?

21 A No doubt.

22 Q When they first showed up when the argument happened

23 ---

24 A Uh-huh.

25 Q --- how close were you to -- to the -- the one you're

1 calling Carlos Reeder?

2 A I say about from the lady -- the juror with the gray
3 shirt on to where I'm at now when he got out the car and
4 walked between.

5 Q Okay. So you had a good opportunity to see ---

6 A Yes. I ---

7 Q --- his face?

8 A --- had a great opportunity to see him.

9 Q And, of course, they're arguing, so you're paying
10 attention to them at that point?

11 A Yeah.

12 Q Okay. But -- and when they walked back 30 minutes
13 later, you're describing what you showed there, the
14 distance between you two was what you showed with the laser
15 pointer?

16 A Yes, sir.

17 Q Were ---

18 A Because ---

19 Q --- you able ---

20 A --- like, right in that area is, like, where you get
21 into a curve at.

22 Q Uh-huh.

23 A So they wasn't in that curve.

24 Q Okay. Were you able to see his face and his clothes
25 and everything?

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1 A I can't remember his clothes. But I remember his
2 face.

3 Q You ever going forget that face?

4 A No, I don't. It took me awhile to forget it. And now
5 I got to do it -- live it all again.

6 Q All right. So when officers got there, were you able
7 to speak with them about what you had observed?

8 A Yes, sir, I did. Because I was the one that made the
9 911 call.

10 Q And where was Deborica when all this was going on?

11 A She was at work, I guess.

12 Q And when the officers got there, you told them what
13 happened?

14 A Yes, sir, I did. Because when the officer got there,
15 I still had Quentin with the dread ---

16 Q Uh-huh.

17 A --- he was still right there ---

18 Q Oh.

19 A --- beside me.

20 Q Yeah. You kept him there, is what you ---

21 A Yeah. I ---

22 Q --- said?

23 A --- I held him till the police got there.

24 Q Well, did he walk back towards the yard after the ---

25 A He tried ---

1 Q --- shooting?

2 A --- to come back in the yard. And I kept pushing him
3 out. I mean, "You okay? What's wrong with you? Y'all
4 just shooting at us, and now you're trying to come in the
5 yard with us."

6 Q Was he drunk or what ---

7 A I don't know what wrong with him. But he ain't look
8 like he right.

9 Q Okay. At any time did you see Quentin Graham, the guy
10 with the dreadlocks, aim a weapon at you?

11 A No, sir, I didn't.

12 Q All right. You're sure it was the other one?

13 A I'm positive 100 percent.

14 Q Did -- all right. At some point do you remember
15 meeting Sgt. Allison Moore?

16 A Yes, sir, I do.

17 Q And do you recall a -- a group of photographs she
18 showed you?

19 A Yes, sir.

20 Q And -- and what did she ask you about the photographs?

21 A She showed -- she came with a lineup with six
22 individuals. And I looked at it. She told me that if --
23 if I see the person that shot -- you know, did the shooting
24 -- I meant, if I see him in the lineup, to point him out.
25 And with no hesitation, I went right to him.

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1 Q All right. Immediately you were ---

2 A Immediately.

3 Q --- able ---

4 A No hesitation.

5 Q You remember about how long after the shooting
6 occurred that you were able to pick the person out of the
7 lineup?

8 A Probably hour and half/two hours after ---

9 Q Okay.

10 A --- maybe. Yeah.

11 Q And how did you indicate on the lineup that you were
12 picking the person you saw do the shooting?

13 A Because I remember his face.

14 Q Let me -- let me show you State's No. 1. Let -- do
15 you recognize that?

16 A Yes, sir. I -- this is my signature.

17 Q Okay. So how did you pick the person on there that
18 you thought was the shooter?

19 A I remember his face. And then when I looked at all
20 the pictures and everything, I meant, I see he was right
21 there.

22 Q Well, I -- you draw a square around it? Did you ---

23 A No.

24 Q --- shade ---

25 A I -- I ---

1 Q --- it in?

2 A --- drew a circle, and I initialed.

3 Q Okay. And that's -- that is the copy of the photo
4 lineup you were given?

5 A Yes.

6 Q All right. Was there any hesitation in your mind that
7 that was the person who fired the weapon at you?

8 A No, it's not. No ---

9 Q Okay.

10 A --- it's not. I bet my life on that. This is him.

11 Q Okay. No doubt ---

12 A This is ---

13 Q --- in your ---

14 A --- him.

15 Q --- mind?

16 A No doubt.

17 Q And -- and that's the person who showed up in the
18 Corolla?

19 A This is him.

20 Q Is that ---

21 A I put ---

22 Q --- the first ---

23 A --- it on everything I love. This is him.

24 Q Okay. And is that the person who did the shooting
25 where ---

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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1 A Yes, sir. Yes, sir, it is.

2 Q All right. Do you see him in the courtroom today?

3 A Yes, sir. He's sitting over there in the blue-plaid
4 shirt.

5 Q Okay. Any doubt whatsoever?

6 A No doubt.

7 Q All right.

8 THE COURT: Okay. Let the record reflect the witness
9 identified Mr. Reeder, the defendant.

10 A No doubt.

11 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

12 Q Ms. Davis, please answer any questions Mr. Verner has
13 for you.

14 THE COURT: Okay. Mr. Verner, any cross-examination?

15 MR. VERNER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. VERNER:

18 Q Ms. Davis, are you adding some statements today that
19 didn't actually occur, kind of trying to fill in the detail
20 what -- of what you were feeling?

21 A About the -- my little -- my little nephew say ---

22 Q Yeah.

23 A --- he seen the gun?

24 Q It seems that you're kind of adding some statements in
25 to -- to your testimony today to kind of just give the jury

1 a feel of it, but they may not have actually been spoken;
2 is that correct?

3 A No. They true statements.

4 Q Okay.

5 A They are ---

6 Q The ---

7 A --- true statements.

8 Q You gave a written statement the same day with --
9 within a short period of time after this happened, didn't
10 you?

11 A Yes, sir, I did.

12 Q For law enforcement?

13 A Uh-huh.

14 Q The ---

15 MR. VERNER: Mr. Prosecutor, do you still have a copy
16 of her written statement?

17 MR. SCOTT: It's right there.

18 MR. VERNER: May I approach the witness, Your Honor?

19 THE COURT: Sure can.

20 Q Ms. Davis, I'm going ask you: Can you recall whether
21 that is your written statement?

22 MR. VERNER: (To Mr. Scott) Did you put this into
23 evidence or just ---

24 A Yes. This is my handwriting.

25 MR. VERNER: Did you stipulate to it?

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1 Q Okay. I'll let you actually keep a copy of that for a
2 second. Do you remember the officer that you made that
3 statement for?

4 A No, I don't.

5 Q Was it Ms. -- was it Officer Moore at the prosecutor's
6 table? She ---

7 A No.

8 Q --- was ---

9 A I think it was the officer in the back.

10 Q Okay. Officer Matthews?

11 A I ---

12 Q The officer ---

13 A --- yeah.

14 Q --- with the kind of goatee, black ---

15 A Yes.

16 Q --- shirt?

17 Okay. The -- do you recall where you were when you
18 gave that statement: out in the street or in the house or
19 did you go to the law enforcement complex on Nance Street?

20 A No. At the house.

21 Q Okay. Inside?

22 A Outside.

23 Q Okay. And you -- do you remember what you wrote the
24 statement on? Did you write it on the car, or did you just
25 -- did you go back to your car and write it on your lap or

1 -- I'm -- I'm just -- the -- the -- I don't really care.
2 I'm just trying to remember -- see if you remember the
3 details of writing the statement.

4 A I remember writing the statement. I can't remember if
5 I was given a clipboard to press down on or if I was on the
6 car.

7 Q Okay. But it -- just -- you -- you do recall ---

8 A Yes.

9 Q --- writing the statement?

10 A Uh-huh.

11 Q The -- and at that time that was within a very short
12 period of this event ---

13 A Uh-huh.

14 Q --- happening?

15 A And I -- I'm ---

16 Q Yes, sir.

17 A --- not trying to be rude. But you -- you've got to
18 say "yes" or "no" so she can write it down as a ---

19 Q I ---

20 A --- "yes" or "no" answer for ---

21 Q Yes, sir.

22 A --- the record.

23 Q Okay. The -- at that time your version that you gave
24 officers at that time is a little bit different than your
25 testimony today, isn't it?

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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1 A It probably is.

2 Q Okay. At that time you indicated that you saw them --
3 okay. Well, first of all, the -- you testified for us that
4 you saw the -- the car pull up on Rodelsperger.

5 A Uh-huh.

6 Q The -- the -- and you're violating my ---

7 A Oh. I ---

8 Q --- question.

9 A Yes, sir.

10 Q Okay. The -- but you weren't initially close in when
11 that first came in ---

12 A I meant, from the side of the house, you could -- you
13 could see the road, because it's close to the -- the front
14 of the house.

15 Q Okay.

16 A I wasn't beside it. I was up on the house. You can
17 see all of that, the front end of the house.

18 Q The -- but were you at that all a part of that initial
19 encounter?

20 A No, I wasn't.

21 Q In terms of getting close or -- or saying anything ---

22 A No. I didn't say anything.

23 Q Okay. The -- the -- but your understanding was Carlos
24 was -- was asking if a guy named Smoke was there?

25 A Yes.

1 Q The -- and -- and Smoke is a friend of Deborica?

2 A I don't know Smoke.

3 Q Okay.

4 A I can't answer that.

5 Q The -- and you said you -- that -- you testified for
6 the prosecutor just a minute ago: "Then they told him to
7 get back in his car." Who is the they that you're talking
8 about?

9 A My brother -- he was exchanging words with my brother.

10 Q Okay. And anybody else?

11 A I don't think so. I know him and brother were
12 exchanging words.

13 Q Those were the main two ---

14 A The main two ---

15 Q --- speakers ---

16 A --- him and ---

17 Q --- but there ---

18 A --- my brother.

19 Q --- other people ---

20 A Him and my brother was ---

21 Q --- in -- in ---

22 A --- the main two.

23 Q --- the area?

24 A Yeah.

25 Q Okay. The -- how many people do you recall being out

1 there at the front yard when the car first came in?

2 A Probably about 12 or 15. I don't know exactly. I
3 can't give an exact number.

4 Q But a -- a -- were -- were they mostly men, women, or
5 was it kind of an even ---

6 A It was a mixture.

7 Q Okay.

8 A Men ---

9 Q But ---

10 A --- women, and kids.

11 Q What about the people at the car? Was it ---

12 A Nobody really stepped to the car. Because it's -- it
13 wasn't like a -- a contact where they was fixing fight and
14 swing at, you know, something like that. I meant, my
15 brother didn't go to the car and Carlos didn't come to my
16 brother.

17 Q But you testified that you -- your brother said, "You
18 better get your ass back in the car"?

19 A He got out of the car.

20 Q Okay. The -- and at that time they were just looking
21 for somebody?

22 A Somebody named Smoke.

23 Q Was this your brother's house?

24 A No. It was my nephew and his ---

25 Q All right.

1 A --- girlfriend's house.

2 Q The -- was your nephew there?

3 A He was in the house, cooking.

4 Q Okay. The -- but -- but basically, everybody out in
5 the yard was a guest there too?

6 A Yes.

7 Q Okay. The -- did you -- after the car first -- and
8 then it backed up, crossed Charles Street, and left?

9 A It backed up on -- on Rodelsperger and went up Charles
10 Street.

11 Q Okay. The -- and -- and you said probably less but up
12 to 30 minutes later, the car -- I mean, the -- you saw the
13 people return?

14 A They returned, walking.

15 Q Did you stay out in the yard after the car left, or
16 did you go inside ---

17 A I never ---

18 Q --- the house?

19 A --- went in the house.

20 Q Okay.

21 A I stay outside the whole time.

22 Q And I assume -- essentially, the party was mostly
23 outside? I mean, there ---

24 A Yes.

25 Q --- may be people inside doing ---

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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- 1 A Yeah. It ---
- 2 Q --- stuff but ---
- 3 A --- was cooking on the inside, and they had a grill on
- 4 the outside.
- 5 Q And -- and the ---
- 6 A And the ---
- 7 Q --- bulk of ---
- 8 A --- majority ---
- 9 Q --- the people. ---
- 10 A --- of people ---
- 11 Q --- would've been ---
- 12 A Yes.
- 13 Q --- outside?
- 14 A They were outside.
- 15 Q The -- did you recall seeing -- did they come back in
- 16 their car after you first saw them leave?
- 17 A No. When they came back, they came back walking.
- 18 Q Okay. Well, if -- if -- if they came back cruising at
- 19 a slow speed of the house, do you think you would've seen
- 20 that?
- 21 A They didn't come back, though.
- 22 Q Okay.
- 23 A Because I was ---
- 24 Q I -- I'm ---
- 25 A --- outside.

1 Q --- just asking if they ---

2 A No. I was just saying I was ---

3 Q You would ---

4 A --- outside.

5 Q --- have seen it if they did come ---

6 A Yes ---

7 Q --- back ---

8 A --- I would.

9 Q --- cruising the house?

10 A Yes, I would've.

11 Q Okay. The -- and that probably would've caused a
12 commotion with people, too, if they had, wouldn't it, if
13 they had come by at a slow speed ---

14 A I mean ---

15 Q --- cruising?

16 A --- I can't answer that.

17 Q That's something you would've remembered if they ---

18 A If they ---

19 Q --- had ---

20 A --- yes, if they did, I would've remembered that.

21 Q Okay. The -- and then, did -- you testified for us
22 just a -- a minute ago that -- that you didn't really see
23 them come back, the -- your first encounter of them coming
24 back was the kid saying, "He's got a gun," or, "They've got
25 a gun."

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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1 A Yes. Because at that time I wasn't facing the park.
2 I had my back faced to where everybody was at, talking.
3 And then that's when the little boy ran over and said it.
4 That's when we turned around and went to the back of the
5 truck.

6 Q But you told police back on October 6th, the day of
7 the incident, that they tried to come back in the yard.
8 They -- they came back on foot ---

9 A No.

10 Q --- they tried ---

11 A I said ---

12 Q --- to come back in -- well ---

13 A --- Quentin ---

14 Q --- let me finish ---

15 A --- came ---

16 Q --- my question and I'll let ---

17 A Okay.

18 Q --- you answer ---

19 A Okay.

20 Q --- correctly.

21 A Okay.

22 Q But you told -- you -- you -- in your written
23 statement, you said they came walking back, tried to enter
24 the yard, and somebody put them off the property again.
25 And I'll -- I'll let you look at your written statement.

1 The -- and I'm -- I'm looking about the middle -- the
2 -- the line that says -- your -- your handwriting says:
3 "The driver and the guy with the dreads left. They came
4 back, walking. And the guy put them out of the yard again.
5 And then they walked up the road a little bit." Is that
6 what you wrote?

7 A I mean, yes. That's what written down here.

8 Q Okay. So on -- on October 6th, the day this actually
9 happened, you remembered them coming back to the property
10 and them -- and there being a second encounter where they
11 were put off the property?

12 A I meant, that's what I put down here.

13 Q Okay. The -- now, the -- you don't recall Dirt's real
14 name?

15 A I don't know his real name.

16 Q Okay. The ---

17 A Because he's mostly friends with my nephew now. So I
18 don't know his real name. I just know him by a nickname.

19 Q Okay. But you -- you knew him before this get-
20 together?

21 A Yes, sir, I do.

22 Q About how old is Dirt? And I'm sure he's not old as
23 dirt, but that's ---

24 A No. He's -- I think he's in his early 30s.

25 Q Okay.

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1 A I don't think he's 35 yet.

2 Q And you said there was another guy with you too at the

3 ---

4 A Yeah.

5 Q --- front of ---

6 A But I ---

7 Q --- the car?

8 A --- can't remember who the other guy was that was
9 standing there.

10 Q Okay. But why did you -- your testimony was when you
11 saw them walking back down the road, you and others went
12 back and you grabbed a golf club.

13 A I got the golf club after the situation. When I -- I
14 heard they had a gun, that's when I got my golf club. And
15 then that's when I came around.

16 Q Okay. Before the shooting?

17 A Yeah. Before the shooting I had ---

18 Q Okay.

19 A --- my golf club before the shooting.

20 Q The -- were -- were you holding it in a threatening --
21 I'm sure you weren't playing golf. I mean, how were you
22 ---

23 A No. I ---

24 Q --- holding the ---

25 A --- was holding it because of -- if -- if something --

1 I mean, if I feel threatened, I'm going protect myself.

2 Q Okay. The ---

3 A And at the time I felt threatened, and look what
4 happened.

5 Q The -- but at this point they were just walking back.
6 The -- what about Dirt? Did he grab a -- any kind of item?

7 A No. I -- I -- I only one had -- I'm the only one had
8 something. I had a golf cart -- I meant, a golf club.

9 Q None of the other guys had anything in their hands?

10 A No. No, sir.

11 Q That's your recollection?

12 A No, sir.

13 Q The -- and you didn't see anybody with a -- a handgun
14 in the waist or anything like that?

15 A Talking about in ---

16 Q In -- in any ---

17 A --- our yard?

18 Q --- of your -- any of the -- your friends at the party
19 -- at the cookout?

20 A No, sir.

21 Q Okay. The -- did you approach Carlos or Quentin or --
22 or the young men as they were ---

23 A I ---

24 Q --- walking back?

25 A I approached Quentin. When I was on the phone with 911

1 ---

2 Q No. I'm talking about ---

3 A --- approached ---

4 Q --- before ---

5 A --- him.

6 Q --- before the shooting.

7 A No.

8 Q The ---

9 A No, sir, I didn't.

10 Q Well, what did you do after you grabbed the golf club?

11 A The golf club came after they left. I didn't have the
12 golf club when they first came looking for somebody named
13 Smoke.

14 Q Right.

15 A I got the golf club ---

16 Q When they ---

17 A --- after the ---

18 Q --- were walking ---

19 A --- fact.

20 Q --- back.

21 A Huh?

22 Q When they were walking back?

23 A When they had came back, when they was up there,
24 that's when I got my golf club. Because I told them,
25 "Something ain't right. I got a bad feeling."

1 Q But before the shooting -- and -- and -- and you
2 walked back towards the front -- or the back end of that
3 silver SUV -- your nephew's SUV?

4 A You said before the shooting?

5 Q Before any shots were fired, you were holding the golf
6 club in your hand?

7 A Before any shots got fired, I had went and got my golf
8 cart -- my golf club. Then that's when I came back.

9 Q Right. And -- and you said that other people went
10 back to your car too and then came back on that side of the
11 road where -- where the -- where the guys were walking up
12 the street?

13 A Could you say that again?

14 Q The -- you said that Dirt went with you back to your
15 car?

16 A No, I didn't say that.

17 Q Okay. The -- did he approach the road ---

18 A Who ---

19 Q --- that ---

20 A --- Dirt?

21 Q While -- while you were going back to your car to get
22 your golf club, what -- did Dirt ---

23 A Because, see, my car was on the opposite side. My car
24 wasn't over there where the Explorer was at.

25 Q Do -- do you know what the other guys in the yard were

1 doing when you went back there to get your golf club?

2 A Far as I know, they were still standing there.

3 Q Were they approaching or bracing towards the boys who
4 were coming ---

5 A No, they ---

6 Q --- down the ---

7 A --- wasn't. No, sir ---

8 Q Okay.

9 A --- they wasn't.

10 Q The -- well, who was the one who put them off the
11 property the second time?

12 A I couldn't answer that.

13 Q The -- do you know how close they were?

14 A I couldn't -- I can't answer that.

15 Q Okay. The -- were -- were you at a -- at -- at all
16 involved in any of the passing words?

17 A No, sir, I wasn't.

18 Q Okay. The -- were -- were you ever identified as
19 somebody that Carlos or Quentin or anybody was particularly
20 mad at?

21 A No, sir, I wasn't.

22 Q Okay. If -- if they were mad at anybody, it wasn't
23 you; you just happened to be there?

24 A Yes, sir.

25 Q Okay. The -- and I think there was a black car behind

1 ---

2 A In front of the ---

3 Q --- the -- a ---

4 A --- Explorer ---

5 Q --- black SUV kind of in front ---

6 A My ---

7 Q --- of the ---

8 A --- brother's black Expedition.

9 Q Okay. The ---

10 A That's where the truck was sitting when they first
11 came. The truck never moved.

12 Q Right. The -- did -- did -- did you ever see Carlos
13 -- did -- what -- were you watching when the shooting was
14 going on?

15 A I meant, till the bullets stop.

16 Q Okay. The -- were you watching?

17 A I seen the first bullet come out. And after that I
18 had -- I had to run and dip then.

19 Q Do you know who that was directed at?

20 A If I was -- have to say a guess, I would say my
21 brother.

22 Q Okay. Was it directed at you?

23 A My brother.

24 Q Okay. The -- do you believe any of the shots, if they
25 were fired anybody, were -- were fired at you as a target?

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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1 A A bullet has no name.

2 Q I understand that. But, I mean, the ---

3 MR. SCOTT: I think he's calling for speculation,
4 Judge, at this point.

5 MR. VERNER: Well, I'm -- she was -- she's testifying
6 to what she saw.

7 THE COURT: Well, I -- I -- I think -- I think the
8 solicitor's objection is that you're asking this witness to
9 make a determination of what the shooter had intended to
10 do.

11 MR. VERNER: Yes, sir.

12 THE COURT: And I don't think this witness can make a
13 determination of what someone else intended. She can
14 testify as to what she observed. But I don't think she can
15 testify as far as the intent of the shooter.

16 MR. VERNER: The ---

17 THE COURT: So I would sustain the objection. Now, if
18 you want to rephrase, then we'll -- we'll go from there.

19 MR. VERNER: Yes, sir.

20 Q You -- you are the victim in this -- in an attempted
21 murder.

22 A Yes, sir ---

23 Q Do you ---

24 A --- I am.

25 Q --- understand that?

1 A Yes, sir.

2 Q The -- and -- and if -- if the -- the argument --
3 whoever it was, you were not a part of it?

4 A Talking about the argument?

5 Q The -- whatever arguments were there, you were not
6 part ---

7 A No, sir ---

8 Q --- of any ---

9 A --- I wasn't.

10 Q --- of them?

11 A No, sir, I wasn't.

12 Q Okay. The -- Carlos never expressed any threats
13 towards you?

14 A No. No.

15 Q Did you see him shooting at you?

16 A I meant ---

17 Q And I understand bullets don't have any names. My
18 question is very simple: Did you see him shooting at you?

19 A I mean, he was aiming in my direction. I meant, and
20 the bullet came out the chamber.

21 Q Okay. The -- and where were you standing at the ---

22 A I was ---

23 Q --- time?

24 A --- standing by the back tire of the Explorer.

25 Q Were there other people in that area too?

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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- 1 A Yes.
- 2 Q The -- was anybody shot?
- 3 A No, sir.
- 4 Q Okay. How close was the back end of the car from
5 where Carlos was standing?
- 6 A I meant, I guess from the -- like I said, I -- from
7 the door to other door. I'm not good with measurements. I
8 ---
- 9 Q I -- I ---
- 10 A --- don't ---
- 11 Q --- understand that.
- 12 A --- know inches and yards and stuff. So, I mean, I
13 can't give you an accurate ---
- 14 Q Okay.
- 15 A --- measurement because ---
- 16 Q But -- but ---
- 17 A --- I don't know it.
- 18 Q The -- from the door to this courtroom to where you're
19 standing is what you're testifying that ---
- 20 A From ---
- 21 Q --- the measurement ---
- 22 A From where Carlos was standing?
- 23 Q From the car. Yes, ma'am.
- 24 A I'll say from the outside of the door probably to the
25 entrance, if that far. I meant, it wasn't too far. I

1 meant, he was visible; wasn't no -- no trees or nothing in
2 the way. I meant, you could see him. He was very visible.
3 He wasn't back that far.

4 Q The -- well, I -- I'm -- and I'm not trying to trick
5 you. I'm just trying to ---

6 A No. I ---

7 Q --- get a ---

8 A --- mean, I understand.

9 Q The -- you -- you -- I'm going to ask you ---

10 MR. VERNER: Your -- Your Honor, may I ask her just to
11 step down for a second?

12 THE COURT: Sure.

13 (Whereupon, the witness exited the witness stand.)

14 Q Would -- would you -- I just want you to -- if this is
15 the back end of the truck ---

16 A Okay.

17 Q --- how -- how far from the back end of the truck do
18 you remember that Carlos -- or the person shooting was
19 standing? Was he closer from where you are standing now or
20 further away?

21 A A little -- a little farther away ---

22 Q Okay. About ---

23 A --- than where ---

24 Q --- how many ---

25 A --- you standing from where I am.

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1 Q Okay. But a little bit further? About how many more
2 steps you think it would be?

3 A I meant ---

4 Q Ten more steps away?

5 A I -- probably ten or fifteen.

6 Q Okay. Thank you, ma'am. I'm just ---

7 (Whereupon, the witness reentered the witness stand.)

8 Q The -- were -- were there any other big objects
9 between -- the -- the truck was the closest big object ---

10 A That was the only object in the way of the gunfire, is
11 the truck.

12 Q Okay.

13 A I mean, it ---

14 Q And -- and ---

15 A --- was a ---

16 Q --- that was ---

17 A --- big, open space.

18 Q And that was the closest object to Carlos?

19 A Was the truck.

20 Q Okay. The -- now, when you heard the gunshots, can --
21 can you, as -- as best you remember -- and I'm going to ask
22 you to make sounds -- but -- but try to make the sounds of
23 the gunfire as you recall hearing them.

