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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

Case No. 2012-GS-26-04016

ORIGINAL

RECEIVED

MAY 29 2015

SC Court of Appeals

The State Respondent,

v.

Shelton Butler Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Shelton Lathal Butler Jr

AKA:

Race: BLACK Sex: M Age: 23

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Murder (30 Y - Life)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2604016

A/W#: M972956

Date of Offense: 6/8/2012

S.C. Code § 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

§ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *MRP*

SCB16182

DeBusk, Jr., George H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *since date of arrest on June 19, 2012.*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$

TOTAL \$ 133.90 + 40.00 = 173.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 6/19/2012

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)

v.)

SHELTON LATHAL BUTLER, JR.,)

DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS

FIFTEENTH JUDICIAL CIRCUIT

INDICTMENT NO.: 2012-GS-26-04016

VERDICT FORM

I. MURDER

On the charge of Murder, we the Jury, by unanimous consent, find the Defendant, Shelton Lathal Butler, Jr. (check only one of the following options):

☐ Not Guilty

OR

☒ Guilty

Mary Roper
FOREPERSON'S SIGNATURE

June 5, 2014
Conway, South Carolina

NOTE: Please inform the Bailiff once deliberations are complete.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2012-GS-26-04016

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

June 2-5, 2014

SHELTON LATHAL BUTLER,)
JR.,)

Defendant.)

B E F O R E:

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

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

George H. DeBusk, Jr., Esquire
J. Stephen Grooms, Esquire
Attorney for Plaintiff

J. Eric Fox, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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1 MR. GROOMS: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 MR. GROOMS: May it please the Court.

4 OPENING BY MR. GROOMS:

5 MR. GROOMS: Ladies and gentlemen, on June 8th, 2012,
6 Jose Gutierrez was senselessly murdered by Shelton Brown
7 [sic], Hakeem Johnson and Donavon Johnson. The evidence
8 you're gonna hear in this case will show you that he was set
9 up, that they went to his home, that they called him prior,
10 that they set up a marijuana deal.

11 Now, regardless of whether or not you have any thoughts
12 on marijuana or whether somebody selling marijuana doesn't
13 matter today. Today what matters is that someone was shot in
14 the back. Regardless of him selling marijuana or be involved
15 in a marijuana transaction is the same as if you're selling
16 Girl Scout cookies as far as today goes. Today we're here to
17 find justice for the State and for the victim's family.

18 On that date, evidence is gonna show you that Hakeem
19 Johnson received a phone call, well excuse me, before I get
20 into that, you may notice only one person is on trial today.
21 Hakeem Johnson and Donavon Johnson are not here and they're
22 not on trial. Today we're here only as to being concerned
23 whether or not Shelton Butler is guilty of murder. They'll
24 have their day in the Court; that's all you need to be
25 concerned about.

1 Ladies and gentlemen, on June 8th, 2012, Jose Gutierrez
2 didn't need to die. This was a senseless killing. They went
3 to his home. They called him out to his home. The testimony
4 will show you that they waited with handguns, that they drove
5 the vehicle to the dead end instead of pulling in the
6 driveway, that they turned their vehicle around positioning it
7 for an easy escape. Then they called the victim. The victim
8 and his friend, Travis, came out to the vehicle, that they got
9 in the vehicle. That once in the vehicle, this Defendant,
10 Shelton, began small talk with Travis. You're gonna hear from
11 Travis in this case and they were just chatting about school.
12 You're gonna hear that Jose had reached up over the seat at
13 that point and handed the marijuana to either Hakeem or
14 Donavon, that once the marijuana was handed up front, small
15 talk stopped. Travis has an uneasy feeling; he begins to back
16 out of this vehicle. As he's got one foot out the door, the
17 car begins to move. It accelerated and he hears, you know
18 what time it is and he recognized that voice as Donavon
19 Johnson. Donavon Johnson is positioned in the front passenger
20 seat. At that point, he sees Donavon with a gun pointed in
21 the victim's direction. Now, he can't see Shelton at this
22 time. He doesn't know whether Shelton has a gun or not, but
23 he knows that as Jose is attempting to get out of that car or
24 one, being thrown out of that car, as the vehicle is spinning
25 forward -- this is Travis, he's now like this and the car is

1 moving forward, he sees the victim in this case, twenty-year-
2 old Jose Gutierrez coming out of that vehicle and hears a
3 shot. He doesn't know -- he can't tell you that Donavon shot
4 him; he can't tell you that Shelton shot him; he can't tell
5 you that Hakeem shot him. The trajectory would tell you that
6 it came from somebody either in that back seat or someone on
7 the right side of the vehicle. You'll hear from Dr. Proctor
8 tomorrow afternoon about the trajectory of the bullet.

9 What I can tell you, though, is that this Defendant has
10 given a statement that he knew that this was a robbery. In
11 the State of South Carolina, under what is commonly referred
12 to as the hand of one, hand of all, if Defendants who are
13 acting in concert to commit an illegal act such as a robbery
14 and one of those actors and they're all acting in concert and
15 one of those actors does a fatal action that causes the death
16 of another person, that all persons that participated are
17 guilty of murder.

18 So I want you to listen closely to the testimony of all
19 people in this case. I want you to listen closely especially
20 to the statements of the Defendants, of the Defendant. I want
21 you to listen to the inconsistencies in the statement and how
22 he's gonna try to put it off on somebody else. But at the end
23 of the day, after we get done with presenting our case, I
24 think it's gonna be very clear that Shelton knew exactly what
25 was going on. He was in this vehicle because he was involved.

1 He was in this vehicle because he was gonna get some
2 marijuana, too. He was in this vehicle because they went
3 there to rip off Jose. He was in this vehicle when it turned
4 around and positioned itself for escape. He was in this
5 vehicle either armed or with an armed codefendant and they
6 were there for one reason, to rob this victim. Regardless of
7 whether they robbed him of marijuana or what it is, once they
8 decide we're gonna go commit a robbery, once they act in
9 concert together and once somebody's dead, once somebody's
10 shot in the back in cold blood, all parties are now
11 responsible.

12 Thank you for your time.

13 THE COURT: All right, Mr. Fox.

14 MR. FOX: Thank you, Your Honor, may it please the Court.

15 OPENING BY MR. FOX:

16 MR. FOX: Ladies and gentlemen, my name is Eric Fox and
17 it's my privilege today to be the attorney for Mr. Shelton
18 Butler.

19 If only it were that simple; it is not that simple. The
20 State, right off the bat, doesn't want you to think about
21 who's not here nor that there are three people charged in this
22 murder and like in the Wizard of Oz, they don't want you to
23 pay attention in this case to the two men who are behind the
24 curtain or in the jail cell but you can't ignore them, their
25 names are gonna be all over this thing. And what you're gonna

1 hear about Donavon Johnson and Charles Johnson, who actually
2 aren't related, is that any evidence that you hear about, any
3 testimony, any physical evidence you have about who did the
4 shooting, all relates to Donavon Johnson. Any testimony, any
5 evidence you have about who organized this thing, who was
6 making the phone calls to set up the drug deal and he wanted
7 to sell them marijuana and that's fine -- was between Charles
8 Johnson, also known as Hakeem, Charles Johnson and Rico
9 Gutierrez. You're not gonna any phone calls between Shelton
10 Butler. You're not gonna have anybody say they saw Shelton
11 Butler with a gun or that he said, you know what time it is,
12 which is slang for you're about to be robbed. All right.
13 You're not gonna have any of that. It is true in South
14 Carolina the hand of one is the hand of all, but that's not
15 the end of it. Merely being present at the scene of the
16 crime, even with knowledge that that crime may occur, is not a
17 crime, does not make him guilty, does not make him guilty of
18 the crime that happens or if something unintended like a
19 shooting or killing happens. For example, three people get in
20 the car to go rob a bank, one of whom doesn't touch a gun,
21 stays in the car and he's the lookout. Two of them go in with
22 the masks on and the guns and they do the robbery. The third
23 person, if he's a lookout, he's a participant, he planned, he
24 cooperated, he furthered the action, furthered the crime;
25 sure, he's absolutely responsible just like the two that go in

1 the bank. And if someone gets hurt inside, there's a
2 kidnapping or a shooting, he's absolutely as responsible. But
3 now imagine three people, two of them between them have
4 discussed going to rob the bank. They say to their friend,
5 hey, we're going to the bank, do you want to ride along?
6 Sure. He goes, they get out and go inside. He has no idea;
7 he's just sitting there waiting for them to come back out. It
8 turns out they went to rob the bank. Unfortunately, someone
9 gets hurt inside. He does not have criminal responsibility
10 even if on their way out of the car and said oh, by the way,
11 we'll be back in a minute, we've got this bank to rob. That
12 is not the law reads. The Judge will give you the law at the
13 end of the case. He will tell you exactly what hand of one,
14 hand of all means. Obviously, the Solicitor wants you to say
15 anyone who's in that car has got to be responsible, but it's
16 just not that simple. So I urge you to keep that in mind.

17 Finally, I don't think it's at all clear when you listen
18 to the evidence -- I'm not gonna go through everything before
19 you heard it -- it's not at all clear where that shot came
20 from. And in fact, one thing he didn't tell you was that Mr.
21 Gutierrez and his friend, the only one, the only testimony
22 you'll hear that confirms who had a gun when they got there
23 was Mr. Spivey. Travis Spivey is that person who when with
24 with Mr. Gutierrez. He admits that they went there with guns.
25 He admits that he picked up a gun and fired the gun in

1 response. You didn't hear that just now, but you'll hear it
2 from Mr. Spivey.

3 The last thing I'll say is, I'll leave it up to you.
4 You're gonna hear statements from Shelton Butler. You decide
5 who's being consistent. You compare him to what Travis Spivey
6 is gonna say. You see who's consistent and who gives you the
7 most reasonable explanation for what happens. I'll trust your
8 good sense in comparing Mr. Spivey and Mr. Butler. Thank you.

9 BY THE COURT:

10 THE COURT: All right. Thank you, ladies and gentlemen.
11 I appreciate the fact that we haven't gotten very far in the
12 trial and that y'all have been waiting today. It was
13 important that we got started, that you were sworn, you were
14 under oath and under your obligations before we went any
15 further in this particular matter.

16 I would like y'all to be back tomorrow morning down in
17 the Jury Assembly Room by 9:15, downstairs in that Jury
18 Assembly Room by 9:15. The Bailiff will collect you at that
19 point in time and bring you upstairs. The Clerk of Court's
20 Office will have something for you in the jury room for y'all,
21 something to eat and we'll get started with the trial of this
22 case at 9:30. We'll start it at 9:30 in the morning. At that
23 point in time, we'll hear from the witnesses who will testify
24 to you in this matter under oath.

25 One thing I didn't mention to you earlier, I do not want

1 CLERK: Raise your right hand please.

2 TRAVIS SPIVEY, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please be seated and state your full name for the
5 Court and spell your last name.

6 MR. SPIVEY: Travis Spivey.

7 THE COURT: All right. Yes, I'm sorry, go ahead.

8 MR. SPIVEY: Travis Spivey. S-P-I-V-E-Y.

9 THE COURT: All right. All right, Madam Forelady, ladies
10 and gentlemen of the Jury, I'm sorry, I was not aware that
11 there was some matter of law that I had to take up outside
12 your presence. So, sorry, go back to your jury room. Thank
13 you very much.

14 (REPORTER'S NOTE: Jury exits courtroom. 9:39 A.M. The
15 following takes place outside the presence of the Jury.)

16 THE COURT: I'll be glad to hear from you, Mr. Fox, I
17 certainly will but that's sort of the purpose of the pre-trial
18 conferences to alert the Court that you have some issues so
19 that I don't have to do what I just did, just bring them in
20 and send them right back out. If there's some reason, there's
21 some tactical reason you don't want to explain that in front
22 of the Solicitor, that's fine, you can tell my Clerk. All
23 right. So in the future, keep that in mind, please, sir. Be
24 glad to hear from you?

25 MR. FOX: Yes, sir, Your Honor. The Court needs to know,

1 I don't control or have any idea who ---

2 THE COURT: I understand that, but you know it's gonna
3 come up. Don't you want the Court prepared ahead of time so
4 that -- now you're springing it on me, if there's some issue
5 that I could have look at it, examined it, maybe done some
6 research on it before the issue come up. Again, if there's
7 some tactical reason, that's fine. You always have access to
8 my Clerk. The State does too on their side without the
9 necessity of informing the other side. Be that as it may,
10 please tell me what your issue is.

11 MR. FOX: It's an issue you should be familiar or I know
12 you're familiar with from the trial you had with Mr. Chrisco
13 last year, which is the theory of this case is the hand of one
14 is the hand of all. Before they can proceed with any other
15 evidence, the State, under the Woomer case has got to show
16 evidence that there is in fact a plan. Until they establish
17 that, produce evidence of that, they cannot go into other.
18 This witness will not be testifying about anything that has to
19 do with the plan that Mr. Butler and allegedly his
20 codefendants had to rob Mr. Spivey and Mr. Guttierrez and
21 that's Woomer, again that's an issue Your Honor will recall
22 came up in a murder trial with Mr. Chrisco and Mr. Richardson
23 had last year on this very issue. I'll hand up again the copy
24 of Woomer, that's what it seems to -- it's straight from the
25 State Supreme Court, it's been the law since 1981, I believe

1 it's very clear they've got to first show evidence of this
2 common scheme or plan, this combination between the Defendants
3 to accomplish illegal activity before they present it into
4 evidence.

5 THE COURT: Solicitor?

6 MR. DEBUSK: Your Honor, I'm sorry, I have not seen this
7 case yet, so I need just a moment to find it. What portion is
8 he referring to? We probably have it in -- oh, here we go.

9 MR. FOX: Your Honor, it's on the second page in the
10 right-hand column ---

11 THE COURT: Yes, sir.

12 MR. FOX: --- about halfway down, it says it's well
13 established when joined with another and the second part of
14 that paragraph, to admit evidence under this theory, the
15 existence of common design and participation of the accused
16 against who the evidence is offered should first be shown.

17 THE COURT: All right, sir.

18 MR. DEBUSK: Your Honor, the individuals who are involved
19 in the common scheme or plan will testify, it will be proven
20 by circumstantial evidence. This witness will present
21 circumstantial -- substantial circumstantial evidence of a
22 common scheme or plan.

23 THE COURT: I certainly don't have an idea of what Mr.
24 Spivey is going to testify. It is certainly conceivable that
25 his testimony can establish certain circumstantial evidence,

1 which combined with other things from which the Jury could
2 find that there is a common scheme and plan in existence just
3 by the actions of all of the participants, how it occurred,
4 what they did at that time that they, just from the observable
5 facts, acted in concert. There does not have to be testimony
6 of someone saying I planned with John Doe to do X, Y and Z.
7 Certainly by substantial circumstantial evidence, you can
8 establish this is what occurred. Participant A did this;
9 participant B did this, they were acting in -- from the facts
10 and circumstances, they were acting in concert. It certainly
11 appeared from the observations of that one witness that
12 everybody knew what was going on by how they acted. There was
13 no act of surprise. You know, the Defendant didn't say, oh my
14 God, what are you doing, why did you do this, anything like
15 that. If they react in a fashion that they expected what was
16 gonna happen happened, then that's certainly substantial
17 circumstantial evidence to know that they knew what was gonna
18 happen beforehand. So I, I appreciate your objection. It may
19 be that you might need to raise that again, but at the present
20 time, without the benefit of what Mr. Spivey is going to say
21 about what occurred, I can't prejudge that particular issue,
22 but it is certainly conceivable that he can lend -- blend
23 evidence from which the Jury can thereby afterwards put
24 together substantial circumstantial evidence, including the
25 testimony of Mr. Spivey, that there was a common plan, scheme,

1 in existence and it was being carried out by all of the
2 participants there.

3 MR. FOX: Thank you, Judge. And for the record I would
4 point out once he testifies, that will be too late.

5 THE COURT: Well, I appreciate that. I understand that,
6 that it is too late to keep him from saying something; it's
7 not too late potentially to cure something by telling the Jury
8 to disregard it and making sure that they do so, but again,
9 the existence of a common design, plan or scheme can come from
10 many facts, not just somebody saying I was one of the two
11 people or the three people and we decided we would do X, Y and
12 Z. It can come from matters outside of that, which would show
13 that those three people or those two people were in engaged in
14 a common plan and scheme. So again, at the present time,
15 there is no grounds to keep Mr. Spivey from testifying and at
16 this point in time, from what I understand, he is, from what I
17 heard from the Defendant's statement and the presentation, the
18 opening statements that Mr. Spivey was there, can say this is
19 what I saw happen. Obviously, you know, the Jury judges his
20 credibility and believability as to whether or not that
21 occurred, but he can say, look, I was there and this is what,
22 what happened and this is what I saw the Defendant Mr. Butler,
23 do or not do or, you know, he didn't show any shock or
24 surprise about what was happening. You know, it appeared he
25 knew exactly what was going on and he distracted me or

1 whatever he's gonna, gonna say. I'm just surmising that from
2 what I've already heard. You know, Lord knows, what, you
3 know, what he's gonna say. But anyway, I appreciate your
4 objection.

5 MR. FOX: Yes, sir.

6 THE COURT: It's noted and I'm gonna allow the State to
7 proceed with this witness.

8 MR. FOX: And, Your Honor, just looking around, this is a
9 separate issue I have, I do have Ginger Pop under subpoena
10 specifically about testimony and conversations with Mr.
11 Spivey.

12 THE COURT: She is the lead investigator though; is that
13 correct?

14 MR. DEBUSK: Yes, sir.

15 THE COURT: I'm gonna allow her to stay. I understand
16 that, but the State needs to have its lead investigator
17 throughout the entirety of the trial.

18 MR. FOX: Your Honor, she will witness -- that's fine.
19 It can override my ability to have a fair cross examination of
20 a witness. There's gonna be issue with Mr. Spivey. He gave
21 recorded statements. He also gave what I think will be
22 inconsistent statements and additional facts late in the day.
23 I understand trial prep, I don't need to talk to the
24 Solicitor, but late in the day, I may, depending on what he
25 says, want to ask somebody, well, what did he tell you and how

1 was that different than what was said before and why isn't
2 that memorialized in the Court if those are facts within Ms.
3 Pop's knowledge. I don't want her hearing this witness
4 testify if I do in fact need to call her as a witness to cross
5 examine her. That's a substantial trial right my client has
6 to confront and cross examine potential witnesses against,
7 against him. He's under subpoena. There are other
8 detectives. She's the lead detective only because they don't
9 want to bring Neil Frebowitz in here. He is the lead
10 detective, but that's a Fran Humphries' trick of not having
11 the lead detective here so they will put blinders on --
12 regardless, they can have another investigator, Alex Smith is
13 here who is a witness who is all over this case, Horry County
14 PD -- this can easily be handled and it cannot be handled by
15 tromping on my client's substantial constitutional rights
16 regarding confronting witnesses.