24 A You want me to make gun sounds?

25 Q Well, I'm -- I'm -- I don't care how the -- how you --

1 how you characterize ---

2 A Pop ---

3 Q --- the ---

4 A --- pop ---

5 Q --- sounds ---

6 A --- pop ---

7 Q --- but ---

8 A --- pop, pop, pop, pop.

9 Q That -- yeah. I'm -- I'm interested in how close
10 together they were in time..

11 A They were right behind each other.

12 Q Okay.

13 A Pop ---

14 Q Rapidly ---

15 A --- pop, pop ---

16 Q --- fired ---

17 A --- pop, pop ---

18 Q --- shots?

19 A Yeah.

20 Q Okay.

21 A I meant, it was a constant shoot.

22 Q Okay. Now, what is your brother's name?

23 A Johnny Davis.

24 Q Johnny?

25 A Uh-huh.

CROSS-EXAMINATION BY MR. VERNER - VICKIE DAVIS

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1 Q The -- and the -- in -- initially, at least, Johnny
2 was the lead one getting in the argument, at least from
3 your ---

4 A Yes.

5 Q --- friends' side of it?

6 A Uh-huh.

7 Q Okay. The -- but who else do you remember being in
8 the yard?

9 A It was family. I mean ---

10 Q Okay. Was there ---

11 A --- family.

12 Q --- a guy named Reginald Nance?

13 A Yeah. Red was in there.

14 Q Okay.

15 A Yes, sir. Because it was different people that talked
16 to the police, but they didn't give statements because I
17 don't know if they were scared or they just didn't want
18 anything to do with it. It was people scared to give
19 statements.

20 Q Okay. The ---

21 A But other people talked to officers in the yard.

22 Q And the -- your -- your recollection is you don't
23 recall who approached them the second time they ---

24 A No, sir. I can't ---

25 Q Okay.

1 A --- tell you.

2 Q Okay. The ---

3 A It must've happened when I walked off to go get my
4 golf club. I -- I couldn't -- I couldn't tell you that.
5 Because from my recollection, I don't remember them coming
6 back to the yard.

7 Q Thank you, Ms. Vickie Davis.

8 A Uh-huh.

9 THE COURT: Anything in redirect, Solicitor?

10 MR. SCOTT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q I -- I just want to clear up the golf-club thing.
14 When the first come walking back up Charles Street, you --
15 do you have the golf club when you first see them?

16 A No. When I -- when they -- when I found out they was
17 back the second time, that's when I walked off to get my
18 golf club.

19 Q Okay.

20 A Then that's when I came back and I told them, "Y'all
21 need to watch them because something ain't right." Because
22 like I say, they body movement wasn't right. I kept -- I
23 felt funny about it.

24 Q All right. Now, how are you holding the golf club?

25 Are you threatening them ---

REDIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS 337

1 A No.

2 Q --- with it?

3 A I'm -- I'm walking around. I meant, I'm walking
4 around with it like this, you know. I'm ready. I'm -- I'm
5 walking with it like this. That's how I was doing it. I
6 didn't swing or threaten nobody with it in that time. But
7 I was going defend myself if I had to. Because like I
8 said, our kids was there.

9 Q Right. You ---

10 A When ---

11 Q --- didn't run after them with the golf club and
12 that's why he had to shoot at you?

13 A No. Once he -- once Carlos shot and he ran off,
14 that's when I went up to Quentin. And on my way up to him,
15 that's when I made the 911 call because the lady -- the
16 dispatch told me that I don't need to be chasing him; I
17 need to back off because he might have a gun.

18 Q Okay. This was after Carlos ran off ---

19 A Yeah.

20 Q --- after ---

21 A Carlos ---

22 Q --- shooting?

23 A --- had ran off then.

24 Q All right. I guess my question is: Did you threaten
25 Carlos Reeder with any physical violence before he started

1 shooting?

2 A I meant, I had -- I didn't say anything to him.

3 Q Did anybody ---

4 A I ---

5 Q --- in your presence threaten him in any way?

6 A Only thing they told him, he need to get back in the
7 car and go ahead on because don't know Smoke stay around
8 here; don't nobody know Smoke.

9 Q I'm talking about the second time they come back.

10 A No. The second time it was no words, no contact, no
11 nothing.

12 Q Did he have any reason to fire shots at your group of
13 people?

14 A No, he didn't.

15 Q All right. Look -- look over here, Vickie. Do -- do
16 you -- this is State's No. 10. And that's a close-up
17 picture, but do you recognize what that is?

18 A That's one of the bullet holes.

19 Q All right. Where -- of -- of whose car?

20 A That's the -- the Explorer.

21 Q Which one?

22 A Dawayne.

23 Q Dawayne's?

24 Is that the one you were talking about standing beside
25 when the gunshots started?

REDIRECT EXAMINATION BY MR. SCOTT - VICKIE DAVIS 339

1 A Yes, sir. We were standing by the back tire on the
2 driver's side.

3 Q Where is that bullet hole?

4 A That one there, I think it -- well, that one right
5 there, I think that was on that -- the side that we were
6 standing on. I want to say two bullets hit the -- the
7 tailgate or either one ---

8 Q I'm talking ---

9 A --- hit it or that up there.

10 Q No. I'm asking specifically about that bullet hole.
11 Where on the car is that located?

12 A I think that right there is, like, on the back-
13 passenger's side.

14 Q Back-passenger ---

15 A Back -- no. Back-driver's side.

16 Q Let me show you Defendant's No. 1. Do you see that
17 same bullet hole in this picture?

18 A I see one right there and that right there.

19 Q I -- and where were you standing on the car when the
20 shots started?

21 A We were standing right here by this back tire.

22 Q And how far away are you from that bullet hole, then?

23 A The bullet hole is right there.

24 Q How far were you standing from where that bullet hole
25 hit?

1 A Right here by the back tire.

2 Q Did you realize that bullet hole hit so close to where
3 you were standing?

4 A After the fact. We didn't notice any damage until
5 after everything was over with.

6 Q And what is that bullet hole? Is that ---

7 A It shot the back window ---

8 Q It's ---

9 A --- out.

10 Q --- torso-level from where you -- where you had been
11 standing?

12 A Yeah. Yes, sir.

13 Q When you looked at Carlos Reeder pointing that gun at,
14 what'd you see? You looking down the barrel?

15 A I looked dead at him. When the first sight hit -- the
16 spark of fire came, that's when I -- I dipped, I turned,
17 and we ran. We all ran around the front of the car. Some
18 went in front of the house. You even had people trying to
19 get up under the black truck in the front.

20 Q It was pandemonium?

21 A Yeah. It was -- it was scatter. It was haywire.

22 Q You saw the muzzle blast when he fired ---

23 A Yes ---

24 Q --- the first ---

25 A --- I did.

RECROSS EXAMINATION BY MR. VERNER - VICKIE DAVIS 341

1 Q --- shot?

2 A Yes ---

3 Q Are you ---

4 A --- I did.

5 Q --- looking down the barrel?

6 A Just like you pointing at me now.

7 Q It wasn't over here?

8 A No.

9 Q Wasn't over here or up ---

10 A It was ---

11 Q --- here?

12 A --- straight ahead.

13 Q Okay. Thank you.

14 THE COURT: Any recross?

15 MR. VERNER: I do, Your Honor. I understand it's
16 recross, but I do want to ---

17 THE COURT: Okay.

18 MR. VERNER: --- touch ---

19 THE COURT: That's fine.

20 MR. VERNER: --- some ---

21 RECROSS-EXAMINATION

22 BY MR. VERNER:

23 Q The -- did you have the laser pointer?

24 A Yeah.

25 Q The -- my understanding -- I just want to clarify too.

1 I'm -- the -- you testified that you were standing -- when
2 you first saw them walking back up the street, you -- you
3 were standing towards the driver's back tire ---

4 A Yeah. Driver ---

5 Q --- when -- when ---

6 A --- back ---

7 Q --- they were ---

8 A --- tire.

9 Q --- walking back?

10 A Uh-huh.

11 Q The -- but you didn't stay there for the shooting, did
12 you? You went behind ---

13 A No.

14 Q --- the vehicle?

15 A Everybody got to running.

16 Q Okay. Well, the -- and there were six or seven shots
17 that were fired?

18 A Yes. About six or seven shots because ---

19 Q Okay.

20 A --- some went -- the truck and the side of the house.

21 Q That's right. I'm -- my question is: How -- how do
22 you know -- the prosecutor is -- is asking a question as if
23 that was the first shot fired. Do you know that for a
24 fact?

25 A Yes. Because the first shot you heard the glass

1 shatter.

2 Q Well, then, that would not be the first shot, would
3 it? That -- the first should would -- could be in -- in
4 that area, right?

5 A No. The first shot, when it hit, that's when the
6 glass shattered.

7 Q Okay. Is that the shot that broke the glass?

8 A I don't know. It's -- I mean, if the gunshot -- I
9 don't know if it broke the glass. But it -- the glass
10 broke.

11 Q Okay. And there were also shots fired up towards in
12 the house area?

13 A Yeah. Up right -- right in the front of the truck,
14 closer to this side.

15 Q Okay. The ---

16 A I think it was two or three ---

17 Q But did ---

18 A --- in the side ---

19 Q --- you see ---

20 A --- of the ---

21 Q --- the ---

22 A --- house.

23 Q Did you see the glass break, or you just heard the
24 loud ---

25 A When he was shooting, the glass broke. I meant, he

1 was still shooting.

2 Q And at ---

3 A I ran.

4 Q --- that point you ran?

5 A Yeah. I didn't ---

6 Q Okay.

7 A --- stop to see ---

8 Q And after ---

9 A --- nothing.

10 Q But you don't know the order of the -- where the shots
11 came ---

12 A I meant, we do know that the first shots hit the
13 truck. We do know that.

14 Q The -- to the best that you remember ---

15 A We do ---

16 Q --- the -- the first ---

17 A --- know ---

18 Q --- shot broke ---

19 A --- the first ---

20 Q --- the ---

21 A --- shots hit ---

22 Q --- windshield ---

23 A --- the truck.

24 Q --- or the -- or the rear windshield ---

25 A They hit the ---

RECROSS EXAMINATION BY MR. VERNER - VICKIE DAVIS 345

1 Q Okay.

2 A --- rear of the truck. The first shots hit the rear
3 of the truck.

4 Q Okay. The -- could it have been the also -- what
5 about that one? That one also struck the truck. Could
6 that ---

7 A Yes.

8 Q --- have been the first shot?

9 A I don't think that was the first shot.

10 Q Why not?

11 A Because it -- we didn't hear no -- I didn't hear no --
12 I heard the glass when it hit.

13 Q Okay. So you -- you think the first shot was in -- in
14 that area somewhere?

15 A Around in that area ---

16 Q Okay.

17 A --- from that light around in that area.

18 Q And you were in this area?

19 A I was standing right by that tire.

20 Q Okay.

21 A And it was Dirt right there. And it was -- it was
22 somebody else standing in between me and Dirt.

23 Q And actually, the first -- when you first identified
24 Carlos Reeder, you used a picture that a family member had
25 given you; is that correct?

- 1 A No, sir, it's not. No, sir, it's not.
- 2 Q You didn't have a friend named Beverly who texted you
- 3 a ---
- 4 A No.
- 5 Q --- photograph of ---
- 6 A That's ---
- 7 Q --- Carlos?
- 8 A No. You -- no. That's ---
- 9 Q Oh. That's ---
- 10 A --- not me.
- 11 Q That's ---
- 12 A That's somebody else. That's ---
- 13 Q Okay.
- 14 A --- not me. No.
- 15 Q Okay. The -- how are you related to Deborica Adams?
- 16 A We're not related. She -- her and my nephew go
- 17 together. That's my nephew's girlfriend.
- 18 Q Okay. The -- and the nephew was the one living ---
- 19 A Yes, sir.
- 20 Q --- with her?
- 21 A He was in the house.
- 22 Q Okay. And your nephew's name, again, is what?
- 23 A Travis Davis.
- 24 Q Okay. So Travis and Deborica are the actual two
- 25 homeowners?

RECROSS EXAMINATION BY MR. VERNER - VICKIE DAVIS 347

- 1 A Yes, sir.
- 2 Q Okay. And you would be connected to Deborica ---
- 3 A No.
- 4 Q --- on your nephew's side ---
- 5 A Yes, sir.
- 6 Q --- her boyfriend's ---
- 7 A Just ---
- 8 Q --- side?
- 9 A I know her through him.
- 10 Q Okay. Were most of the people out there family
- 11 members of Travis or friends of Travis or friends of -- or
- 12 just a ---
- 13 A The ---
- 14 Q --- mixture ---
- 15 A --- majority ---
- 16 Q --- of both?
- 17 A --- was family of -- of -- our family, the Davis
- 18 family.
- 19 Q Okay.
- 20 A I don't think she had any family members out there,
- 21 beside her kids.
- 22 Q Do you remember where Deborica moved from?
- 23 A I don't really know her like that. I just ---
- 24 Q She's not ---
- 25 A --- know her ---

RECROSS EXAMINATION BY MR. VERNER - VICKIE DAVIS 348

1 Q --- a Newberry ---

2 A --- through my ---

3 Q --- girl, is she?

4 A --- nephew. I do know she's not from Newberry.

5 Q Okay.

6 MR. SCOTT: Your Honor, if -- if -- we're only limited
7 to ---

8 THE COURT: Right.

9 MR. VERNER: I -- I'm through.

10 MR. SCOTT: --- redirect and ---

11 THE COURT: I -- I ---

12 MR. SCOTT: --- I think ---

13 THE COURT: --- think he's ---

14 MR. SCOTT: --- we're outside ---

15 THE COURT: --- finished ---

16 MR. VERNER: I ---

17 THE COURT: --- right?

18 MR. VERNER: --- I am through, Your Honor.

19 THE COURT: Okay. Before this witness steps down, let
20 me see the lawyers sidebar for just a moment.

21 (Whereupon, a sidebar conference was held off the
22 record in the presence of the jury, but out of the
23 hearing of the jury.)

24 THE COURT: All right. Based upon conversations with
25 the lawyers, based upon this witness's testimony as far as

1 the distance between where the shooter was and where she
2 was, she never gave a -- an actual number distance. But
3 based upon her testimony, where she was standing and that
4 wall where Mr. Verner was standing -- and then, she said
5 she was about ten to fifteen steps beyond that -- it's my
6 understanding that the lawyers have agreed that would be
7 anyone 15 yard, plus ten to fifteen steps backwards, as far
8 as distance -- distance between her and the shooter. Is
9 that correct?

10 MR. VERNER: Yes, sir. The -- I would agree that what
11 -- I guess the prosecutor and I agree it's about 15 yards
12 from wall to wall. So -- and she said she was about ten
13 steps -- I -- I don't want to stipulate that that's a fact
14 that that's where the shooter was. But that ---

15 THE COURT: Right.

16 MR. VERNER: --- is where her ---

17 THE COURT: Based ---

18 MR. VERNER: --- testimony ---

19 THE COURT: --- upon her testimony, though.

20 MR. VERNER: Yes, sir.

21 THE COURT: Okay. All right. And any further
22 questions?

23 MR. SCOTT: Your Honor, just briefly.

24 REDIRECT EXAMINATION

25 BY MR. SCOTT:

1 Q Ms. Davis, a lot of times we talk about a truck. You
2 -- you testified a lot about standing beside a truck and
3 different things happening to a truck. Which truck are you
4 talking about?

5 A The Explorer. That -- the Explorer right here.

6 Q Now, there are two Explorers in the yard. Which ---

7 A No. It's ---

8 Q --- Explorer ---

9 A --- the black one is a Expedition. This ---

10 Q Okay.

11 A --- one's Explorer.

12 Q Okay. You ---

13 A The black ---

14 Q --- talked ---

15 A --- one in the front is a Expedition.

16 Q So when you testified to a truck, you were talking
17 about Dawayne Davis's ---

18 A I'm talking about Dawayne Davis's truck.

19 Q Okay. Which was an Explorer?

20 A Was his Explorer, which is the gray one.

21 Q The gray one? Okay. Thank you.

22 THE COURT: All right. Thank you for your testimony,
23 ma'am. You ---

24 THE WITNESS: All right.

25 THE COURT: --- can step down.

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 351

1 (Whereupon, the witness exited the witness stand.)

2 THE BAILIFF: Excuse this witness?

3 MR. SCOTT: And, Your Honor -- yes, sir. We ---

4 THE COURT: Any objections ---

5 MR. SCOTT: --- would ask ---

6 THE COURT: --- this witness ---

7 MR. VERNER: No, Your Honor.

8 THE COURT: --- being excused?

9 MR. VERNER: It's -- it's ---

10 THE COURT: Without objection, ma'am, you're free to
11 stay with us or you're free to leave the courthouse.

12 THE WITNESS: Okay.

13 MR. SCOTT: Debora Adams, Your Honor.

14 THE COURT: Okay.

15 (Off the record briefly.)

16 (Whereupon, the witness came forward.)

17 DEBORICA ADAMS, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q Debora, will you spell your first name, please?

22 A D-e-b-o-r-i-c-a.

23 Q Ms. Adams, where do you live?

24 A [REDACTED] Rodelsperger Street, Newberry, South Carolina
25 29108.

1 Q All right. Slow down a little bit. [REDACTED] Rodelsperger?

2 A That's correct.

3 Q All right. And now, were you living there October
4 6th, 2012?

5 A That's correct.

6 Q Now, this October 6th, 2012, is -- is that a date you
7 recollect?

8 A Yes.

9 Q At that point how long had you been living in that
10 home?

11 A I signed the lease agreement September the 27th. I
12 moved all my stuff in October the 5th.

13 Q All right. So October 5th is the day you moved into
14 this home?

15 A Yes.

16 Q And, Deboraica, turn around real quick.

17 A (Complied.)

18 Q Is that picture -- is -- is -- that's Defense No. 1.
19 It -- is that the home at [REDACTED] Rodelsperger?

20 A That's correct.

21 Q Okay. Tell me about October 5th when you were moving
22 into the home. Who was with you?

23 A This guy named Smoke.

24 Q All right.

25 A He was with me. He was helping me move in.

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 353

1 Q How did you know Smoke?

2 A He was from the apartment complex that I had moved
3 from. He was just a neighborhood friend.

4 Q All right. You know his real name?

5 A No.

6 Q And so October 5th, Smoke was helping you move in.

7 Was anyone else there, helping you move, or was it just you
8 and he?

9 A No. Just me and him.

10 Q All right. What happened, oh, October 5th, 2012, when
11 you and Smoke were moving items into the home at [REDACTED]
12 Rodelsperger?

13 A As me and Smoke was moving my stuff in to Rodelsperger
14 on October the 5th, it was a car had came by. And it had
15 some guys in the car. And Smoke had went up to the car and
16 started talking to the guys.

17 Q All right. Hold on. Did you go up to the car?

18 A No.

19 Q Did you see the car?

20 A Yes.

21 Q And what -- how would you describe the car?

22 A It was a Toyota Corolla. It was a tan-looking Toyota
23 Corolla.

24 Q Okay. And now, where were you when Smoke went up to
25 the car to speak with the driver?

1 A I was still moving -- I was coming from outside to
2 inside my home. I was still moving some of the stuff from
3 off the truck to inside my home.

4 Q All right. Was this -- this just something that you
5 observed while you were going about moving things in and
6 out? You were ---

7 A Yes.

8 Q --- busy, so you didn't go talk with the people?

9 A That's correct. I -- I never said anything to them.

10 Q All right. Did you even know them?

11 A No.

12 Q All right. What happened next? He -- he's speaking
13 with the people in the car, and then what happens?

14 A He walks up to the car, speaking to the guys in the
15 car. I'm still moving the stuff in and outside of my home.
16 So when he come inside, the guys leave.

17 When Smoke come inside, I said, "Smoke, who is those
18 guys?"

19 And he said, "Oh, that's my buddy from jail."

20 Q Oh. Now, he indicated that he knew some people in ---

21 A Yes.

22 Q --- there?

23 Which person in the car did he indicate that he knew?

24 A Carlos Reeder.

25 Q All right. This is October 5th, 2012?

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 355

1 A Yes.

2 Q Did you know who Carlos Reeder was?

3 A No.

4 Q Okay. Anything else happen October 5th, 2012, that
5 was noteworthy at all?

6 A No.

7 Q Okay. Again, you just saw the car; you didn't see the
8 people in the car?

9 A That's correct.

10 Q And Smoke tells you the name of Carlos Reeder?

11 A That's correct.

12 Q October 6th, 2012, I -- I believe that was a Saturday.
13 Is that your recollection?

14 A That's correct.

15 Q What were you doing that Saturday?

16 A I was at work.

17 Q And where were you working at the time?

18 A Laurens Agape.

19 Q What's Agape?

20 A It's a nursing home in Laurens.

21 Q Okay. And what was going on at the house at [REDACTED]
22 Rodelsperger while you were at work?

23 A They were just having a family cookout.

24 Q All right. This was something you knew about?

25 A I mean, they had mentioned it earlier that day.

1 Q And were -- and they were doing it without you?

2 A Yes. I was at work.

3 Q Okay. But who -- who lived there with you?

4 A My boyfriend and my children.

5 Q Okay. So they were there and you were at work while
6 they were having a ---

7 A Yes.

8 Q --- cookout?

9 A My boyfriend was there, but my kids wasn't. His kids
10 was there. But ---

11 Q Okay.

12 A --- mine wasn't.

13 Q Is this something you were planning on going to when
14 you got off work?

15 A Yes. That's correct.

16 Q Okay. At some point, October 6th, the day after you
17 move in, did you receive a phone call from somebody at the
18 party at your home?

19 A Yes.

20 Q All right. And -- and what was that phone call in
21 regards to?

22 A That a shooting had occurred at my home.

23 Q All right. Were -- were you at work at this point or
24 on your way home or what?

25 A No. I was on my way -- I haven't even clocked in.

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 357

- 1 I've -- excuse me. I haven't even clocked out. By the
2 time I was on the phone, I'm -- I'm at the time clock now,
3 fixing to get -- about -- about to clock out ---
- 4 Q Okay.
- 5 A --- while they're calling me on the telephone.
- 6 Q All right. And -- okay. So you're at work when you
7 get the call, and you're trying to clock to, what, get home
8 or ---
- 9 A Yes.
- 10 Q --- and just ---
- 11 A To go home.
- 12 Q Okay. It just happened to occurred in the time you
13 were supposed to clock out?
- 14 A I -- I assume so.
- 15 Q Okay. What information did you understand, as far as,
16 like, what happened with the shooting?
- 17 A They just said that a shooting ---
- 18 MR. VERNER: Your Honor ---
- 19 A --- had occurred.
- 20 MR. VERNER: --- the ---
- 21 THE COURT: Okay. Can't repeat ---
- 22 MR. VERNER: --- if she's ---
- 23 THE COURT: --- what someone ---
- 24 MR. VERNER: --- not a ---
- 25 THE COURT: --- told you. You can testify as a result

1 of your conversation what you did. Repeat the question,
2 Solicitor.

3 Q Did you -- all right. Without saying what they said,
4 did you receive a description of what had occurred at your
5 home?

6 A Yes.

7 Q Did any information from that description ring a bell
8 with you?

9 A Yes.

10 Q And -- and what in particular in regards to the
11 shooting rang bells with you?

12 A That someone had came by, looking for a guy named
13 Smoke.

14 Q And why was that significant to you?

15 A Because no one knew that Smoke had helped me move in
16 but these guys.

17 Q Okay. Because Smoke did not live there?

18 A No.

19 Q Was Smoke at the party that night?

20 A No.

21 Q Where was Smoke from?

22 A Smoke was from Laurens.

23 Q Okay. So that rings a bell to you because why would
24 somebody be there looking for Smoke?

25 A That's correct.

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 359

1 Q Okay. Did any other detail about the shooting raise
2 flags with you?

3 A No.

4 Q Okay. Were you given a description of any automobile?

5 A I was.

6 Q Was that significant to you?

7 A Yes.

8 Q Why was that significant to you?

9 A Because this is the same automobile that came by my
10 house the day of October the 5th when I was moving in that
11 had came there and the guys was talking to Smoke..

12 Q Okay. Upon hearing that there was a shooting and upon
13 hearing these two details, did any name come to mind?

14 A This -- I don't know his little street name.

15 Q I'm -- I'm not asking about a street name. When you
16 hear about a Corolla and you hear about somebody looking
17 for Smoke -- did they know who the shooter was at the time?

18 A No.

19 Q Well, did you have an idea upon hearing these details?

20 A I did.

21 Q And what -- what did -- well, tell us: Who -- who did
22 you -- who came to your mind when you heard this?

23 A When they -- when they gave me a description that
24 someone had been there looking for Smoke, I -- I -- I
25 assumed then it was Carlos Reeder.

1 Q Okay.

2 A I knew then it was him.

3 Q All right. But you weren't there to see ---

4 A No.

5 Q --- the shooting, were you?

6 A I wasn't there.

7 Q All right. Now, you clock out and then you, what,
8 start heading back towards Rodelsperger?

9 A That's correct.

10 Q All right. On the way home, did -- did you pass
11 anyone that you recognized or knew?

12 A I did.

13 Q Okay. And -- and tell us what happened when you're on
14 the way home.

15 A I -- on my home -- as I'm on my way home, I'm coming
16 through Joanna. And I see this same car that had been to
17 my house talking to Smoke on October the 5th as I'm heading
18 home. This is the same car that I see with a guy on the
19 passenger side laid down and a female driving.

20 Q And they were headed towards where?

21 A They was headed -- I was headed towards Newberry; they
22 was headed towards Joanna.

23 Q All right. You recognize the car. But did you
24 recognize the female driver?

25 A No. I mean, I don't -- I didn't recognize her at that

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 361

1 time.

2 Q Okay. And -- and you -- did you say a black male in
3 the passenger seat?

4 A Yes.

5 Q Lying back in his seat?

6 A Yes.

7 Q Did you -- so you didn't see him either, did you?

8 A No, I didn't see him either.

9 Q Okay.

10 A But I did see a -- a female driving and a black male
11 on the passenger seat, laid back.

12 Q And it was the same Corolla -- or you thought it to be
13 the same Corolla you had seen the day before?

14 A No. I'm -- it looked just like this car.

15 Q Okay.

16 A It was this exact same car.

17 Q All right.

18 A I mean, it was nothing but two cars on the street. It
19 was me and this car.

20 Q Okay.

21 A That was it.

22 Q All right. So when you got -- when you finally get
23 home or -- is law enforcement out there?

24 A Yes.

25 Q And at -- at that time they -- they did not have an

1 identity of the shooter; is that correct?

2 A That's correct.

3 Q Because nobody in the yard recognized him?

4 A That's correct.

5 Q Did you relay to law enforcement the name Carlos

6 Reeder?

7 A I did.

8 Q Okay. And you told them about the story from the day
9 before when you were moving in?

10 A I did.

11 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

12 Q All right. Now, without saying how you had heard it
13 or -- or why you had heard it, had you ever heard the name
14 Carlos Reeder before?

15 A I have.

16 Q And did you know somebody who knew him?

17 A I did.

18 Q And who is that person?

19 A Beverly Jones.

20 Q Who's she, related to you?

21 A She's related to my children.

22 Q Okay. It -- okay. And where does she live?

23 A She stay in Cross Hill.

24 Q All right. Did you contact her in regards to Carlos?

25 A I -- I had contacted her.

DIRECT EXAMINATION BY MR. SCOTT - DEBORICA ADAMS 363

1 Q This is while you were on the scene with the cops
2 there?

3 A That's correct.

4 Q All right. What was the purpose of you contacting
5 her?

6 A So she could give me a description of who he was.

7 Q Okay. And she sent you a picture of him; is that
8 right?

9 A That's correct.

10 Q Now, who did you show this picture to?

11 A To the law enforcement.

12 Q All right. Did you go around, showing it to the other
13 people ---

14 A No, I ---

15 Q --- in the yard?

16 A --- did not.

17 Q All right. And -- and do you know -- or do you have
18 any knowledge of law enforcement getting a photographic
19 lineup after that?

20 A No.

21 Q Okay. Okay. So you didn't see them showing lineups
22 to anyone?

23 A No.

24 Q Okay. Now, that -- it was a lot of people out there?

25 A It was, including children that was at the playground.

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS 364

1 Q Now -- now, generally, would you describe a lot of the
2 people there as not wanting to get involved?

3 A I do. They gave verbal statements to the police
4 officer, but they didn't do written because they didn't
5 want their name to be given.

6 Q Okay. But to your knowledge, Vickie Davis and Dawayne
7 Davis did?

8 A Yes.

9 Q Okay. Okay. Thank you, Ms. Adams.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. VERNER:

13 Q Afternoon, Ms. Adams.

14 A Good afternoon.

15 Q The -- my understanding is you're not originally from
16 Newberry, are you?

17 A No, sir.

18 Q Had -- had you ever lived in Newberry until you
19 arrived here in late September through October 5th?

20 A No, sir.

21 Q Okay. And I'm sure, living in Laurens, that you've
22 been through Newberry and -- and maybe dated people or --
23 or generally familiar but in terms of living here, most of
24 your friends would be in the Laurens area?

25 A That's correct.

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS 365

1 Q Okay. The -- and Smoke is just a friend of yours who
2 was nice enough to help you move from Laurens?

3 A That is correct.

4 Q The -- and was it just coincidentally -- you're saying
5 that the day that you were moving, October 5th, that you
6 remember Carlos Reeder speaking to him?

7 A Yes. As we was moving in, they was, like, riding by.
8 And I ---

9 Q Who ---

10 A --- guess he ---

11 Q --- who is they?

12 A Carlos and his buddy.

13 Q The -- do you know who his buddy ---

14 A No.

15 Q --- was? Okay.

16 A I just seen two -- two/three people in the car.

17 Q Okay. The -- so it may or may not have been Quentin
18 Graham or anybody else? But you -- you don't know them
19 from Adam, whoever he was ---

20 A I don't ---

21 Q --- with?

22 A --- know them.

23 Q Okay. The -- did you know Carlos Reeder at that time?

24 A No, I didn't.

25 Q Okay. What -- was it a hostile exchange between

1 Carlos and Smoke?

2 A No.

3 Q The -- they're actually friends, aren't they?

4 A Correct.

5 Q So -- and -- and there was nothing wrong with Carlos
6 coming by to say hey to Smoke? You didn't see anything
7 hairy about that, was it?

8 A No.

9 Q The -- and -- and from what you know, would there have
10 been -- been anything wrong for Carlos to come by the next
11 day, asking if his friend Smoke was there at the house?

12 A I didn't -- I didn't see nothing wrong with it.

13 Q Okay. The -- it -- it certainly sounds like it
14 started innocent enough, if -- if it's true it happened
15 that way. But he -- somebody was coming by -- as far as
16 you know, Smoke and Carlos are friends?

17 A Right. That's correct.

18 Q Okay. You didn't see any threats or -- or coming back
19 the next day to get -- try to get even with Smoke or -- or
20 any kind of hostility?

21 A No. No, sir.

22 Q It -- it was just friends saying hey to each other?

23 A Yeah. Yes.

24 Q The -- do you know most of the members of -- are --
25 are you still with your -- your boyfriend at that time?

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS 367

- 1 A That's correct.
- 2 Q Okay. The -- how long had you known him ---
- 3 A Prior to ---
- 4 Q --- prior to ---
- 5 A --- us ---
- 6 Q --- you moving ---
- 7 A --- moving in ---
- 8 Q --- together in -- in October 5th?
- 9 A Over two years.
- 10 Q Okay. Did you know most of his cousins and ---
- 11 A Oh, of course.
- 12 Q So even though you weren't there at the party, the --
- 13 you -- you would've recognized most of the people there?
- 14 A Yes.
- 15 Q Okay. Are those mostly Newberry people, or they come
- 16 -- did he come down from Laurens too or ---
- 17 A No. They're mostly Newberry people.
- 18 Q Okay. The -- do you have any idea how many people
- 19 were at the party?
- 20 A No, sir.
- 21 Q The -- had y'all had cookouts like that at -- at -- in
- 22 Laurens or at other people's yards here in Newberry where
- 23 you've gone to similar-type family get-togethers with his?
- 24 A Similar in Laurens.
- 25 Q Okay. And his family would come up there to -- to

1 basically hang out or -- or have a family get-
2 together/cookout?

3 A In Laurens?

4 Q Yes, ma'am.

5 A No.

6 Q Okay. The -- do you have any idea how many people
7 were in the yard?

8 A No, I don't.

9 Q Okay. The -- do you have any -- who would've invited
10 them?

11 A Who would have invited who?

12 Q The -- what -- the -- I assume that your boyfriend
13 probably just got the word out to some of his family
14 members that he was having a -- "we're moving in; we're --
15 we're going have a cookout and just get the people to
16 come"?

17 A Yes.

18 Q Okay. The -- how long did it take you to get from
19 Laurens County -- after you got the telephone call, how
20 long do you think it got you to come back down from . . .

21 A From work to home?

22 Q Yes, ma'am.

23 A Approximately 30/35 minutes.

24 Q Okay. Was it still daylight when you got home, or was
25 it already dark?

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS 369

- 1 A The sun hadn't dropped yet.
- 2 Q Okay.
- 3 A It was -- it was after 6:30.
- 4 Q Okay. The -- were the police still out there in the
- 5 yard when you got home?
- 6 A Yes.
- 7 Q The -- how many people were still left over?
- 8 A It was a good many.
- 9 Q I -- you -- you're going have to tell me what a good
- 10 many means.
- 11 A I can't exactly say.
- 12 Q More than ten?
- 13 A Yes. It was ---
- 14 Q Okay.
- 15 A --- more than ten.
- 16 Q All right. We talking about adults, now?
- 17 A You talking about adults? Just adults?
- 18 Q Yes, ma'am.
- 19 A Yeah. It was around about ten ---
- 20 Q Okay.
- 21 A --- ten or more.
- 22 Q Was -- was it a fairly younger crowd, or was it a --
- 23 like -- like, a --- your-parents'-age crowd or ---
- 24 A No. It was around about -- it wasn't no older, older
- 25 crowd.

1 Q The -- most of the -- people there would be about what
2 age-group type?

3 A In their 30s, close ---

4 Q Okay.

5 A --- beginning of 40s.

6 Q The -- have you ever heard of any -- any of those --
7 since you've been with him, any -- anybody there having
8 prior problems with Carlos before?

9 A No.

10 Q Okay. So as -- as best you know, there was no
11 existing feud going on between the people at the party and
12 Carlos Reeder?

13 A Not before this happened. No.

14 Q Oh, come on. The -- all right. And -- and everything
15 that you have heard about it and that -- that you've
16 testified to pretty much comes from people -- either your
17 boyfriend or other people in the family telling you what
18 they saw happen or what they heard happen?

19 A I mean, just random people talking.

20 Q Okay. But the -- as far as what actually happened
21 that day, you're relying entirely on what other people told
22 you who were there?

23 A Explain that.

24 Q The -- you -- you weren't there until -- and -- and at
25 least an hour or two after the -- the incident occurred,

CROSS-EXAMINATION BY MR. VERNER - DEBORICA ADAMS 371

1 right?

2 A Right.

3 Q So -- so everything that happened that day ---

4 A They saw it.

5 Q --- other than the stuff that you remember from
6 October 5th, from that point on, everything is -- is what
7 you heard other people telling you ---

8 A Yes.

9 Q --- happened?

10 Okay. Thank you, Ms. Deboraica ---

11 A You're welcome.

12 Q --- Adams.

13 THE COURT: Any redirect?

14 MR. SCOTT: No, sir.

15 THE COURT: Okay. Thank you for your testimony. You
16 can step down. Any objections to this witness being
17 excused?

18 MR. SCOTT: None from the state, Your Honor.

19 THE COURT: All right. Without objection this witness
20 is excused. You're welcome to remain with us or you're
21 free to leave the courthouse.

22 THE WITNESS: Okay.

23 (Whereupon, the witness exited the witness stand.)

24 THE COURT: All right. We're going to take a ten-
25 minute recess for this afternoon. Caution and remind the

1 jury not to discuss anything about this case amongst
2 yourselves. And we'll come back about ten minutes.

3 (Whereupon, the jury exited the courtroom at 3:25
4 p.m.)

5 (Off the record briefly.)

6 THE COURT: All right. We'll be in recess about ten
7 minutes or so.

8 (Off the record from 3:25 p.m. until 3:48 p.m.)

9 (Whereupon, State's Exhibit 18 and 19 were marked for
10 identification off the record.)

11 THE COURT: Okay. Let -- let's go back on the record.
12 I think, Solicitor, you indicated that this officer be your
13 last witness. Is that still the plan?

14 MR. SCOTT: That's correct, Your Honor.

15 THE COURT: Okay. And -- and I -- I'm -- I -- I trust
16 that you'll be careful in examination of this officer
17 concerning the photo of the defendant and how that was
18 obtained. We don't want any insinuation of ---

19 MR. SCOTT: Oh, yes, sir.

20 THE COURT: You -- you ---

21 MR. SCOTT: Yes, sir.

22 THE COURT: --- you understand where I'm coming from?

23 MR. SCOTT: It -- it's a DMV ---

24 THE COURT: Okay.

25 MR. SCOTT: --- photo.

1 THE COURT: Okay. All right. Okay. Anything, Mr.
2 Verner, before we bring the jury out?

3 MR. VERNER: No, Your Honor.

4 THE COURT: Okay. All right. Let's bring the jury
5 out, please.

6 MR. VERNER: Just as -- as a technical matter, we've
7 measured the distance. It was actually 13 yards, so the
8 solicitor was off by 2 ---

9 THE COURT: Okay.

10 MR. VERNER: --- yards.

11 THE COURT: All right. Do we want to -- I'll note
12 that for the jury?

13 MR. VERNER: No, sir. It's ---

14 MR. SCOTT: No.

15 MR. VERNER: --- 15 yards ---

16 MR. SCOTT: It --- 15's ---

17 THE COURT: Don't need to?

18 MR. SCOTT: --- fine ---

19 THE COURT: Okay.

20 MR. SCOTT: --- because another 15 steps ---

21 THE COURT: Okay.

22 MR. SCOTT: --- paces or what they said.

23 THE COURT: All right.

24 MR. VERNER: Yeah. I thought it was at least 20.

25 THE COURT: All right.

1 (Whereupon, the jury entered the courtroom at 3:49
2 p.m.)

3 THE COURT: All right. Let the record reflect the
4 jury is back in. And, Madam Forelady, when we had started
5 the break, there was some indication from you, ma'am, that
6 you needed to communicate something with the Court. And I
7 ---

8 FOREPERSON: Yes.

9 THE COURT: --- indicated to you let's just wait till
10 the whole jury was back and we would do it. So it -- what
11 was that you needed to communicate to the Court?

12 FOREPERSON: There was a question from one of the
13 jurors. And she wasn't certain could she ask this
14 particular question.

15 THE COURT: Well, if -- if it's a question concerning
16 any of the facts or evidence in this case or even what the
17 law is, I cannot respond to that. Now, if it's something
18 outside of that, go ahead and -- if -- if she can relay
19 that to you and I -- I want to hear it from -- from you.
20 So if you want to . . .

21 (Whereupon, the foreperson and a juror conferred.)

22 FOREPERSON: Okay. She wants to know who are the two
23 persons that was supposed to be attempted murder.

24 THE COURT: Okay. That is ---

25 FOREPERSON: The -- the ---

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 375

1 THE COURT: --- a ---

2 FOREPERSON: --- two names on the indictment. What
3 was the two -- she's confused.

4 THE COURT: All right. The -- I -- I will be glad to
5 publish the indictments. But I will do that at the
6 conclusion of the case. When I give the final charge, I
7 will republish the two indictments that I published at the
8 outset. I think that would be the most appropriate time to
9 do that.

10 FOREPERSON: Okay.

11 THE COURT: Okay. All right. Okay. All right.
12 Solicitor, you can call your next witness, please.

13 MR. DANIEL: Yes, sir, Your Honor. The state calls
14 Allison Moore.

15 (Whereupon, the witness came forward.)

16 ALLISON MOORE, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. DANIEL:

20 Q Officer Moore, you're a investigator/detective with
21 the Newberry Police Department?

22 A Yes, sir.

23 Q How long have you worked in that capacity?

24 A For about two years now.

25 Q All right. How long have you been in law enforcement?

1 A Eighteen years.

2 Q October 6th of 2012, about a year and a half ago now,
3 were you working as an investigator?

4 A Yes, sir, I was.

5 Q Okay. Did you have an occasion to become involved in
6 a shooting investigation that occurred at [REDACTED] Rodelsperger
7 Street here in Newberry?

8 A Yes, sir.

9 Q Tell us about how you became involved in this shooting
10 investigation at that location.

11 A Okay. The lieutenant who was working that night was
12 Lt. Jay Brogdon. I received a call from him that a
13 shooting had taken place at [REDACTED] Rodelsperger and he needed
14 me to respond in order to obtain a lineup of a possible
15 suspect.

16 Q And what information had you received about a
17 potential suspect in the shooting?

18 A Well, when I arrived at my office, I was met by Lt.
19 Brogdon, who gave me the information of Carlos Demont
20 Reeder.

21 Q Now, October 6th, were you already -- you said you
22 arrived at the office. Was that a workday?

23 A No, sir. I believe it was a Saturday, I believe.

24 Q Okay.

25 A Uh-huh.

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 377

1 Q So once you arrived at the office, you were met by Lt.
2 Jay Brogdon?

3 A Yes, sir.

4 Q And you received information about the suspect?

5 A Yes, sir.

6 Q And that was Carlos Demont Reeder?

7 A That's correct.

8 Q Now, when you receive information about a suspect,
9 what exactly do you mean, "information"?

10 A I received his name. And then me and -- me and the
11 lieutenant looked him up in our LawTrak database. We -- we
12 saw that we had his name, his date of birth, and -- and an
13 -- a possible address and also his driver's license. And I
14 also cross-referenced that through our communications
15 center to get a printout of his DMV driver's license.

16 Q Now, every person in the state of South Carolina that
17 has a driver's license has a unique number that's -- that
18 they're associated with?

19 A That is correct.

20 Q Now, you wanted -- you had this information because
21 you wanted to obtain a photo lineup?

22 A Correct.

23 Q And tell us the process of -- of gathering a photo
24 lineup.

25 A The SLED Fusion Center in Columbia has a request form.

1 And on that form contains a -- his name, his race, date of
2 birth, and his driver's license number. So I filled in all
3 that information and I sent it to the SLED Fusion Center in
4 Columbia through my e-mail.

5 Q Investigator Moore, I'm going to show you what's been
6 marked for ID purposes as State's No. 19. You recognize
7 that?

8 A Yes, sir. That is that SLED request form.

9 Q Okay. And that's the information that you sent to
10 SLED in order to obtain a photo lineup?

11 A Yes, sir.

12 Q Now, when you do that, that's how a photo lineup is
13 generated through -- now, SLED is -- tell us what SLED is.

14 A The SLED Fusion Center is just a resource center that
15 -- at SLED, the State Law Enforcement Division in Columbia.
16 It's just a resource center that we reach out to them when
17 we are unable to do certain things. They -- they're just a
18 large research that we're able to utilize.

19 Q So it's just -- they support local law enforcement in
20 various functions?

21 A Correct.

22 Q All right. And so you sent that information in order
23 to do a photo lineup; SLED generates the photo lineup of
24 that suspect that you give information on?

25 A That's correct.

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 379

1 Q Do they send other photos?

2 A They -- correct. They send a total of six.

3 Q Send a total of -- and who are -- what are the other
4 six photos of?

5 A They're just the same height, weight, sex, and race of
6 the suspect.

7 Q Okay. I want to show you what's been marked for ID
8 purposes as State's No. 18. Do you recognize that?

9 A Yes, sir.

10 Q And what is that?

11 A Okay. Along with sending the six pictures in the
12 photo lineup, they send the picture of the suspect that we
13 are looking at. It's an individual picture. That way they
14 know that that's -- that's Carlos Reeder who we're looking
15 at.

16 Q So you sent ---

17 MR. DANIEL: And, Your Honor, I'll offer State's No.
18 18 and 19 for admission into evidence.

19 THE COURT: Okay. What says the defense?

20 MR. VERNER: The -- Your Honor, I don't have any --
21 the -- subject to the preliminary ---

22 THE COURT: Sure.

23 MR. VERNER: --- motion ---

24 THE COURT: Sure.

25 MR. VERNER: --- I -- I don't have any objection ---

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 380

1 THE COURT: Okay.

2 MR. VERNER: --- to this ---

3 THE COURT: All right.

4 MR. VERNER: --- particular ---

5 THE COURT: Thank you very much. Eighteen and 19 in
6 -- into evidence on behalf of the state.

7 (Whereupon, State's Exhibits 18 and 19 were entered
8 into evidence.)

9 Q Okay. This -- State's No. 19, this information you
10 sent to SLED Fusion Center ---

11 A Uh-huh.

12 Q --- in order to get a -- a photo lineup. They sent
13 you back a picture?

14 A An individual picture.

15 Q And this ---

16 A Uh-huh.

17 Q --- photo is of ---

18 A --- Carlos Reeder.

19 Q Okay. And what else did SLED Fusion send you?

20 A And they sent -- in another attachment they sent these
21 -- the lineup -- the photo lineup of the six individuals.

22 Q And these other, I guess -- did these six individuals
23 -- one of them is Carlos Reeder?

24 A Correct.

25 Q So the five other individuals in this six-pack photo

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 381

1 lineup, as I'm going to call it ---

2 A Correct.

3 Q --- are not Carlos Reeder? These ---

4 A I'm sorry. Say that again.

5 Q These other five -- because one of them's ---

6 A Uh-huh.

7 Q --- Carlos Reeder in this -- in these six photos they
8 sent you.

9 A Uh-huh.

10 Q Now, the other five, who -- who are those ---

11 A They ---

12 Q --- pictures ---

13 A --- they are -- I don't know who they are. They're
14 not Carlos Reeder. It's one Carlos Reeder and the other
15 five who match Carlos Reeder's description.

16 Q In terms of race?

17 A Race.

18 Q Gender?

19 A Sex. And -- and personal characteristics.

20 Q Okay. Hair length?

21 A Correct.

22 Q So if a suspect had -- is -- is described as having
23 dreadlocks, they're not going to send you back a picture of
24 someone with a bald head?

25 A No, sir.

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 382

1 Q Okay. I'm going to show you what's been marked for ID
2 purposes as State's No. 1. Do you recognize that?

3 A Yes, sir. This is the photo lineup I showed Ms.
4 Vickie Davis.

5 Q About what time did you receive that packet from SLED
6 Fusion Center, the six-pack lineup?

7 A I probably received it probably 7:30/7:45 maybe that
8 night.

9 Q So that Saturday night you received it?

10 A Yes, sir.

11 Q And as soon as you received it, you went on scene to
12 [REDACTED] Rodelsperger?

13 A Correct.

14 Q And that's when you met Vickie and Dawayne Davis; is
15 that correct?

16 A Correct.

17 Q And -- and I'm also going to show you State's No. 2.

18 A Uh-huh.

19 Q You recognize that?

20 A Correct. This is the photo lineup I showed Dawayne
21 Davis.

22 Q Okay. And both State's 1 and 2 are the photo lineups
23 you showed both our eyewitnesses, Vickie Davis and Dawayne
24 Davis?

25 A Correct.

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 383

1 Q And you conducted the photo lineup with them?

2 A Yes.

3 Q Were they separated when they did this?

4 A Yes.

5 Q Did they know the name of the suspect at the time?

6 A At -- no, sir. Not at the time.

7 Q Were -- I'll start with Vickie Davis.

8 A Uh-huh.

9 Q Was Vickie Davis able to -- what kind of questions did
10 you ask Vickie Davis when she identified the suspect in
11 that lineup?

12 A This is her lineup. And I gave her the lineup. And I
13 asked her, if she recognized the shooter in this lineup,
14 she was to circle it and make the initial.

15 MR. DANIEL: Your Honor, I'll offer State's No. 1 for
16 admission into evidence.

17 THE COURT: Okay. What says the defense?

18 (Whereupon, Mr. Daniel and Mr. Verner conferred.)

19 MR. VERNER: Without -- well, subject ---

20 THE COURT: Subject ---

21 MR. VERNER: --- to my previous ---

22 THE COURT: --- to preliminary ---

23 MR. VERNER: --- objection ---

24 THE COURT: --- objections ---

25 MR. VERNER: --- yes, sir.

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 384

1 THE COURT: --- other than that? Okay. So admitted
2 into evidence as number -- which one do you have, 1 or 2?

3 MR. DANIEL: Number 1, Your Honor.

4 THE COURT: Number 1 into evidence.

5 (Whereupon, State's Exhibit No. 1 was entered into
6 evidence.)

7 Q Okay. And I'm going to put this on the projector
8 here. Okay. Now, what are we looking at here?

9 A This is our department's photographic-lineup form,
10 where we put the date; my name is there who showed me a
11 photographic lineup containing six pictures; I viewed this
12 lineup while at location -- that's [REDACTED] -- where Ms. Vickie
13 Davis signed that she identified Picture No. 2, which is
14 the person associated with an incident involving attempted
15 murder that occurred at [REDACTED] Rodelsperger on October 6th.

16 Q And witness name is Vickie Davis?

17 A Correct.

18 Q And witness signature is that Vickie Davis?

19 A Correct.

20 Q And Vickie Davis -- now, when you say "I identified
21 Picture No. 2, which is the person associated with incident
22 involving attempted murder," are you referring to who was
23 the shooter or were you specific in -- in what you told her
24 who she -- who she is identifying?

25 A I told her she needed to look at the photographic

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 385

1 lineup and identify who the shooter was in this incident --
2 or identify the -- the person that she believed was the
3 shooter in the incident.

4 Q Did you tell her the shooter was definitely in this
5 six-pack lineup?

6 A I did not say either way.

7 Q All right. The next page is what?

8 A That is the six individuals in the photo lineup.

9 Q And -- and I see here No. 2 is circled.

10 A Correct.

11 Q And whose initials are that beside that?

12 A That's Vickie Davis's.

13 Q And who is No. 2?

14 A That is Carlos Reeder.

15 Q And No. 1, 3, 4, 5, and 6, who are they?

16 A I have no idea.

17 Q That's just other individuals who have -- have similar
18 physical characteristics?

19 A That's correct.

20 Q Okay. Now, No. 2, this is -- SLED obtained this photo
21 through DMV records?

22 A Correct.

23 Q Department of Motor Vehicle Records?

24 A Correct.

25 Q Driver's license picture?

1 A Correct. So those other five individuals are
2 individuals throughout the whole state of South Carolina.

3 Q Okay. And then, this is the identifying information
4 that you sent to SLED in order to obtain this lineup?

5 A Yes, sir.

6 Q And this contains Carlos Reeder's identifying
7 information?

8 A Yes, sir, it does.

9 Q Date of birth, driver's license number?

10 A Yes, sir.

11 Q And then, this larger photo is what again?

12 A That is just the single, individual picture that SLED
13 sends me so I'll know that that's Carlos Reeder; that
14 that's who I requested.