17 THE COURT: Would you like to respond, Solicitor?

18 MR. DEBUSK: Your Honor, it's a well-established right
19 the State has the -- should have their chief investigator.
20 Ms. Pop is the one that we've worked most closely with on this
21 case. She's developed a lot of the evidence in the case after
22 the original investigation, which was two years ago. She is
23 vital to the procedure of the State's case and we have a
24 substantial right to have her here, Your Honor.

25 MR. FOX: I'm only asking that she be excluded for this

1 witness.

2 THE COURT: I appreciate that. I see no necessity for
3 that. She is, yes she is under subpoena, but she is familiar
4 with the -- what Mr. Spivey has said in the past and I don't
5 see how in any conceivable way her hearing his testimony today
6 can affect her testimony in any way. She will be under oath.
7 She will be sworn to tell the truth. To follow your
8 objection, I would have to basically say that Ms. Pop is
9 incapable of telling the truth.

10 MR. FOX: Your Honor, not at all. She's not a special
11 class of witness. Just because she's an investigator and a
12 law enforcement officer, doesn't give her special status.
13 She's like any witness; she's a human being. And the reason
14 we sequester witnesses and don't let them listen to other
15 witnesses is so they don't get the idea of where I'm headed
16 with my questions. They don't see weak points or strong
17 points, points to avoid, points to emphasize. All the reasons
18 we sequester witnesses apply to her. She doesn't occupy any
19 kind of special status just because she's the lead
20 investigator or with law enforcement. I'm not questioning her
21 honesty. In fact, I know her honesty. That's part of my
22 reason I want her not to hear Mr. Spivey. We're talking about
23 one witness here ---

24 THE COURT: I appreciate that.

25 MR. FOX: We can do this without any inconvenience to

1 anybody, but we can't if she stays in the courtroom
2 potentially are my client's trial rights.

3 THE COURT: Anything else, Solicitor?

4 MR. DEBUSK: Your Honor, again, the chief investigator is
5 an important part of the prosecution team and we -- just by
6 subpoenaing her, should not keep her out of the, out of our
7 team.

8 MR. FOX: Not trying to do that.

9 THE COURT: All right. I appreciate that, gentlemen.
10 Thank you very much. Your positions are noted for the record.
11 Mr. Fox, I'm gonna allow her to stay. I do not find it
12 affects your client's constitutional rights in any way to
13 confront witnesses. I do not see any tactical advantage, any
14 advantage that can be gained by the Defense. Ms. Pop is more
15 aware of all the facts of this case than any other person
16 involved. The State needs to have the person here during Mr.
17 Spivey's testimony in case the Solicitor forgets to ask a
18 particular question. She is extremely familiar with the
19 facts. Being the lead investigator, I'm gonna allow her to
20 stay. Thank you very much.

21 Anything else from the State?

22 MR. DEBUSK: Nothing from the State.

23 THE COURT: Anything else from the Defense?

24 MR. FOX: No.

25 THE COURT: Very good. Ask the Jury to come in please.

1 MR. FOX: Your Honor, if you hear a beep, my computer is
2 turning on, I'm gonna turn the sound down ---

3 THE COURT: Very good. Not a problem. Yes, sir.

4 All right, Solicitor, you may continue.

5 MR. DEBUSK: Thank you, Your Honor.

6 (REPORTER'S NOTE: Jury enters courtroom. 9:54 A.M.)

7 DIRECT EXAMINATION OF TRAVIS SPIVEY BY MR. DEBUSK:

8 Q: Good morning, Travis. How old are you?

9 A: Sir?

10 Q: How old are you?

11 A: Twenty-two.

12 Q: And do you live in Horry County?

13 A: Yes, sir.

14 Q: What part of the county, what section of the county do you
15 live in?

16 A: Myrtle Beach.

17 Q: What kind of work do you do?

18 A: As far as my job?

19 Q: Yeah, your job?

20 A: Cook.

21 Q: And how many days of week do you work?

22 A: Six days.

23 Q: Are you married or do you have kids?

24 A: Yes, sir, I got kids.

25 Q: Okay. How many?

1 A: Two kids.

2 Q: Okay. Now or in the past, have you ever gone by any
3 nicknames?

4 A: Yes, sir, it was a Money Trav.

5 Q: Money Trav. Now, back in the day, a few years ago, you
6 had a little trouble with the law; is that true?

7 A: Yes, sir.

8 Q: Matter of fact, in about 2009 you were convicted of common
9 law robbery and you got probation; is that correct?

10 A: Yes, sir.

11 Q: How old were you?

12 A: Sixteen.

13 Q: Okay. But that's all over with though; is that correct?

14 A: Yes, sir.

15 Q: In 2011, you had a charge for possession of a pistol when
16 were too young; is that correct?

17 A: Yes, sir.

18 Q: Do you know or did you know, I guess. Did you know Jose
19 Gutierrez?

20 A: Of course. Yes, sir.

21 Q: Did he have a name -- was he known by Jose or something
22 else?

23 A: Rico.

24 Q: Rico?

25 A: Uh-huh (affirmative response).

- 1 Q: How long have you known Rico?
- 2 A: About ten -- eleven, ten years.
- 3 Q: You, you grew up with him?
- 4 A: Basically, yes, sir.
- 5 Q: How would you characterize your relationship with Rico?
- 6 A: Like my brother.
- 7 Q: Where did Rico live?
- 8 A: In Myrtle Beach. He's at 17 South.
- 9 Q: Was Rico married?
- 10 A: No, sir.
- 11 Q: Was he in a relationship?
- 12 A: Yes, sir.
- 13 Q: With who?
- 14 A: Sherita.
- 15 Q: Okay. Did Rico have kids?
- 16 A: No, sir.
- 17 Q: Let me take your mind back to about two years ago, June
- 18 8th of 2012; do you remember that day?
- 19 A: Yes, sir.
- 20 Q: Did you speak in person or by phone to Rico that day?
- 21 A: By phone and then when I met -- when I got in touch with
- 22 him face to face.
- 23 Q: So, you talked to him by phone first?
- 24 A: Yes, sir.
- 25 Q: Now what did you do in response to the phone call you had

1 with Rico?

2 A: I went by his house and got a bag for him.

3 STATE'S EXHIBIT NUMBER TWENTY-FIVE

4 MARKED FOR IDENTIFICATION

5 Q: I'm showing you what's marked for identification as
6 State's Exhibit Twenty-Five and ask if you recognize that?

7 A: Yes, sir.

8 Q: What is it?

9 A: A bag from the crime that day; that was the bag I got from
10 his house.

11 Q: And where did you take that bag?

12 A: To Sherita's house where he was at.

13 Q: Do you know where that is, what street?

14 A: Ronald McNair.

15 Q: Okay. I hate to ask you the obvious again, but what
16 county is that in, the house where Sherita lived; what county?

17 A: Horry County.

18 Q: Okay. Let me show you State's Exhibit Fourteen and ask if
19 you recognize this?

20 A: Yes, sir.

21 Q: What is that?

22 A: Sherita's area.

23 Q: Okay.

24 A: The area of the house where the scene and all that.

25 Q: What's this over here?

1 A: The dead end road; the road that the crime took place.

2 Q: What is this here?

3 A: The highway.

4 Q: Do you know which highway that is?

5 A: No, sir.

6 Q: What are these two items here?

7 A: I'm not sure; the bridge where the ---

8 THE COURT: Speak up a little bit. You're a little far
9 from the microphone. So just make sure you speak up a little
10 bit. Okay?

11 MR. DEBUSK: I'm getting ahead of myself a little bit.
12 Your Honor, we're gonna move this into evidence and
13 authenticate it a little bit.

14 THE COURT: Any objection, Mr. Fox?

15 MR. FOX: No, Your Honor.

16 THE COURT: All right, sir. State's Fourteen is in
17 evidence.

18 MR. DEBUSK: Okay. We'll get back to that in a moment.

19 THE COURT: I'm sorry, it's State's Fourteen, is that
20 correct?

21 MR. DEBUSK: Correct, Your Honor.

22 THE COURT: It's in evidence without objection.

23 STATE'S EXHIBIT NUMBER FOURTEEN

24 ADMITTED INTO EVIDENCE

25 BY MR. DEBUSK:

1 Q: We'll come back to that in a moment.

2 Now, when you had this conversation with Rico, did you
3 get any feeling for how he was emotionally?

4 A: Felt uneasy, like didn't really feel right.

5 Q: Did you do anything else in response to that feeling?

6 A: Yes, sir. I got a weapon from his house.

7 Q: Okay. Did you carry that weapon with you?

8 A: Yes, sir.

9 Q: Let me show you what's marked as State's Exhibit Twenty-
10 two for identification. I ask if you recognize that?

11 A: Yes, sir.

12 Q: What is it?

13 A: The gun I got from his house.

14 MR. DEBUSK: Your Honor, the State would move State's
15 Twenty-two into evidence?

16 THE COURT: Any objection?

17 MR. FOX: No, Your Honor.

18 THE COURT: It's into evidence without objection.

19 STATE'S EXHIBIT NUMBER TWENTY-TWO

20 ADMITTED INTO EVIDENCE

21 BY MR. DEBUSK:

22 Q: After you got this two items where did you go?

23 A: To Ronald McNair, Sherita's house.

24 Q: Who was there?

25 A: Him and Sherita, and I was with -- I was with Sotlaeya.

- 1 Q: Okay. How did you get to that scene?
- 2 A: I drove.
- 3 Q: Your car?
- 4 A: Yes, sir.
- 5 Q: Okay. While you were there with Rico and Sherita, what
- 6 were you doing?
- 7 A: We smoked.
- 8 Q: Okay.
- 9 A: And we talked ---
- 10 Q: How long were y'all there?
- 11 A: About thirty minutes.
- 12 Q: Without telling us what was said, did Rico talk on the
- 13 phone during that period?
- 14 A: Yes, sir, he received a phone call.
- 15 Q: Okay. Based on that phone call, what did y'all do?
- 16 A: We began to -- after he got off the phone -- well, he was
- 17 giving directions and then after we noticed a car pulling down
- 18 the road, we began to get out the car and toted the black bag
- 19 towards the end of the road.
- 20 Q: Okay. Let me go back to State's Exhibit Fourteen. Where,
- 21 which one of these trailers or which one of these houses were
- 22 y'all at?
- 23 A: The third one all the way on the end, sir.
- 24 Q: Okay. And when you said walked back out to the road,
- 25 you're talking about Ronald McNair Boulevard?

1 A: Yes, sir.

2 Q: Okay. What happened when you got to Ronald McNair
3 Boulevard?

4 A: There was a car on the end of the road facing towards to
5 leave out; we walked towards that car.

6 Q: Where was it; was it near any structures?

7 A: It was like right under that bridge area.

8 Q: I show you what's been marked as State's Exhibit Fifteen
9 and ask if you recognize it?

10 A: Yes, sir.

11 Q: What is that?

12 A: Exactly where the car was at.

13 Q: Now what is that structure?

14 A: The bridge.

15 MR. DEBUSK: The State would offer State's Fifteen into
16 evidence, Your Honor.

17 THE COURT: Any objection?

18 MR. FOX: No, sir.

19 THE COURT: It's into evidence without objection.

20 STATE'S EXHIBIT NUMBER FIFTEEN

21 ADMITTED INTO EVIDENCE

22 BY MR. DEBUSK:

23 Q: Now, this is a picture you said of the bridge. Where was
24 the car parked when you approached?

25 A: On the left side, right here, sir.

1 Q: It was actually under the bridge?

2 A: Not quite.

3 Q: So right at the edge of the bridge?

4 A: Right at the edge of the bridge, sir.

5 MR. DEBUSK: Your Honor, may I publish this to the Jury?

6 THE COURT: Yes, sir.

7 BY MR. DEBUSK:

8 Q: Now, based on your knowledge of what was going on, what
9 was gonna happen when you and Rico went up to that car?

10 A: A drug deal.

11 Q: Did you have a pretty good idea what was in that black
12 bag?

13 A: Yes, sir.

14 Q: What was that?

15 A: Marijuana.

16 Q: Do you know who Rico was talking to on the phone?

17 A: Not quite, sir.

18 Q: But he was giving directions to someone ---

19 A: In the car, yes, sir.

20 Q: To your knowledge, did the people that Rico was talking on
21 the phone have any idea you were there with Rico?

22 A: No, sir.

23 Q: You -- do you recall what kind of car was parked under the
24 edge of that bridge?

25 A: A four-door silver car.

- 1 Q: Do you know what brand it was?
- 2 A: No, sir.
- 3 Q: Okay. Was it still light or was it dark?
- 4 A: It was still light.
- 5 Q: Could you see who was in the car?
- 6 A: Yes, sir.
- 7 Q: Who did you recognize?
- 8 A: I recognized Shelton and I recognized the guy, Little D,
- 9 who was in the passenger seat.
- 10 Q: Okay. When you say Shelton, you're referring to the
- 11 Defendant, Shelton Butler?
- 12 A: Yes, sir.
- 13 Q: Where was Shelton Butler seated?
- 14 A: In the back seat.
- 15 Q: Okay. How many people were in the car altogether?
- 16 A: Three.
- 17 Q: So, Shelton was in the back seat; where was -- you said
- 18 Little D -- where was Little D?
- 19 A: In the passenger seat.
- 20 Q: And was there a third person?
- 21 A: Yes, sir.
- 22 Q: Who was that?
- 23 A: I don't know, sir.
- 24 Q: Where was he seated?
- 25 A: In the front seat, driver's seat.

- 1 Q: Driver's seat?
- 2 A: Yes, sir.
- 3 Q: Behind the wheel?
- 4 A: Right.
- 5 Q: How did you know Shelton?
- 6 A: From Alternative School.
- 7 Q: Did you recognize him immediately?
- 8 A: Yes, sir.
- 9 Q: Did you speak to him?
- 10 A: Yes, sir.
- 11 Q: While you were speaking, what were you talking about?
- 12 A: What's been going on lately since I last seen him at
- 13 school.
- 14 Q: Did he make any comments about the surroundings?
- 15 A: Yes, he said this would be the perfect place to body a
- 16 person.
- 17 Q: What does that mean?
- 18 A: A perfect place to kill someone.
- 19 Q: Okay. While you were talking to Shelton, what was Rico
- 20 doing?
- 21 A: Having a discussion with the driver and the passenger.
- 22 Q: Okay. I think I might have gotten ahead of myself a
- 23 little bit here. Do you or both of you get in the car?
- 24 A: Rico stepped in the car and then I sat right there on the
- 25 side, but I was halfway out the whole time.

- 1 Q: You were sort of sitting on the edge of the seat?
- 2 A: Yes, sir.
- 3 Q: Where was Rico?
- 4 A: In the middle.
- 5 Q: Sort of where the transmission hump is?
- 6 A: Yes, sir.
- 7 Q: And once again, who was Rico talking to?
- 8 A: The driver and passenger, sir.
- 9 Q: Did the contents of that bag -- did he do anything with
- 10 the contents of the bag?
- 11 A: It was already passed up to the front.
- 12 Q: Okay. What were they talking about, could you tell?
- 13 A: They was negotiating the price.
- 14 Q: Okay. So, tell me what happened. Continue with the
- 15 story.
- 16 A: They continued to negotiated with the price and while I
- 17 continued to talk with Shelton and then I just didn't have a
- 18 good feeling about the situation, so I began to step out the
- 19 car.
- 20 Q: What was making you nervous?
- 21 A: Just the fact that what he was already had said and where
- 22 we was at and I didn't really know them guys like that. So I
- 23 was really trying not to sit in the car that long and I was
- 24 there to backup Rico so I began to step out the car and right
- 25 when I was stepping out the car, the guy, Little D, the

- 1 passenger he reached around with a gun and told both of us,
2 you know what time it is.
- 3 Q: And what happened next?
- 4 A: The car that was driving the car began to take off while I
5 was stepping out. He give it the gas and I fell, fell.
- 6 Q: So, they took off while you were out of the car?
- 7 A: Getting out, yes, sir.
- 8 Q: Okay. Now, I think you covered it but did you see anybody
9 in the car with a weapon?
- 10 A: Yes, sir.
- 11 Q: Who was it?
- 12 A: Little D.
- 13 Q: Could you tell if Shelton had a weapon or not?
- 14 A: No, sir.
- 15 Q: You could not tell or did he not have a weapon?
- 16 A: From my view he did not have a weapon.
- 17 Q: What happened next? Did Rico get out of the car?
- 18 A: The car began to pull up towards going down the street and
19 I didn't hear instantaneously while the door was opening to
20 get while it was -- the car was moving about fifteen miles, I
21 heard a gunshot and Rico's body then came out of the car and
22 began to roll.
- 23 Q: Okay. You started out under the edge of the bridge; is
24 that correct?
- 25 A: Yes, sir.

1 Q: How far down the road did he get before Rico came out?

2 A: From, I say from about the top of Sherita's road, right
3 there at Ronald McNair, from the edge of that bridge.

4 Q: Let me show you State's Exhibit Twenty and ask if you
5 recognize that?

6 A: This would be the area right here where his body was out
7 of the car.

8 Q: Okay. Now did you get safely out the car when you were
9 getting out?

10 A: Yes -- well, I was actually, when I -- when the car pulled
11 off, I actually fell in the road but no harm was done.

12 Q: Now, what -- while this car is going down the road with
13 your friend in it, what did you do?

14 A: I got up and was heading towards that way and when his
15 body got out the car, I began to head towards the body, but
16 while I was doing that, I got safely over him, a good few
17 steps away and fired shots at the car.

18 Q: Okay. That was the gun you had brought from Rico's place?

19 A: Yes, sir.

20 Q: How many shots did you fire?

21 A: I believe it was two, sir.

22 Q: Okay. What did you fire at?

23 A: The car. Well, I was trying to shoot the glass or
24 something.

25 Q: Do you think you hit it?

1 A: No, sir.

2 Q: When you were shooting at the car, those two shots, where
3 was Rico?

4 A: On the ground in front of me.

5 Q: So you're shooting at basically right over him?

6 A: Yes, sir.

7 Q: Now, how was Rico when he got out of the car?

8 A: He was -- when he stopped, he was -- he had his back on
9 the ground faced up.

10 Q: I show you State's Exhibit Nineteen and ask if you
11 recognize that?

12 A: It's one of Rico's shoes.

13 Q: And State's Exhibit Eighteen and ask if you recognize
14 that?

15 A: That was Rico's phone at that time.

16 MR. DEBUSK: Your Honor, State's Exhibits Eighteen and
17 Nineteen, the State would offer into evidence at this time.

18 THE COURT: Any objection?

19 MR. FOX: No, Your Honor.

20 THE COURT: What about Twenty, you had him look at Twenty
21 before?

22 MR. DEBUSK: I don't know if I've got to Twenty yet, Your
23 Honor, did I? Yes, Your Honor, we did. We would offer Twenty
24 into evidence at this time?

25 THE COURT: Show that to Mr. Fox, please.

1 MR. FOX: No objection, Your Honor.

2 THE COURT: All right. So State's Eighteen, Nineteen and
3 Twenty are in evidence without objection. You may proceed.

4 STATE'S EXHIBITS EIGHTEEN, NINETEEN AND TWENTY

5 ADMITTED INTO EVIDENCE

6 BY MR. DEBUSK:

7 Q: What happened to Rico when he came out the car?

8 A: Once I, I stopped firing at the car, he was gasping for
9 air, like ---

10 Q: Now, at that point, did you know he'd been shot?

11 A: I, I recognized the bullet hole on him and then saw him
12 bleeding and I looked up at his shirt and seen the hole in his
13 chest.

14 Q: Okay. I showed you the picture of the phone and of the
15 shoe. Were those on his body or had they come off?

16 A: They already had come off.

17 Q: Okay. Was that from the body being thrown from the car?

18 A: Yes, sir, or rolling in the road.

19 Q: Did you find any other items there near Rico?

20 A: A gun.

21 Q: Okay. This is State's Exhibit Twenty-three. I ask you if
22 you recognize that?

23 A: Yes, this is the gun he had on his person.

24 MR. DEBUSK: Okay. State's Exhibit Thirty-two we offer
25 into evidence.

1 THE COURT: Twenty-three or Thirty-two?

2 MR. DEBUSK: Twenty-three, Your Honor, I'm sorry.

3 THE COURT: All right. Any objection?

4 MR. FOX: No, objection.

5 THE COURT: All right. It's into evidence without
6 objection.

7 STATE'S EXHIBIT NUMBER TWENTY-THREE

8 ADMITTED INTO EVIDENCE

9 BY MR. DEBUSK:

10 Q: Up to that time, did you know Rico was armed?

11 A: Yes, sir.

12 Q: Did you, did he pull that gun out at any time while he was
13 in that car?

14 A: No, sir.

15 Q: Now, what happened to the car after Rico was out?

16 A: It sped around the corner, sir, and the road where, the
17 way the road is positioned there's woods all around so it's a
18 curve so once it was around that curve, I don't know.

19 Q: So, did the same three people who came in that car, leave
20 in that car?

21 A: Yes, sir.

22 Q: And did anybody else besides Rico get out?

23 A: No, sir.

24 Q: Did you hear anybody express surprise when they said you
25 know what time it is?

1 A: No, sir.

2 Q: And was it only when you were almost out of the car that
3 the car took off?

4 A: Yes, sir.

5 Q: Let's go back to after the car has left and Rico's on the
6 ground. You said, show me again, what was state? How was he

7 ---

8 A: Fatal.

9 Q: Was he face up or face down?

10 A: Face up.

11 Q: What did you do?

12 A: I began to cover the spot where he was shot at and Sherita
13 got the car, she drove it up to the top of the road and got
14 help from some guy that was out there, load him, put him in
15 the car and we sped him to the Conway Hospital.

16 Q: What happened at Conway Hospital?

17 A: They announced him dead there.

18 Q: I'm sorry?

19 A: They announced him dead at the hospital.

20 Q: What happened to the gun that you had and the gun that we
21 found from Rico?

22 A: Well, before, before Sherita -- when Sherita was in the
23 car, Sherita's son was out there. She told me to move the
24 guns and I moved them and I put them on the side of the woods.
25 Later on that night, I told them exactly where they was at.

1 Q: You told who?

2 A: The police.

3 Q: Did the police find the guns?

4 A: Yes, sir.

5 Q: Well, did you talk to the police that evening?

6 A: Yes, sir.

7 Q: Did you tell them what happened?

8 A: Yes, sir.

9 MR. DEBUSK: Your Honor, may I ask the witness to
10 approach and point some things out to the Jury?

11 THE COURT: All right, sir, if you'd just -- sir, when
12 you step down, you see that box over there, that's a
13 microphone, so I want you to stand next to that and make sure
14 that you speak up, all right, sir?

15 A: Yes, sir.

16 BY MR. DEBUSK:

17 Q: Once again, so the whole jury can see, where was Sherita's
18 house?

19 A: Right here (indicating).

20 Q: Where is the road that you walked up with Rico?

21 A: This road right here.

22 Q: It's sort of a driveway?

23 A: Yes, sir.

24 Q: What is this road?

25 A: Ronald McNair.

1 Q: Okay. And ---

2 THE COURT: Speak up just a little bit, please, sir?

3 A: Yes, sir.

4 BY MR. DEBUSK:

5 Q: And what are these light-colored objects here?

6 A: It's the bridge.

7 Q: State's Exhibit Fifteen; is that the same bridge?

8 A: Yes, sir.

9 Q: Okay. And what's the, where was the car parked?

10 A: Right here partially under, partially out.

11 Q: Okay. And when you got in that car, who was in that car?

12 A: Shelton, Little D and some other guy.

13 Q: And who was -- who got in the car first you are Rico?

14 A: Rico.

15 Q: Who was closest to Rico when you got in the car?

16 A: Shelton.

17 Q: Okay. And again, did they have any way of knowing you
18 were gonna be there?

19 A: No, sir.

20 Q: Where was the car when you tried to get out?

21 A: Right here.

22 Q: In basically the same, same area?

23 A: Same area.

24 Q: And back to State's Exhibit Twenty. Can you point out
25 where Mr. Gutierrez' body was?

- 1 A: Yes, sir.
- 2 Q: Where is that on this picture?
- 3 A: Right here, sir.
- 4 Q: Okay. So these ---
- 5 A: Right here.
- 6 Q: Are those two little ---
- 7 A: Yes, sir.
- 8 Q: Thank you. Please have a seat.
- 9 Now, you said that you didn't know there was robbery
- 10 going on until you heard ---
- 11 A: You know what time it is.
- 12 Q: Okay. Is that sort of accepted as a, a term for being
- 13 violent?
- 14 A: It's a new age stick'em up, sir.
- 15 Q: Okay. Did Shelton ever warn you that you were about to be
- 16 robbed?
- 17 A: No, sir.
- 18 Q: You sat there and talked to him?
- 19 A: Yes, sir.
- 20 Q: Okay. What did he say?
- 21 A: It's a perfect place to body a person.
- 22 Q: Now when the two of you got in the car, did Shelton have
- 23 anything on his head?
- 24 A: No, sir.
- 25 Q: And was he asleep?

1 A: No, sir.

2 Q: Okay. Now, you told us they pulled, pulled up under that
3 bridge to that corner ---

4 A: Yes, sir.

5 Q: --- place where they said it would be a good place to body
6 somebody?

7 A: Correct.

8 Q: Who decided where to park the car?

9 A: The driver I believe.

10 Q: Did Rico tell them to park there?

11 A: I doubt it. Most likely he would have told them up there
12 at the top of the road, but not underneath the bridge.

13 Q: Well, they could have pulled in the driveway for that
14 matter?

15 A: Right.

16 Q: That's where y'all were; you had to walk from where you
17 were?

18 A: Right.

19 Q: Out to where they parked?

20 A: Right.

21 Q: And that spot was not visible from the house?

22 A: Right.

23 Q: Thank you. Please answer any question the Defense may
24 have.

25 THE COURT: Cross examination.

1 CROSS EXAMINATION OF TRAVIS SPIVEY BY ERIC FOX:

2 Q: Mr. Spivey, you spoke to the police a number of different
3 times, didn't you?

4 A: Yes, sir.

5 Q: You spoke to them at the hospital?

6 A: Uh-huh (affirmative response).

7 Q: Right?

8 A: Yes, sir.

9 Q: Okay. And later that night, didn't you go back out to
10 Ronald McNair with the police so that you could show them
11 where things happened?

12 A: They took me from the hospital directly to Ronald McNair,
13 sir.

14 Q: Okay. And so you talked to them again about everything
15 that happened?

16 A: Yes, sir.

17 Q: Did they, did anybody, do you remember which officers that
18 was?

19 A: No, sir.

20 Q: The same ones that talked to you at the hospital?

21 A: Yes, sir, the one who took me there. Well, there was more
22 -- when I got there, there was more police and everything out
23 there.

24 Q: But you rode back with Detective Frebowitz?

25 A: That's who I rode from the hospital with.

1 Q: Right. He's the one that interviewed you at the hospital,
2 right?

3 A: Yes, sir.

4 Q: Okay. You rode back to the scene with him. He's the one
5 you were dealing with in terms of showing what happened where
6 and everything, right?

7 A: Yes, sir.

8 Q: Okay. Is Detective Frebowitz here; do you see him?

9 A: No, sir.

10 Q: Okay. That was on June the 8th in the evening when you
11 spoke to them at the hospital shortly after the shooting,
12 right?

13 A: Yes, sir.

14 Q: And later that evening, sometime after midnight, you spoke
15 to Detective Frebowitz again, correct?

16 A: I was there with them, sir.

17 Q: Okay. But he, he -- was your first interview recorded?

18 A: I don't think it was.

19 Q: Okay. Would it surprise you to learn that it was?

20 A: I don't know.

21 Q: Okay. Do you know whether you spoke to him again -- he
22 said I got some more questions for you, right?

23 A: Yes, sir.

24 Q: He recorded that statement too, right?

25 A: Not to my knowledge; I'm not sure.

- 1 Q: Would it surprise you to hear your voice on the recording?
- 2 A: No, sir.
- 3 Q: Okay. Now, on those two occasions, that's -- and that was
- 4 basically the same night, right, it was after midnight but it
- 5 was basically the same evening that you spoke to him again,
- 6 right?
- 7 A: Yes, sir.
- 8 Q: It was all kind of one continuous ---
- 9 A: Yes, sir.
- 10 Q: --- interaction with Detective Frebowitz. Okay. Then two
- 11 or three days later, he asked you to come back in and talk to
- 12 him again, right?
- 13 A: Yes, sir.
- 14 Q: Had more questions?
- 15 A: Yes, sir.
- 16 Q: Okay. And that was, again that was recorded; do you
- 17 recall?
- 18 A: Yes, sir.
- 19 Q: Okay. So, that's three different recordings that you had
- 20 with Detective Frebowitz; is that fair to say?
- 21 A: Yes, sir.
- 22 Q: And there were other officers there, I believe?
- 23 A: Yes, sir.
- 24 Q: Detective Wilson maybe was there?
- 25 A: I'm sure of all the other ones there, just ---

- 1 Q: But there were other officers?
- 2 A: Yes, sir.
- 3 Q: In fact at one point, Detective Frebowitz had to leave, in
4 that last interview he had to leave to deal with something ---
- 5 A: I was left with someone else.
- 6 Q: That's right.
- 7 A: Yes, sir.
- 8 Q: So, you just basically went through and you told your
9 version of events to that person, right?
- 10 A: Yes, sir.
- 11 Q: In anytime leading up to this trial, have you met with the
12 Solicitor, with Mr. DeBusk or Mr. Grooms about this case?
- 13 A: Yes, sir. Have I ever -- had I ever met with them in that
14 period of time?
- 15 Q: Yeah.
- 16 A: Not to my knowledge, I don't remember.
- 17 Q: You haven't met with them, talked with them on the phone?
- 18 A: I'm not sure. That was a rough area around that time,
19 sir, I don't remember.
- 20 Q: Okay. So you might have, but you don't remember?
- 21 A: Yes, sir.
- 22 Q: Okay. What about Ginger Pop, the lady sitting there with
23 the blond hair and black jacket, right behind Mr. DeBusk?
- 24 A: Same situation, sir, might have but don't remember.
- 25 Q: You might have met with them this past weekend and when I

1 say meet, I mean, including conversation on the phone, any
2 form of communication with them, face to face, on the phone
3 ---

4 A: In -- around in June right?

5 Q: No, I'm talking about anytime between June and all the way
6 up till ---

7 A: Oh, yes, sir, I spoke with them.

8 Q: Okay. When was that?

9 A: I spoke with them -- well, basically they kept in contact
10 with me.

11 Q: Okay. Who kept in contact with you?

12 A: Ginger.

13 Q: Ginger. Okay. At any time and I'm talking mostly now in
14 these last few weeks, what about Mr. DeBusk?

15 A: Yes, sir.

16 Q: Okay. Did you come meet with him at his office?

17 A: Yes, sir.

18 Q: Did you go over your statements, things that you told the
19 police before?

20 A: Yes, sir.

21 Q: He asked you questions?

22 A: Yes, sir.

23 Q: Okay. And Ms. Pop was there also, Ginger Pop would be
24 there also?

25 A: Yes, sir.

1 Q: Okay. And that included this past weekend you met with
2 them?

3 A: Yes, sir.

4 Q: Okay. Now, do you remember what you told the police the
5 first time you spoke to them?

6 A: It's been awhile, sir.

7 Q: Okay.

8 A: Most likely the same thing I'm saying now.

9 Q: Okay. You think it was the same as that you're saying
10 now?

11 A: Yes, sir.

12 Q: Okay. So today you're saying you got there, you had a
13 gun, you had weed to sell and you came up to the car and you
14 recognized Shelton and you recognized Little D, right?

15 A: Yes, sir.

16 Q: You didn't tell the police that back in 2012 though, did
17 you, that you recognized Little D?

18 A: No, sir, because I was flustered, sir.

19 Q: All right. But two days later, when you weren't -- were
20 you still flustered two days later?

21 A: No, but actually I told them two days later.

22 Q: Okay. Now, did you say anything about when you first
23 spoke to the police that you were gonna be -- you were there
24 to sell the weed with Rico?

25 A: No, sir.

1 Q: Okay. And did you say anything with any of those police
2 interviews, any one of them at any time whether you were
3 sitting there on the recorder, down at the scene, any of the
4 multiple times you spoke to the several different officers, at
5 any point, did you say Shelton Butler made the comment about
6 this would be a good place to body somebody?

7 A: No, sir.

8 Q: Never did. In fact, the first time that came out of your
9 mouth was speaking with Mr. DeBusk this past weekend, wasn't
10 it?

11 A: Yes, sir.

12 Q: Doesn't that seem like a pretty important, vital piece of
13 information to have out there?

14 A: Well, my main concern was my friend who lost his life and,
15 and his family and also I was concerned about myself. And in
16 that situation, I told them the main things and at that time,
17 I didn't believe that was a main concern because he said it's
18 a little sentence, the main thing was telling them who had the
19 gun and where we was at and things like that.

20 Q: What does that mean -- I understand. What does that
21 phrase mean to you, a good place to body somebody?

22 A: A good place to kill someone.

23 Q: A good place to kill somebody. What happened at that
24 scene?

25 A: Someone got killed.

- 1 Q: All right. Now, you don't think that would have been
2 important to tell the police sometime in the two years between
3 when the shooting happened and today?
4 A: I did tell them in between the two years and today.
5 Q: You told them over the weekend?
6 A: A week ago, yes, sir.
7 Q: All right. But you were in contact off and on all through
8 ---
9 A: Yes, sir. It was not all through. Actually it was a big
10 break and I was working this whole time.
11 Q: But those are your words; is that not right?
12 A: Yes, sir, but it was still ---
13 Q: Do you have their contact information?
14 A: Yes, sir.
15 Q: Okay. You know how to reach them?
16 A: Yes, sir.
17 Q: You know how to reach the detectives?
18 A: Yes, sir.
19 Q: How to work a phone?
20 A: Yes, sir.
21 Q: Okay. But nowhere in that time did you decide to pick up
22 the phone and say, hey, now that I've had a chance to think
23 about it, you know what, Shelton said something that got my
24 attention?
25 A: I did not make that decision, sir.

1 Q: Okay. How do you know that phrase, if he said it, that
2 could just as easily have been a cautionary comment to the two
3 guys he was with, damn, here we are in a strange place, this
4 would be a place to body somebody as in we better watch out;
5 it could've just as easily been that, couldn't it?

6 A: I doubt it.

7 Q: But you don't know it?

8 A: Nine out of ten, sir, that's exactly what he was meaning
9 that this a perfect place to kill someone; that is the street
10 term of that.

11 Q: You've been around enough people saying it's a good place
12 to body somebody, you can say nine out of ten times that's
13 what it means?

14 A: Well, I've watched a good bit of movies. I'm from a rough
15 area, sir.

16 Q: So, that's something that's familiar to you?

17 A: That phrase is, sir.

18 Q: Okay. Now, in your first statement when you talked to the
19 police, you talked about what happened, talked about the
20 shooting. How did that happen; you were partly in -- did the
21 car -- when the car took off, did it pull forward?

22 A: Yes, sir.

23 Q: Do you remember telling the police that you were outside
24 the car and it backed up and hit you?

25 A: I was exiting the car, sir, and I didn't tell them that it

- 1 hit me.
- 2 Q: Okay. You didn't say like they backed up to hit me?
- 3 A: No, sir.
- 4 Q: Okay. So, now you get out, Rico was out and you grab your
- 5 -- where did you grab the revolver from?
- 6 A: My waist, sir.
- 7 Q: Okay. You didn't pick it up off the ground?
- 8 A: No, sir.
- 9 Q: You told the police you picked it up off the ground,
- 10 didn't you?
- 11 A: I don't remember telling them that, sir.
- 12 Q: So you deny telling the police you picked up -- you saw
- 13 Rico fall and saw guns by his body, you picked one up and
- 14 fired at the car; you didn't tell them that?
- 15 A: No, sir, I told them I seen the gun by his body, which is
- 16 the one I pointed out in that picture, sir.
- 17 Q: Right. But you didn't tell them you picked it up out of
- 18 your waist -- you pulled one out of your waistband and fired
- 19 it, did you?
- 20 A: I just told that I fired the gun. I don't remember
- 21 telling them where exactly I pulled it from.
- 22 Q: Well, my question was, did you tell them that you pulled
- 23 it out of your waistband like you just told this Jury?
- 24 A: I believe I should have.
- 25 Q: Should have, but did you?

- 1 A: That was a long time ago, sir, but I believe I did, sir.
- 2 Q: All right. Now, again we're talking about this
- 3 conversation you had. The first time you talked to the police,
- 4 there's a couple of other people there, right; your girlfriend
- 5 and Rico's girlfriend were there, right?
- 6 A: Yes, sir.
- 7 Q: Just the three of you?
- 8 A: Yes, sir.
- 9 Q: And when they talked to you a little while later, the
- 10 police, it was just you, right?
- 11 A: Uh-huh (affirmative response).
- 12 Q: All right. And during that conversation, same night?
- 13 A: Uh-huh (affirmative response).
- 14 Q: Do you remember telling the police ---
- 15 A: Actually, it was a good bit of people out there, more than
- 16 just them, when the police talked to me.
- 17 Q: Well, I'm not talking about there on the scene, I'm
- 18 talking about still -- well, they got you alone anyway and
- 19 talked to you at some point, correct?
- 20 A: Yes, sir.
- 21 Q: Interviewed you again?
- 22 A: Yes, sir.
- 23 Q: Okay. And during that interview, you told them what
- 24 happened, how it was Rico got in the car to go to the
- 25 hospital, right?