15 Q Is this No. 2?

16 A Correct.

17 Q That's Carlos Reeder right ---

18 A That's ---

19 Q --- here?

20 A --- Carlos Reeder. Uh-huh.

21 Q All right. That was Vickie Davis's photographic
22 lineup we just looked at. Now, State's No. 2, it's been
23 admitted into evidence.

24 A Uh-huh.

25 Q This is for or related to Dawayne Davis; is that

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 387

1 correct?

2 A That is correct.

3 Q Okay. Same thing: This is -- what are we looking at
4 here?

5 A That's the same Newberry City form. The only
6 difference on there is Dawayne's -- printed his name at the
7 bottom as a witness and then signed as a witness.

8 Q Okay. And the next page, you ask -- did you go
9 through the same questions with Dawayne as you did for
10 Vickie?

11 A Correct. I showed him the lineup and I asked him to
12 pick out the shooter in this incident.

13 Q And what are we looking at here?

14 A He circled No. 2 with his initials.

15 Q "DD" is Dawayne Davis?

16 A Correct.

17 Q And Vickie and Dawayne were separated at the time they
18 selected these photos?

19 A Correct.

20 (Whereupon, Mr. Daniel and Mr. Scott conferred.)

21 Q Now, when Vickie and Dawayne were selecting who they
22 thought the shooter was -- start with Vickie -- did Vickie
23 -- how quickly did Vickie select No. 2 as the person who
24 was the shooter?

25 A She had no hesitation. It was quick.

1 Q So immediately when she saw those six photos, she
2 circled No. 2?

3 A She did.

4 Q And this was approximately what time that Vickie made
5 this selection?

6 A I'm going to say around probably eight o'clock at
7 night.

8 Q So 8 p.m. was the identification?

9 A (No audible response.)

10 Q Did Dawayne make his at the same time?

11 A It was after Vickie. We -- we talked with Vickie.
12 She circled her -- her response. And then she left, and
13 then Dawayne came over to where we were.

14 Q What about Dawayne's level of certainty in -- in
15 identifying the shooter?

16 A Oh, he -- he doesn't -- he didn't hesitate as well.

17 Q He selected No. 2?

18 A He selected No. 2 as the shooter.

19 Q Did you suggest that No. 2 was the shooter?

20 A No, sir.

21 Q You didn't make any suggestive remarks?

22 A No, sir.

23 Q You didn't point to No. 2?

24 A No, sir.

25 Q You're familiar with the Charles Street/Rodelsperger

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 389

1 area, that neighborhood?

2 A I am.

3 Q Okay. And you were on scene that night of October
4 6th, 2012?

5 A Only for the lineups.

6 Q Okay. But you were familiar with the scene and where
7 the -- the shell casings were located at one point?

8 A That is correct. I -- I -- I've worked for the city
9 for eight years, so I am familiar with the area and with
10 the photographs. Yes, I am familiar.

11 Q I'm going to show you what's been admitted into
12 evidence. This is State's ---

13 A Uh-huh.

14 Q --- No. 15.

15 A Uh-huh.

16 Q You recognize that?

17 A I do.

18 Q And what is it?

19 A This is on Charles Street, looking at the back of the
20 house at [REDACTED] Rodelsperger.

21 Q And looking at this photo -- and what are these
22 markers?

23 A Those are markers that are to identify the shell
24 casings that were found on scene.

25 Q And since -- you said you're familiar with this area

1 ---

2 A I ---

3 Q --- through law enforcement?

4 A Correct.

5 Q Do you ---

6 A Uh-huh.

7 Q --- live in Newberry as well?

8 A I do not. I've just worked here for a while.

9 Q About how far were these markers where the shell
10 casings were located ---

11 A Uh-huh.

12 Q --- is it from this street to the yard at [REDACTED]
13 Rodelsperger, I guess, where that person in the yellow
14 shirt's standing near a vehicle?

15 A Uh-huh.

16 Q Roughly how many feet?

17 MR. VERNER: Your -- Your Honor, respectfully, I'm --
18 I'm going to object. If -- if she's doing it from the
19 photograph, I would object. If she was there personally
20 and knows the area from her personal knowledge, I don't
21 have a -- I think it's a proper question.

22 THE COURT: Okay. Well, let's ---

23 MR. VERNER: But I think ---

24 THE COURT: --- let's ask the solicitor to lay a
25 foundation and we'll see how -- how it shakes out.

DIRECT EXAMINATION BY MR. DANIEL - ALLISON MOORE 391

1 MR. VERNER: Thank you..

2 Q Investigator Moore, from your experience approximately
3 how many feet would you say from being out there, knowing
4 the location, and looking at the picture as well, from
5 these markers to the yard at [REDACTED] Rodelsperger -- that
6 vehicle is, how many feet is that?

7 A I would say about 15 to 20 yards.

8 Q Now, the extent of your involvement in this
9 investigation, were you considered to be the lead
10 investigator of this case?

11 A I was just the investigator to assist, because the
12 lieutenant on shift -- he pretty much handled the case and
13 he has the experience to do so. I just came out with the
14 assistance. So I don't know if you want to categorize it
15 as that. But I was the investigator that was called out.

16 Q And Ryan Matthews, the responding officer, did he
17 handle a large portion of the investigation?

18 A I do believe him, along with Jay -- Lt. Brodgon and
19 Sgt. Andy Rowe.

20 Q Looking through the report -- how many investigators
21 are there with the Newberry Police Department --
22 detectives?

23 A There is a captain, who is considered and
24 investigator. Then, you have a lead investigator, a --
25 another detective. And I am just a -- a juvenile

1 investigator, along with an adult investigator. I am under
2 the investigative division.

3 Q Did you over -- and -- and as part of the
4 investigative division, though, did you oversee this case
5 ---

6 A I did.

7 Q --- from an ---

8 A Yes.

9 Q --- administrative point ---

10 A Yeah.

11 Q --- I guess?

12 A Yes. Uh-huh. Yes.

13 Q What listed address did you have for Carlos Reeder?

14 A It was an address on Rosalyn Drive here in Newberry.

15 Q That's where he was known to reside?

16 A That's where he was known to -- in -- in our LawTrak
17 system, yes. That's where he was last known to reside.

18 Q When did Newberry P.D. actually take Carlos Reeder
19 into custody?

20 A I believe it was either six to eight months later
21 after this incident.

22 MR. VERNER: Your Honor, if she can testify to what's
23 in her personal knowledge. If she's going by what she
24 heard from other people ---

25 THE COURT: Right.

CROSS-EXAMINATION BY MR. VERNER - ALLISON MOORE 393

1 MR. VERNER: --- they need to call those witnesses.

2 THE COURT: Okay. Lay a proper foundation if she
3 knows from her personal knowledge or -- or not.

4 (Whereupon, Mr. Daniel and Mr. Scott conferred.)

5 Q As the lead investigator of the case, as we just went
6 through, to your knowledge, when was Carlos Reeder taken
7 into custody by the Newberry Police Department?

8 A Yes. My -- my knowledge is he was arrested six to
9 eight months later, because I brought him into the police
10 department, after he was arrested, to be interviewed.

11 Q And where was he -- where was he apprehended or taken
12 into custody? Was it in Newberry County?

13 A It was in Laurens County.

14 Q But Carlos Reeder is known to live in Newberry?

15 A I -- I believe he goes back and forth. He lives in
16 Laurens County and Newberry County.

17 Q Okay. No further questions.

18 THE COURT: Cross-examination, Mr. Verner?

19 CROSS-EXAMINATION

20 BY MR. VERNER:

21 Q Officer Moore, your initial response to this scene was
22 to basically you prepared a -- a -- another officer said,
23 "I need a photo lineup prepared; include Carlos Reeder's
24 picture in there"?

25 A Correct.

1 Q And -- and that's what you did with the help of the
2 SLED -- they've got a -- I suppose a -- a computer program
3 that is designed to do just that?

4 A Correct.

5 Q And they either faxed it or e-mailed it back to you,
6 and then you took it to the scene?

7 A Correct.

8 Q The -- and you showed it to Vickie and Dawayne Davis?

9 A Correct.

10 Q Did you have any other role in the investigation,
11 other than -- at that point, other than to do the photo
12 lineups?

13 A At that point, no, sir. Just ---

14 Q Okay.

15 A --- the photo lineups.

16 Q Did you take any witness statements?

17 A At that point, no. I ---

18 Q Okay.

19 A --- I took one later from Quentin.

20 Q Okay. The -- is that the statement -- well, I don't
21 know if you've been in the courtroom. We -- we -- the --
22 the only statement that -- you took a statement from
23 Quentin Graham, the codefendant?

24 A Yes, sir.

25 Q Okay. But that's the only witness statement that you

CROSS-EXAMINATION BY MR. VERNER - ALLISON MOORE 395

1 recall that you prepared in this case?

2 A Correct.

3 Q Okay. The -- thank you, officer.

4 A Uh-huh.

5 THE COURT: Redirect?

6 MR. DANIEL: No, sir, Your Honor.

7 THE COURT: Thank you for your testimony, ma'am. You
8 can step down.

9 (Whereupon, the witness exited the witness stand.)

10 (Whereupon, Mr. Daniel and Mr. Scott conferred.)

11 THE COURT: Anything further from the state?

12 MR. DANIEL: State rests, Your Honor.

13 THE COURT: Okay. All right. Madam Forelady and
14 ladies and gentlemen of the jury, I'm going to ask at this
15 point time is to -- to retire to your jury room for,
16 hopefully, not too long a time and then we'll bring you
17 back out. Again, remind you not to discuss anything about
18 this case amongst yourselves.

19 (Whereupon, the jury exited the courtroom at 4:12
20 p.m.)

21 (Off the record briefly.)

22 THE COURT: Okay. Anything we need to take up on the
23 record, Mr. Verner?

24 MR. VERNER: Your Honor, I would move for a directed
25 verdict ---

1 THE COURT: Okay.

2 MR. VERNER: --- on the attempted murder charge for
3 this reason: Now, the -- the two witnesses are a little
4 bit different in -- in situation. But on Dawayne Davis he
5 -- he is the victim, I believe, and that is the -66
6 indictment for attempted murder. It -- both witnesses
7 testified that they were not involved in any altercation or
8 dispute. The -- they are basically people in -- in the
9 crowd who were caught-in-the-crossfire-type, bystander-type
10 victims.

11 Now, I understand that Vickie put herself in a little
12 bit of a different stance by saying that she had grabbed a
13 golf club and she was standing by the car. The -- so she
14 was a little bit more of an active role.

15 But Dawayne was purely a bystander-type victim. I --
16 I wasn't involved in any prior difficulties, either in the
17 initial incident or in the second incident. In fact, I was
18 behind the black Escalade or Expedition when the shooting
19 occurred; that there had been no prior words or
20 confrontation; that I didn't -- he was shooting in our
21 direction and I ducked.

22 And -- but he is a classic bystander-type victim. I
23 -- I'm in a crowd; somebody's angry at somebody else; and
24 somebody then shoots in our general direction. And I'm
25 therefore a victim because I could've been hit.

1 The -- I -- I think the juror asked the same question
2 -- that -- that's my motion, is who really are the victims
3 in this case. That is a case of transferred intent. That
4 is when the defendant is angry at one person and he injures
5 a second person trying to shoot -- I -- I am angry at Dale
6 Scott and I shoot at him, but I miss and then I hit Taylor
7 Daniel, sitting beside him. That is a transferred-intent-
8 type case.

9 The -- the *State v. Fennell* -- F-e-n-n-e-l [sic] --
10 340 S.C. 266, South Carolina does not recognize transferred
11 intent in -- in cases that require malice absent somebody
12 being killed or injured. The -- you can have transferred
13 intent in an assault and battery case. That does not
14 require malice. But in cases that require malice, that is
15 a specific or a general intent to kill somebody. South
16 Carolina only recognizes transferred intent when an
17 innocent bystander is actually shot or injured.

18 The -- and -- and so therefore, certainly, as far as
19 Dawayne Davis, he -- he is a classic bystander victim. He
20 would be a -- he would have been a victim of transferred
21 intent had he been shot. I -- I was angry at somebody else
22 and he is just the person I injured.

23 *State v. Fennell* is a case. That is under the old
24 ABWIK or -- or the -- for some reason, the appellate court
25 calls those "ABIK" -- A-B-I-K -- cases. But as -- as I

1 read *Fennel*, they -- they make it clear that in cases that
2 require malice, the -- the victim actually has to be shot
3 or killed -- injured or killed.

4 ABHAN -- the -- the -- the lesser-included in the
5 *Fennell* case was ABHAN. The -- this was an old ABWIK/ABHAN
6 case. The -- the Court said ABHAN does not require malice
7 and, therefore, transferred intent is appropriate. But
8 when -- when murder or assault and battery with intent to
9 kill required malice, the -- the victim has to be shot or
10 injured.

11 And -- and -- and so we -- we -- we think he is a
12 specific -- just traditional bystander victim in a crowd.
13 Somebody shoots at the crowd; I could've been shot but I
14 wasn't part of anything that was ---

15 THE COURT: Okay.

16 MR. VERNER: --- transpiring.

17 THE COURT: All right. Thank you very much. State's
18 position on -- I mean, I take his -- Mr. Verner's motion is
19 -- applies to both indictments, but primarily the
20 indictment involving Dawayne Davis. Is that correct, Mr.
21 Verner? I don't want to ---

22 MR. VERNER: I -- I ---

23 THE COURT: --- speak for you.

24 MR. VERNER: --- think it's stronger on Dawayne Davis
25 because the -- the lady testified I did actually walk ---

1 THE COURT: Right.

2 MR. VERNER: --- towards them and I had a -- if -- if
3 not a threatening posture, I -- I had a golf club in my
4 hand.

5 But -- but she basically testified the same too: I
6 wasn't part of any altercation. Even if I did have a golf
7 club, I was there basically to support my side, as opposed
8 to that side. But I was not an intended victim.

9 THE COURT: All right. State's position?

10 MR. SCOTT: Your Honor, I -- I think that'd just be a
11 question for the jury. We don't ---

12 THE COURT: Okay.

13 MR. SCOTT: --- you know, what would be the crime if
14 -- if I -- there's no evidence of any real malice that I
15 display but I hold a gun and fire at those 12 people sitting
16 there? It -- it'd be attempted murder for any one of them,
17 I think, with a reckless disregard for human life.

18 You know, same with a murder-type situation that like
19 -- like -- in his example, he aims to shoot me; he hits
20 Taylor. He's guilty of murder. And it -- no matter what
21 the -- who he intended to shoot, and I know he tried to
22 elicit who the target was. And about as close as he got
23 was some speculation from Vickie, saying, "I -- I assume --
24 maybe it was my uncle he was shooting at or -- or my
25 brother," whoever that fellow was.

1 We don't know what was going on in his mind. It
2 sounded like he was angry enough to leave, saying, "I'll be
3 back." Came back 30 minutes later. We -- we've got the
4 malice, as far as the reckless indifference to human life
5 and the express malice, saying, "I'm going to be back." It
6 can be inferred from that.

7 I -- I don't read attempted murder having a -- the
8 specific intent to kill either. But my understanding of
9 the law has always been if I fire into a group of people, I
10 could be charged with attempted murder on -- on any one of
11 those people that I've -- I've fired upon, showing such
12 reckless disregard for human life.

13 THE COURT: Okay.

14 MR. VERNER: The -- are -- could I read just some of
15 the language from the *Fennell* ---

16 THE COURT: Well ---

17 MR. VERNER: --- case? Or the Court ---

18 THE COURT: --- well ---

19 MR. VERNER: --- will have that case.

20 THE COURT: Yeah. Yeah.

21 MR. VERNER: But the ---

22 THE COURT: What -- what I'm going to do is after I
23 hear your arguments, I'm going to take -- take it under
24 advisement and this evening and the morning, read this
25 *Fennell* case, because I'm not specifically familiar with

1 that, and give you guys an opportunity to, you know, get
2 anything else together on this particular issue.

3 I've -- I've tried several attempted murder cases.
4 This is the first time this argument has come up. I'm not
5 saying that to suggest that -- whether or not it's a good
6 argument or bad argument. I've just not heard it before.
7 So I want to really give it some thought and -- and make
8 sure I make a correct ruling on the -- on the motion for
9 directed verdict.

10 MR. VERNER: Yes, sir.

11 THE COURT: So I'm going to take it under advisement.
12 Anything else on this motion from either side? And again,
13 tonight if you want -- and don't -- don't even -- even
14 though my computer is -- is now been -- well, I think I've
15 got a new computer, but if you e-mail anything, e-mail it
16 to -- to Lyon, because I won't have my computer until in
17 the morning.

18 But anything else from either side on the motion for
19 directed verdict?

20 MR. SCOTT: No, sir. I -- I -- you know, that
21 argument sort of shakes my understanding of attempted
22 murder ---

23 THE COURT: Right.

24 MR. SCOTT: --- to -- to its core. So I'm going to
25 have to do some research to ---

1 THE COURT: Right.

2 MR. SCOTT: --- argue against what he's claiming now.
3 So I -- I -- if -- I'll just e-mail Lyon tonight.

4 THE COURT: Right. If -- if you can -- tonight so we
5 can have first thing in the morning, I would -- and again,
6 this is no indication of how I'm going to rule on the
7 motion, but I think both sides need to be ready to -- you
8 know, to argue and -- and charge in the morning.

9 But that -- if I were to deny your motion, Mr. Verner,
10 is it your intent to -- to put up a case or to have your
11 client testify? And ---

12 MR. VERNER: The ---

13 THE COURT: --- I'll give him, in just a moment, the
14 -- the standard instruction.

15 MR. VERNER: Yes, sir. We -- we haven't made that
16 decision yet.

17 THE COURT: Sure.

18 MR. VERNER: I've ---

19 THE COURT: And ---

20 MR. VERNER: --- spoke to him.

21 THE COURT: That's fine. That's ---

22 MR. VERNER: The ---

23 THE COURT: --- fine.

24 MR. VERNER: Also, just in -- in general, I'd also
25 that -- argue that the state in general hasn't proven

1 malice.

2 THE COURT: Okay.

3 MR. VERNER: The -- the -- the -- the -- as to both,
4 but that's -- we'll ---

5 THE COURT: Of course ---

6 MR. VERNER: --- go ---

7 THE COURT: --- as -- as we -- as we all know, absent
8 any mitigating circumstances or self-defense, then, of
9 course, use of a deadly weapon can -- malice can be
10 inferred. And, of course, I've not heard as yet -- may
11 hear if you put up a case -- may hear ---

12 MR. VERNER: Yes, sir.

13 THE COURT: --- some -- some mitigation. But at -- at
14 this point I've not heard any. So certainly, the -- the
15 principle that use of a deadly weapon -- malice can be
16 inferred therefrom would -- would stand. That may change,
17 depending upon what you guys do.

18 MR. VERNER: Thank you, Your Honor. I -- I would ask
19 -- I'm going -- if -- if I can approach your clerk and let
20 him type in the right e-mail address, I'm going forward the
21 clerk the *Fennell* ---

22 THE COURT: Okay.

23 MR. VERNER: --- unless you don't have it.

24 THE COURT: We -- we ---

25 MR. VERNER: You've got ---

1 THE COURT: --- we can ---

2 MR. VERNER: --- it? Okay.

3 THE COURT: --- we can pull it up. We can pull up ---

4 MR. VERNER: Okay.

5 THE COURT: --- the *Fennell* decision.

6 MR. VERNER: He says he's got it, Judge.

7 THE COURT: Yeah. We got it.

8 MR. VERNER: The -- and -- but he hasn't made a
9 decision.

10 THE COURT: That's fine.

11 MR. VERNER: I would ask ---

12 THE COURT: And -- and I ---

13 MR. VERNER: --- that we ---

14 THE COURT: --- won't -- I'll wait -- if I deny the
15 motion for directed verdict, I will certainly wait till in
16 the morning to give him the standard instruction whether or
17 not to testify. And then you can inform me at that time
18 whether or not you want to put up a case or whether or not
19 he's going to testify. So ---

20 MR. VERNER: Yes, sir.

21 THE COURT: --- so you just keep that in your back
22 pocket right now.

23 MR. VERNER: My ---

24 THE COURT: Okay?

25 MR. VERNER: My motion -- I guess I would ask when he

1 is admonished, Judge, my understanding is he's got a prior
2 burglary second-degree; is that right?

3 MR. SCOTT: It's third.

4 MR. VERNER: Might be a third.

5 MR. SCOTT: I think it's ---

6 MR. VERNER: It's a prior third-degree burglary, a
7 prior grand larceny; is that right?

8 (Whereupon, Mr. Daniel and Mr. Scott conferred.)

9 MR. VERNER: And a prior ---

10 THE COURT: What -- what he'll -- what he'll -- he'll
11 be instructed on if -- if any prior crimes are admissible,
12 then, of course, he can be impeached with that if they are
13 admissible or not. So it's kind of a generic-type
14 instruction.

15 MR. VERNER: Yes, sir.

16 THE COURT: But he will be -- he'll be advised of that
17 in ---

18 MR. VERNER: Well ---

19 THE COURT: --- the instruction.

20 MR. VERNER: At -- at -- I would -- I would go ahead
21 and move that under 403, the -- that the -- my -- on all
22 three of the charges, my -- primarily concerned that he --
23 he does have a prior assault with intent to kill ---

24 THE COURT: Okay.

25 MR. VERNER: --- which was under the common law.

1 Under 403 I -- I would argue that that one would be
2 particularly prejudicial; that it -- it would be hard for
3 the jury just to take a charge on whether he's truthful or
4 not and -- and -- and separate that one from the facts of
5 this case.

6 THE COURT: Okay. We've got an ABWIK and when -- when
7 was that?

8 MR. VERNER: An AWIK.

9 MR. SCOTT: Yes, sir. It's actually an AWIK.

10 THE COURT: Oh. AWIK.

11 MR. SCOTT: And so if they still have that, that -- it
12 -- it was a '07 offense.

13 THE COURT: Okay. And you say there's two others that
14 need ---

15 MR. VERNER: A burglary ---

16 THE COURT: --- to consider?

17 MR. VERNER: --- and a larceny are -- are also, I
18 would argue, are prejudicial, but not nearly to the extent
19 that a prior assault with intent to kill would be.

20 MR. SCOTT: We may have to argue with the AWIK a
21 little bit. But I think the use of vehicle without
22 consent, which is the larceny ---

23 MR. VERNER: I -- I don't ---

24 MR. SCOTT: --- you referred to ---

25 MR. VERNER: --- that -- that's ---

1 MR. SCOTT: And ---

2 MR. VERNER: --- that -- that's impeachable too. All
3 -- all of them, I -- I would ask not be included under 403.
4 But the -- my primary concern would be the assault with
5 intent ---

6 THE COURT: Right.

7 MR. VERNER: --- to kill.

8 MR. SCOTT: The -- the -- the AWIK may -- may take
9 some arguing our part. But the use of vehicle without
10 consent and the burg-third are clearly crimes of
11 dishonesty, Your Honor. So they ---

12 MR. VERNER: They -- they're not ---

13 MR. SCOTT: --- they --- they would fall ---

14 MR. VERNER: --- they're not ---

15 MR. SCOTT: --- without ---

16 MR. VERNER: --- crimes of dishonesty. But they are
17 ---

18 MR. SCOTT: Well, they're theft -- larceny cases.

19 MR. VERNER: The -- burglary is not a crime of
20 dishonesty. It -- it's a -- it -- it's an old crime of
21 moral turpitude, which we don't use anymore. But it -- it
22 qualifies as it's a crime that carries more than one year
23 ---

24 THE COURT: Okay.

25 MR. VERNER: --- of punishment.

1 THE COURT: Right.

2 MR. VERNER: The -- it -- it's -- it's not
3 automatically -- it's not a crime of dishonesty because the
4 Supreme Court said there can be burglaries without
5 larcenies.

6 THE COURT: Okay. Well, all right. So -- and when --
7 the use of the vehicle, what -- when was that? I'm just
8 kind of getting some notes in -- in advance from you. I
9 know we're going to get into this pretty hard tomorrow if I
10 don't direct a -- a verdict.

11 MR. SCOTT: The sentencing sheet, Your Honor, is an
12 '08 on the use of vehicle without consent.

13 THE COURT: And burglary-third?

14 MR. SCOTT: And the burglary-third is an '09.

15 THE COURT: Okay. All right.

16 MR. SCOTT: And the -- the AWIK is an '08.

17 THE COURT: Okay. I thought it was '07. '08?

18 MR. SCOTT: I -- I'm ---

19 THE COURT: Okay.

20 MR. SCOTT: --- sorry. Yeah. I read you the offense
21 date ---

22 THE COURT: That's fine.

23 MR. SCOTT: --- before. That's the conviction ---

24 THE COURT: That's fine.

25 MR. SCOTT: --- date. Yes, sir.

1 THE COURT: Okay. All right. Well, if -- if I don't
2 grant the motion for directed verdict, then we will fully
3 discuss -- assuming he -- the defendant wants to testify,
4 then we'll certainly get into that. And so you -- you guys
5 -- and I know you will -- be prepared to fully argue that.

6 And -- all right. Okay. I think I'm going to have
7 the jury come -- come back in, in the morning about 10:30;
8 give us full time to -- to argue -- finish arguing the
9 motion and then if I deny it, and then argue these -- the
10 use of the three priors. So let's -- let's have the jury
11 come back in about 10:30 in the morning. Satisfactory to
12 everybody?

13 MR. VERNER: With -- with -- with 9:30 being set aside
14 for the attorneys to argue the motion ---

15 THE COURT: Yeah.

16 MR. VERNER: --- or 9?

17 THE COURT: I think probably an hour to deal with what
18 we need to deal with. So yeah, 9:30.

19 MR. VERNER: Yes, sir.

20 THE COURT: Sure.

21 MR. SCOTT: And just as a heads-up -- I'm going cross
22 this tomorrow -- but we will be asking for a transferred-
23 intent charge when we -- we get to that point. That --
24 that's the only one that comes to mind right now.

25 THE COURT: Okay. All right. All right. Let's bring

1 the jury out.

2 (Off the record briefly.)

3 (Whereupon, the jury entered the courtroom at 4:27
4 p.m.)

5 THE COURT: Okay. Let the record reflect the jury's
6 back in. And, Madam Forelady and ladies and gentlemen of
7 the jury, we're going to go ahead and adjourn for today.
8 We've got -- I've got some more work to do with the
9 lawyers, especially in the morning, before we start back.
10 And so I'm going to ask that you be back at 10:30 in the
11 morning, instead of -- you know, I think we started back at
12 9:30 this morning -- but 10:30. That will give us plenty
13 of time to -- to deal with some issues that I need to deal
14 with, with the lawyers and so 10:30 in the morning.

15 Again, I remind you and caution you not to discuss
16 this case among yourselves or anybody that you come in
17 contact with this afternoon or this evening. And please be
18 prompt -- I know you will -- back in your jury room at
19 10:30 in the morning.

20 Have a good evening.

21 JUROR: Thank you.

22 (Whereupon, the jury exited the courtroom at 4:28
23 p.m.)

24 THE COURT: Okay. Anything else we need to discuss
25 before we adjourn for the day?

1 MR. SCOTT: No, sir.

2 THE COURT: Okay.

3 MR. SCOTT: Nothing from the state.

4 MR. VERNER: We've got an hour set aside tomorrow, so

5 ---

6 THE COURT: Okay.

7 MR. VERNER: --- that's fine.

8 THE COURT: All right. Okay. All right. We'll be in
9 recess until in the morning at 9:30.

10 (Whereupon, the proceedings were adjourned at 4:29 p.m.)

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1 TRIAL DAY 3 - 04/23/14

2 (Whereupon, the proceedings were resumed at 9:49 a.m.)

3 THE COURT: Okay. Gentlemen, we're back on the record
4 in the Reeder case. And we concluded yesterday's hearing
5 with Mr. Verner's motion for directed verdict, relying on
6 the -- the *Fennell* case. And the Court has -- has reviewed
7 the *Fennell* case. The Court has also reviewed a -- an e-
8 mail that Solicitor Scott sent out late last night.

9 And, Mr. Verner, did you get cc'ed on that?

10 MR. VERNER: From a person named Christopher Scott?
11 Yes, sir.

12 THE COURT: Yeah. Yeah. That kind of threw -- threw
13 the Court off just a little bit but ---

14 MR. VERNER: Yes, sir, I did.

15 MR. SCOTT: Couldn't sign into my -- my work e-mail
16 from home for some reason, but that's my gmail account.

17 THE COURT: Okay. So anyways, Mr. Verner, anything --
18 I mean, I know you maybe have had a chance to kind of
19 gather your thoughts a little bit more on this issue. I'll
20 be glad to hear from you and then hear from the -- the
21 state. And I've got some thoughts on this too as ---

22 MR. VERNER: Okay.

23 THE COURT: --- well. But let me just kind of hear
24 from you and we'll hash through this -- this issue.

25 MR. VERNER: I -- I think, from his perspective, the

1 solicitor hit on the right argument: that the state sees
2 this is as a shooting-at-a-group-type, where every
3 individual member would be a victim. I think his analogy
4 was driving a car intentionally through a shopping mall or
5 some kind of crowd of people.

6 The -- that -- it -- in -- in my opinion is
7 inconsistent, really, with the testimony, which is this was
8 between some people at the party and the defendant --
9 Dawayne's was "I -- I was never in the first altercation
10 and never in a second altercation. And even when it
11 happened, I was well away. I -- I wasn't really a target,
12 other than when I heard gunfire, I -- I went down."

13 Of course, his car was never shot. The -- his -- his
14 actual car was shot, but the car he was actually behind was
15 not, the black Expedition.

16 THE COURT: Right.

17 MR. VERNER: The -- he never testified he was
18 targeted, had a reason to be targeted. The -- he did
19 testify that there was a dispute in the beginning between
20 the defendant, possibly Quentin Graham, and the people in
21 the front of the house.

22 And then -- but just basically, I heard the boy
23 screaming, "He's got a gun. I looked. I saw the man.
24 When I heard the shot, I went down and didn't look back
25 up."

1 He -- he's a classic bystander-type victim. He --
2 he's in a group. Something happens between other people;
3 he's in the danger area but not really specifically the
4 target.

5 The -- Vickie's closer to the action, but she's still,
6 under her testimony, a bystander-type victim. The -- "My
7 brother was in a dispute with him, possibly some other
8 people."

9 The -- now, she did -- the -- the testimony's a little
10 bit inconsistent. Her testimony at trial was that: "He
11 just started walking up, and then I heard the kid saying he
12 had a gun. I got my golf club, and then he started
13 shooting." Her statement to the officer, which is also
14 evidence -- the -- the statement wouldn't come in. But it
15 would come in as her testimony that: "I did tell the
16 officers at the time that there was a second dispute where
17 people put him off the property and then the shooting
18 occurred."

19 The -- but -- but either way, Your Honor, I -- I think
20 the consistent testimony is these are both bystander-type
21 victims; the -- that the appropriate charge would be
22 assault and battery, first-degree, unless there's some kind
23 of specific intent to kill them.

24 On that argument, Your Honor -- and I -- I think it's
25 the *Yarborough* case. I apologize; I didn't bring my iPad

1 today. But the -- I'm -- I'm thinking it's *Yarborough*. It
2 -- it's the case in South Carolina where the state sought
3 to charge a person with both assault and battery with
4 intent to kill and attempted murder.

5 And our Supreme Court said although that's not double
6 jeopardy to charge both crimes, South Carolina's never
7 recognized attempted murder in the criminal courts, and so
8 the appropriate charge is assault and battery with intent
9 to kill. We've got the right to accept attempted murder,
10 but we just refuse -- as common law, I guess -- the Supreme
11 Court to accept it, because the state never traditionally
12 has accepted it. So it -- that -- that's the case that
13 proposition -- I can't remember the name. But it's -- it's
14 the case where the Supreme Court refused to accept
15 attempted murder. So it's prior, obviously, to the
16 attempted murder statute.

17 But the important ruling, I think, from that case is
18 that attempted murder what -- the -- our Supreme Court said
19 differentiated attempted murder from assault and battery
20 with intent to kill is that attempted murder requires a
21 specific intent to kill ---

22 THE COURT: Let me just stop you there. In all the
23 materials that -- that circuit judges are provided, it
24 consistently says that attempted murder is a general-intent
25 crime and not a specific-intent. Now, if we got a case

1 that says otherwise, then I want to look at it. But again,
2 throughout all the materials that we have, it specifically
3 says attempted murder is a general-intent, and not a
4 specific-intent, crime.

5 So if you've got a case -- you're thinking it's
6 *Yarborough* -- we'll maybe try to pull that up and -- and
7 ---

8 MR. VERNER: Yes, sir.

9 THE COURT: --- take a ---

10 MR. VERNER: But the ---

11 THE COURT: --- look at it.

12 MR. VERNER: And -- and again, that was addressing
13 attempted murder under what would be the common law ---

14 THE COURT: Right.

15 MR. VERNER: --- attempted murder, nonstatutory. But
16 at -- at that time the Supreme Court said what
17 differentiates attempted murder from assault and battery
18 with intent to kill is attempted murder would require a
19 specific intent to kill. ABWIK would -- would include --
20 it -- it can include specific intent, but it can include
21 the general intent ---

22 THE COURT: Right.

23 MR. VERNER: --- too. And if attempted murder
24 requires a specific intent to kill, then -- and -- and --
25 and I -- I do recognize that -- it -- that -- that would be

1 common law attempted murder and now we have statutory
2 attempted murder, the -- which -- which basically --
3 general intent -- because we've got ABHAN that is now
4 ABWIK, what I would consider the old assault and battery
5 with intent to kill is now statutory assault and battery
6 high and aggravated nature, that would be the general
7 intent. I -- so I would make the argument that attempted
8 murder requires a specific intent ---

9 THE COURT: Okay.

10 MR. VERNER: --- to kill.

11 THE COURT: All right. What -- what -- what -- what
12 I'm -- I'm -- what I'm struggling with, in -- in trying to
13 reconcile the -- the -- the *Fennell* case and your argument
14 as far as innocent bystanders with the facts we've got
15 here, that's what I'm struggling with. I don't -- I don't
16 know if we have any evidence that would show that Mr.
17 Reeder came back with the gun with the intent of shooting
18 the person that he had the prior argument with.

19 In *Fennell* we've got two people: We've got Mr.
20 Thrailkill and we've got Mr. Jones or whatever his name is.
21 Prior problems with Mr. Thrailkill; the two are standing
22 right there. He's shooting Mr. Thrailkill; one of the
23 bullets strays and hits the -- the other fellow.

24 In this situation we've got 10 to 15 people, or
25 numbers thereabout, outside. And we've got seven shots

1 fired. Your argument presupposes that, in fact, Mr. Reeder
2 came with the intent to shoot at this guy he had an
3 argument with. I think maybe -- I mean, there's been
4 evidence that there was argument with more than one
5 individual, then an argument with Vickie Davis's brother.

6 As I understand attempted murder, the elements are --
7 and y'all correct me if I'm wrong -- it's attempt to kill
8 somebody, another person; the -- the mental state, or the
9 intent, which can be recklessness; that can be a -- that
10 can be a -- a factor of the requisite mental state,
11 recklessness; with malice aforethought; and absent
12 mitigating circumstances, malice can be inferred from the
13 use of a gun.

14 So -- and you guys are a whole lot smarter than I am.
15 But I'm trying to figure out how this argument of
16 transferred intent even comes into play in lights of the
17 facts that we've got here. Now, with that -- with that
18 said, you know, help me figure out why we're even talking
19 about transferred intent. And again, I -- I -- I probably
20 -- I'm missing the boat. But I -- I just can't -- I can't
21 reconcile it with -- with the facts that we have here.

22 So, Mr. Verner, take -- take that. And I'm -- I'm --
23 I hadn't forgotten about this state's position. But I'll
24 get to you in a minute.

25 MR. VERNER: Well, under the state's theory, he --

1 they were shooting at the crowd, I -- I think the Court's
2 ---

3 THE COURT: Right.

4 MR. VERNER: --- right. And I think that's the proper
5 argument for the state to -- that's the only one they can
6 really make, is he intended to shoot somebody in the ---

7 THE COURT: Right.

8 MR. VERNER: --- crowd.

9 THE COURT: He just -- you know, seven shots; bunch of
10 people out there; and yeah. He just -- reckless shooting
11 and "if something hits, it hits; if it doesn't, it doesn't"
12 kind of situation.

13 MR. VERNER: The -- and -- and I do -- I don't want to
14 -- but my understanding is reckless indifference for human
15 life would be -- it wouldn't be a recklessness, but it
16 would be reckless indifference to human life.

17 THE COURT: Well, maybe I ---

18 MR. VERNER: The ---

19 THE COURT: --- I gave the shorthand version of that.

20 MR. VERNER: Yes, sir.

21 THE COURT: But ---

22 MR. VERNER: But the ---

23 THE COURT: --- I understand what you're saying.

24 MR. VERNER: The -- now, I -- I agree. I think the
25 state's correct. If -- if the Court sees it as the

1 solicitor's arguing that this is an intent to shoot anybody
2 in the crowd, then -- then I think he's got the stronger
3 argument. The -- Vickie testified that: "Initially, I
4 thought they were shooting at my brother. The -- but I was
5 close enough to get hit." And then we started talking
6 about the car getting hit and how far she was from it.

7 But the -- the -- the testimony was there was a
8 dispute between the brother and -- and maybe some other
9 people with him ---

10 THE COURT: Uh-huh.

11 MR. VERNER: --- and -- Boozer -- Reeder ---

12 THE COURT: Yeah.

13 MR. VERNER: --- I'm sorry. The -- and then with --
14 within 30 minutes later, that -- when she testified she saw
15 him back and it's been a little bit different, the -- the
16 story, because there's been a little bit different
17 versions. But he -- they come back. The shooting occurs.

18 At that point she says: "I'm standing in front of the
19 vehicle. I thought they were shooting at my brother." And
20 she did say that: "I -- there was an argument before the
21 second shooting." She didn't in her initial testimony.
22 But when she was -- refreshed her recollection with the
23 prior statement, she did say: "I remember telling police
24 that I did hear a second argument."

25 The -- Quentin Graham also testified that there was a

1 second argument before the -- that he remembers a -- an
2 argument shortly before the shooting. The -- but her
3 testimony was: "I -- I thought they were shooting at my
4 brother, because he -- they had -- he was the one that they
5 had the altercation -- he was the one the threat was made
6 to: 'I will see you back later.'"

7 So -- so that would be the express -- if there was
8 malice or an express argument, that -- that would be the
9 statement: "I will see you later." That was made to her
10 brother. "I assume they were shooting at my brother."

11 And the -- Dawayne basically is in an entirely
12 different yard. He's really in the front yard behind the
13 black vehicle; didn't really consider himself a target,
14 other than he is in the ---

15 THE COURT: Let ---

16 MR. VERNER: --- firing ---

17 THE COURT: But ---

18 MR. VERNER: --- zone.

19 THE COURT: --- but let me just stop you. And again,
20 no one can -- can determine the -- what -- what Mr. Reeder
21 was thinking. When he says, "I don't think I was a
22 target," but how can -- how can he say that? How can any
23 of those people out there necessarily say that? Because
24 they don't know what Mr. Reeder had in his mind.

25 So that -- that -- I'm struggling with that too. Is

1 that, you know -- and -- and he did -- I don't -- I didn't
2 consider myself a target and -- you know, but how -- how
3 can he say that? Because he doesn't know what Mr. Reeder
4 was thinking.

5 MR. VERNER: Yes, sir. But -- but he's -- he is the
6 victim what ---

7 THE COURT: I ---

8 MR. VERNER: --- it ---

9 THE COURT: --- understand he is the victim in the
10 indictment.

11 MR. VERNER: In the indictment.

12 THE COURT: That -- that ---

13 MR. VERNER: And the ---

14 THE COURT: --- that's right.

15 MR. VERNER: And the state would have to prove that he
16 is the ---

17 THE COURT: I -- I understand ---

18 MR. VERNER: --- either the ---

19 THE COURT: --- that.

20 MR. VERNER: --- general or specific ---

21 THE COURT: I understand that.

22 MR. VERNER: The -- the -- and -- and I -- I -- I --
23 obviously, I'm going argue that, regardless ---

24 THE COURT: Sure.

25 MR. VERNER: --- of how the ---

1 THE COURT: Sure.

2 MR. VERNER: --- well, how the Court rules. But that
3 -- that's our position, Judge.

4 THE COURT: Sure.

5 MR. VERNER: If ---

6 THE COURT: I'm not ---

7 MR. VERNER: --- if -- if the state sees it -- if --
8 if the Court thinks that there is at least some evidence
9 supporting the state's theory that this is a -- an intent
10 to shoot anybody in the crowd, then I -- I think they have
11 the better argument.

12 If -- if the evidence that was testified to that this
13 started out as a -- the incident between the man that the
14 threat was made to, coupled with Vickie's that I assumed he
15 was shooting at my brother's, then that -- that -- there
16 was an intended-target-type crime, then they can really
17 only be assault and battery, first-degree, victims ---

18 THE COURT: Right. And -- and ---

19 MR. VERNER: --- unless ---

20 THE COURT: --- that's something ---

21 MR. VERNER: --- they were ---

22 THE COURT: --- we're going ---

23 MR. VERNER: --- shot.

24 THE COURT: --- to need -- assuming my ultimate
25 decision is a denial of your motion for directed verdict,

1 certainly, what we will need to discuss, either in a few
2 minutes or at some point in time, do I charge the lesser-
3 included offenses of, you know, assault and battery, you
4 know? And we'll -- we're going ---

5 MR. VERNER: Yes, sir.

6 THE COURT: --- we're going to need to discuss that
7 if, in fact, my ultimate decision is to -- to ---

8 MR. VERNER: Yes, sir.

9 THE COURT: --- deny your motion.

10 MR. VERNER: And I -- I think the -- the -- that is my
11 argument. And I know the state -- fairly lengthy reply
12 from the prosecutor in the e-mail response, but -- but I do
13 -- if -- if -- if his proposition is correct, then he's got
14 the better argument on whether attempted murder can be
15 charged ---

16 THE COURT: Okay.

17 MR. VERNER: --- in this case.

18 THE COURT: All right. Okay. All right. Solicitor
19 Scott? Daniel?

20 MR. SCOTT: Your Honor, that -- that's -- I -- it took
21 me awhile to get there. But kind of woke up with -- with a
22 distilled argument, and that's simply that transferred
23 intent does not apply in this case. And it -- it's -- it's
24 unnecessary as far as murder's concerned, as far as -- as
25 -- as long as the requisite malice is present. And I think

1 that's been proven in a couple instances, both through
2 express and implied malice.

3 In fact, I think *Fennell* calls it a legal fiction.
4 And I -- I think the -- the citation of the *Fennell* case,
5 when -- when Charles brought it up yesterday, kind of set
6 my mind spinning. And that's when I was thinking we needed
7 a transferred intent and that's when we got on that path.
8 And not to discount my e-mail, because there's some jewels
9 of -- I'm an example guy, as you can tell.

10 THE COURT: Well, you know, I was quite impressed
11 that, you know, it was done at ten o'clock at night.

12 MR. SCOTT: That -- that's my argument, though, Your
13 Honor. And -- and at the appropriate time, we -- we would
14 just argue that with all the testimony regarding malice and
15 -- we don't think there -- there would be a lesser-included
16 A&B-first. You know, there -- there's ---

17 THE COURT: All right. So the state's position is
18 don't charge any lesser-included offenses ---

19 MR. SCOTT: Yes, sir.

20 THE COURT: --- is that -- okay.

21 MR. SCOTT: That's correct.

22 THE COURT: And -- but let's -- let -- let -- we'll
23 revive that discussion concerning the charges because we --
24 we've got a draft charge. The draft does contain the
25 lesser-included. We just put them in there just so it can

1 initiate our discussion.

2 And so probably the better course of action for us to
3 take is to let y'all look at the draft. I emphasize it is
4 a draft. Let y'all look at it; then -- then we can engage
5 in that dialog.

6 The -- the point is extremely -- I mean, it's an
7 interesting issue that you raise, Mr. Verner. And I -- I
8 appreciate that and really caused Lyon and I to do a lot of
9 -- a lot of thinking about this last night and -- and this
10 morning.

11 But viewing the evidence in the light most favorable
12 to the state, the Court does find that there is the
13 existence of direct and substantial circumstantial evidence
14 to -- to deny your motion.

15 Okay. Now, with that said, we now come to the point
16 of -- and -- and I guess, Mr. Verner, before you make a --
17 before you and your client make a final decision about,
18 number one, putting up a case and/or having your client
19 testify, do we need to discuss the issue of his prior
20 record and the admissibility of -- I think there's three
21 offenses that we need to discuss. We kind of left our
22 discussion last night with that hanging out there. And I
23 don't know if there's been any resolution between the two
24 sides concerning that. But you may want to know how the
25 Court's going to rule before you decide whether or not to

1 put your guy up, correct?

2 MR. VERNER: Yes, sir. That would -- and again --
3 sorry -- the -- I -- I just think that the danger -- I -- I
4 don't think burglary's been classified as a crime of
5 dishonesty. The -- in fact, I think that's been disavowed
6 because burglary can include crimes such as going in to
7 beat somebody up.

8 The -- but it does qualify under the -- it's a crime
9 that carries more than year.

10 THE COURT: Right.

11 MR. VERNER: The -- the difference, I guess, as the
12 state and I talked about yesterday, is that the 403
13 prejudice standard -- if it's a crime of dishonesty, the --
14 there's a presumption that the Court doesn't need to get
15 into the 403, whether it's -- I -- I think the Courts have
16 pretty much repudiated that and -- and they've said 403
17 always applies to anything that comes into evidence.

18 THE COURT: Right. I -- and I -- I think you're
19 right. As I understand it, if -- if it's a crime that
20 carries more than one year, then you -- you do look to 403,
21 probative value versus prejudice. If it's a crime of
22 dishonesty, I think there is that presumption. But it can
23 be rebutted by evidence.

24 And -- and I think the -- the -- I think the better
25 way for the Court to look at any situation is to look at,

1 you know, the -- the impeachment value. And the -- there's
2 about four or five factors that the Court looks at. So I
3 -- I think -- I think it's a correct statement ---

4 MR. VERNER: The ---

5 THE COURT: --- concerning ---

6 MR. VERNER: --- the ---

7 THE COURT: --- how we view that.

8 MR. VERNER: It -- my biggest concern is the -- the
9 unfair prejudice to client if he testifies in assault --
10 basically what is an "assault and battery with intent to
11 kill, two years ago" case. And he's got a prior "assault
12 with intent to kill" conviction. The jury -- that's going
13 to confuse the jury or -- or improperly influence them,
14 when it's only supposed to be admitted for his reputation
15 for honesty or dishonesty. That it -- because it's the
16 same or confusingly similar charge, that that would
17 unfairly prejudice the jury that he's got a prior assault
18 with intent to kill. It becomes even less necessary if the
19 -- if the Court does let the burglary-third and the "use of
20 a vehicle without owner's consent" charge come in.

21 THE COURT: Yeah. What -- what I've got is a -- is an
22 -- is an '09 AWIK; an '08 use of vehicle without consent;
23 and an '09 burglary-third. I think that's what was ---

24 MR. VERNER: Yes, sir.

25 THE COURT: --- stated to me yesterday.

1 MR. VERNER: The -- but that -- that is primarily the
2 -- the charge I would be most concerned about, is how the
3 jury gives him a fair ---

4 THE COURT: The -- the AWIK charge ---

5 MR. VERNER: With the -- with the AWIK.

6 THE COURT: --- offense?

7 MR. VERNER: And -- and traditionally, AWIK would not
8 be a crime involving dishonesty anyway. It -- it's a --
9 trying to hurt somebody. And -- and that's never been a
10 dishonesty-type -- and -- and because the impeachment value
11 is basically his character for truthfulness or
12 untruthfulness. It -- it's not even in the dishonesty-type
13 realm. So I -- I would ask the Court that if he does
14 testify, that the AWIK would not be permitted.

15 And I did have one more motion, Judge, that would also
16 really -- as -- as much as that or more affect whether he
17 testifies or not. And the Court indicated yesterday that
18 the Court wasn't sure whether you heard mitigating or self-
19 defense-type -- that -- that would prevent the -- the
20 inference charge -- the gun gives rise to an inference of
21 malice. The -- and -- and I did want to address that prior
22 to our defense case.

23 THE COURT: Okay.

24 MR. VERNER: Because if -- if the Court -- if that is
25 the Court's concern, then I'm -- I'm -- more likely than

1 not, my client would have to testify.

2 THE COURT: Right.

3 MR. VERNER: The -- I -- I do think it -- mitigation
4 -- legally, mitigation would be is there any evidence that
5 would tend to show that the crime is one -- at least one
6 crime less than charged? If the Court was inclined that
7 there is at least enough evidence to charge assault and
8 battery with first degree, then that -- that would be some
9 mitigation in the record on -- on that basis alone because
10 mitigation would be -- reduces the -- not innocent, but
11 would reduce the severity of the crime.

12 The -- I -- I would also -- and -- and the Court --
13 there -- there just has to be some evidence that -- that --
14 my understanding is the Supreme Court has given a fairly
15 strong rebuke of the -- the mandatory "inference because of
16 the gun" charge and because it came from a U.S. Supreme
17 Court case that said that charge is disfavored.

18 The -- if there is any evidence in the record that
19 would show that this could be an assault and battery first-
20 degree, as opposed to an attempted murder charge, then I --
21 then -- then I submit the mitigation's already in the
22 record. If there is any evidence that the -- the Court --
23 if the defense said I wanted a self-defense charge and the
24 Court felt there was at least evidence that you can argue
25 self-defense, then -- then we're there on self-defense too.

1 And on that basis, Judge, we -- with the evidence I
2 think we've got is there's a prior altercation; there are
3 at least threats from the victims -- or at least some of
4 the victims towards the defendant, "You better" ---

5 THE COURT: Let me just stop you, Mr. Verner. I mean,
6 you ---

7 MR. VERNER: Yes, sir.

8 THE COURT: --- put whatever you want to. If -- if
9 you're suggesting that right now with what is in the record
10 there's enough for self-defense, don't go there.

11 MR. VERNER: Okay.

12 THE COURT: I mean, we're not -- we're not -- we're
13 not anywhere close.

14 MR. VERNER: The ---

15 THE COURT: Now, if you still feel compelled to get --
16 put something on the record, I'm -- I'm certainly allowing
17 you to do that. But we're -- we're -- we're nowhere even
18 remotely close to -- to establishing self-defense based
19 upon what we have in the record thus far.

20 MR. VERNER: All right. I would -- I would agree. I
21 -- I think the -- the first parts are -- are showing that
22 there was an altercation. There are threats towards the --
23 the defendant, you -- which -- which can only be inferences
24 of threats: "You better get your ass in the car"; multiple
25 people around him. I -- I think we're not near -- we don't

1 have any evidence of the duty to retreat and the --
2 possibly whether this was a mutual -- the -- the lack of
3 contributing to the altercation.

4 But -- but I think we've got the first part of it:
5 that there are threats, which can only be classified as
6 threats: the icing-it-down situation; the -- the multiple
7 people at his car; the -- "you better" -- the -- I -- I
8 would agree I would have to put more in the record probably
9 to argue self-defense.