- 1 A: Correct.
- 2 Q: How did Rico get in the car to go to the hospital?
- 3 A: We helped him inside.
- 4 Q: Whose we?
- 5 A: Me and a random guy who was out there, sir, that they
- 6 couldn't find that night.
- 7 Q: A random guy?
- 8 A: Yes, sir, who was there at the scene.
- 9 Q: Random guy, okay.
- 10 A: Yes, sir.
- 11 Q: Who -- he's just hanging around?
- 12 A: No, actually, he was at that third house that was closest
- 13 to the road.
- 14 Q: Did you tell the police that?
- 15 A: Yes, sir.
- 16 Q: Okay. You told him at the third house closest to the
- 17 road. You ever seen him before?
- 18 A: No, sir.
- 19 Q: Okay. So this random guy ---
- 20 A: They went to his house and they couldn't find the guy; no
- 21 one was there that seen him.
- 22 Q: Did you have a description?
- 23 A: Yes, sir.
- 24 Q: Okay. What was that description?
- 25 A: Tall black guy, that I can remember.

- 1 Q: Okay. Well, that does narrow it down. Now, who told you
2 to get rid of those guns?
- 3 A: Sherita told me move the guns out the way because her son
4 was still out there.
- 5 Q: Do you remember telling the police that that random guy,
6 the tall black guy, told you to get the guns out of the road?
- 7 A: No, sir.
- 8 Q: You didn't tell them that?
- 9 A: No, sir.
- 10 Q: You don't remember telling the police the guy that was
11 helping me told me to get the guns out of the street?
- 12 A: No, sir.
- 13 Q: You didn't tell the police that?
- 14 A: No, sir.
- 15 Q: Now, who drove?
- 16 A: Sherita.
- 17 Q: And what's Sherita's last name?
- 18 A: Anderson.
- 19 Q: Anderson. And then the other, whose Ms. Vereen?
- 20 A: Sotlaeya Vereen.
- 21 Q: Sotlaeya Vereen and I apologize. And which one was your
22 girlfriend?
- 23 A: Sotlaeya, okay.
- 24 Q: Now, did you go with Ms. Vereen and Ms. Anderson to the
25 hospital?

1 A: I drove behind them, sir.

2 Q: But did you go in that car?

3 A: Yes, sir. No, not in that car, sir.

4 Q: Why not?

5 A: Because while they pulled off, I moved the guns out the
6 road and got her son from out the road as well.

7 Q: But they'd already told the son to go on in, didn't they?

8 A: They told him, but it's a long road till you get to the
9 house and he's a little, he was a little boy at that time.

10 You can tell a little kid but that's not exactly he was gonna
11 do.

12 Q: Did you tell the police about having to put the little son
13 in the, the little child in the house?

14 A: I told them.

15 Q: You told the police that. Now, why get the guns -- you've
16 got a crime scene, right, Rico's been shot?

17 A: Uh-huh (affirmative response).

18 Q: And according to you, without any justification -- so it's
19 a crime scene?

20 A: Yes, sir.

21 Q: And you moved evidence from the crime scene, there's a
22 gun?

23 A: Yes, sir, which was first -- which was later on pointed
24 out by me.

25 Q: I understand. After you talked to the police, right --

1 but you did in fact, your first instinct, your first move was
2 to toss that gun out of the way, right, two guns out of the
3 way, correct?

4 A: Yes, sir, I didn't think it would be a good idea to just
5 leave them in the road and expect them to be there when we
6 come back.

7 Q: Right.

8 A: Or bring them to the hospital.

9 Q: But there were people around -- well you know there would
10 be police at the hospital?

11 A: Exactly, sir.

12 Q: You shot one of those guns?

13 A: Yes, sir.

14 Q: That would not have be smart?

15 A: Exactly.

16 Q: Right. Now, why didn't y'all call EMS, 911?

17 A: Well, it was a panicking moment, sir. It was basically my
18 brother, I wanted to get him some help as soon as possible.

19 Q: Right.

20 A: So we decided to put him the car and drive him to the
21 hospital. We figured that would be faster than the ambulance.

22 Q: Well, it's more than just speed; there's a reason why EMS
23 comes in with trucks and has all the equipment and the
24 defibrillators.

25 A: Well, I'm not that smart in that area, in medical.

1 Q: Well, you live in a rough neighborhood; you ever see EMS
2 come out to your neighborhood before?

3 A: Not that much.

4 Q: Never?

5 A: Not that much.

6 Q: Not at all familiar with the fact that EMS has blood they
7 can transfuse and they can do emergency procedures on the way
8 to the hospital and not just ---

9 A: Again, sir, I'm not that smart when it comes to medical.

10 Q: Okay.

11 A: That wasn't my ---

12 Q: I gotcha.

13 A: --- my thing.

14 Q: And they've got sirens and move people out of the way when
15 they go down the road?

16 A: Yeah, it looks good.

17 Q: But y'all decided -- it looks good; is that what it's for,
18 just to look good?

19 A: You said sirens, sir.

20 Q: Yeah, sirens, it's more than ---

21 A: I just -- we decided to take him in the car, sir.

22 Q: I gotcha.

23 A: We figured that would be a better idea. Waiting for the
24 ambulance would've took fifteen more minutes.

25 Q: I'm sorry. I don't mean to talk over you. What was the

1 rest? It'd would be a better idea ---

2 A: Than to wait for fifteen minutes for an ambulance.

3 Q: Okay. But you all were -- this is down Ronald McNair
4 across the waterway, right?

5 A: Yes, sir.

6 Q: Okay. So, the other side of the waterway and if we're
7 going north and south on 17 ---

8 A: Uh-huh (affirmative response).

9 Q: What would be the first avenue you'd come to; let's say we
10 headed north; what would be the first avenue that you would
11 hit if you went north on 17 from that area? Where are you
12 between; does that make sense? If you're on ---

13 A: I'm not sure because that's like ducked off on 501 so it's
14 kinda, kinda hard to tell.

15 Q: Okay. So if you were to go -- let's not even worry about
16 it. So, you're on 501 across the waterway, right, on the
17 beach side of the waterway; is that right?

18 A: Yes, sir.

19 Q: Okay. And y'all chose from there to come back to Conway;
20 is that right?

21 A: Yes, sir.

22 Q: Okay.

23 A: Well, I wasn't driving the car, sir.

24 Q: I understand. And in fact, you actually headed for Grand
25 Strand first, isn't that right, Grand Strand Hospital?

1 A: I didn't know which hospital there was and then I busted a
2 U after I got on the phone with her.
3 Q: Okay. So you weren't close by, you weren't close enough
4 behind Ms. Vereen driving the car to know where they went?
5 A: Oh, I was speeding, sir.
6 Q: You were what?
7 A: I was speeding. By the time they got to the hospital, I
8 was a couple of minutes right behind them.
9 Q: What I'm saying is you were, but you first went the wrong
10 way because they were ---
11 A: I made the wrong turn at first, sir.
12 Q: Right, because you couldn't still see them.
13 A: Thinking they would go to Grand Strand.
14 Q: Right. Because that would've been closer?
15 A: I would think.
16 Q: When EMS comes up on a crime scene, they're gonna, and
17 they see a person shot and evidence of guns and you called
18 911, who else is likely to show up?
19 A: Police.
20 Q: The police?
21 A: Yes, sir.
22 Q: So, now you eventually get to -- now you told the police
23 when you talked to them that you went straight to Grand
24 Strand. That wasn't exactly accurate, was it? You -- I mean
25 to Conway Hospital -- you went at least towards Grand Strand

- 1 at first, right?
- 2 A: I made that turn, but I didn't go no further than their
3 road.
- 4 Q: How far towards 82nd Avenue did you get?
- 5 A: Say it again, sir?
- 6 Q: Grand Strand is located near about 82nd Avenue?
- 7 A: Yes, sir. I didn't even get to Ron Jon's.
- 8 Q: Where is Ron Jon's?
- 9 A: Not even really a mile up the road.
- 10 Q: Okay. Now, you also in addition to speaking to the police
11 several times, had the chance to write a statement, didn't
12 you?
- 13 A: Yes, sir.
- 14 Q: And Detective Frebowitz made it very clear that it was
15 important that that include everything because he needed to
16 have everything nice and tight. He said he needed you as a
17 witness, right?
- 18 A: Yes, sir.
- 19 Q: You were important to him?
- 20 A: That's what he said.
- 21 Q: He's offering you the first seat on the bus, right?
- 22 A: I guess.
- 23 Q: And during that written statement, no one told you what to
24 write; is that correct?
- 25 A: No, sir.

1 Q: Okay. And that was done -- let me find the date -- well,
2 it's not dated. Do you recall how long after the shooting was
3 that you wrote that statement for Detective Frebowitz?

4 A: No, sir, that was a little blurry moment. I was flustered
5 around all that time. I'd just lost my best friend, sir.

6 Q: Oh, I understand. But this is still several days later,
7 right?

8 A: Not really sure, sir.

9 Q: And in fact it was that third interview you had with
10 Frebowitz, which was June 11th or 12th; so it was a good three
11 weeks later and you, in fact, it was at the end of the
12 conversation you had with the detective, correct?

13 A: I believe so.

14 Q: Okay. So he had a chance to ask you questions and lead
15 you through everything and make sure, even though you were
16 flustered, that you could remember important details, right?

17 A: Yes, sir.

18 Q: Okay. And at that point, there was no threat to you
19 because there was no one around, there was no guns, right?

20 A: Right.

21 Q: Okay. You were safe. All right. In that statement, did
22 you say anything about this random black guy who helped you
23 put Mr. Rico in the car?

24 A: No, sir, I told them at the scene, sir. They looked for
25 him at the scene, sir.

1 Q: I'm asking about in the written statement that you gave.
2 You wrote a statement -- I can hand it to you -- would it help
3 your memory if I showed you what you wrote?

4 A: No, sir.

5 Q: It wouldn't help you? Okay. So do you remember if you
6 wrote anything about the random tall black guy?

7 A: At the time, I don't think I did.

8 Q: Okay.

9 A: But I know I told them that and we looked for him that
10 night. So I figured they knew that.

11 Q: But Detective Frebowitz made it clear that it was
12 important that they get everything written down so you'd be
13 consistent. Do you remember that?

14 A: It's a little blurry, but yes, sir.

15 Q: Okay. He said I don't want anything bad -- you're useful
16 to me, but you're more useful as a witness; do you remember
17 him telling you that?

18 A: No, sir.

19 Q: He didn't tell you that. Do you remember -- did he not
20 tell you that or you just don't remember?

21 A: I don't remember, sir.

22 Q: Now, when did you first mention that anybody got Donavon,
23 Little D -- did you know Little D's name?

24 A: I knew, I knew Little D; I knew that name, but I didn't
25 really ---

1 Q: You didn't know what his real name was?

2 A: Yeah.

3 Q: Okay. Now, when did you first tell anybody that Little D
4 had a gun?

5 A: I believe as soon as the police asked me about the crime.

6 Q: In fact, do you remember Detective Frebowitz wanting to be
7 very clear with you about that and he said, now -- because you
8 were talking about the sequence that you all had been in the
9 car, the transaction was going on, the negotiations, you hear
10 what time it is, you start to get out and you hear a shot.

11 And Detective Frebowitz asked very specifically, do you
12 remember -- did you see a gun, Travis, or did you just assume
13 that Donovan had a gun?

14 A: I told him I seen a gun.

15 Q: You told him you assumed he had a gun; isn't that right?

16 A: I'm not sure if that's right.

17 Q: Okay. Now, you didn't make any mention of seeing a gun
18 for sure until you spoke to the Solicitor's office the end of
19 May. Does that sound right; you told them you saw a gun?

20 A: Nah, I had to tell them that I seen a gun too as well.

21 Q: What's the last thing you remember seeing as you got out
22 of the car?

23 A: The guy with the gun.

24 Q: And that guy was?

25 A: Little D.

- 1 Q: Little D. Little D was sitting where?
- 2 A: The passenger seat.
- 3 Q: Okay. In the front or back?
- 4 A: Front passenger, sir.
- 5 Q: Okay. What was he doing with the gun?
- 6 A: Aiming it at me and my friend.
- 7 Q: Okay. Now, when did Detective Frebowitz asked you very
- 8 specifically whether you in fact saw the gun or assumed that
- 9 based on the sound you heard right after, which was a gunshot,
- 10 you said well, I guess I assumed it. Do you remember telling
- 11 him that?
- 12 A: No, sir.
- 13 Q: Okay. Now you also told the police you'd -- well, you
- 14 said today, too, you'd been smoking that day, right?
- 15 A: Yes, sir.
- 16 Q: Smoking marijuana?
- 17 A: Yes, sir.
- 18 Q: Okay. You were high, right?
- 19 A: It was kinda gone after all that was going on.
- 20 Q: Okay. Well, I'm asking before it all happened.
- 21 A: Yes, sir.
- 22 Q: Okay. I mean that's the whole point, right? You don't
- 23 smoke marijuana for the taste, right?
- 24 A: Nah.
- 25 Q: I mean it's the point. People that smoke marijuana, it's

1 for the effects?

2 A: You could say that, yes, sir.

3 Q: I mean, like cigars, some might have different aromas or
4 tastes, but the point of smoking is for it to affect you, to
5 get high, right?

6 A: Right.

7 Q: Okay. So, you were high when this happened?

8 A: For a short amount of time.

9 Q: Okay. And you were high when you were all in the car?

10 A: Around that time, sir, the thing about marijuana is when
11 the adrenaline is rushing, it kinda knocks it off.

12 Q: Oh, it just snaps it right off like that?

13 A: Yeah, when your adrenaline is rushing like your high
14 doesn't even really -- when you're high off weed, it doesn't
15 really phase you none because your adrenaline's pumping and
16 ---

17 Q: Adrenaline's rushing?

18 A: Yeah.

19 Q: Does that, so then you're super focused at that point. So
20 marijuana doesn't have any affect, it's just poom?

21 A: Yes, sir.

22 Q: The adrenaline overcomes that; okay. How much had you
23 smoked before?

24 A: Just one cigar blunt.

25 Q: Cigar?

1 A: Yeah.

2 Q: Let's say there's no adrenaline pumping and you're just
3 smoking, how does it affect your senses, marijuana?

4 A: I'm -- it doesn't really affect it. I'm on point, like I
5 would have noticed everything, it's just -- I probably would
6 just turned my head slower or something like that.

7 Q: Turned your head slower; react slower?

8 A: Yeah.

9 Q: React slower. Okay.

10 A: Well, that's without adrenaline pumping.

11 Q: Without adrenaline pumping. Okay. Since I'm mentioning
12 this now, you were on point, what does that mean?

13 A: My adrenaline was pumping.

14 Q: Oh, I gotcha. It doesn't mean you were the lookout man
15 for Rico?

16 A: That's why I was on point. I was watching his back.

17 Q: Okay. So your adrenaline was pumping before you got
18 there?

19 A: My adrenaline was pumping when I got in that area that
20 commenced -- the area where it was on a dead end road and
21 they're facing opposite way, he said what he said ---

22 Q: Well, Rico lives, right -- Rico lives down there ---

23 A: Yeah, but he lives off that road; he doesn't live on that
24 dead end road where it's dark around that bridge. You seen
25 the picture.

1 Q: Yeah, he's right there Okay. And from what you've heard,
2 he's the one giving directions; come here to this dead end
3 road where the bridge is, right?

4 A: Yeah.

5 Q: He's bringing them to that location?

6 A: Yeah, but he didn't necessarily -- I didn't hear him say
7 go under the bridge right there.

8 Q: I understand. But he brought them to that. They're ain't
9 but one way in and out of there; is there?

10 A: Yeah.

11 Q: Right. It's not like, you know, being out on 501 or a
12 parking lot somewhere, I mean, it's -- you know, it's
13 controlled, right?

14 A: Yes, sir.

15 Q: Okay. And he was the one giving directions?

16 A: Yes, sir.

17 Q: Come to me. Now, the police, would it be fair to say they
18 were a little bit skeptical about the -- your version of the
19 events when they interviewed you? Didn't quite believe you?

20 A: Yes, sir.

21 Q: Okay. In fact told you that it took us about two seconds
22 to figure out you weren't telling us the whole truth; do you
23 remember that?

24 A: Yes, sir.

25 Q: Okay. And they questioned you a lot about the

1 circumstances, how all this came about; didn't they?

2 A: Yes, sir.

3 Q: Okay. And they asked you who was, who would be ripping
4 off who, right?

5 A: I believe so, yes, sir.

6 Q: Yeah, they did. In other words, they had concerns or
7 belief that it just might have been you and Rico ripping off
8 the others?

9 MR. DEBUSK: Objection. That's calls for speculation.

10 BY MR. FOX:

11 Q: They asked you -- did they ask you that question?

12 A: I don't remember that, sir.

13 Q: Okay. They didn't ask you who was ripping off who?

14 A: I don't know, sir.

15 Q: Okay. We'll get to that in a minute. Now, they also
16 asked very specifically about the sequence and where you were
17 and everything. You hadn't told them you had a gun. You said
18 you picked a gun up off the road. That wasn't true; you had
19 the gun. When you first spoke to them at the hospital, you
20 didn't say anything about shooting at the car; they had to ask
21 you about that, right?

22 A: About?

23 Q: You brought it up and they said why didn't you tell us
24 that before that you had shot at the car?

25 A: I shot at the car? I didn't -- I told them that.

1 Q: Yeah, after a while and they said you didn't tell us that;
2 that was important.

3 A: Again, sir, I was flustered at the beginning, sir.

4 Q: I understand. And they asked you and this was -- whether
5 they -- you might've hit Rico yourself?

6 A: They asked me that.

7 Q: Right. Did you hit him?

8 A: No, sir. I was standing over him, sir; there's no way.

9 Q: When your senses were dulled or when your adrenaline was
10 pumping, you were reacting quickly, it happened bam, bam and
11 you fired two shots in that direction, correct, no doubt about
12 it?

13 A: In the car's direction after my friend was on the ground,
14 sir.

15 Q: All right. Well, that's what you said, he was on the
16 ground. Okay. Didn't make any mention of that black bag you
17 talked about today, right, you didn't tell the police about
18 that, about what was in there, right? You carried that bag up
19 the car, right?

20 A: We did, sir.

21 Q: Did you carry it together? Did you each have a hand on
22 it?

23 A: No -- well, he did, sir. I was with him. Like you said,
24 the hand one or the hand of all; we both walked up the road,
25 sir.

- 1 Q: Did you know what was in the bag?
- 2 A: Yes, sir.
- 3 Q: Hand of one is the hand of all, where did you hear that?
- 4 A: You just said it not too long ago.
- 5 Q: Who did?
- 6 A: You did.
- 7 Q: The hand of one; you heard that one before?
- 8 A: Yes, sir.
- 9 Q: You've heard that phrase?
- 10 A: Yes, sir.
- 11 Q: Please make clear, the Solicitor has made clear that's
- 12 very important in this case.
- 13 A: Yes, sir.
- 14 Q: Because there's no doubt in your mind the person who had
- 15 the gun in the car was Little D?
- 16 A: Yes, sir.
- 17 Q: Okay. Didn't see Shelton Butler with a gun?
- 18 A: No, sir, I didn't.
- 19 Q: Okay. And you heard one shot, correct?
- 20 A: Yes, sir.
- 21 Q: Okay. And you and Shelton in fact made small talk about
- 22 ---
- 23 A: That was before the gunshot.
- 24 Q: Yeah. Okay. That didn't put you on any alarm that you
- 25 were fine, nothing to worry about there at that point, I mean

1 hey, right?

2 A: Right. When I was -- the only person holding
3 conversation, yes.

4 Q: Right.

5 A: Yes, sir.

6 Q: And in fact, you didn't have any suspicion or any worry
7 until actually you heard, you know what time it is?

8 A: Right, and I actually when he said -- but the whole thing
9 was sketchy.

10 Q: The whole thing was sketchy?

11 A: Yeah.

12 Q: You didn't say anything to the police, I mean Frebowitz
13 had to lead you through that and you were trying -- you were
14 trying -- he was asking you what put you on alert and you had
15 no answers for that and so he suggested that it was their
16 faces, their demeanor; do you recall that?

17 A: No, sir.

18 Q: Okay. Do you remember Frebowitz telling you, we need your
19 help; do you remember that?

20 A: No, sir.

21 Q: Okay. He didn't tell you that?

22 A: That was -- most likely you don't -- what anyone said
23 because it was a detective talking to a witness.

24 Q: Okay. So did you remember him asking you what put you on
25 alert?

- 1 A: No, sir.
- 2 Q: He didn't ask you that?
- 3 A: I don't remember.
- 4 Q: Okay. And you didn't have -- you just said well, it made
5 me suspicious because I didn't know these guys; do you
6 remember that?
- 7 A: No, I don't.
- 8 Q: Okay. Then Frebowitz asked you, so it was their demeanor
9 and you said yeah; do you remember that?
- 10 A: No, sir. The whole conversation with Frebowitz is kinda
11 blurry to be honest, because he talked to me at the hospital.
12 And right after that, so that, that I was already going
13 through a lot that night. I had just lost my best friend. So
14 the main thing on my mind was him.
- 15 Q: Let me be clear, this is the interview three days later?
- 16 A: Indicates affirmatively.)
- 17 Q: Okay. Do you remember those conversations ---
- 18 A: No, sir.
- 19 Q: --- with Frebowitz then?
- 20 A: No, sir.
- 21 Q: And he suggested it was some instinct and you said yeah;
22 you remember that?
- 23 A: (Indicates negatively.)
- 24 Q: Okay. So, you don't remember him suggesting the answers
25 to his questions?

1 A: No, sir.

2 MR. FOX: Your Honor, at this time, based on his denial
3 of certain statements and he is under oath at this time, we
4 would request to play and have him identify -- play Mr.
5 Spivey's statement.

6 THE COURT: Ladies and gentlemen of the Jury, go to your
7 jury room please.

8 (REPORTER'S NOTE: Jury exits courtroom. 10:51 A.M. The
9 following takes place outside the presence of the Jury.)

10 BY THE COURT:

11 THE COURT: All right. Mr. Fox, you want to cite the
12 rule to me, please, sir?

13 MR. FOX: Your Honor, basically we'll be refreshing his
14 recollection. He denies making, making certain statements
15 that I believe will be in the recorded statements he gave to
16 the police. Your Honor, that would be 613(b), extrinsic
17 evidence of a prior inconsistent statement generally not
18 admissible unless the witness is advised of the substance of
19 the statement, we've done that; time and place it was
20 committed, we've done that; and the person to whom it was made
21 given the opportunity to explain or deny it, we've done that.
22 There have been several -- at this point, there have been
23 several different statements that he either said I don't
24 remember saying that; I don't think I ever said that; or flat
25 out denying saying things. I don't think it's a situation

1 where I can pick and choose excerpts. These are not extremely
2 long. I propose to play both of his statements to the police.
3 They're recorded. He can authenticate them. He can say yes,
4 I recognize my voice; I remember making, talking to -- and
5 then play those for the Jury.

6 THE COURT: All right, sir. First we got to get over
7 advising the substance of the statement. I don't think you've
8 done that. You've asked him about them but you haven't given
9 them to him, he hasn't read through them, he hasn't
10 familiarized himself with the contents of all of those
11 statements.

12 MR. FOX: Okay. Well, I will -- we have transcripts of
13 those and I propose ---

14 THE COURT: Is that what you're intending to show the
15 Jury is transcripts?

16 MR. FOX: I don't intend to show the Jury, no, I intend
17 to play his actual statements.

18 THE COURT: All right. Well ---

19 MR. FOX: He can listen to the statements himself, Your
20 Honor, before to refresh his memory.

21 THE COURT: Solicitor?

22 MR. DEBUSK: Your Honor, I think he might establish
23 admissibility but he still has to lay the foundation. He has
24 to bring somebody in here to testify that those statements are
25 the true and accurate representation of his interviews.

1 MR. FOX: He can do that.

2 THE COURT: Well ---

3 MR. DEBUSK: They can be admissible with a subsequent
4 witness.

5 THE COURT: He may or may not be able to; I don't know.
6 I mean, you can play them to him and he can listen to them and
7 then he can say, yeah, I remember that or that's my voice, I
8 don't remember any of that, I don't know when that was taken
9 or, yes, I remember that now or whatever. I mean, whatever
10 he, whatever he knows about it and then we'll see, you know
11 ---

12 MR. FOX: Yes, sir.

13 THE COURT: --- at that point, but certainly, I mean,
14 it's certainly potentially possible that he can through,
15 through his own statement it'd be proper at that point in
16 time. So, you need a minute to get those ---

17 MR. FOX: Yes, to make sure I've got it to where it can
18 be heard and I have it ready. I just need a minute to make
19 sure ---

20 THE COURT: We'll take a short break then. Thank you
21 very much.

22 (RECESS - 10:55 A.M.)

23 *****OFF THE RECORD*****

24 (On the Record - 11:13 A.M.)

25 (REPORTER'S NOTE: The following takes place outside the

1 presence of the Jury.)

2 THE COURT: All right, Mr. Fox, you ready to go?

3 MR. FOX: I am, Your Honor.

4 THE COURT: And the witness, sir, you need to come back
5 up to the witness stand, please, sir.

6 All right. Mr. Fox, you may continue, sir.

7 MR. FOX: Your Honor, this -- procedurally we're gonna
8 make sure that -- what I intend to do is this witness be given
9 the opportunity to hear the time and place and the nature of
10 what he said and whether he can remember or not.

11 THE COURT: Yes, sir.

12 MR. FOX: And authenticating -- my understanding is the
13 Solicitor isn't objecting to their admissibility subject to
14 his being able to lay the proper foundation.

15 THE COURT: Yes, sir.

16 MR. FOX: My intention at this point is to limit it just
17 to laying the foundation and I'll play the entire statement
18 for the witness and then bring the Jury back for that.

19 THE COURT: Okay. But at some point in time, you've got
20 to make him aware of what it is that, this is what you said
21 before, okay, exactly. This is what you said, you said A, B
22 and C, okay; do you remember saying A, B and C?

23 MR. FOX: I've done that. I've asked those specific
24 questions.

25 THE COURT: You've asked questions. You have not said

1 here's your statement. In your statement you said A, B and C;
2 do you remember saying A, B and C. All right? So how long is
3 this statement?

4 MR. FOX: They're each approximately thirty minutes, Your
5 Honor.

6 THE COURT: All right. You might as well start playing
7 it.

8 EXAMINATION OF TRAVIS SPIVEY BY MR. FOX:

9 Q: Mr. Butler, the first one I'll ask you about; do you
10 remember making this statement with Detective Frebowitz?

11 A: This is ---

12 THE COURT: All right. Well, hold on a second. You
13 can't two things going on at the same time.

14 BY MR. FOX:

15 Q: All right. Now, Mr. Spivey, do you remember making a
16 statement with Detective Frebowitz at the hospital that same
17 evening of the shooting, just you and the detective, not the
18 girls?

19 A: Yes, sir.

20 Q: Okay. You remember that. Do you remember the time and
21 place where that was?

22 A: Not the time, but the place was there -- well, he talked
23 to me there by myself and ---

24 Q: When you say there, where's there?

25 A: The hospital.

1 Q: Okay. And that was the same evening of the shooting later
2 on that evening?

3 A: Yes, sir.

4 Q: Okay. Would you recognize your voice; if you heard it
5 would you recognize if we started playing that will just say
6 that's me on it?

7 A: Yes, sir.

8 Q: Okay. So, that's what about to play and tell me if you
9 recognize that conversation?

10 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
11 presence of the Jury. Not transcribed herein.)

12 THE COURT: I'm sorry. Solicitor, could you stop it for
13 just one second. All right. I'm sorry. This statement is
14 how long please, the entirety of the statement?

15 MR. FOX: Twenty-five minutes.

16 THE COURT: All right, sir. And then there's ---

17 MR. FOX: We do not need to go through the entire thing.

18 THE COURT: Okay. Very good. How about is there another
19 one?

20 MR. FOX: There's another one that's roughly the same
21 length and then there's a very brief one that's at the
22 hospital with he and ---

23 THE COURT: Do we need, do we need to go through the
24 entirety of any of those or will -- it'll be substantially
25 shorter than ---

1 MR. FOX: It would be shorter than that because of a lot
2 of it is not things that I asked him about.

3 THE COURT: All right. Very good. Okay. Go ahead. I'm
4 just thinking about the Jury and then ---

5 MR. FOX: Yes, sir. And I'm looking, what I'm doing, I'm
6 skipping ahead trying to recall what I specifically asked him
7 and when we get to ---

8 THE COURT: Okay. Good. Good. The part in the rule,
9 just so you're clear about it, the part in the rule that I'm
10 focusing on is he's given an opportunity to explain it or deny
11 it and I'm having a hard time knowing that he could explain it
12 or deny it if he doesn't know exactly what it is that he said.
13 Okay. That's what I'm asking to be for the reason for to play
14 these. Okay? Go ahead.

15 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
16 presence of the Jury. Not transcribed herein.)

17 THE COURT: I mean, is this just dead space or is there
18 something going on here?

19 MR. DEBUSK: Detective Frebowitz is on the phone, Your
20 Honor.

21 THE COURT: Okay. All right. I'm sorry. I just didn't
22 understand what was going on.

23 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
24 presence of the Jury. Not transcribed herein.)

25 BY MR. FOX:

- 1 Q: Now, did you hear that, Mr. Spivey?
- 2 A: Yes, sir.
- 3 Q: Okay. And you heard what you described to the detective
4 up till there?
- 5 A: Yes, sir.
- 6 Q: Did you at any time during that discussion say you
7 recognized anyone other than Shelton Butler?
- 8 A: Recognized the guys; asked if I recognized the guys?
- 9 Q: Okay. And the name ---
- 10 A: I didn't have his name; I couldn't recollect his name at
11 that time.
- 12 Q: Okay. So, you didn't identify at that point, Little D,
13 did you?
- 14 A: I didn't identify his name at that time, but I did say I
15 recognized the guys as in multiples at that time, sir.
- 16 Q: Now with regard to the car moving, you said something
17 happened, you heard -- the car moved, did you hear what you
18 told the detective about the car hitting you?
- 19 A: Yeah, and the first time I believe he asked me did it back
20 into me?
- 21 Q: Right.
- 22 A: Yeah, that's why I say I didn't remember saying that.
- 23 Q: But did in fact what you told him was, they back up ---
- 24 A: The back of the car hit me; that's what I said.
- 25 Q: Well, it says they back up, hit me; you want to hear it

1 again?

2 A: Yeah.

3 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
4 presence of the Jury. Not transcribed herein.)

5 A: And I fell.

6 THE COURT: Go ahead, sir, if you want to make a
7 statement.

8 A: Like I said, the back of it hit me and I fell. Did you
9 get that, sir?

10 BY MR. FOX:

11 Q: I heard your answer.

12 A: Okay.

13 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
14 presence of the Jury. Not transcribed herein.)

15 BY MR. FOX:

16 Q: Now as to that question, where the gun was that you shot
17 with; you told me you pulled it out your waistband; do you
18 recall telling me that?

19 A: Yes, sir.

20 Q: Okay. That's not what you told the police just then, was
21 it?

22 A: Right.

23 Q: Okay. And what you told the police at the time was it was
24 on the ground, you picked it up and shot, correct?

25 A: Yes, sir.

1 Q: Okay.

2 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
3 presence of the Jury. Not transcribed herein.)

4 MR. FOX: Let me see if I can skip ahead a little bit to
5 save us some time.

6 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
7 presence of the Jury. Not transcribed herein.)

8 BY MR. FOX:

9 Q: Mr. Spivey, again did you say anything to the police about
10 recognizing the face of the passenger in the front seat?

11 A: No, sir, I didn't, at that time, I didn't.

12 Q: Okay.

13 A: I believe he would have written down when I had told him
14 that though because I did tell him that. He was the first
15 officer who the other guy was.

16 Q: All right. I'm seeing if there's anything further in
17 this. I don't believe there is.

18 Now, I'm gonna ask you, Mr. Spivey, about the later
19 interview you did: Do you recall an interview on June 11th
20 with the detectives two days after the shooting ---

21 A: Yes, sir.

22 Q: Okay. Do you recall the time and place that occurred?

23 A: No, sir.

24 Q: If you heard -- but you know it did occur?

25 A: Yes, sir.

1 Q: And you were present and you know it was recorded?

2 A: It should have been, yes, sir.

3 Q: Okay. Tell me if this jogs your recollection?

4 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
5 presence of the Jury. Not transcribed herein.)

6 BY MR. FOX:

7 Q: Does that sound like your voice?

8 A: Yes, sir.

9 Q: Okay. Do you believe this is the recording of that
10 interview you had on June the 11th?

11 A: Yes, sir.

12 Q: Okay.

13 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
14 presence of the Jury. Not transcribed herein.)

15 BY MR. FOX:

16 Q: All right. I'm gonna keep playing that. So you're
17 talking about the fellow with the dreads, right?

18 A: Uh-huh (affirmative response.)

19 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
20 presence of the Jury. Not transcribed herein.)

21 BY MR. FOX:

22 Q: Now, he's asking you about the passenger, the front seat
23 passenger, correct, that fellow had dreads?

24 A: Yes, sir.

25 Q: All right. Again, this is now the third time you spoke

1 with the police, right?

2 A: (Indicates affirmatively.)

3 Q: Did you tell them that you recognized him?

4 A: Yes, sir. He just said, you know him from Alternative

5 School in that just now.

6 Q: Did you give him the name?

7 A: I didn't recollect his name at that time.

8 Q: Little D. Okay. Now, that's the first time you heard

9 then they asked you about a gun, right?

10 A: Uh-huh (affirmative response.)

11 Q: And they say, you hear the officer say, I don't remember

12 you telling me about a gun before. Did you hear him say that?

13 A: No, sir.

14 Q: Do you deny he told you that, asked you that?

15 A: I'm saying, no, I didn't hear him say that, sir.

16 Q: You didn't hear that when you were speaking to him at the

17 time?

18 A: I told him he had the gun. I told him he had the gun and

19 just now I just said that was the one with the gun.

20 Q: And the officer says to you, I don't remember you saying

21 anything about the gun before?

22 A: And you stopped it.

23 (REPORTER'S NOTE: Defendant's Exhibit One played outside the

24 presence of the Jury. Not transcribed herein.)

25 BY MR. FOX:

1 Q: But you didn't say anything. The interview we just played
2 made no mention about the fact the guy in the passenger seat
3 having a gun?

4 A: I believe when you start this over and do it all over,
5 it's gonna be something mentioned about that guy having a gun.
6 And then I think I did just say -- can you -- you gonna
7 restart that, I think I did said something about him having a
8 gun.

9 Q: Yeah ---

10 A: Yeah.

11 Q: Certainly.

12 A: Yeah. That was a few days after when I done had time to
13 rest and clear my mind of all the events that just happened.

14 Q: All right. Okay. Now, remember -- I'm gonna try to skip
15 forward.

16 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
17 presence of the Jury. Not transcribed herein.)

18 BY MR. FOX:

19 Q: Now, I asked you that question a while ago. Didn't the
20 detective ask you if you actually saw the gun or assumed and
21 your response was I assumed he had a gun, correct?

22 A: Yeah, that was my response then, yes, sir.

23 Q: Okay. Go a little bit further.

24 (REPORTER'S NOTE: Defendant's Exhibit One played outside the
25 presence of the Jury. Not transcribed herein.)

1 BY MR. FOX:

2 Q: All right. The detective asked you, did you actually see
3 him with the gun and you responded ---

4 A: Yes, sir.

5 MR. FOX: One moment, Your Honor. I've got to get the
6 other disc. That would be it for that interview.

7 THE COURT: All right, sir.

8 MR. FOX: The last one is the original interview at the
9 hospital. It's short.

10 THE COURT: All right, sir.

11 MR. FOX: It contains some other witnesses. I think
12 we'll just go through the whole thing. It's very brief.

13 THE COURT: All right, sir.

14 BY MR. FOX:

15 Q: Now, Mr. Spivey, I'm gonna ask you now, at the original
16 time you spoke to the detective at the hospital, you were
17 there with Ms. Anderson and Ms. Green; do you recall that?

18 A: Yes, sir.

19 Q: Okay.

20 (REPORTER'S NOTE: Defendant's Exhibit Two played outside the
21 presence of the Jury. Not transcribed herein.)

22 BY MR. FOX:

23 Q: Where was that; where do you remember talking to the
24 police?

25 A: I don't remember where.

1 Q: Was it at the hospital?

2 A: I don't remember where, sir.

3 Q: Do you remember speaking to the police?

4 A: Yes, I just don't know where.

5 Q: Do you remember speaking to the police in the presence of
6 Ms. Green and Ms. Anderson?

7 A: Not recorded though, yes.

8 Q: Tell me, I'm gonna play a few minutes and then ask you to
9 tell me if you recognize your voice.

10 (REPORTER'S NOTE: Defendant's Exhibit Two played outside the
11 presence of the Jury. Not transcribed herein.)

12 BY MR. FOX:

13 Q: Is that you?

14 A: Yes, sir.

15 Q: Okay. And in the beginning you heard the detective state
16 the date; is that, do you remember making that statement?

17 A: Yes, sir.

18 Q: Okay. I'll try to skip over the girls' statements where
19 we just get to a little bit that deals with you. Okay. Let's
20 get -- so they talk to the girls a few minutes and then they
21 turn to you.

22 (REPORTER'S NOTE: Defendant's Exhibit Two played outside the
23 presence of the Jury. Not transcribed herein.)

24 BY MR. FOX:

25 Q: Now, Mr. Spivey, up to that point, they've gone through

1 the first time where you had told them this is what happened,
2 you met these guys, Rico said we got some guys coming through.
3 I walked to the car, boom, boom, he falls out of the car,
4 right? At that point, had you said anything about firing your
5 gun or even having a gun?

6 A: No, sir.

7 Q: Okay. I'm gone skip a little bit more.

8 (REPORTER'S NOTE: Defendant's Exhibit Two played outside the
9 presence of the Jury. Not transcribed herein.)