10 The -- but there is also the second argument that the
11 lady says where they did put them off the property again
12 before the next shooting. So that would show the -- and --
13 and then, of course, Quentin's testimony that: "When we
14 were walking by the house, we had no intent -- we -- we
15 were just walking by -- down the hill on the way towards
16 the store." So ---

17 THE COURT: Uh-huh.

18 MR. VERNER: --- so that's the -- he's a codefendant
19 but he was a witness called and, I -- I thought, fairly
20 candid, for the most part. Not -- but ---

21 THE COURT: Well ---

22 MR. VERNER: --- just -- but ---

23 THE COURT: --- what -- what ---

24 MR. VERNER: --- basically we had no ---

25 THE COURT: Maybe candid as far as what he could

1 remember.

2 MR. VERNER: Yes, sir. The -- I -- I think the jury
3 is -- is probably going to remember him as -- as basically
4 candid but trouble -- but -- but problematical. But the --
5 but -- but his testimony was: "When we were walking by the
6 house, we had no intent to start a confrontation" type --
7 the -- but I understand. Well, I -- I don't think we're
8 probably near self-defense either. But I -- I think we got
9 the first leg or two ---

10 THE COURT: Okay.

11 MR. VERNER: --- there if we build ---

12 THE COURT: All right.

13 MR. VERNER: --- on it.

14 THE COURT: Well, let's -- we -- we can come back to
15 that. Let -- let's deal with the -- the offenses. Let me
16 hear from the state. We got three potentially impeachable
17 offenses, if -- if the defendant testifies. And so let --
18 let me hear from the state on -- on -- on each one.

19 MR. SCOTT: Okay. Your Honor, the -- again, we would
20 argue that the -- and -- and would agree -- and that's what
21 Charles and I talked about yesterday as a lower standard as
22 far as a 403 balancing standard for the crimes of
23 dishonesty.

24 There is a *State v. Cooper*, found at 386 S.C. 210 that
25 does find that burglary is a crime of dishonesty.

1 THE COURT: Okay. State versus what?

2 MR. SCOTT: It's Cooper.

3 THE COURT: Cooper?

4 MR. SCOTT: C-o-o-p-e-r.

5 THE COURT: Okay. And the cite, please?

6 MR. SCOTT: 386 S.C. 210.

7 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

8 THE COURT: And it says that burglary-third is a crime
9 of dishonesty?

10 MR. SCOTT: Well, it's a housebreaking case, Your
11 Honor, which ---

12 THE COURT: Right.

13 MR. SCOTT: --- would -- would be ---

14 THE COURT: Right.

15 MR. SCOTT: --- the same thing. It -- it is a current
16 crime of dishonesty. We would argue, although I can't find
17 any case law, but just the -- common sense tells me that
18 use of vehicle without consent would be a crime of
19 dishonesty as well.

20 THE COURT: Okay.

21 MR. SCOTT: He did take the vehicle, one 1994 Buick
22 Roadmaster, from another with intent to deprive said owner
23 from -- so it's basically a larcenous-type case so ---

24 THE COURT: Okay. And what about the -- the AWIK,
25 which I think Mr. Verner is most concerned with?

1 MR. SCOTT: Yeah. And admittedly, there would be a
2 much higher standard, as far as a 403 balancing test. Just
3 argue, Your Honor, that -- that I -- I guess as -- as I'm
4 put in the position of saying we -- we do want it; it -- it
5 is prejudicial, but that's why it's so, I guess, probative
6 for the jury to -- to hear that -- that he has been
7 convicted of assault with intent to kill. Obviously, that
8 does carry over -- over a year. We think that's highly
9 probative and -- and in a case like this that -- that I
10 think the probative nature would outweigh any prejudicial
11 effect.

12 And, of course, he -- you know, he -- if Your Honor
13 does disagree with us, that -- then he would always -- he
14 would still be liable should he open the door. I -- I -- I
15 can't imagine how he would do it. But if he does take the
16 stand and -- and testify that he would never do such a
17 thing, I -- I think, theoretically, he could open the door.

18 THE COURT: All right. Okay. The -- the -- the
19 ruling is I -- I -- the use of the vehicle without consent,
20 I think that would certainly be pretty much a given that
21 that would be a crime of dishonesty. The -- the
22 housebreaking, which is now burglary-third under that
23 Cooper case -- yeah. Under the Cooper case, it says that
24 is a crime of dishonesty. And I think the -- the -- the
25 main one that defense is worried about, the AWIK, I'm going

1 to allow that one in too. The -- the basis for the ruling
2 is the -- in determining the probative value versus
3 prejudicial value, I think the impeachment value is very
4 high with that; similarity between crimes, the AWIK and the
5 attempted murder, very similar. Certainly, defendant's
6 testimony would be of -- I think of high importance in this
7 case, if he were to testify. And the -- the centrality of
8 credibility, I think that's applicable just about in any
9 case that you have.

10 So in -- in -- in determining the probative value
11 versus prejudicial value, I'm going to find that the
12 probative value outweighs the prejudicial value. So I'm
13 going to allow -- if the defendant were to testify, allow
14 all three to be used for impeachment purposes only.

15 MR. VERNER: And -- and, Judge, I don't mean to just
16 reargue that, but I just wanted to -- that -- renew the --
17 I -- I disagree with the -- the two crimes being classified
18 as dishonesty. And just -- I -- I did want to highlight
19 that the -- when it talks about how close the crimes are
20 together and the importance of the defendant's testimony,
21 those are reasons not to allow the -- the -- those are
22 brought up by the Court not as probative reasons. But
23 those are brought up as reasons for the Court that probably
24 not allow those to come in if they're close in nature.

25 THE COURT: All right.

1 MR. VERNER: The ---

2 THE COURT: So you're -- you're saying that the -- the
3 -- the similarity between the crimes and the importance of
4 the defendant's testimony, if I find that the -- the
5 similarity of crimes, that would be a basis not to allow
6 the -- the -- the offense in; is that what you're saying?

7 MR. VERNER: The -- I -- I think the -- the reading of
8 the case is those are warnings to the Court: The closer
9 they are in degree, the -- the less that the Court should
10 let the crimes come in.

11 THE COURT: All right.

12 MR. VERNER: The more ---

13 THE COURT: Well ---

14 MR. VERNER: --- important's the need for the
15 defendant to testify ---

16 THE COURT: Okay.

17 MR. VERNER: --- the less ---

18 THE COURT: Okay. All right. Well, in -- in that
19 case, we're going to need to try to find something that
20 will help direct me. Can you put your hands on anything?

21 MR. VERNER: The -- I -- Your Honor, I don't have my
22 iPad in front of me. I've got my Westlaw across the
23 street. But the -- from -- from my remembrance of that
24 statute, those were some reasons that the Court might not
25 want to -- as -- as opposed to might want ---

1 THE COURT: Okay.

2 MR. VERNER: --- to allow them in.

3 THE COURT: Well, all right.

4 (Whereupon, Mr. Scott and Mr. Daniel conferred.)

5 MR. DANIEL: Your Honor, I have one case -- might be
6 on point: *State v. Bryant*. That's 369 S.C. 511.

7 THE COURT: Okay. All right. Well -- well, let --
8 let's do this: Let's go off the record. Everybody be at
9 ease. You can be looking at whatever you need to look at.
10 And I'm -- we're looking at *State versus* -- we'll look at
11 these two cases. Everybody be at ease for a little bit.

12 (Off the record from 10:22 a.m. until 10:30 a.m.)

13 THE COURT: All right. We're back on the record. I
14 have reconsidered -- I'm -- based upon a *State v. Colf* --
15 C-o-l-f -- I'm not going to allow -- if the defendant were
16 to testify, I'm not going to allow the AWIK charge because
17 of the similarity. I do stand corrected. And, Mr. Verner,
18 I appreciate you correcting me on that.

19 But on the other two, the burglary-third and the use
20 of the vehicle without consent, the use of the vehicle
21 without consent is, I believe, a crime of dishonesty.
22 Burglary-third, there's some cases that says it's not. But
23 I believe that the probative value would outweigh the
24 prejudice. So I'll allow for impeachment purposes only
25 those two crimes, but not allow any impeachment evidence as

1 to the AWIK.

2 MR. VERNER: Thank you, Your Honor.

3 THE COURT: Okay.

4 MR. VERNER: The ---

5 THE COURT: All right. All right. Now, so where that
6 leads us is let's go ahead and let me give the instruction
7 to the defendant concerning testifying. Then you can
8 inform the Court your intent on that.

9 (Off the record briefly.)

10 THE COURT: Madam clerk, would you swear Mr. Reeder
11 in, please?

12 CARLOS REEDER, having been first duly sworn,
13 testified and stated as follows:

14 THE COURT: Okay. Give me just a second. Mr. Reeder,
15 at this time I'm going to explain to you certain of your
16 rights. If you do not understand anything I say, please
17 let me know. If you want me to explain anything in more
18 detail, please let me know that as well. Do you
19 understand, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. We have now reached the stage of
22 the trial where you may present your defense. You have the
23 right to claim the protections given to you by the Fifth
24 Amendment to the Constitution of the United States. And
25 this amendment states, in part: "No person shall be

1 compelled in any criminal case to be a witness against
2 himself."

3 This means that you cannot be required to testify in
4 this case. You have the right to testify on your own
5 behalf. However, no one can make you testify. This is a
6 personal right. No one can waive this right except you.

7 If you decide to testify, you will be subject to the
8 same rules that govern other witnesses and you may be
9 examined and cross-examined on any relevant issue in this
10 case.

11 In addition -- and I've already made a ruling -- that
12 if you do decide to testify, that two crimes that you have
13 on your record -- a -- a burglary-third and a use of a
14 vehicle without the owner's permission -- you will be --
15 the state will be entitled to examine you about that for
16 impeachment purposes only. I've already ruled that your
17 prior conviction for AWIK is not going to be allowed for
18 impeachment purposes.

19 But if you do testify, those can come out for
20 impeachment purposes. And that means to attack your
21 credibility or your truthfulness on the stand. If you
22 decide to testify, this decision on your part must be
23 freely, voluntarily, and intelligently made with knowledge
24 of the protections given to you by the Fifth Amendment and
25 the consequences of your decision to testify.

1 Now, if you decide not to testify, I will instruct the
2 jurors that they cannot give the fact that you did not
3 testify any consideration whatsoever and that there is to
4 be absolutely no prejudice to you because you did not
5 testify. It is left entirely up to you whether or not you
6 testify.

7 Now, you -- I'm sure you've already talked with your
8 attorney. And you can talk with your attorney further. If
9 you -- I don't know if you have any family or friends here,
10 but you certainly can talk with them as well. But the
11 final decision will be left entirely up to you.

12 Now, Mr. Reeder, do you understand or have you
13 understood everything that I have explained to you thus
14 far?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. And do you have any questions about
17 what I have explained to you?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. Have you had an opportunity to
20 discuss with Mr. Verner whether or not you should or should
21 not testify?

22 THE DEFENDANT: Yes, sir. But I would like, you know,
23 to talk to him a little more.

24 THE COURT: You want to talk with him some more.
25 Okay. All right. Okay. What we will do, we'll take a --

1 a few-minute break. Spend some time with your lawyer. And
2 then I'll come back to you and your lawyer and you can
3 inform me at that time what your decision is. Okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Thank you ---

6 THE DEFENDANT: Thank you.

7 THE COURT: --- very much. All right. We'll all be
8 at ease.

9 MR. VERNER: Judge, I -- I don't mean -- but -- but
10 before I speak to him -- and -- and I don't mean to press
11 the Court on this issue. The -- the -- the Court's ruling
12 on -- on whether there's enough evidence to get the lesser-
13 included charges before the jury, the assault and battery
14 first-degree, in -- in my mind, has the greatest bearing on
15 whether I would recommend he testify ---

16 THE COURT: Okay.

17 MR. VERNER: --- or not.

18 THE COURT: Sure.

19 MR. VERNER: And I -- I don't want to ask for a
20 preliminary ruling. But I do think it's appropriate at the
21 close of the state's case to -- if -- if the Court believes
22 that there is any evidence in the record that would support
23 assault and battery first-degree, then, of course, we --
24 we'd argue that the Court's required to charge the lesser-
25 included offense.

1 THE COURT: Okay.

2 MR. VERNER: The -- and -- and I -- as I said to the
3 Court, that -- that will have the greatest weight on me
4 whether we need to testify. I do intend Vickie Hunter will
5 probably testify, just very briefly, about the distance
6 between the house and the bullet casings. But other than
7 that, the -- the -- if -- if there's -- if assault and
8 battery first-degree -- if it's appropriate for me to argue
9 that based on the record as it is now, then -- then we're
10 -- we're probably -- he's probably not going to testify.

11 THE COURT: Okay. All right. Okay. Well, let's --
12 let's do this. Would -- would either side have any
13 objections -- and we may kind of be going in a little
14 different order than what we normally do -- is -- is to go
15 ahead and let both sides look at the draft charge, which
16 does contain the -- the assault and battery, all of them.
17 But again, we just put in there so we would have it for
18 discussion purposes. Would that be suitable to both sides?
19 We take that up?

20 MR. VERNER: Yes, sir. And just for -- for the
21 record, I wouldn't be arguing -- and I don't think the
22 facts support an assault and battery-second or assault and
23 battery-third.

24 THE COURT: Okay.

25 MR. VERNER: The -- the -- assault and battery-first,

1 I think, is about as far as we can ---

2 THE COURT: Okay.

3 MR. VERNER: --- in good ---

4 THE COURT: All right.

5 MR. VERNER: --- faith, argue that.

6 THE COURT: Okay. We'll -- we'll just strike through
7 that. Because I -- I think the state's position is they
8 want none of -- of that; they just want the charge on
9 attempted murder. So we'll -- based upon what -- your
10 statement, we'll take those out of the draft. Let us make
11 a copy and we'll give it to you.

12 Now, with that said, I'm going to ask the bailiffs if
13 you'll just go to the jury room; let the jury know that we
14 are working on some legal matters and just to please be
15 patient with us. Again, I don't want -- I always worry so
16 much about juries thinking that we're just sitting back,
17 drinking coffee and having a good time and not doing
18 anything. So please, ma'am, just impress with them that we
19 are working very hard on some legal matters and just ask
20 that they be patient with us.

21 THE BAILIFF: All right.

22 MR. VERNER: May I withdraw with my client to speak to
23 him privately, Judge?

24 THE COURT: Yeah. Do y'all have a room back there or
25 something?

1 MR. VERNER: Yes, sir. We -- just in his holding
2 room.

3 THE COURT: Okay. Yeah. Okay.

4 (Off the record from 10:38 a.m. until 11:33 a.m.)

5 (Whereupon, the jury entered the courtroom at 11:33
6 a.m.)

7 THE COURT: All right. Let the record reflect the
8 jury's back in. And good morning.

9 JURORS: Good morning.

10 THE COURT: Thank you for your patience. Let me
11 explain to you that started -- we started about 9:30 this
12 morning, dealing with legal issues. And we've been pretty
13 much continuous, 9:30 up until now. So we've been working
14 very hard.

15 And when -- when you have very good lawyers on both
16 sides, there's always a lot of legal issues that are
17 created and presented to the Court for discussion. Now,
18 it's just -- that's just the way it is. So we've been
19 working pretty hard for the last two hours.

20 And what we're going to do this morning before we
21 break for lunch, the defense is going to put up one
22 witness, who, I understand, will be a relatively short
23 witness. And the state will put in one other item of -- of
24 evidence related to yesterday. And then I'm going to send
25 you on for lunch and have you come back at whatever time I

1 -- I -- I determine. So that's what we're going to do this
2 morning.

3 When you come back from lunch, then we will do the
4 closing arguments. I -- I assume the state's not going to
5 have any rebuttal case, right?

6 MR. SCOTT: No, sir.

7 THE COURT: Okay. So when you come back from lunch,
8 the lawyers will give their closing arguments; I will give
9 you the final charge on the law. And then at that time,
10 then I will instruct you about when to begin deliberations
11 in this case in order to reach a -- a -- a verdict. So
12 that's kind of the game plan that we have.

13 Again, I -- I appreciate so much your -- your
14 patience. I know that's not a real good -- I think the
15 chairs are hard. And -- but it -- we're -- we're dealing
16 with what we've got and make the best of it.

17 So with that said, Mr. Verner, you want to -- or do
18 you want to go ahead and put that piece of evidence in?

19 MR. SCOTT: Yes, Your Honor, if you don't mind. Just
20 as a matter of housekeeping, the state -- State's ID
21 Exhibit No. 2 is a photographic lineup that was published
22 to the jury yesterday. This would've been the photo
23 lineup, or the "six-pack," as I call it, that Dawayne Davis
24 ---

25 THE COURT: Okay.

1 MR. SCOTT: --- used. We failed to use the magic
2 words of "Please admit State's No. 2" ---

3 THE COURT: Okay.

4 MR. SCOTT: --- "into evidence." And we would ask, at
5 this point, to admit State's ID No. 2 into ---

6 THE COURT: Okay.

7 MR. SCOTT: --- evidence.

8 THE COURT: All right.

9 MR. VERNER: Your Honor, just subject to previous
10 arguments ---

11 THE COURT: Right.

12 MR. VERNER: --- but no objection ---

13 THE COURT: Certainly..

14 MR. VERNER: --- to the ---

15 THE COURT: Thank you very much. So admitted into
16 evidence as State's 2.

17 (Whereupon, State's Exhibit 2 was entered into
18 evidence.)

19 THE COURT: Mr. Verner, I understand you've got one
20 witness and then -- let -- let me see the lawyers just for
21 a second.

22 (Whereupon, a bench conference was held off the record
23 in the presence of the jury, but out of the hearing of
24 the jury.)

25 THE COURT: Okay, Mr. Verner. Turn it over to you,

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1 sir.

2 MR. VERNER: May it please the Court? Thank you ---

3 THE COURT: Yes.

4 MR. VERNER: --- Your Honor. I -- I would call Ms.
5 Vickie Hunter.

6 THE COURT: Okay. Come around, Ms. Hunter.

7 (Whereupon, the witness came forward.)

8 VICKIE HUNTER, having been first duly sworn,
9 testified as follows:

10 (Whereupon, Mr. Scott and Mr. Verner conferred.)

11 DIRECT EXAMINATION

12 BY MR. VERNER:

13 Q The -- Ms. Hunter, the -- you have -- you're -- you're
14 my assistant for the public defender's office?

15 A Yes, I am.

16 Q Okay. Prior -- just briefly, where do you live? What
17 county or city do you live in?

18 A I live in the City of Newberry.

19 Q Okay. How long you lived in Newberry?

20 A All my life.

21 Q Just briefly, tell me about your past, just some of
22 the places you've worked.

23 A I worked for the Newberry County Sheriff's Department.

24 Q Okay. That -- that's your last ---

25 A Yeah. That was my ---

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1 Q --- employer?

2 A --- last job.

3 Q The -- yesterday you visited the -- [REDACTED] Rodensperger
4 Street with me; is that correct?

5 A Yes, I did.

6 Q Okay. Did you help me take measurements of distances?

7 A Yes.

8 Q All right. The -- were you able to find the spot on
9 the road where the shell casings were lying?

10 A Yes.

11 Q The -- there's a fairly uniquely shaped location ---

12 MR. VERNER: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 MR. VERNER: I'm sorry.

15 Q The -- is -- this little depression area right there
16 where the shell casings -- is that still a fairly easy
17 landmark to find in the road?

18 A Yes, it is.

19 Q Okay. Did you take measurements from that location to
20 a car that was parked in the same location as the -- or --
21 or to several objects in the yard?

22 A Yes, I did.

23 Q Okay. From a car -- from the back end of a car parked
24 at the same location where that silver SUV truck was, how
25 far is that, just in -- in ---

DIRECT EXAMINATION BY MR. VERNER - VICKIE HUNTER 450

1 A It was 104 feet.

2 Q Okay. From the back of that silver car/truck/SUV to
3 the depression area is 104 feet?

4 A Yes, it is.

5 Q Okay. And from the back of the SUV to the front
6 corner of the house, you remember how far that distance
7 was?

8 A It was about 28 feet.

9 Q Okay. The -- are you familiar with this -- what I'm
10 handing to you?

11 A Yes, I am.

12 Q Okay. What is that a photograph of?

13 A That's a photograph for the side of the house on
14 Charles Street in your vehicle.

15 MR. VERNER: I'm sorry. Do you have any objection to
16 ---

17 MR. SCOTT: No, sir.

18 Q Is that a fair and accurate photograph taken from that
19 location?

20 A Yes, it is.

21 Q But this is black and white?

22 A Yes.

23 Q The -- and this is the front corner of -- of the house
24 right here?

25 A Yes.

DIRECT EXAMINATION BY MR. VERNER - VICKIE HUNTER 451

1 Q Okay. Where the picture was taken?

2 A (No audible response.)

3 Q And what is this object right back in here?

4 A That's the little -- that's the area on the -- in
5 Charles Street where the ---

6 Q Do you recognize who that person is standing?

7 A That's me.

8 Q Okay. So that -- that's a photograph taken from the
9 corner -- front corner of the house?

10 And -- and where are you standing?

11 A I'm standing directly in front of the -- the
12 playground ---

13 Q Okay. But ---

14 A --- on ---

15 Q --- I mean ---

16 A --- Charles Street.

17 Q But are -- are you standing where the -- the
18 depression is in the road where the bullets were found?

19 A Yes. I'm standing directly inside of it.

20 Q Okay. The -- and this -- that's my car, actually; is
21 that correct?

22 A Yes.

23 Q But that's parked in the vicinity of where the silver
24 SUV would be?

25 A Yes, it is.

DIRECT EXAMINATION BY MR. VERNER - VICKIE HUNTER 452

1 Q And it was 104 feet from the back, of my car to where
2 you're standing ---

3 A Yes.

4 Q --- in that photograph?

5 The ---

6 MR. VERNER: Your Honor, I -- I would introduce this
7 black and white photograph as Defendant's 3.

8 MR. SCOTT: Without objection, Your Honor.

9 THE COURT: Okay. Without objection, be Defense No.
10 3.

11 (Whereupon, Defendant's Exhibit 3 was marked and
12 entered into evidence.)

13 MR. VERNER: Thank you.

14 Q Ms. Hunter, if either of the prosecutors has any
15 questions for you, you need to answer their ---

16 THE COURT: Anything from the state?

17 MR. SCOTT: I -- I don't think so, Your Honor. No,
18 nothing from the state.

19 THE COURT: Okay. Thank you very much for your
20 testimony, ma'am. You can step down.

21 (Whereupon, the witness exited the witness stand.)

22 MR. VERNER: At -- Your Honor, at -- at this point,
23 we're -- we're satisfied with the evidence in the record,
24 and -- and the defense will rest at this point.

25 THE COURT: Okay. All right. Thank you very much.

1 And no rebuttal from the state?

2 MR. SCOTT: No, sir, Your Honor.

3 THE COURT: Okay. All right. Okay. All right.

4 Madam Forelady and ladies and gentlemen of the jury, that
5 closes the evidentiary record in this case. And as I told
6 you a moment ago, when you come back from lunch, we will
7 then proceed into closing arguments from the attorneys and
8 the Court will then give you a final jury charge and
9 instruction.

10 So with that said, I'm going to let you go home for
11 lunch or go wherever you're going to go eat lunch and do
12 whatever you need to do. And I'm going to ask that you be
13 back at 1:15 back in your jury room. And remind you once
14 again, don't begin discussions amongst yourselves about
15 anything related to this case, nor discuss anything about
16 the case with anybody that you may come into contact with
17 during the break, and see you back at 1:15. Have a good
18 lunch.

19 (Whereupon, the jury exited the courtroom at 11:43
20 a.m.)

21 THE COURT: Okay. We will -- we'll be at ease for
22 just a little bit. I'm going to go ahead before we -- for
23 us to break for lunch, I want to go ahead and read that
24 case. I want have kind of everything done before we break
25 for lunch so when we come back after lunch, then we'll be

1 able to hit the ground running and go ahead and argue and
2 charge. So -- and we'll go back on the record before we
3 break for lunch. And -- and, Mr. Verner, at that time we
4 can get everything on the record concerning your request to
5 charge and what I've granted and what I've denied. Okay?

6 MR. VERNER: Thank you, Your Honor.

7 THE COURT: Okay. Thank you. So ---

8 MR. SCOTT: Judge, you probably would've found it, but
9 that citation is 385 S.C. 597, *Belcher*.

10 THE COURT: Oh, okay. You got that? Okay. Thank
11 you.

12 (Off the record from 11:44 a.m. until 1:30 p.m.)

13 THE COURT: Okay. We're back on the record after our
14 lunch break. And, Mr. Verner, you want to talk with your
15 client further on the issue of him testifying? Where are
16 we on that?

17 MR. VERNER: Your Honor, I have had a break. And --
18 and we're prepared to offer him -- his testimony. I would
19 -- I don't want to reargue the point. But I -- I would
20 just ask to cite one more case.

21 THE COURT: Okay.

22 MR. VERNER: And I -- I think it's as -- as close to
23 on-fours with this case as we can really get. It's *State*
24 *v. Middleton*. And I've got it -- I've got it printed up.
25 I'm going to hand up, if I can, Your Honor.

1 THE COURT: Okay. And that is on the -- what -- what
2 issue we're dealing with?

3 MR. VERNER: The -- the -- the fact pattern of the --
4 the charges and whether a lesser-included offense -- in
5 *Middleton* the defendant, on his motorcycle, pulled up or
6 shot into a car with two people seven -- five to seven
7 times at two people in a car. The defendant shot into the
8 car five to seven times. The people testified they only
9 survived because they ducked down into the car. They were
10 only injured because of the glass. And they only got away
11 because they hit the gas as they were ducked down.