10 BY MR. FOX:

11 Q: Again any, during that point in the conversation, any
12 mention of recognizing anybody other than Shelton Brown?

13 A: No, sir.

14 (REPORTER'S NOTE: Defendant's Exhibit Two played outside the
15 presence of the Jury. Not transcribed herein.)

16 BY MR. FOX:

17 Q: That was the first time the officers questioned you, that
18 you mentioned firing a gun, correct; you didn't volunteer that
19 information?

20 A: Yes, sir.

21 MR. FOX: Judge, I think that's it on these.

22 BY THE COURT:

23 THE COURT: All right, sir. All right. Any objections,
24 Solicitor, that you want to raise?

25 MR. DEBUSK: Your Honor, we want to publish that

1 statement in full for completeness, Your Honor.

2 MR. FOX: I have no problem playing it in full ---

3 THE COURT: I appreciate that, but other than that, I
4 mean, I think -- I find it's been properly authenticated.
5 He's had an opportunity now to hear it and to, you know,
6 understand the statements and be able to explain or deny them.
7 So it's certainly proper cross examination. I'm gonna allow
8 it.

9 MR. FOX: Your Honor, just -- again, because I want to do
10 this the way Your Honor's ruling and it's -- my intention, I
11 agree with the Solicitor, the best way to do this is to play
12 them in their entirety for the Jury.

13 THE COURT: That's fine. If you want to do that and then
14 if you want to stop it and ask a question ---

15 MR. FOX: Yes, sir.

16 THE COURT: At that point in time, I'll be glad for you
17 to do that, but you want to, you know, play the whole thing in
18 its entirety; I'll be glad for you to do that. But you can
19 certainly stop it and ask a question about that and then
20 continue on.

21 MR. FOX: Yes, sir.

22 THE COURT: Not a problem. All right.

23 All right. Ask the Jury to come back in please.

24 Mr. Fox, Solicitor, we need to mark those in some way.

25 MR. DEBUSK: I don't have the CDs.

1 THE COURT: All right. Where, where ---

2 COURT REPORTER: Mr. Fox has them.

3 THE COURT: Mr. Fox, the CDs, we have to mark them in
4 some way for identification anyway.

5 MR. FOX: There's two of them.

6 THE COURT: What are they marked as?

7 COURT REPORTER: Defendant's One and Defendant's Two.

8 THE COURT: For identification?

9 COURT REPORTER: For identification, yes, sir.

10 DEFENDANT'S EXHIBIT NUMBER ONE AND TWO

11 MARKED FOR IDENTIFICATION

12 (REPORTER'S NOTE: Jury enters courtroom. 11:49 A.M. The
13 following takes place in the presence of the Jury.)

14 THE COURT: All right. Go ahead, Mr. Fox; you may
15 continue, sir.

16 MR. FOX: Thank you.

17 CONTINUATION OF CROSS EXAMINATION OF TRAVIS SPIVEY BY MR. FOX:

18 Q: Mr. Spivey, we talked about the interviews you gave to the
19 police, correct?

20 A: Yes, sir.

21 Q: Okay. And you admit there were several different
22 interviews?

23 A: Yes, sir.

24 Q: Okay. And if you were to hear, can you recall making a
25 statement at the Conway Hospital to Detective Frebowitz?

1 A: Yes, sir.

2 Q: And that was on the night of the shooting?

3 A: Yes, sir.

4 Q: And I think Ms. Vereen and Ms. Anderson were there with
5 you?

6 A: Yes, sir.

7 Q: Okay. Would you recognize your voice, if you heard it on
8 a recording?

9 A: Yes, sir.

10 MR. FOX: All right, Your Honor, I'm gonna take a left
11 turn on this one.

12 THE COURT: All right, sir.

13 MR. FOX: As you know, we had it playing shortly.

14 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
15 presence of the Jury. Not transcribed herein.)

16 BY MR. FOX:

17 Q: That's you on that tape, correct?

18 A: Yes, sir.

19 Q: Okay. And that's the one you gave -- the interview you
20 gave to the police ---

21 A: Yes, sir.

22 Q: --- at the hospital, correct?

23 A: Yes, sir.

24 Q: You just heard that last exchange about who you saw in the
25 car. Did you make any mention to Detective Frebowitz that you

- 1 recognized anybody in the car at that time?
- 2 A: Not at that time, sir.
- 3 Q: Okay.
- 4 A: I was still flustered at that time.
- 5 Q: I understand.
- 6 MR. FOX: Your Honor, may we briefly approach?
- 7 THE COURT: Yes, sir.
- 8 (REPORTER'S NOTE: A bench conference was held off the record
- 9 in the presence of the Jury but out of hearing of the Jury.)
- 10 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
- 11 presence of the Jury. Not transcribed herein.)
- 12 BY MR. FOX:
- 13 Q: Again, Mr. Spivey, they've asked you again and you said
- 14 Shelton, still no mention of recognizing anybody else; is that
- 15 right?
- 16 A: Yes, sir, not yet, sir.
- 17 Q: Okay.
- 18 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
- 19 presence of the Jury. Not transcribed herein.)
- 20 BY MR. FOX:
- 21 Q: Mr. Spivey, that was the first mention of you firing any
- 22 shots, wasn't it, when the detectives questioned you?
- 23 A: Yes, sir.
- 24 Q: And in there, you heard the other voices in there, Ms.
- 25 Vereen and Ms. Anderson, is that correct?

1 A: That's right.

2 Q: Obviously, you're the first witness today, correct?

3 A: Yes, sir.

4 Q: Okay. So, does that appear to be your, in this incident,
5 everything that you spoke to Detective Frebowitz in this
6 interview?

7 A: In that specific one right there; is that everything, no.

8 Q: Oh, there's more?

9 A: Because the frustration in my voice, like, you could tell
10 like, I was still frustrated from my friend being murdered
11 right there in front of me.

12 Q: Okay. Well, I'm just asking though, that's the -- that
13 recording appear to be complete?

14 A: Yes, sir.

15 Q: Okay. And nowhere in there do you mention Little D,
16 Donovan Johnson?

17 A: No, sir.

18 Q: And nowhere in there do you mention Donovan Johnson having
19 a gun?

20 A: No, sir.

21 Q: Or even seeing a gun, do you?

22 A: No, sir.

23 Q: Now, when you spoke with them -- do you recall speaking
24 with Detective Frebowitz later that same night?

25 A: Yes, sir.

1 Q: Okay. And do you recall that interview being recorded?

2 A: Yes, sir.

3 Q: Okay. Do you recall where that interview took place?

4 A: At the Horry County Police Station.

5 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
6 presence of the Jury. Not transcribed herein.)

7 BY MR. FOX:

8 Q: Does that sound like your voice?

9 A: Yes, sir.

10 Q: Okay. That sound like that's the interview you were
11 having on June 8th, later that night?

12 A: Yes, sir.

13 Q: Okay. Right off the bat, I notice the detective says
14 we've been talking a little while; what had you been talking
15 about?

16 A: I can't remember, sir. Probably, he's probably talking
17 about that first recording.

18 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
19 presence of the Jury. Not transcribed herein.)

20 BY MR. FOX:

21 Q: All right. Now, have you gone over this story with the
22 detective prior to the recording being turned on?

23 A: I don't think I did, sir.

24 Q: Did you hear what he just said?

25 A: Yes, sir.

1 Q: Okay. But you hadn't talked to him before about it?

2 A: Not that I -- not to my memory.

3 Q: Okay.

4 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
5 presence of the Jury. Not transcribed herein.)

6 BY MR. FOX:

7 Q: Now, you're sitting there talking to Shelton in the car
8 at that point, correct?

9 A: Yes, sir.

10 Q: Okay. What is Rico doing?

11 A: Talking to the passenger and the driver.

12 Q: What were they talking about?

13 A: To me they was negotiating a price.

14 Q: Okay. And the price for?

15 A: His stuff.

16 Q: His stuff which was?

17 A: Marijuana.

18 Q: And Rico was selling?

19 A: Marijuana.

20 Q: That's -- but he was the seller?

21 A: Yes, sir.

22 Q: And that's what was in the black bag?

23 A: Yes, sir.

24 Q: Okay. Now, I'll mention again, Shelton, you don't mention
25 recognizing the dreads, right?

1 A: Right.

2 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
3 presence of the Jury. Not transcribed herein.)

4 BY MR. FOX:

5 Q: Now there you said how many shots?

6 A: Three.

7 Q: Three. Didn't you say earlier one shot?

8 A: Yeah, I just added on the shots I fired.

9 Q: But you didn't say you fired the shots?

10 A: No, sir.

11 Q: You didn't say you fired the shots?

12 A: Not yet.

13 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
14 presence of the Jury. Not transcribed herein.)

15 BY MR. FOX:

16 Q: The gun wasn't beside him though, was it?

17 A: No, sir.

18 Q: It was where?

19 A: On my waistband.

20 Q: So, that was a lie?

21 A: Yes, sir.

22 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
23 presence of the Jury. Not transcribed herein.)

24 BY MR. FOX:

25 Q: Now, where in there is the part where you got the little

1 boy and got him to the house?

2 A: In the midst of doing that, I didn't say that, sir, but
3 that's what I did. I made sure he got to where he was
4 supposed to be going.

5 Q: And this is just a random guy, a tall, black guy?

6 A: Yes, sir.

7 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
8 presence of the Jury. Not transcribed herein.)

9 BY MR. FOX:

10 Q: Again, another opportunity to describe the people you saw
11 in the car, right?

12 A: Uh-huh (affirmative response), yes, sir.

13 Q: Still just three black guys in the car?

14 A: Yeah, in a flustered mood.

15 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
16 presence of the Jury. Not transcribed herein.)

17 Q: Now, there, they're asking you about Rico being on the
18 phone; you weren't part of those phone conversations, right?

19 A: No, sir.

20 Q: Okay. So, he just said some boys are coming through,
21 right?

22 A: Yes, sir.

23 Q: But you don't know who he was talking to on the phone
24 calls, do you?

25 A: Not quite. I didn't know, but ---

1 Q: I mean, if you don't -- I mean, you don't know who was on
2 the other end, do you?

3 A: No, sir.

4 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
5 presence of the Jury. Not transcribed herein.)

6 BY MR. FOX:

7 Q: You got in a predicament a while before, right?

8 A: Yes, sir.

9 Q: And that's when, when Rico gave up his drug-selling ways?

10 A: Supposedly.

11 Q: But he didn't, did he?

12 A: No, sir.

13 Q: And you didn't either because you were his partner ---

14 A: His home boy.

15 Q: His home boy. Well, that means friend in part, right?

16 A: Yes, sir.

17 Q: But it means more than that?

18 A: It means friend or home boy.

19 Q: Well, does it mean you helped him when he was selling
20 drugs?

21 A: From time to time.

22 Q: Okay. So, even though you got in a predicament before
23 with weed and you said, hey, I got a kids on the way, I can't
24 do that; you still kept doing it?

25 A: No, sir.

- 1 Q: Didn't he -- you did it this night with Rico?
- 2 A: No, I watched his back that night.
- 3 Q: Well, you're saying you didn't touch the marijuana?
- 4 A: No, I -- I did what my friend asked me to do; that's what
- 5 I did.
- 6 Q: Okay. But you knew what he was up to?
- 7 A: Yes, sir.
- 8 Q: Okay. And you knew that thing he was up to was illegal?
- 9 A: Yes, sir.
- 10 Q: Okay. And you participated?
- 11 A: Yes, sir.
- 12 Q: Watched his back?
- 13 A: Yes, sir.
- 14 Q: And it was the same way after you got popped in the past,
- 15 2009, for strong armed robbery, common law robbery, right?
- 16 A: Yes, sir.
- 17 Q: All right. Possession of a pistol in 2011?
- 18 A: Yes, sir.
- 19 Q: You kept doing what you were doing then, right?
- 20 A: Yes, sir, that was all before that.
- 21 Q: But you say it was all before that, but on this night you
- 22 were going with Rico for him to sell marijuana, there was a
- 23 bag and you got a gun, correct?
- 24 A: Yes, sir.
- 25 Q: Okay. Were you lawfully in possession of that gun?

1 A: No, sir.

2 Q: Okay.

3 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
4 presence of the Jury. Not transcribed herein.)

5 BY MR. FOX:

6 Q: Mr. Spivey, there's a period of silence now. Did the
7 detective go out of the room for a little while?

8 A: Yes, sir.

9 Q: Okay.

10 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
11 presence of the Jury. Not transcribed herein.)

12 Q: At this point, that's a negotiation, right?

13 A: Yes, sir.

14 Q: They're talking about the weed. Everyone's calm. Jose is
15 there to sell weed and they're there to buy weed, correct?

16 A: Yes, sir.

17 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
18 presence of the Jury. Not transcribed herein.)

19 Q: Rico referred to whether he was gonna meet his home boy;
20 is that the same word you used to refer to your relationship
21 with him?

22 A: Yes, sir.

23 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
24 presence of the Jury. Not transcribed herein.)

25 Q: So, if I understand what that conversation with the

1 detective was, what you're telling him is he's asking about
2 the car?

3 A: Yes, sir.

4 Q: And you just described it as a pretty nice clean car?

5 A: Yes, sir.

6 Q: Is that right? And you decided from that it probably
7 couldn't belong to these guys that rode in it?

8 A: Yes, sir.

9 Q: Because if I can paraphrase it, it would be stupid to
10 shoot somebody in a nice car like that, is basically what you
11 said, right?

12 A: Uh-huh (affirmative response).

13 Q: You would bring a dirty car -- if anything, you're gonna
14 bring a dirty car; you gonna shoot somebody in a clean car;
15 come on -- those are your words, right?

16 A: Yes, sir.

17 (REPORTER'S NOTE: Defendant's Exhibit Two played in the
18 presence of the Jury. Not transcribed herein.)

19 BY MR. FOX:

20 Q: That just cuts off; do you hear that?

21 A: Yes, sir.

22 Q: Was that the end of the interview?

23 A: I'm not sure.

24 Q: You think there was more to it?

25 A: Probably not. I don't know where you get that from.

- 1 Q: Well, maybe from the way it just kind of cut off in mid-
2 sentence. Do you remember speaking any further with the
3 detective?
- 4 A: I don't remember that far.
- 5 Q: Now, you just heard that entire interview. This is the
6 one on June the 9th, later the same night of the shooting.
- 7 A: Yes, sir.
- 8 Q: They gave you two or three chances to describe the people
9 in the car, didn't they?
- 10 A: Yes, sir.
- 11 Q: They gave you every opportunity to say everything you knew
12 about what happened, didn't they?
- 13 A: Yes, sir.
- 14 Q: You were many hours away from the shooting by that point?
- 15 A: Yes, sir.
- 16 Q: Were you still high?
- 17 A: No, sir, but I wasn't fully stable.
- 18 Q: So, you your wits were all about you. At no time did you
19 indicate you knew anyone other than Shelton or you said
20 Sheldon, but Shelton from the Alternative School, did you? In
21 this statement at no time did you ---
- 22 A: No, sir.
- 23 Q: --- mention anybody else?
- 24 A: No, sir.
- 25 Q: No mention that anybody else had a gun, was there?

1 A: No, sir.

2 Q: And no mention of you having a gun in your waist when you
3 went out there?

4 A: No, sir.

5 Q: Okay. Now, that wasn't the last time you talked to the
6 police, was it?

7 A: No, sir.

8 Q: Okay. In fact, two days later you spoke on another time?

9 A: Yes, sir.

10 Q: Do you recall where that was?

11 A: No, sir.

12 Q: But you remember having a conversation?

13 A: Yes, sir.

14 Q: And that was with Detective Frebowitz and Detective Smith?

15 A: Yes, sir.

16 (REPORTER'S NOTE: Defendant's Exhibit One played in the
17 presence of the Jury. Not transcribed herein.)

18 BY MR. FOX:

19 Q: That's your voice again?

20 A: Yes, sir.

21 Q: Okay. So you recall this conversation on June the 11th?

22 A: Yes, sir.

23 Q: Okay.

24 (REPORTER'S NOTE: Defendant's Exhibit One played in the
25 presence of the Jury. Not transcribed herein.)

1 BY MR. FOX:

2 Q: Now, we've heard the two times you talked to the police,
3 at least the recorded times, right? Detective Frebowitz was
4 there for one of them and we've heard, just heard the second
5 interview you gave with Detective Williamson. ---

6 A: Yes, sir.

7 Q: And at no time in either of those statements did you
8 mention the passenger in the car having a gun, did you?

9 A: No, sir. Maybe that was probably that time when he said
10 let's continue on and then they started the recording maybe.

11 (REPORTER'S NOTE: Defendant's Exhibit One played in the
12 presence of the Jury. Not transcribed herein.)

13 BY MR. FOX:

14 Q: Who was carrying the black bag?

15 A: He was really but that's -- I didn't mention it at the
16 time.

17 (REPORTER'S NOTE: Defendant's Exhibit One played in the
18 presence of the Jury. Not transcribed herein.)

19 BY MR. FOX:

20 Q: Rico is on the -- is the one of the phone with whoever
21 these people are, right?

22 A: Yes, sir.

23 Q: You don't have any contact with them?

24 A: No, sir.

25 Q: Why does he need you to go along; why is he knocking on

1 the window for you to go along?

2 A: Because he originally, before I even got there, he already
3 had felt uneasy about making the deal or whatever. That's the
4 reason why I stopped by his house because we already talked on
5 the phone explaining the situation what was going on and how
6 he felt about the situation.

7 Q: We'll keep going. Remember that.

8 (REPORTER'S NOTE: Defendant's Exhibit One played in the
9 presence of the Jury. Not transcribed herein.)

10 BY MR. FOX:

11 Q: Another chance to describe the guys; once again, just
12 three black guys, right?

13 A: Yes, sir.

14 (REPORTER'S NOTE: Defendant's Exhibit One played in the
15 presence of the Jury. Not transcribed herein.)

16 BY MR. FOX:

17 Q: So you didn't actually tell the detective, he asked you
18 directly, did you see the gun and you said well, no, I just
19 assumed is what you said?

20 A: Yes, sir, that's what I said.

21 Q: Now, not questioned though at that time if you had a gun?

22 A: Sir?

23 Q: There's no question that you had a gun with you at that
24 time?

25 A: Yes, sir.

1 Q: In the car?

2 A: I said, yes, sir.

3 Q: Okay. And Rico had a gun?

4 A: Yes, sir.

5 (REPORTER'S NOTE: Defendant's Exhibit One played in the
6 presence of the Jury. Not transcribed herein.)

7 BY MR. FOX:

8 Q: You know what time it is and the vehicle drives off?

9 A: Yes, sir.

10 Q: Did it ---

11 A: It pulls off.

12 (REPORTER'S NOTE: Defendant's Exhibit One played in the
13 presence of the Jury. Not transcribed herein.)

14 BY MR. FOX:

15 Q: At any time during the interview with the police, did they
16 take a DNA sample from you?

17 A: Yes, sir.

18 Q: They did?

19 A: Yes, sir.

20 Q: They get a swab from your cheek or something?

21 A: I don't think they did that, but ---

22 Q: They got a sample of your DNA?

23 A: Yes, sir.

24 (REPORTER'S NOTE: Defendant's Exhibit One played in the
25 presence of the Jury. Not transcribed herein.)

1 BY MR. FOX:

2 Q: Do you recall later -- we're gonna play this whole thing
3 -- do you recall later in this conversation having give and
4 take with Detective Frebowitz about being a catch-on guy; you
5 being the catch-on guy, you catch-on to what's going on around
6 you?

7 A: I said something like that.

8 Q: Okay. You catch-on and you just heard what he just told
9 you right, that he found your DNA on the gun?

10 A: Yes, sir.

11 Q: And he said, we're good with that, we don't care; we care
12 you lied a little bit but we can get past that. Now, you're a
13 catch-on guy, what do you think he was trying to tell you;
14 what did you from your perspective sitting there at that point
15 pick up on from Detective Frebowitz?

16 A: I mean, when he said that, I mean, I was continuing
17 telling the story.

18 Q: He was telling you he knew that you and Rico had gone with
19 marijuana and guns to meet some people and he knew at this
20 point for sure, from your own admission, that you fired your
21 gun?

22 A: Yes, sir.

23 Q: He hadn't heard anything about anybody else having a gun
24 at this point, right, no mention of anybody else having a gun?

25 A: Yes, he did.

1 Q: And he heard about a gunshot?

2 A: Uh-huh (affirmative response.)

3 Q: And he said did you see a gun and you said, well, or did
4 you just assume, you said, well, I assumed. So, he
5 specifically asked you and you had to back up and say, no, I
6 didn't see it, right?

7 A: Yes, and that wasn't the first question that was like
8 that.

9 Q: Well, but the point is, at this point, you have not told
10 him I saw Donovan with a gun; you said I think because of the
11 circumstances. What do you think he was getting at; what do
12 you take this to mean when he says, you fired a gun, you lied
13 to us but we're good with that, we can get past that; what do
14 you think that meant?

15 A: Tell the truth.

16 Q: Tell the truth. Okay. Did you feel like -- now, they've
17 interviewed you now three times, right?

18 A: Yes, sir.

19 Q: And they're asking you specifically, hey, did you shoot --
20 do you think maybe you did Rico; they asked you that, right?

21 A: Yes, sir.

22 Q: Okay. And they're gonna ask you some more about what
23 happened to Rico having money and what happened with the
24 money, right, they asked you those kind of questions, right?

25 A: Yes, sir.

1 Q: And they asked you about Rico's family, questioned you
2 about his condition when he was found; you had those
3 conversations, right?

4 A: Yes, sir.

5 Q: Okay. So, did you get the impression they were maybe just
6 a little suspicious of your role in this whole thing?

7 A: Yes, sir, I thought that; I questioned that.

8 Q: Okay. So when he says, don't worry, son, we're good,
9 we're good, we can get past all that; where did you think
10 that, that was your ticket out of this thing, wasn't it?

11 A: No.

12 (REPORTER'S NOTE: Defendant's Exhibit One played in the
13 presence of the Jury. Not transcribed herein.)

14 BY MR. FOX:

15 Q: He's telling you what happened here, isn't he; Frebowitz
16 is telling you all these facts and you're saying yes, sir,
17 yes, sir; he's giving details and you've just agreed with him,
18 right?

19 A: He's telling what his -- he's telling his side of the
20 story what he's seen and what he's ---

21 Q: What he wants to hear?

22 A: Yeah -- well, not what he wants to hear, but what he's
23 getting from what I'm telling him.

24 (REPORTER'S NOTE: Defendant's Exhibit One played in the
25 presence of the Jury. Not transcribed herein.)

1 BY MR. FOX:

2 Q: That's not true, is it?

3 A: No.

4 Q: So, you're still lying to the police at this point, aren't
5 you?

6 A: Yes, sir..

7 Q: Okay.

8 (REPORTER'S NOTE: Defendant's Exhibit One played in the
9 presence of the Jury. Not transcribed herein.)

10 BY MR. FOX:

11 Q: You said you believed Rico was getting ripped off, right?

12 A: Yes, sir.

13 Q: But this is after Detective Frebowitz has said to you, we
14 ain't worried about your lies, we ain't worried about all
15 that, we're good, right? This is a few minutes after he's
16 told you we're good, nudge, nudge, wink, wink, right?

17 A: He said that, but that's not what I took it as.

18 (REPORTER'S NOTE: Defendant's Exhibit One played in the
19 presence of the Jury. Not transcribed herein.)

20 BY MR. FOX:

21 Q: Did you hear what the detective said there, they ask you
22 what put you on alert and you say, well, to be honest -- could
23 you hear what he said after that? He said honestly means
24 trouble, do you remember that?

25 A: No, I couldn't hear him, no, but okay.

1 Q: Well, what did you -- let's keep going.

2 (REPORTER'S NOTE: Defendant's Exhibit One played in the
3 presence of the Jury. Not transcribed herein.)

4 BY MR. FOX:

5 Q: Now there you said their body language and their faces;
6 that's what made you suspicious, correct?

7 A: Yeah.

8 Q: Earlier you testified that Rico felt uneasy and that's why
9 you needed a gun?

10 A: That's why I brought what I brought.

11 Q: Okay. You didn't say anything about Rico feeling uneasy
12 to the police though, did you?

13 A: No, sir.

14 (REPORTER'S NOTE: Defendant's Exhibit One played in the
15 presence of the Jury. Not transcribed herein.)

16 BY MR. FOX:

17 Q: That's the detective asking you what to ask Mr. Butler and
18 the two Mr. Johnsons?

19 A: That's what it sounded like.

20 Q: Mighty big Christmas present, wouldn't you say?

21 A: No.

22 (REPORTER'S NOTE: Defendant's Exhibit One played in the
23 presence of the Jury. Not transcribed herein.)

24 BY MR. FOX:

25 Q: Where did Rico get his money that he was never broke?

1 A: He had part-time little jobs, he knowed how to work on
2 cars and stuff.

3 Q: Selling weed?

4 A: Whatever you take it as.

5 Q: I'm ask; I don't know?

6 A: I just said he worked on cars and stuff.

7 Q: But did he also sell weed to support himself; is that the
8 way he had money?

9 A: You could say that.

10 Q: Okay.

11 (REPORTER'S NOTE: Defendant's Exhibit One played in the
12 presence of the Jury. Not transcribed herein.)

13 BY MR. FOX:

14 Q: Now, you didn't try to lift him by yourself, did you?

15 A: At first, yes. I was there over him first.

16 Q: But then ---

17 A: A guy came and helped me.

18 Q: That random black guy?

19 A: Yeah.

20 (REPORTER'S NOTE: Defendant's Exhibit One played in the
21 presence of the Jury. Not transcribed herein.)

22 BY MR. FOX:

23 Q: So you had -- the family was suspicious of you; is that
24 fair to say?

25 A: Yes, sir.

1 Q: Okay. And do you know one reason you were back talking to
2 the police is his family thought you were lying to the police?

3 A: Yes, sir.

4 (REPORTER'S NOTE: Defendant's Exhibit One played in the
5 presence of the Jury. Not transcribed herein.)

6 BY MR. FOX:

7 Q: All right, Mr. Spivey, just a couple more questions.
8 You've now heard all the statements that you gave the police,
9 right?

10 A: Yes, sir.

11 Q: In any of those statements, in none of those statements
12 did you say you recognized the guy in the passenger seat?

13 A: You sure about that, sir?

14 Q: I'm asking you.

15 A: Yes, I did.

16 Q: Okay. Now, you never mentioned Little D or Donovan or
17 anything like that in those statements?

18 A: Say it again, did I mention them?

19 Q: In the statements that you just heard that we've spent the
20 last hour or so listening to ---

21 A: Yes.

22 Q: --- you never mentioned Little D or Donovan or anything
23 like that?

24 A: I did.

25 Q: Now during -- and then he gave you one last chance; made

1 it clear, he don't mind, Detective Frebowitz, whatever you say
2 is all right by him, he's fine with you, you are useful and
3 helpful, but only as a witness?

4 A: Yeah, he tried to make me sound like that.

5 Q: He needs you. You never told him -- you testified earlier
6 that Rico felt uneasy and that's why you went but that's
7 nowhere in your statement?

8 A: No, sir.

9 Q: Okay. You also didn't -- this morning, you said at some
10 point that you lifted up -- you weren't sure what happened to
11 Rico but you lifted up his shirt and you saw a bullet wound;
12 you said that in your testimony this morning, correct?

13 A: Yes, sir.

14 Q: At no point did you say that to the police during your
15 hours of interviews?

16 A: No, sir.

17 Q: Okay.

18 A: I wrote down the main things. I didn't think that would
19 make a big change in this situation right here that I lifted
20 up his shirt or left it down or looked at him a different way
21 or whatever.

22 Q: You had several different chances to tell him everything
23 you knew, did you not?

24 A: I didn't think that would be a big situation in this crime
25 that I picked up his shirt.

1 Q: They told you to write everything you could think of,
2 didn't they?

3 A: Yes, sir.

4 Q: Okay. Or to say everything that you could think of. And
5 in your written statement there was no mention of that and no
6 mention of Little D or Donovan, is there?

7 A: No, sir.

8 Q: There's no mention of Donovan or anybody having a gun?

9 A: I did mention that he had a gun.

10 Q: Thank you, that's all the questions.

11 REDIRECT EXAMINATION OF TRAVIS SPIVEY BY MR. DEBUSK:

12 Q: Travis, you talked to the police multiple times, right?

13 A: Yes, sir.

14 Q: Did you ever refuse to talk to them?

15 A: No, sir.

16 Q: You were cooperative?

17 A: Yes, sir.

18 Q: You even give them DNA, didn't you?

19 A: Yes, sir.

20 Q: That very first day when you talked to Detective Frebowitz
21 at the hospital, this was within an hour of the shooting,
22 wasn't it?

23 A: Yes, sir.

24 Q: And less than an hour when you found out your best friend
25 was dead?

- 1 A: Yes, sir.
- 2 Q: And you still told them that you fired a gun?
- 3 A: Yes, sir.
- 4 Q: And you named the Defendant, that man right there, Shelton
5 Butler?
- 6 A: Yes, sir.
- 7 Q: Now, you got his last name a little bit wrong; you said
8 Shelton B?
- 9 A: Yes, sir.
- 10 Q: I showed you the picture and that was Shelton Butler,
11 right?
- 12 A: Yes, sir.
- 13 Q: The man sitting at that table over there?
- 14 A: Yes, sir.
- 15 Q: That very day within an hour when it happened, you
16 identified him?
- 17 A: Yes, sir.
- 18 Q: How many shots were fired in that car?
- 19 A: In the car?
- 20 Q: Yes?
- 21 A: One.
- 22 Q: You heard one shot in the car?
- 23 A: Yes, sir.
- 24 Q: Okay. After all this time, I guess the conversations with
25 Detective Frebowitz run together, but you went back on a

1 subsequent day, didn't you?

2 A: Say again?

3 Q: You went back a couple of days after this happened ---

4 A: Yes, sir.

5 Q: --- to talk to him; why did you go back?

6 A: They, they called me. They asked me -- they wanted me to
7 identify someone.

8 Q: Okay. And did you identify that person?

9 A: Yes, sir.

10 Q: Who was it?

11 A: Little D.

12 Q: Okay. So is there any doubt in your mind that just as you
13 told them that very first day that Shelton Butler was the one
14 sitting closest to Rico when he was shot?

15 A: There's no doubt.

16 Q: Any doubt you told him that, that you went there and you
17 knew he was gonna sell drugs?

18 A: No, sir.

19 Q: You knew he ---

20 A: No, sir.

21 Q: You didn't want to tell the police that, did you?

22 A: No, sir.

23 Q: You thought you might get yourself in trouble?

24 A: Yes, sir.

25 Q: You might make Rico look bad, correct?

- 1 A: Yes, sir.
- 2 Q: But the fact is it was a drug deal?
- 3 A: Yes, sir.
- 4 Q: And you were there with Rico; you were watching his back,
5 weren't you?
- 6 A: Yes, sir.
- 7 Q: Okay. Any doubt that as soon as you stood up and started
8 to get out of that vehicle, that vehicle took off?
- 9 A: No doubt, sir.
- 10 Q: And that was when they said, you know what time it is?
- 11 A: Yes, sir.
- 12 Q: They didn't say you know what time it is when you were
13 sitting in there, did they?
- 14 A: While I was asking them they said -- like they was waiting
15 for me to get out or something.
- 16 Q: All right. And you said -- any doubt in your mind that
17 you saw Rico trying to get out of that car?
- 18 A: When he was exiting out that car when -- I seen him
19 falling out the car or jumping out, so that's what I seen.
- 20 Q: The officers asked you about that and -- he asked you if
21 he came out back first and you were trying to describe it to
22 them, but we couldn't see what you were doing?
- 23 A: Yes, sir.
- 24 Q: What were you demonstrating?
- 25 A: I was demonstrating how the car was going straight, he

1 fell out and his back was towards me because I was behind the
2 car being that his face was facing towards the front of the
3 road so he came out like ---

4 Q: He sort of fell down like that?

5 A: Basically.

6 Q: So and he tumbled when he hit the ground?

7 A: Yes, sir.

8 Q: Was his back exposed to where he could get shot in the
9 back?

10 A: What about when he was rolling?

11 Q: No, was his back -- at any time was his back towards the
12 person with the gun who shot him?

13 A: I mean, when they drove off, there was a few seconds in
14 the car when I wasn't in there. So I don't know what took
15 place when I was outside of the car.

16 Q: Okay. And Rico came out and when he -- did he land face
17 up or face down?

18 A: When he stopped rolling he landed face up.

19 Q: And was he clearly hurt at that point?

20 A: Yes, sir.

21 Q: And that's when you pulled out your gun and shot it?

22 A: Yes, sir.

23 Q: So there's no way you could have hit him?

24 A: No way.

25 Q: So there's no way you have hit him in the back?

- 1 A: No way at all.
- 2 Q: Okay. So Rico came out of the car; did the weed ever come
3 out of the car?
- 4 A: No, sir.
- 5 Q: Did any money come out of the car?
- 6 A: No, sir.
- 7 Q: So, Rico came out of the car injured and the car took off?
- 8 A: Yes, sir.
- 9 Q: Okay. Sitting in front of you.
- 10 A: Yes, sir.
- 11 Q: State's Exhibit Twenty-five. In fact it had something in
12 it when you took over to Rico, correct?
- 13 A: Yes, sir.
- 14 Q: When you got it back -- when it was found did it have
15 anything in it?
- 16 A: No, sir.
- 17 Q: What was in it; the weed was gone?
- 18 A: Yes, sir.
- 19 Q: And once again, the very first day you talked within an
20 hour of this shooting and with less than an hour when you
21 found out your best friend was dead?
- 22 A: Yes, sir.
- 23 Q: You identified that man as the man sitting closest to him
24 when he was killed?
- 25 A: Yes, sir.

1 Q: And you admitted even at that time that you had fired at
2 that car?

3 A: Yes, sir.

4 Q: One last little question. What happens to people that
5 talk to the police in your neighborhood; are they modeled as
6 heroes?

7 A: No, sir.

8 Q: Does that make you nervous to talk to police?

9 A: Yes, sir.

10 Q: A little reticent to talk to police?

11 A: Yes, sir.

12 Q: But you voluntarily went in there for at least recorded
13 statements?

14 A: Yes, sir. Being that he was my best friend that he had
15 taken place, that got murdered right in front of me.

16 Q: Right. But you voluntarily did that despite the fact
17 knowing that people were putting stigma on in your community?

18 A: Yes, sir.

19 Q: Thank you. No further questions, Your Honor.

20 THE COURT: Mr. Fox, on those questions just asked by the
21 Solicitor?

22 MR. FOX: No, Your Honor.

23 THE COURT: All right, sir. You may step down, sir.

24 A: Thank you, sir.

25 THE COURT: All right, ladies and gentlemen, we're going

1 CLERK: Please raise your right hand and put your left
2 hand on the Bible.

3 SHERITA ANDERSON, HAVING BEEN SWORN
4 TESTIFIES AS FOLLOWS:

5 CLERK: Please be seated. State your full name and spell
6 your last name for the Court, please.

7 MS. ANDERSON: Sherita Anderson, A-N-D-E-R-S-O-N.

8 DIRECT EXAMINATION OF SHERITA ANDERSON BY MR. GROOMS:

9 Q: Thank you, Ms. Anderson. Ms. Anderson, can you please
10 tell the Court a little bit about your background; tell us
11 where you're from please?

12 A: I'm from Myrtle Beach.

13 Q: All right. And where do you currently reside?

14 A: ADDRESS

15 Q: All right. And what's the address there?

16 A: ADDRESS

17 Q: Is that the same residence you had in June of 2012?

18 A: Yes, sir.

19 Q: All right. And can you please tell the Court how you knew
20 Jose Gutierrez?

21 A: We was dating for four years on and off.

22 Q: Okay. So four years on and off. Were you dating at the
23 time?

24 A: Yes, sir.

25 Q: Okay. Were you living together?

1 A: Yes, I was -- we was back and forth. 17th South was his
2 place and then I still had my stuff over at mom's on

3 ADDRESS

4 Q: So, your mom lives there with you?

5 A: Yeah, at ADDRESS

6 Q: I got you. Was anyone else living there with you at the
7 time?

8 A: Her boyfriend.

9 Q: Your mom's boyfriend?

10 A: Yeah.

11 Q: Okay. How would you -- you said Jose lived on 17th South,
12 correct?

13 A: Uh-huh (affirmative response).

14 Q: How would you communicate with him?

15 A: Telephone.

16 Q: All right. And did you have a cell phone?

17 A: Yes, sir.

18 Q: Did Jose have a cell phone?

19 A: Yes, sir.

20 Q: Do you recall his cell phone number?

21 A: Yeah, Number 1

22 Q: You said 4 -- I'm sorry, what was the number again?

23 A: . I'm sorry,

24 Q: . Thank you. Do you know Travis Spivey?

25 A: Yes, sir.

- 1 Q: Can you tell me how you know Travis Spivey?
- 2 A: We have friends that know each other. I mean, we've never
- 3 really hung out like that, but him and Rico was real good
- 4 friends.
- 5 Q: All right. And you say you were from Myrtle Beach. Did
- 6 you know him growing up?
- 7 A: Yeah.
- 8 Q: Okay. So you knew him for a number of years?
- 9 A: Yeah.
- 10 Q: Can you tell the Court whether or not Jose and Travis were
- 11 friends?
- 12 A: Yeah, they, they were inseparable.
- 13 Q: Okay. Where were you at on June 8th, 2012?
- 14 A: I started off my day at work and then left work, got up
- 15 with him. We did a little bit of running around and then went
- 16 back to Ronald McNair.
- 17 Q: All right. And who is him?
- 18 A: Rico, Jose.
- 19 Q: Jose. You know what time of day this was?
- 20 A: Like around afternoon.
- 21 Q: Okay. So this is after you went to work and said you got
- 22 off and ran some errands in the afternoon?
- 23 A: Yeah.
- 24 Q: Okay. And you eventually returned back to ---
- 25 A: Yes, sir.