12 The -- in -- in that case all five members of the
13 Supreme Court said that although the people were -- he was
14 convicted of assault and battery with intent to kill, all
15 five members of the Supreme Court case said the judge
16 should have charged assault and battery, first-degree. And
17 that's five to seven shots into a car with multiple people.

18 THE COURT: Okay. All right. Let -- let -- let --
19 give -- give me a moment to read it. This is a 2014 case.
20 Have you had a chance to look at it, Solicitors?

21 MR. SCOTT: I -- I reviewed that. The fact pattern
22 sounds familiar. But if I get that citation, I'll put it
23 up on my ---

24 THE COURT: Take -- you -- take a look at it as well.

25 MR. SCOTT: What's the citation? Do you know?

1 MR. VERNER: I ---

2 THE COURT: It's -- it's decided February 26th, 2014.

3 So it'd be in the -- I guess be in the February advance
4 sheets ---

5 MR. SCOTT: Oh ---

6 THE COURT: --- or maybe ---

7 MR. SCOTT: --- okay.

8 THE COURT: --- March advance sheets.

9 MR. SCOTT: Okay.

10 MR. VERNER: Yes, sir. I didn't pull it out of
11 advance sheets.

12 THE COURT: Right.

13 MR. VERNER: I pulled it out of Westlaw. But the --
14 it is a very new . . .

15 (Off the record from 1:33 p.m. until 1:39 p.m.)

16 THE COURT: Okay. Let -- let's go back on the record.
17 The Court's had an opportunity to review the Middleton
18 case. Looks like it's pretty close on point, Solicitor.

19 MR. SCOTT: Well, I -- my only problem with that is we
20 don't know what evidence Judge Buckner was presented in
21 deciding on a lesser. The Court in that case simply said
22 he was mistaken in denying it for one victim and granting
23 it for the other because he was mistaken in the fact that
24 it requires an injury. It does not ---

25 THE COURT: Right.

1 MR. SCOTT: --- just the offer -- attempt to offer
2 injury.

3 THE COURT: Right.

4 MR. SCOTT: My problem with this case is we don't know
5 what mitigation -- what -- what evidence was presented to
6 him in order for him to decide on lesser-included. So ---

7 THE COURT: I know. And it -- and it -- it makes it
8 -- you know, it -- it -- it certainly makes it difficult
9 for all of us to analogize -- or analogize the -- our case
10 with this case to make sure that, you know, they're --
11 they're similar enough to -- to -- to follow the -- the
12 holding. I mean, that -- that -- that makes it -- that --
13 that makes it difficult.

14 But, I mean, I have to take it for face value of what
15 the case says. And it -- and it's pretty clear that this
16 -- and the facts are similar. This is kind of a drive-by-
17 type shooting, shooting into a car, kind of somewhat
18 similar facts. And here I go, you know, changing my stance
19 again. But it looks like assault and battery-first would
20 be applicable. And I'm going to charge that. And I'm not
21 going to charge the gun -- or use of the weapons creating
22 the inference of malice.

23 So with that said, it looks like on page 23 of the
24 charge I will stop after "human life," period; start back
25 "if facts are proved beyond a reasonable doubt . . ." And

1 I'll take out that middle section there.

2 Now, again, as -- as *Belcher* indicates, that doesn't
3 -- that doesn't alter what the state can argue to -- to the
4 jury. I mean, I think the -- that case was very clear that
5 the Court cannot prevent the state from arguing that --
6 that inference.

7 MR. VERNER: That's correct, Your Honor. Just that
8 the judge won't charge it.

9 THE COURT: Okay. All right. And again, I mean, it's
10 -- y'all -- y'all are doing a good job. You presented me
11 with the -- with the necessary information for me to make a
12 ruling, even though I'm kind of waffling back and forth.
13 But that -- that's -- that's going to be my decision.

14 And let me just get on the record as far as the -- the
15 request to charge. The defense wanted the attempt section
16 of -- of the charge out; I declined that. The defense
17 wanted a transfer-intent charge; I declined that. The
18 defense requested that I charge the actual attempted murder
19 statute verbatim, except for any sentencing provision; I
20 have granted that.

21 The defense wanted a -- a specific-intent charge on
22 attempted murder. I've declined that, finding that it's a
23 general-intent situation. And the state -- of course, this
24 kind of goes back what we discussed in chambers. The state
25 did not want the assault and battery-first charged. And

1 with my now ruling, I've decided to -- to charge that.

2 I think I've covered all the areas concerning requests
3 to charge.

4 MR. VERNER: Yes, sir. The -- the only thing I would
5 -- as a Court's exhibit, the -- on the attempted murder,
6 whether that requires a specific intent or a general intent
7 or both, I -- I going hand up -- it's the -- State v.
8 Sutton, a 2000 case. Now, admittedly, that was under the
9 common law ---

10 THE COURT: Right.

11 MR. VERNER: --- attempted murder. But I'm going to
12 hand that up for the -- as a Court's exhibit.

13 THE COURT: Okay. Go ahead -- madam court reporter,
14 if you would mark that.

15 (Whereupon, Mr. Scott and Mr. Verner conferred.)

16 (Whereupon, Court's Exhibit 1 was marked for
17 identification.)

18 THE COURT: Okay.

19 MR. VERNER: And I've highlighted the relative ---

20 THE COURT: Okay.

21 MR. VERNER: --- the -- the relevant ---

22 THE COURT: Okay.

23 MR. VERNER: --- portion that says it ---

24 THE COURT: All right.

25 MR. VERNER: --- requires specific intent.

1 THE COURT: Okay. All right. Mr. Verner, I assume
2 that your client is not going to testify now in light of
3 the Court's ruling?

4 (Whereupon, Mr. Verner and the defendant conferred.)

5 MR. VERNER: The -- the -- his preference is not to
6 testify ---

7 THE COURT: Okay.

8 MR. VERNER: --- Your Honor.

9 THE COURT: All right. Mr. Reeder, if you would just
10 stand.

11 THE DEFENDANT: (Complied.)

12 THE COURT: I remind you, you're under oath. Your
13 attorney tells me that you have decided now, after much
14 discussion on various areas and aspects and issues of this
15 case, that it's your decision not to testify; is that
16 correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you had full opportunity to review
19 this issue with your attorney, discuss with him whether or
20 not you should testify? You need any more time to talk
21 with him?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. So your decision not to testify,
24 has that been made freely, voluntarily, and intelligently
25 by you with the assistance of Mr. Verner?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Thank you very much. And the Court
3 so finds.

4 Anything else we need to take up on the record?

5 MR. SCOTT: Nothing from the state, Your Honor.

6 THE COURT: Okay. All right. And I assume,
7 Solicitor, that you will fully close and not open on the
8 law?

9 MR. SCOTT: That -- that'd be my preference, Your
10 Honor. I -- I ---

11 THE COURT: That's fine.

12 MR. SCOTT: --- usually just do ---

13 THE COURT: That's fine.

14 MR. SCOTT: --- it all ---

15 THE COURT: I know ---

16 MR. SCOTT: --- at once.

17 THE COURT: --- what's you normally do, but I just
18 wanted to make sure.

19 All right. Okay. Let's bring the jury out.

20 (Off the record briefly.)

21 (Whereupon, the jury entered the courtroom at 1:46
22 p.m.)

23 THE COURT: Okay. Let the record reflect that the
24 jury is back in. And, Madam Forelady and ladies and
25 gentlemen of the jury, as -- as I indicated before we broke

1 for lunch, we're now at the stage of the trial where the
2 lawyers will make their closing arguments to you. And once
3 that is done, then the Court will give you the final
4 instruction -- your final instructions, which includes the
5 full instruction on the law applicable to this case.

6 So at this time, Mr. Verner will be going first. I
7 would ask that you give him, as well as -- I think
8 Solicitor Scott will be doing the closing for the state.
9 Give both these fine attorneys all of your attention --
10 undivided attention. Thank you.

11 MR. VERNER: May it ---

12 THE COURT: Mr. Verner?

13 MR. VERNER: --- please the Court, Your Honor.

14 CLOSING ARGUMENT BY MR. VERNER

15 MR. VERNER: Ms. Forelady and members -- the end of
16 the case, basically, what you're going be called on is two
17 questions for two people: It's attempted murder for both
18 victims, the -- Dawayne Davis and Ms. Vickie Davis.

19 The legal analysis is -- is the same, although there's
20 a little bit of difference of fact pattern between them.
21 It's not murder; it's attempted murder.

22 The -- and -- and I would ask you to -- the -- the --
23 the judge is going tell you what the state needs to prove.
24 To the extent -- and -- and I don't know what the state's
25 going to say.

1 But it's not a parade of horrors --
2 would've/could've/should've case. It -- it's a case where
3 there's a specific set of facts given to you. There is a
4 specific law that applies. And -- and you're under oath to
5 apply the correct -- whichever verdict.

6 And -- and we try a lot of cases in Newberry. The --
7 I -- I been here ten years plus. Solicitors have been here
8 for a while. We respect your verdict: guilty verdict, not
9 guilty verdict, compromise or -- or lesser-included
10 verdict.

11 You -- you do your best, and -- and we respect that.
12 And -- and -- and then we go on about other people so that
13 there -- no friends here, no enemies. Either -- either way
14 we respect it, but there -- there's nothing that can be
15 done to fix your verdict today if you think you got it
16 wrong. The -- there's no way legally.

17 The -- the -- the very first rule is if there is any
18 doubt about any of the evidence or any of the charges --
19 and the judge is going to charge you for both victims --
20 purported victims two -- really -- really, three possible
21 verdicts: attempted murder, guilty or not guilty. It --
22 if -- if it's guilty, that's the end of it.

23 The next verdict is assault and battery of the first
24 degree. The -- used to be aggravated and battery, but it's
25 assault and battery of the first degree.

1 Or not guilty -- and -- and I'm -- I'm not really
2 asking for a not guilty verdict. I -- I'm just asking for
3 the appropriate verdict.

4 The -- really, the -- the state has to prove four
5 things in an attempted murder case -- little bit more than
6 that. But really, we're -- we're going boil it down to
7 four things.

8 The -- the very first thing is that the intended
9 victim of the crime, if there was a crime, were the people
10 actually on the indicted -- Your Honor, may I borrow the --
11 do you have the indictments?

12 THE COURT: I do right here. Just give them back to
13 me when you're finished, please.

14 MR. VERNER: I will, Your Honor.

15 The -- if -- if there is any question about who -- who
16 the victims are, then -- then that is the very first prong
17 of their case, is -- is that under the indictment, which is
18 -- and this is just the charging paper that gets us into
19 court. But this is what the state has to prove: that
20 there was an attempt to murder Dawayne Davis; the second
21 indictment, that there was an intent to murder Vickie
22 Davis.

23 I -- I submit to you, what happened -- thank you, Your
24 Honor ---

25 THE COURT: Uh-huh.

1 MR. VERNER: --- is, really, when the police responded
2 to the shooting, the -- the only people who really
3 volunteered to cooperate were Vickie and Dawayne, by their
4 own testimony.

5 This -- a lot of people didn't want to get involved.
6 Dawayne's angry; his car has been shot up. He's getting
7 involved; he's talking to the police: You know, that's my
8 car; look at it.

9 The -- and Miss Vickie testifies. Nobody else --
10 neither one of them really said they thought they were the
11 intended victim. Vickie said, "I thought -- when I heard
12 the shooting, I thought it was my brother."

13 Dawayne said -- neither one of them said they were
14 part of any of the opening hostility. Dawayne said he was
15 over in the front yard in front of the black vehicle. The
16 -- he heard the shooting; he ducked down.

17 The -- they've been really designated victims by
18 proxy. We don't have the victims. The state's going
19 really say everybody there that day was a victim, that
20 anybody could've been shot; therefore, we're designating
21 this person and this person by proxy to come up and be the
22 representative victims.

23 Well, they're not really -- the -- they could've been
24 harmed. And -- and that would be a different matter. But
25 they're -- they're really designated as victims for the

1 group.

2 And -- and the state -- and -- and there is some merit
3 to it -- that they're -- they're victims that if this was
4 an intent to harm anybody in that group, an analogy might
5 be if somebody drove a car through the crowded parking lot,
6 then everybody in that car's path is a victim. And that is
7 true, if y'all find that the person had the intent to harm
8 everybody in that group, they are.

9 The -- we -- we all know what happened here. I mean,
10 the -- maybe not every detail, but, I mean, it -- it's a
11 fairly common -- one -- one group of tough guys confronts
12 another group of tough guys. They stay on it, and they
13 stay on it. Somebody gets angry, and -- and it gets blown
14 up. And -- and that's exactly what you have here.

15 I mean, the -- who -- who is ultimately the most at
16 fault? It -- it's Carlos Reeder. We -- we know that. But
17 we all know the story happened -- I mean, the -- even their
18 verdict is -- is a fairly unvarnished -- it started
19 innocently enough:

20 "Hey, is Smoke here?"

21 "No. We don't know y'all. Y'all better get back --
22 you bet get your ass back in that car."

23 And he's not by himself when he -- when the brother
24 says that. He -- he's with -- as -- ten to twelve mostly-
25 male -- adult males drinking alcohol, as -- as Dawayne

1 said.

2 The -- it -- it -- but it -- it just started off on --
3 on -- on -- it shouldn't have gotten that far. It started
4 off innocently enough.

5 The -- as -- as Quentin said -- Quentin was a witness.
6 And I -- I -- I submit to you, he was overall the -- a --
7 favorably, a fairly credible witness. He -- I -- I was
8 inebriated greatly. I was on pills. And I -- and you --
9 you have to factor that in there.

10 But did you think he was actually lying or pretty much
11 saying a generally fairly truthful testimony? When we
12 dropped the car off, we had to walk back by the house. The
13 -- in his testimony that came out; when he -- what he told
14 the police was: "I heard the argument start again. That's
15 when I heard the shooting."

16 The -- Ms. Vickie Davis, she testified the same thing.
17 She didn't -- not initially, but when she reviewed her --
18 what she told the officers back in October, she testified
19 also that there was a second confrontation. Now, her
20 testimony at first was just that it was a walk-up shooting.

21 But that's not what she told the police on October
22 6th. She said that the argument resumed and then they
23 tried to put the people off the property and that's when
24 the shooting occurred. That was the day -- not two years
25 later; that was her -- what she told the police in her

1 written statement the day -- and she confirmed: "Yes.
2 That is what I told the police."

3 Now, it -- it -- just a very simple argument of why
4 it's not attempted murder: Nobody was hurt. The -- I
5 mean, maybe that's by accident.

6 But the -- that's certainly not an intent to kill,
7 where he's 20, 30 -- 104 feet from the back of the car.
8 Nothing prevents him from taking ten more steps and killing
9 somebody.

10 If I wanted to kill somebody and I have a gun and they
11 are unarmed, I take ten more steps and I kill the person.
12 I at least shoot them. I don't stay 35 yards back and
13 shoot into a house and a car and then run away if I want
14 somebody dead. And that's the ultimate issue the judge is
15 going charge you: Did he want somebody dead?

16 He would have come closer. Nothing prevented him.
17 They -- they weren't shooting at him, stopping him from
18 going away. They weren't running away. The -- they were
19 ducking down behind whatever they could or going back
20 behind a house. But there is absolutely nothing that kept
21 him from any victim.

22 And -- and that in itself right there is just a lack
23 of intent to kill somebody. It's a murder case. They have
24 to prove basically this would have been a premeditated
25 murder; that he had a cold-blooded -- before -- at some

1 point before the incident happened, he had it in his heart
2 -- I want to have somebody dead -- and then he made an
3 attempt to put somebody in the grave.

4 And he didn't. You wouldn't have just gunshots in
5 that side of a house and a car with present ability to go
6 kill somebody -- several people if he wanted to -- if there
7 was any actual intent to kill anybody.

8 The -- the -- there are different -- the -- really, it
9 -- the -- there's a legal fiction that -- that there's a
10 difference between specific intent and general intent.
11 Those are both the two types of intent.

12 Specific intent is: I have the intent to kill that
13 specific person. General intent just means that I have the
14 intent to kill somebody -- somebody over there.

15 The -- but it's still -- whether you call it a
16 specific intent to kill or a general intent, it's still
17 intent to kill -- murder.

18 The -- now, I submit to you that -- that they don't
19 really even have the victims if there was a "wolf and --
20 and icing-down" type situation. It wasn't between Vickie
21 Davis and Dawayne Davis. It -- it was between some of the
22 other guys, none of whom testified, none of whom really
23 cooperated with the police -- victims, but none of whom
24 testified and none of whom cooperated with the police.

25 And why? Why? I mean, it's perfectly reasonable to

1 wonder why -- why not.

2 The -- attempted murder requires premeditated. It's
3 got to be premeditated: I knew ahead of time. Can't be
4 just somebody -- I got angry; I tried to hurt somebody.
5 It's got to be a chance to reflect and say, "I want
6 somebody dead," and then go do it.

7 Has to be malice -- malice. Malice is a hatred. You
8 know you are harming somebody, and you do it anyway,
9 because that is what you were hoping to do.

10 A hatred, an ill-will: I -- I know what I'm doing is
11 evil, and -- and I'm going to do it. The judge is going to
12 tell you that before you can find guilty of attempted
13 murder, you have to find malice, a hatred of -- of -- just
14 indifference of human life.

15 And -- and finally, as I've mentioned before, the --
16 there has to be an intent to kill. The -- again, this
17 one's defined kind of two ways. It -- it's either express
18 intent to kill or implied intent to kill. Doesn't really
19 matter.

20 The -- intent to kill, express is I want to kill that
21 person. I said it; I've expressed it. Implied just means
22 that looking at everything that happened, we know he wanted
23 to kill the person. Held her down; tied her up; put the
24 gun against her head.

25 He didn't say he wanted her to kill, but there's no

1 way to look at what he did and not know that he had the
2 intent to kill her. The -- walked up closer to her
3 perhaps.

4 The -- that is what attempted murder is. And it's not
5 an attempted murder. It's a hotheaded dispute between two
6 people that results in a -- what -- what I submit to you is
7 probably an intentional shooting into a dwelling to -- to
8 scare the hell out of people, to intimidate the hell out of
9 people.

10 I -- I -- it's not -- it -- it's a criminal act. It's
11 not attempted murder. I don't -- we all know what
12 happened. One group of toughs stood up to another group of
13 toughs. And one say that, "Unh-unh. Unh-unh. You aren't
14 doing that. Get away."

15 And he scared the hell out of them. And that is
16 criminal. Using the gun makes it criminal. Does it make
17 it attempted murder?

18 The -- the lesser-included charge, if -- if you don't
19 find attempted murder, is assault and battery of a first
20 degree. The elements are you can be convicted of assault
21 and battery, first-degree, even if you intend to kill --
22 even if -- if what you do will result in somebody dying.
23 Shooting somebody can be assault and battery if you don't
24 have the malice, the premeditation, and the specific or the
25 general intent to kill somebody.

1 If you shoot at somebody and -- and recognize, if you
2 hit them, they will die or they will be greatly injured but
3 you don't have the premeditated intention to leave them
4 dead, that is assault and battery of the first degree with
5 the use of a deadly weapon.

6 The -- now, I submit to you, it -- it's a fairly clear
7 verdict in this case. It -- it's not an attempted murder
8 case. The -- there would be somebody dead. There would be
9 somebody injured.

10 If there is any doubt whatsoever that -- even if y'all
11 feel -- or -- or some of you feel or -- or many of you feel
12 -- and it takes all 12 to reach the verdict. But even if
13 you feel that -- that there is some evidence of attempted
14 murder but there's something in your mind that makes it
15 that it might not be, then -- then the only person punished
16 here today is Carlos Reeder. And -- and that is, under
17 your oath, the proper verdict.

18 The -- as -- as Carlos -- as Quentin Graham testified
19 to, the -- when they went back by there, they didn't go
20 with the intent to -- to restrike up the confrontation.
21 That -- that came from the crew at the house towards the
22 pedestrians walking by.

23 The -- when the shots were fired and the police were
24 called, every -- as Quentin said, "I'm not the only guy who
25 left and fled the scene. Everybody took off."

1 And -- and I would too if -- if there's shots fired.
2 But the -- there are some other reasons, I submit to you,
3 that are likely to be why you don't have more witnesses to
4 -- who were actually involved in the wolfing here.

5 The -- if -- if I could paraphrase Dawayne Davis --
6 and -- and you recall -- you remember testimony as -- as
7 you remember it. I -- I'll -- I -- I submit to you, this
8 is how I believe people testified, but you remember it how
9 you remember it.

10 The -- Dawayne Davis: I heard a commotion. I heard
11 harsh words coming back and forth -- this is when it first
12 happened in the front yard -- several people arguing. The
13 -- people were getting loud, but I didn't have anything to
14 do with it. The -- the -- there was no beef between me.

15 The -- you know, in fact, he was actually kind of
16 distant friends with Quentin: I went to school -- I
17 remember the dreadlock guy. I went to school with him. I
18 wasn't friends, but no immediate animosity between us.

19 I submit to you that -- that the only express malice
20 is I will see you later, which is a fairly enough common
21 phrase that -- that doesn't mean I'm coming back to get
22 you. It can. But it -- it means I'm holding a grudge.

23 And I submit to you, the only time you'll ever hear
24 that phrase is when there is a threat coming -- the -- the
25 only time people make that phrase is when they're angry and

1 they're walking away. I will see you later. There'll be
2 another time between you and me.

3 But that's not a threat to come back and kill
4 somebody. That is I'm -- I'm remembering this, but I'm
5 leaving. That -- that's the only way y'all can take that.
6 That -- before you hear that phrase -- you've heard
7 somebody threaten and then other person leaving before they
8 ever say that.

9 As Quentin said, when -- when I -- I'm sorry. The --
10 Ms. Vickie -- I -- I wasn't involved in any of the
11 beginning arguments. When they came by, they were looking
12 for their friend, Smoke.

13 The -- they weren't looking to start a fight. They
14 were looking for their friend, Smoke. Told to get back in
15 their car; she heard her brother say -- this is Vickie
16 testifying about her -- what her brother said -- "You
17 better get your ass back in your car."

18 When the -- when she says Carlos said, "I'll see you
19 later," what does her brother say? "You see me now. You
20 see me now. I'm right here." That -- that's the brother.

21 The -- the -- she was standing -- when -- when -- when
22 Carlos and Quentin came back, she was holding a golf club.
23 And -- and I submit, she's a feisty lady. And I admire
24 that from her.

25 But -- but there are some other people I wouldn't

1 characterize as just feisty ladies standing up for
2 themselves. They're -- they're guys who've been drinking,
3 holding beer bottles. And it -- it's -- could be a rough
4 crew.

5 The -- Deborica, the homeowner, testified: "Smoke is
6 a friend of mine. They did see him there when they rode by
7 and saw him there. I didn't see anything wrong with them
8 coming by and asking if Smoke was there in the first
9 place."

10 The -- I -- I just submit to you, I mean, we all -- it
11 -- it's a fairly clear case, factwise. I mean, we don't
12 know exactly what happened, but I -- it's -- it -- it's
13 just two toughs wolfing at each other, one guy getting
14 angry, and -- and banging a gun off.

15 If there was an actual intent to be killed, someone
16 would be dead, someone would be greatly injured. But there
17 was nothing -- nothing that would prevent closing in --
18 have you got the exhibits?

19 DEPUTY CLERK OF COURT: No, sir.

20 MR. VERNER: Did you keep the exhibits, Ms. Court
21 Reporter?

22 THE COURT REPORTER: Yes.

23 MR. VERNER: Can I have some? Just the black and
24 whites.

25 I don't know how well y'all can see that. (To the

1 bailiff) Can you dim the lights one?

2 THE BAILIFF: (Complied.)

3 MR. VERNER: This is a photograph taken, just
4 basically from the vantage point that Dawayne would have
5 been -- would have seen the shooting. Of course, there
6 would've also been the black Expedition that he testified
7 that he was behind. That is the distance that the shooter
8 would have been standing.

9 The -- do you see that it -- it's just absolutely
10 nothing that would've prevented him -- that that's about 30
11 -- 104 feet, 33 yards away. The -- that's how close -- on
12 -- on whether he could identify him and their ability to --
13 to actually say they heard what they heard and see what
14 they see. The -- that's what the -- the vantage point
15 would have actually been, the -- not as close as -- as,
16 really, we were led to believe in the beginning.

17 The -- that's just absolutely nothing that prevents
18 somebody standing there from coming all the way up into the
19 yard. The -- it -- it was a distant shooting into the
20 house, in -- into the back of the car, and -- and then
21 running away. I mean, that's a crime. That's not
22 attempted murder.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Verner.

25 Solicitor Scott?

1 MR. VERNER: Thank you.

2 CLOSING ARGUMENT BY MR. SCOTT

3 MR. SCOTT: Pow, pow, pow, pow, pow, pow, pow. Not
4 what you expect to hear at a family cookout, is it?
5 Defense elicited that from two of the witnesses there. And
6 that's what they dealt with October 6th, 2012.

7 This case is about the complete and utter disregard
8 for the value of human life. Make no mistake about it:
9 Carlos Reeder had no qualms -- he had absolutely no problem
10 in pointing a .380 pistol at a group of people at a family
11 cookout and squeezing off seven rounds. He's all but
12 conceded that at this point: absolutely no qualms about
13 it, no regard whatsoever for the most precious thing on
14 earth: a human life.

15 There was no reason, no justification. And today he's
16 here to face consequences for his actions. October 5th,
17 2012, that's move-in date for Deborica Adams. I -- I
18 imagine it -- it was a happy day for you. A new home she
19 would be sharing with her boyfriend; excited as a young
20 couple, I imagine, to have their first home together.

21 She's moving in with Smoke. Smoke is an acquaintance
22 from Laurens. Who is Smoke? I don't know who Smoke is.
23 It's a nickname.

24 We've heard "Dirt," "Unc," C-Note," "Smoke." These
25 are nicknames. But this is her friend. We know he was

1 helping her move.

2 While moving in, the testimony was a silver -- or I'm
3 -- excuse me -- a gold or tan Corolla pulls up in front of
4 the Rodelsperger house. And Deborica doesn't recognize the
5 car; Smoke does. Smoke goes down there.

6 We can only guess what Smoke was doing at the Corolla.
7 I -- I make no assumptions, but we don't know. We do know
8 he was speaking with the driver, who Deborica didn't
9 recognize -- or really get to see.

10 After speaking with the driver, Deborica just asks
11 them out of curiosity, "Who was that, Smoke, you were
12 speaking with?"

13 "Oh, that's my friend, Carlos Reeder."

14 On October 5th, 2012, this means nothing to her, just
15 that a Corolla that passed by with a man named Carlos
16 Reeder said hello to her friend, Smoke, just a chance
17 encounter.

18 The next day is a Saturday, October 6th. Deborica is
19 at work in Laurens, Agape Nursing Home. Looked like the
20 party was kind of starting without her. She was going to
21 go to the -- the -- I guess, for lack of a better term or
22 how I envision it -- a "welcome to the neighborhood" or --
23 or home-warming-type party.

24 But she gets a call. I can't imagine getting that
25 call. There's been a shooting at the house. And it was a

1 black -- two black males that show up in a Corolla, tan-
2 goldish color. They had been asking for somebody named
3 Smoke, and they shot at the group of people there. All the
4 kids came running. It was chaos.

5 What is the name that comes to Deborica's mind that
6 fall afternoon in Newberry? That was Carlos Reeder. That
7 was the -- Smoke -- he's looking for Smoke. He's in a gold
8 Corolla. That's Carlos Reeder.

9 None of these people there who -- who were shot at
10 know who this person is. But what they say is that they're
11 enjoying themselves; they're grilling out. Again, this is
12 just a fall afternoon here in Newberry.

13 Two guys show up in a Corolla. No one there knows
14 them. They're looking for Smoke. No one there at the
15 party knows who Smoke is.

16 Explain it to these two males: We don't know who
17 you're looking for, but he's not here. We don't really
18 know who you are. And you -- would you please exit?

19 I don't think that's unreasonable. I don't think
20 that's unreasonable for me to ask somebody to leave if I'm
21 having a family get-together and they show up at my house,
22 looking for somebody I don't know. Is that so
23 unreasonable?

24 But words are exchanged. Somebody feels they're
25 disrespected. And at that point Carlos Reeder issues the

1 -- I -- I think fairly ominous message: I'll be back.
2 We'll see you.

3 They get in the car; back up on Rodelsperger; take a
4 right on Charles. And really, it should've been over right
5 then. That should've been the end of it. But, you know,
6 somebody like Carlos Reeder does not understand relativity
7 and actions versus reactions and consequences.

8 A reasonable person would say, Yeah. That was kind of
9 ugly of them to make me leave. You know, they -- they
10 should've invited me in to have a -- a beer or a burger.

11 You may have even had words back with them, but that
12 would've probably been it. Because in the long run, does
13 it really matter? Wouldn't you have just gone back to your
14 own business? You probably would have, but not Carlos
15 Reeder.

16 Because like his defense attorney said, he is a tough
17 -- or at least he wants to be tough. He -- he wants --
18 this is how you get respect nowadays, apparently. You show
19 how reckless you can be.

20 So he leaves in the car with Quentin. And where do
21 y'all think they went?

22 Well, they lose the car, and he comes back with a gun.
23 Don't you think it's safe to assume he went to go get that
24 gun; that's why he was going to see him again 30 minutes
25 later?

1 It should've been over, but not for Carlos. He's got
2 to show how tough he is; that there's going be consequences
3 for disrespecting him.

4 The crowd of people out there, they think it's over
5 with. Either Vickie sees him on the road, or a child
6 screams that he's got a gun. I -- it's unclear to me which
7 happens first. But it happens.

8 He's fidgeting. He's pacing. Don't do it, Carlos.
9 Don't do it. You don't have to do it.

10 It's too late, though. He's got it set in his mind.
11 And the notion is in his mind that he's going teach these
12 people that there's consequences for disrespecting Carlos
13 Reeder.

14 Is that reasonable? He stands there. He plants his
15 feet shoulder-width apart, and he takes aim. And he
16 squeezes off seven rounds just as easy as you please at
17 that crowd of people up there having a get-together.

18 It's chaos. People are running. Children are
19 screaming. Quentin Graham is sitting there, stoned out of
20 his mind. Reeder's gone, though; he's on the run.

21 And guess what? He never yelled a person's name for
22 each time he shot. He never said, "This one's for A, B, C,
23 D, E." No. Because a bullet has no name.

24 What y'all think he intended when he fired that gun up
25 there at those people? The defense wants you to think it

1 was just to scare some folks. You know, if you want to
2 scare somebody, don't you do one of these up here? Isn't
3 that how you get somebody's attention? You don't aim that
4 thing people-level.

5 You saw the bullet holes in that Explorer that Vickie
6 was leaning up against. The one that hit the glass two
7 feet over would've hit her right in the sternum.

8 The one that hit the tailgate, couple feet over,
9 would've hit her right in the belly button. You don't aim
10 people-level at a crowd of partygoers if you're trying to
11 scare somebody.

12 A bullet does not have a name. Attempted murder does
13 not require that you have an intended victim. Let's say --
14 thank God it didn't happen. Let's say one of those bullets
15 caught Dawayne Davis between the eyes.

16 You don't think he'd be guilty of killing him just
17 because he intended on hitting somebody else? That ain't
18 how it works.

19 What's my intent if I drive a car into a crowd of
20 people? What's my intent if I fire a pistol into a crowd
21 of people?

22 The defense has made a big deal that you all just need
23 to just toss the case because the indictments, these
24 charging indictments that get it into court, say Vickie
25 Davis and Dawayne Davis. And he wants you to say just --

1 just toss it because they really weren't intended victims.
2 He wants you to assume the intended victim is this uncle,
3 the person that he had initially argued with.

4 We don't know who Carlos Reeder's intended victim was.
5 But I submit to you, when you fire seven times into a crowd
6 of people, you don't really have one person in mind. And
7 the law does not require that.

8 When Judge Hocker reads you the law on attempted
9 murder, he's not going to say you have to find that one
10 sole victim was who Carlos Reeder intended to shoot. He's
11 not going to say you have to find that there was one person
12 that he had in mind to fire upon.

13 He could've been charged with attempted murder for
14 each and every person in that yard. Dawayne Davis and
15 Vickie Davis are representatives of everyone in that yard,
16 because everyone in that yard was a victim. Everyone who
17 was in harm's way is a victim of attempted murder.

18 I -- I just -- I'll reiterate the point. What would
19 we be looking at if Vickie or Dawayne had been killed?
20 Would it not have been murder? Would you have found --
21 well, he didn't mean to kill them. He meant to kill
22 somebody else, so we're going cut him loose.

23 No. It's murder. And that's what it is here. He
24 didn't kill anybody, but it's attempted murder. And that
25 -- there's going to be a very important point of law, and

1 it's called "malice."

2 Malice is what's going to separate the charge of
3 attempted murder from the lesser-included charge that they
4 want you to find him guilty of, assault and battery, first-
5 degree. This ain't no assault and battery, first-degree,
6 because of malice.

7 Malice can be shown by a malignant heart, an evil
8 intent, hostile feelings towards another. It can be shown
9 by the reckless disregard for human life.

10 And -- and I keep saying that, but it's very
11 important. That's just -- this is textbook reckless
12 disregard for human life.

13 You think he valued that -- all those human lives up
14 there when he shot all those times in that crowd of people?
15 That's malice. That's what I call "implied malice," or
16 inferred malice.

17 And there's two kinds of malice. And I submit to you,
18 firing a weapon into a crowd of people is implied malice.
19 That's recklessness, reckless disregard, complete and utter
20 disregard for human life.

21 The express malice is words or actions by the suspect
22 or preparation taken to further an act. I submit to you,
23 these -- this ominous message that he issued before he left
24 -- "I'll see you" -- that was a warning that they may have
25 not understood at the time. But that was a warning: I'm

1 going to be back in 30 minutes. That is express malice.
2 He's telling them: I'm going to be back, and something's
3 about to happen. And the preparation, I submit to you, is
4 him leaving in the car, coming back on foot with a weapon,
5 and firing on those people.

6 It -- this case is about to be yours. I -- you know,
7 it -- two days, essentially, is -- is -- is what we -- I
8 know y'all were here Monday. But we got started yesterday,
9 and it's about a two-day case. And it -- it's about to be
10 yours.

11 And -- and as I stand up here and as I jotted down
12 some notes, I -- I try to answer every question that's out
13 there on every trial I do. But it -- it's impossible,
14 really. I -- I can never answer every one of your
15 questions.

16 The simple fact is I wasn't there. None of us were
17 there. But I ask you like I ask all my juries: just
18 common sense. Reason is going to be your best friend in
19 deciding this case.

20 You're going to be tempted to go back there and play
21 detective. I'm telling you. You're going to go back there
22 and y'all are going pull out the shell casings and you're
23 going pull out the pictures and you're going think about
24 the -- the evidence he introduced where it was a hundred
25 feet, as opposed to 30 yards or this or that.

1 And it doesn't matter. Focus on the big picture.
2 Focus on the relevant; discount the irrelevant. Do not
3 chase red herrings. Look at the big picture.

4 It -- it's so often that, yeah, you know, we have a
5 verdict here of a mistrial or maybe a guilty of a lesser-
6 included offense from a jury. And as prosecutors we say
7 that they just didn't see it. It -- it's so clear to me,
8 but they didn't see it. What -- what did they not see?

9 And every once in a while, a juror will call me on the
10 phone or I'll see him on the street or they'll speak with
11 us after a trial. And they'll say, "You know, there's this
12 one thing that -- that stuck out to us. And -- and here's
13 what it was."

14 And it -- it never fails to blow my mind. Because I
15 think, Well, I would've never in a million years thought
16 they would've focused on that. My God, they lost the
17 forest for the trees. They focused on the minutiae; they
18 focused on the irrelevant detail here or there and lost
19 sight of the big picture.

20 What's the big picture here? Guy shows up to a party;
21 is asked to leave; harsh words are spoken; should've been
22 the end of it. Then he premeditated his plan to come back
23 30 minutes later with a pistol and fire seven rounds into a
24 group of people. That's the big picture.

25 And that is attempted murder. That is the definition

1 of malice. Don't settle on a lesser-included. This isn't
2 A&B-first. This is not assault and battery, first-degree.
3 This is attempted murder.

4 What do you think Carlos Reeder's intent was when he
5 fired those shots at those people? This is what you do
6 when you're trying to scare somebody. This is what you do
7 when you're trying to kill somebody.

8 Two counts of attempted murder -- don't be confused by
9 the names on the indictment. These two represent many more
10 who were in the yard. Remember malice.

11 So long as you are firmly convinced that his intent
12 was to seriously hurt somebody and possibly kill somebody
13 and he acted with reckless disregard for human life, you
14 must find him guilty of attempted murder.

15 I ask you now, after these charges the judge is about
16 to read to you, you go back; consider all the facts and all
17 the testimony you've heard; and come back with a verdict
18 that truly speaks the truth. That's two counts of
19 attempted murder. Thank you.

20 THE COURT: Thank you, Solicitor.

21 (Off the record briefly.)

22 CHARGE OF THE COURT

23 THE COURT: All right. Madam Forelady and ladies and
24 gentlemen of the jury, I will now charge you on the law
25 applicable to this case. And you must consider the charge

1 as a whole and not focus on some portions to the exclusion
2 of other portions.

3 Now, the indictments charge the defendant with
4 attempted murder of Dawayne Davis and attempted murder of
5 Vickie Davis, two indictments. And I'll remind you once
6 again that the fact that the defendant has been arrested,
7 charged, and indicted in this case is not evidence in this
8 case and cannot be considered by you as evidence of guilt
9 in this case, nor does it create any presumption or
10 inference of guilt.

11 The two indictments are simply the formal, written
12 instruments which contain the charges made against the
13 defendant. These are the formal documents by which this
14 case is brought into this Court.

15 Now, the indictments in this case allege several --
16 several different -- well, they each led to one offense
17 against the defendant: Indictment 2013-GS-36-466,
18 attempted murder of Dawayne Davis; and Indictment No. 2013-
19 GS-36-470, attempted murder of Vickie Davis.

20 Each indictment charges a separate and distinct
21 offense. You must decide each indictment separately on the
22 evidence and the law applicable to it, uninfluenced by your
23 decision as to the other indictment.

24 The defendant may be convicted or acquitted on either
25 or both of the indictments. You'll be asked to write a

1 separate verdict of guilty or not guilty for each
2 indictment.

3 Now, I remind you, Madam Forelady and ladies and
4 gentlemen of the jury, that during this trial -- and I
5 mentioned this to you -- instructed you at the outset that
6 you and I have certain duties to perform and have performed
7 during this trial.

8 As the trial judge, it has been my responsibility to
9 preside over the trial of this case. And I've also had the
10 duty to rule on the admissibility of the evidence offered
11 during this trial.

12 You are to consider only the competent evidence before
13 you. If there was any testimony ordered stricken from the
14 record in this case during this trial, you must disregard
15 that testimony. You are to consider only the testimony
16 which has been presented from this witness stand, the
17 exhibits which have been made a part of the record in this
18 case, and any agreements or stipulations of counsel.

19 I have the additional duty to charge you on the law
20 applicable to this case, as I am doing now. As the
21 presiding judge, I am the sole judge of the law in this
22 case. And it's your duty as jurors to accept and apply the
23 law as I now state it to you.

24 And as I told you at the outset of this case, if you
25 already have an idea as to what the law is or what the law

1 ought to be and it does not agree with what I now tell you
2 what the law is, you must abandon that idea because you're
3 sworn to accept the law and apply the law exactly as I
4 state it to you now.

5 In every case tried in this Court before a jury, the
6 jury becomes the sole and exclusive judge of the facts in
7 the case. A trial judge cannot intimate, state, comment
8 on, or make any statement to a trial jury about the facts
9 in a case.

10 Since you, the jury, are the sole judge of the facts
11 in this case, you are not to infer from what I have said
12 during the progress of this trial, in ruling upon the
13 admissibility of evidence or otherwise, or anything that I
14 say now during the course of this instruction of you that I
15 have any opinion about the facts in this case. I do not.
16 The law does not allow me to have an opinion about the
17 facts in this case.

18 This is a matter solely for you, the jury, to
19 determine. As jurors it is your duty to determine the
20 effect, value, weight, and truth of the evidence presented
21 during this trial.

22 Madam Forelady and ladies and gentlemen of the jury,
23 the defendant has pled not guilty to both indictments. And
24 that plea puts the burden on the state to prove the
25 defendant guilty. A person charged with committing a

1 criminal offense in South Carolina is never required to
2 prove himself innocent.

3 I charge you that it is an important rule of the law
4 that the defendant in a criminal trial, no matter what the
5 seriousness of the charge or charges may be, will always
6 presumed to be innocent of the crime or crimes for which
7 the indictments have been issued, unless guilt has been
8 proven by evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 Now, this presumption of innocence does not end when
11 you begin your deliberations, but it accompanies the
12 defendant throughout the trial unless you reach a verdict
13 of guilt based on evidence satisfying you of that guilt
14 beyond a reasonable doubt. This presumption of innocence
15 is like a robe of righteousness placed about the shoulders
16 of the defendant which remains with the defendant unless it
17 has been stripped from the defendant by evidence satisfying
18 you of the defendant's guilt beyond a reasonable doubt.

19 The presumption of innocence is not mere legal theory.
20 It is not just a legal phrase. It is a substantial right
21 to which every defendant is entitled, unless you, the jury,
22 are satisfied from the evidence of the defendant's guilt
23 beyond a reasonable doubt.

24 The state, again, has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of you

1 may have served as jurors in civil cases, where you were
2 told that it is only necessary to prove that a fact is more
3 likely true than not true, such as by the greater weight,
4 or the preponderance of the evidence. In criminal cases
5 the state's proof must be more powerful than that. It must
6 be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that leaves
8 you firmly convinced of the defendant's guilt. Now, Madam
9 Forelady and ladies and gentlemen of the jury, there are
10 very few things in this world that we know with absolute
11 certainty.

12 And in criminal cases the law does not require proof
13 that overcomes every possible doubt. If, cased on your
14 consideration of the evidence, you are firmly convinced
15 that the defendant is guilty of the crimes charged, you
16 must find the defendant guilty.

17 If, on the other hand, you think there is a real
18 possibility that the defendant is not guilty, you must give
19 the defendant the benefit of the doubt and find him not
20 guilty.

21 Now, there are two types of evidence which are
22 generally presented during a trial. That is direct
23 evidence and circumstantial evidence. Direct evidence
24 directly proves the existence of a fact and does not
25 require deduction.

1 However, circumstantial evidence is proof of a chain
2 of facts and circumstances indicating the existence of a
3 fact. Crimes may be proven by circumstantial evidence.
4 The law makes no distinction between the weight or value to
5 be given to either direct or circumstantial evidence.

6 However, to the extent the state relies on
7 circumstantial evidence, all of the circumstances must be
8 consistent with each other and, when taken together, point
9 conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray
11 the defendant's behavior as suspicious, the proof has
12 failed.

13 The state has the burden of proving the defendant
14 guilty beyond a reasonable doubt. This burden rests with
15 the defendant regardless of whether the state -- the burden
16 rests with the state regardless of whether the state relies
17 on direct evidence, circumstantial evidence, or a
18 combination of the two.

19 Necessarily, you must determine the credibility of
20 witnesses who have testified in this case. Credibility
21 simply means believability. It becomes your duty as jurors
22 to analyze and to evaluate the evidence and determine which
23 evidence convinces you of its truth.

24 In determining the believability of witnesses who have
25 testified in this case, you may believe one witness over

1 several witnesses or several witnesses over one witness.
2 You may believe a part of the testimony of a witness and
3 reject the remaining part of the testimony of that same
4 witness.

5 You may believe the testimony of a witness in its
6 entirety or reject the testimony of a witness in its
7 entirety. You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice, or other
9 motive in this case. You may also consider the appearance
10 and manner of a witness while on the witness stand.

11 Now, Madam Forelady and ladies and gentlemen of the
12 jury, I instruct you and emphasize that the fact the
13 defendant did not testify is not a factor to be considered
14 by you in any way in your deliberations and in your
15 consideration on the question of the guilt or innocence of
16 the defendant. It must not be considered by you in any
17 manner whatsoever.

18 A defendant has the constitutional right to remain
19 silent. And the assertion of this right must not be
20 considered by you in your deliberations.

21 I repeat, under you oath that you took at the outset
22 of this case, you are to draw no conclusion whatsoever from
23 the fact that the defendant in this case did not testify.
24 The fact that the -- this defendant did not testify should
25 not even be discussed while in the jury room. The burden

1 of proof, as I have stated to you, is on the state. The
2 defendant is not required to prove his innocence. The
3 burden of proof remains on the state to prove guilt beyond
4 a reasonable doubt.

5 An issue in this case is the identification of the
6 defendant as the person who committed the crime charged.
7 The state has the burden of proving identity beyond a
8 reasonable doubt. You must be satisfied beyond a
9 reasonable doubt of the accuracy of the identification of
10 the defendant before you may convict the defendant.

11 Identification testimony is an expression, a belief,
12 or impression by a witness. You must determine the
13 accuracy of the identification of the defendant. You must
14 consider the believability of each identification witness
15 in the same way as any other witness.

16 You may consider whether the witness had an adequate
17 opportunity to observe the offender at the time of the
18 offense. This will be affected by things like how long or
19 short a time was available; how far or close the witness
20 was; lighting conditions; and whether the witness had the
21 chance to see or know the person in the past. Once again,
22 I instruct you, the burden of proof on the state extends to
23 every element of the crime charged.

24 And this specifically includes the burden of proving
25 beyond a reasonable doubt the identity of the defendant as

1 the person who committed the crime. If, after examining
2 the testimony, you have a reasonable doubt as to the
3 accuracy of the identification, you must find the defendant
4 not guilty.

5 Now, in order to establish criminal liability,
6 criminal intent is required. For example, the mental state
7 required to be proven by the state for a particular crime
8 might be purpose, intent, knowledge, recklessness, or
9 criminal negligence. Criminal intent must be proven by the
10 state beyond a reasonable doubt.

11 Criminal intent is always a matter that must be
12 determined by the jury from the circumstances surrounding
13 the situation. Now, there's no way to prove intent to a
14 mathematical certainty. There's no way medical science can
15 dissect a person's brain and determine what the person had
16 in mind.

17 So the law says that criminal intent may be inferred
18 from the circumstances shown to have existed. This is how
19 you make a determination of whether or not the element
20 requiring intent was present.

21 It's not necessary to establish intent by direct and
22 positive evidence. But intent may be established by
23 inference in the same way as any other fact by taking into
24 consideration the acts of the parties and all the facts and
25 circumstances of the case.

1 Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine what the
3 defendant intended to do, based on the circumstances shown
4 to have existed. Criminal intent can rise from action or
5 failure to act. It may arise from negligence,
6 recklessness, or an indifference to duty or to consequences
7 that is considered by the law to be the equivalent of
8 criminal intent.

9 An attempt is an effort to accomplish a crime which
10 does not succeed. An attempt includes an intent to do a
11 particular criminal act, along with an act falling short of
12 the act intended.

13 The state must show more than mere preparation and
14 intent. There must be some overt act committed in the
15 effort to commit the crime.

16 Intent means intending the result which actually
17 occurs, not accidentally or involuntarily. Intent may be
18 shown by acts and conduct of the defendant and other
19 circumstances from which you may naturally and reasonably
20 infer intent.

21 Now, again, the defendant has been indicted -- two
22 indictments, charged with attempted murder. And that comes
23 from Section 16-3-29, Code of Laws for South Carolina. And
24 it reads: "A person who, with intent to kill, attempts to
25 kill another person with malice aforethought, either

1 expressed or implied, commits the offense of attempted
2 murder."

3 In order to prove this crime, the state must prove the
4 defendant attempted to -- attempted to kill another person
5 with malice aforethought, either express or implied.
6 Malice is hatred, ill-will, or a hostility towards another
7 person. It is the intentional doing of a wrongful act
8 without just cause or excuse and with an intent to inflict
9 an injury or under circumstances that the law will infer an
10 evil intent.

11 Malice aforethought does not require that malice
12 exists for any particular time before the act is committed.
13 But malice must exist in the mind of the defendant just
14 before and at the time of the act is committed. Therefore,
15 there must be a combination of the previous evil intent and
16 the act.

17 Malice aforethought may be expressed or implied.
18 Sometimes we refer to that as "inferred." These terms,
19 "expressed" and "inferred," do not mean different kinds of
20 malice, but merely the manner in which malice may be shown
21 to exist.

22 That is either by direct evidence or by inference from
23 the facts and circumstances which are proved.

24 Express malice is shown when a person speaks words
25 which expressed hate -- which express hatred or ill-will

1 for another or when the person prepared beforehand to do
2 the act which was later accomplished. And give you an
3 example: Lying in wait for a person or any other acts of
4 preparation going to show that the deed was within the
5 defendant's mind would be express malice.

6 Malice may be inferred or implied from conduct showing
7 a total disregard for human life.

8 If facts are proved beyond a reasonable doubt
9 sufficient to raise an inference of malice to your
10 satisfaction, this inference would be simply an evidentiary
11 fact to be considered by you, the jury, along with the
12 other evidence in this case. And you may give it the
13 weight you decide it should receive.

14 A specific intent to kill is not an element of
15 attempted murder. But there must be a general intent to
16 commit serious bodily injury. Intent means intending the
17 result which actually occurs, not accidentally or
18 involuntarily.

19 Intent may be shown by acts and conduct of the defendant
20 and other circumstances from which you may naturally and
21 reasonably infer intent. Evidence of the character of the
22 act, the character of the instrument used, the manner in
23 which it was used, the purpose to be accomplished, and the
24 resulting wounds or injuries may be considered in
25 determining the intent with which the act was committed.

1 Intent may be also be inferred when it is demonstrated
2 that the defendant voluntarily and willfully committed an
3 act, the natural tendency of which is to destroy another's
4 life.

5 Now, if you determine, Madam Forelady and ladies and
6 gentlemen of the jury, that the state has not proven
7 attempted murder beyond a reasonable doubt, you should then
8 consider whether the state has proven beyond a reasonable
9 doubt that the defendant is guilty of assault and battery
10 in the first degree. A person commits the offense of
11 assault and battery in the first degree if the person
12 unlawfully offers or attempts to injure another person with
13 the present ability to do so and the act is accomplished by
14 means likely to produce death or great bodily injury.

15 Great bodily injuries means bodily injury which causes
16 a substantial risk of death or which causes serious,
17 permanent disfigurement or protracted loss or impairment of
18 the function of a bodily member or organ. The assault and
19 battery in the first degree is considered a lesser-included
20 offense from that of attempted murder.

21 Now, Madam Forelady and ladies and gentlemen of the
22 jury, your verdict as to each indictment must be a
23 unanimous verdict.

24 Now, I'm going to come down -- it's better for me to
25 be right in front of you and show you what we call a