- 1 Q: --- your home there?
- 2 A: Yeah, Ronald McNair, that's where we went back to.
- 3 Q: All right. And who was there at that time?
- 4 A: Me and my son, my mom and him, Jose.
- 5 Q: All right. And was it just y'all for the rest of the day?
- 6 A: Yes, sir, and then Travis and his girlfriend came over
- 7 there.
- 8 Q: Okay. Do you know what time they came over?
- 9 A: I don't remember the exact time.
- 10 Q: It would've been at least afternoon?
- 11 A: Yeah.
- 12 Q: Okay. Would it be normal for Travis to come over?
- 13 A: It would normal for them to hang out; at that area, no.
- 14 That was the first time they hung out like at Ronald McNair.
- 15 Q: Okay. So how long had you been living in this residence?
- 16 A: To the Ronald McNair residence?
- 17 Q: Right.
- 18 A: My mom been there for, I believe, like four years maybe.
- 19 Q: And have you been there four years as well?
- 20 A: No, sir.
- 21 Q: Were you living there and was, was ---
- 22 A: She moved there about the time I was like with Rico. They
- 23 -- we -- he didn't really have a permanent spot, like he was
- 24 hanging out with this lady named Megan and so, wherever Megan
- 25 stayed out, we stayed at. But then we end up breaking up, I

1 went back to my mom's.

2 Q: Okay.

3 A: And then left there, got me a place in Socastee, moved
4 from there and then went back there, then me and Rico got back
5 together so I was with him the majority of the time on 17th
6 South.

7 Q: So you hadn't been back together that long or had you?

8 A: No, we, it probably been maybe some months before that
9 happened that we just got back together.

10 Q: So you'd been living there for about a month?

11 A: Yeah, maybe one or two.

12 Q: All right. So, would it be -- you said it was not normal
13 for Travis to be over at ---

14 A: Ronald McNair, it wasn't normal for him to be on Ronald
15 McNair, but like anywhere else, yeah.

16 Q: Okay. When, when Travis came over, did he have anything
17 with him?

18 A: A black bag.

19 Q: Do you know what was in the black bag?

20 A: No.

21 Q: Okay. Do you know what -- you said you knew Travis for a
22 number of years. Did you know that Travis had a nickname?

23 A: Money Trav or Trav.

24 Q: You know why Travis came over that day? Not speculation;
25 do you know, did you know?

1 A: No, not at the time.

2 Q: All right. If you could just tell the Jury and tell the
3 Court what happened that day?

4 A: I started off at work. Maybe like around three or two
5 o'clock I left there and met up with Rico. We went to Walmart
6 and went to Tanger, Toys"R"Us, came back to my house and was
7 eating and then Travis called him because he was outside. So
8 we went outside, him, me and my son, Travis' girlfriend. We
9 was probably out there for a good fifteen, twenty minutes
10 before ---

11 Q: All right. Let me slow you down a little bit. You said
12 we was outside; who is we?

13 A: Me, my son, Travis, Rico and Travis' girlfriend.

14 Q: Okay. And y'all were hanging out in the front yard?

15 A: Yeah.

16 Q: Okay. All right. I'm sorry to stop you. What happened
17 after the phone call?

18 A: Rico, well, Jose, he was walking away; he was like he was
19 gonna be back. My son was like, well, I want to come with
20 you. He was like, no, I'll be right back. Maybe fifteen
21 minutes after that, we heard like three gunshots.

22 Q: All right. Where's walking away -- you were in the front
23 yard ---

24 A: He was walking up towards the entrance to get into my
25 driveway.

- 1 Q: And was Travis with him at that point?
- 2 A: Yeah, they both was walking out together.
- 3 Q: Okay. Did you see any vehicles that day?
- 4 A: No, sir.
- 5 Q: Were you looking for any vehicles that day?
- 6 A: No, sir.
- 7 Q: All right. And are you still in your front yard when you
- 8 hear the shots?
- 9 A: Yes, sir.
- 10 Q: With your child?
- 11 A: Yes, sir.
- 12 Q: And how many shots did you hear?
- 13 A: There was three.
- 14 Q: All right. Can you tell the Court ---
- 15 A: It was like a pow and maybe a like a two second to five
- 16 second break and then two more pow-pow.
- 17 Q: Okay. So your testimony is you heard one shot and then
- 18 there was a break and somewhere between two seconds and five
- 19 seconds then two more shots?
- 20 A: Yes, sir.
- 21 Q: How confident are you of that testimony?
- 22 A: I'm sorry?
- 23 Q: How confident are you in that timeframe?
- 24 A: Very.
- 25 Q: One, two, three, four, five, somewhere in there?

1 A: Yeah.

2 Q: Closer to two or closer to five?

3 A: Closer to two, maybe.

4 Q: Thank you. And please tell the Court what happened after
5 you heard the shots?

6 A: My son ran in the house crying and then I ran behind him
7 to make sure like either my mom had him. Came back outside,
8 that's when Travis' girlfriend was yelling he's been shot;
9 he's been shot; go get the car. So I went back in the house,
10 grabbed my keys and drove up there and then seen him laying
11 down on the ground.

12 Q: All right. Where was Travis' girlfriend prior to this?

13 A: She was in the car, like in -- the way my driveway is set
14 up, like we stay by woods. So, if you're sitting on my front
15 porch, all you see is woods, but you pull straight in like,
16 you know, like they car was like pulled straight in by the
17 tree and she was just basically sitting in the car. I was on
18 the side because my son was like in the middle in his Jeep.

19 Q: Okay. So, you heard the shots and you hear from Travis'
20 girlfriend someone's been shot?

21 A: Yeah.

22 Q: What did you do at that point?

23 A: Got in the car and drove up and then seen him laying down
24 so that's when Travis and some other dude picked him up and
25 put him in the car and drove to the hospital.

- 1 Q: And you don't know who this other dude is?
- 2 A: No, but I'm pretty sure he be chillin up that way, the
3 trailer at the top of the road.
- 4 Q: Would it be normal for people to be just hanging out at
5 the trailer at the top of the road?
- 6 A: Yeah.
- 7 Q: Okay. And when you say people, how many people on average
8 was just hanging out at the top of the road?
- 9 A: I don't know exactly how many dudes be up there, maybe --
10 I want to say maybe five.
- 11 Q: Okay. Court's indulgence. Ms. Anderson, I'm gonna show
12 you what's marked as State's Exhibit Number Seventeen. Can
13 you tell me if you recognize this picture?
- 14 A: Yeah, that's the apartment that's -- I mean, not the
15 apartment but the trailer that's sitting at the top of the
16 road.
- 17 Q: Okay. So, this is not where you live, but this is --
18 would this be at the end of the driveway?
- 19 A: Yes, sir.
- 20 Q: Okay.
- 21 A: Before you could enter to get into my place.
- 22 Q: And how many trailers are there in between this trailer
23 and yours?
- 24 A: Just one, there's three -- I mean, three trailers in a
25 line.

1 Q: All right. Is this a fair and accurate representation of
2 the top of the road?

3 A: Yes, sir.

4 MR. GROOMS: Your Honor, I'd like to enter this into
5 evidence?

6 THE COURT: Any objection.

7 MR. FOX: No, Your Honor.

8 MR. GROOMS: I'd like to publish it to the Jury.

9 THE COURT: All right. Seventeen is in evidence and
10 without objection and you may publish it.

11 MR. GROOMS: Thank you.

12 STATE'S EXHIBIT NUMBER SEVENTEEN

13 ADMITTED INTO EVIDENCE

14 BY MR. GROOMS:

15 Q: Just -- I know you just walked me through it, but that's
16 the trailer at the top of the road and there's no trailers in
17 between that and yours, right?

18 A: Yeah, there's one.

19 Q: There's one?

20 A: Yeah.

21 Q: Okay. So, people are hanging out up here ---

22 A: Yeah, the people who stay there.

23 Q: That's a normal occurrence?

24 A: Yeah, every Friday.

25 Q: Okay. And I was trying to give the Jury a better idea of

1 the scene here, so I appreciate your patience. Once the
2 shooting occurred, you drove to the end of the road, what
3 happened next; did you call 911?

4 A: No, sir.

5 Q: Why did you not?

6 A: It was the heat of the moment, I mean, pretty much I was
7 thinking that if I hurry up and get him there that maybe he
8 had a better chance instead of just waiting for the cops.

9 Q: Who's making the decisions?

10 A: I believe we all were, but we -- no one thought about
11 calling the cops.

12 Q: Would you say you were panicking?

13 A: Yeah.

14 Q: Would it be fair to say that you knew that there could
15 have been drugs involved?

16 A: Yeah.

17 Q: Would that have been a reason not to call 911?

18 A: No.

19 Q: You just thought it would be quicker?

20 A: Yeah.

21 Q: Okay. Thank you. Nothing further from the Defense -- I'm
22 sorry, Court's indulgence. I apologize, Your Honor.

23 THE COURT: That's all right.

24 MR. GROOMS: Court's indulgence? Can we mark these?

25 STATE'S EXHIBIT NUMBER THIRTY-TWO

MARKED FOR IDENTIFICATION

1

2 BY MR. GROOMS:

3 Q: Ms. Anderson, I'm gonna show you what's been marked as
4 State's Exhibit Thirty-two and ask whether or not you can
5 identify a phone number on this page?

6 A: I can.

7 Q: How many?

8 A: Okay. Well, the only number I see is Jose's number that
9 I'm familiar with.

10 Q: Okay. And what was that number again?

11 A: Number 4

12 Q: I'm sorry to go back and forth, but was the number you
13 just identified labeled on this page?

14 A: Yeah.

15 Q: Which one is it?

16 A: The 4 -- the pink;

17 Q: The one in the pink?

18 A: Yeah.

19 THE COURT: All right, Mr. Fox?

20 MR. FOX: Well, other than I haven't seen this before,
21 Your Honor.

22 THE COURT: All right, sir.

23 MR. FOX: And this is just for her to identify the
24 number; is that my understanding?

25 MR. GROOMS: That's correct.

1 THE COURT: Any objection to State's Thirty-two coming
2 into evidence?

3 MR. GROOMS: Your Honor, we're not moving it into
4 evidence at this point?

5 THE COURT: You're not?

6 MR. GROOMS: Just for identification.

7 MR. DEBUSK: I'll be completing the chain ---

8 THE COURT: Chain later; all right, very good.
9 So, it was just her identification only?

10 MR. GROOMS: Yes, sir.

11 THE COURT: All right, very good. All right.

12 BY MR. GROOMS:

13 Q: Ms. Anderson, what happened when you got to Rico; who --
14 how did he get taken to the hospital?

15 A: Travis and this tall dude put him in the backseat of the
16 car and then we drove off, me, Sotlaeya, Travis' girlfriend at
17 the time, and then Rico was in the back seat.

18 Q: What was his condition when you got to him?

19 A: He wasn't responding.

20 Q: So you were unable to speak him. How was his -- other
21 than obviously being shot, was his clothing in order?

22 A: No, the way he walked out the driveway was not the way we
23 seen him.

24 Q: Okay. Thank you, Ms. Anderson.

25 THE COURT: All right. Cross examination.

1 MR. FOX: Thank you, Your Honor.

2 CROSS EXAMINATION OF SHERITA ANDERSON BY MR. FOX:

3 Q: When you -- when the mysterious tall black man and Travis
4 were putting Jose in the back of the car, did you hear anybody
5 say anything about getting the guns out of the road?

6 A: No, sir.

7 Q: Jose, do you know Jose to carry a gun?

8 A: He didn't that day.

9 Q: He was -- but you know he did other times?

10 A: He normally wouldn't carry it. I mean, I know he had one,
11 but I mean he would never carry it just on a regular day.

12 Q: How do you know he didn't have it that day?

13 A: Because we were together all day that day and he would --
14 he had my son so -- we was at my mom's, he wouldn't take one
15 over there.

16 Q: Did you hear -- were you at the hospital when Detective
17 Frebowitz interviewed Travis and Ms. Vereen?

18 A: Yes, sir, we was all three together.

19 Q: What made you think -- I'm looking for something -- what
20 made you think that maybe when you heard shots there was
21 trouble, what made you think that drugs might be involved?

22 A: Just how they were acting.

23 Q: Who was acting?

24 A: Rico and Travis.

25 Q: Well, how was it they were acting?

- 1 A: I mean, I know Rico made a comment to me that day saying
2 that he had a sale for Travis.
- 3 Q: I'm sorry; he had a what?
- 4 A: He had a sale for Travis.
- 5 Q: And what does that mean?
- 6 A: Apparently, they were selling drugs.
- 7 Q: Okay. That's something that you know Rico was involved
8 in?
- 9 A: Yes, sir.
- 10 Q: Okay. And this was -- how would you describe -- this was
11 near your mom's residence, you were at your mom's?
- 12 A: Yes, sir.
- 13 Q: Okay. On Ronald McNair?
- 14 A: Yes, sir.
- 15 Q: Would you describe that as kind of an out-of-the-way
16 place?
- 17 A: I'm sorry.
- 18 Q: Would you describe that street as a little bit out of the
19 way? It'd be kind of hard to find if you didn't know it was
20 there.
- 21 A: Yeah, it's hard to find. It's like a dead end; one way in
22 and one way out.
- 23 Q: One way in and one way out?
- 24 A: Uh-huh (affirmative response).
- 25 Q: Now, your son -- and this was your son that was in the

1 yard, right?

2 A: Yes, sir.

3 Q: Okay. And you heard shots and you did what?

4 A: He started running towards the house crying, so I made
5 sure he got inside before I went to go check the scene out.

6 Q: Okay. So no question your son was in the house before
7 you went down to check on ---

8 A: Yes, sir.

9 Q: Did you or anybody else ever make an effort to ask about
10 or find -- that you know of -- to find out who this strange
11 black man was that helped Travis put Rico in the back of your
12 car?

13 A: Can you repeat that one more time?

14 Q: Did you ever find out who the guy was that helped put Rico
15 in the car?

16 A: Somehow we're related to like everyone that stays on that
17 lot. I think he's more like my grandfather's people. My mom,
18 she may know who I'm talking about, but me, honestly no.

19 Q: Did you at any time make the police aware of this person?

20 A: Yes, sir.

21 Q: Okay. Did you gave them a description?

22 A: Yes, sir.

23 Q: Did you give them the location where you thought he could
24 be found?

25 A: Yes, sir. We pushed them to go talk to the people more

- 1 because, I mean, they pretty much knew more than I did.
- 2 Q: Well, they're on that same road. It's possible someone
- 3 up there saw something; isn't that right?
- 4 A: I believe, yeah, yeah.
- 5 Q: You didn't see anything ---
- 6 A: No, sir.
- 7 Q: --- when the shooting actually happened, that wasn't
- 8 anything you could see, correct?
- 9 A: No, if you're standing in my yard, you can't see the top
- 10 of the street.
- 11 Q: I gotcha. Did you see a silver car go by when you were
- 12 out there?
- 13 A: No, sir.
- 14 Q: Okay. So you certainly didn't see Mr. Butler out there
- 15 then, right?
- 16 A: No, sir.
- 17 Q: Whose number was that that you identified -- you were able
- 18 to identify on this?
- 19 A: Jose's.
- 20 Q: Okay. Any other numbers you could recognize?
- 21 A: No, sir.
- 22 Q: Do you know if Mr. Butler had a phone at that time?
- 23 A: I don't know him, so I can't answer that question.
- 24 Q: Thank you. No further questions.
- 25 THE COURT: Redirect?

1 MR. GROOMS: Nothing further, Your Honor.

2 THE COURT: All right. Do you wish this witness to be
3 excused?

4 MR. GROOMS: Yes, sir, please.

5 THE COURT: Any objection?

6 MR. FOX: No, sir.

7 THE COURT: All right, ma'am, you're released from your
8 subpoena. You may go back to your regular activities.

9 Next witness?

10 MR. DEBUSK: The State calls Deputy Shellneil Whitman.

11 THE COURT: All right. Deputy, please come all the way
12 around up here please, ma'am, and meet the Clerk up here by
13 the witness stand, please.

14 CLERK: Put your left hand on the Bible and raise your
15 right hand, please?

16 SHELLNEIL WHITMAN, HAVING BEEN SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Please be seated. State your full and spell your
19 last name for the Court, please.

20 MS. WHITMAN: Shellneil Whitman.

21 DIRECT EXAMINATION OF SHELLNEIL WHITMAN BY MR. DEBUSK:

22 Q: Deputy Whitman, who is your employer?

23 A: Excuse me, sir?

24 Q: Who is your employer?

25 A: Horry County Sheriff's Office.

- 1 Q: How long have you been with them?
- 2 A: Four years, sir.
- 3 Q: Okay. What are your duties?
- 4 A: Maintain care, custody and control of all the inmates
- 5 coming in and out.
- 6 Q: Do you ever book people into the jail?
- 7 A: Yes, sir.
- 8 Q: In October of 2012, did you have responsibility for
- 9 booking people into jail?
- 10 A: Yes, sir.
- 11 Q: Did you encounter the Defendant, Charles Hakeem Johnson,
- 12 during that time period?
- 13 A: Yes, sir.
- 14 Q: Under what circumstances?
- 15 A: I just know that he was brought to the facility. I don't
- 16 recall exactly what he was charged with.
- 17 Q: Okay. Were the Booking Officer?
- 18 A: Yes, sir.
- 19 Q: Okay. Do you -- what do you do during the booking
- 20 process?
- 21 A: They're, they're first brought into the facility, they're
- 22 patted down, if there's not a lot of inmates in, we'll bring
- 23 them directly up to the process search desk and that is where
- 24 we ask them just general questions, name, address, phone
- 25 number, date of birth, social security card, contacts, and

- 1 then we go through their charging documents.
- 2 Q: When you collect information, do you record it anywhere?
- 3 A: Excuse me?
- 4 Q: Do you record it anywhere, write it down?
- 5 A: We write it on to the booking card that follows them
- 6 throughout their whole stay in the facility.
- 7 Q: I'll show you what's been marked as State's Exhibit
- 8 Thirty-three and ask if you recognize this?
- 9 A: Yes, sir.
- 10 Q: What is that?
- 11 A: It's their booking card.
- 12 Q: And is that for Charles Hakeem Johnson?
- 13 A: Yes, sir.
- 14 Q: Does his signature appear on the second page?
- 15 A: Yes.
- 16 Q: In all of -- did you elicit all the information on that
- 17 booking card from the prisoner?
- 18 A: Yes, sir.
- 19 Q: And recorded it contemporaneously; is that correct?
- 20 A: Yes, sir.
- 21 Q: Did he give a phone number?
- 22 A: Yes, sir.
- 23 MR. DEBUSK: Your Honor, this has been authenticated at
- 24 this time and we would move State's Thirty-three into
- 25 evidence?

1 THE COURT: Any objection to State's Thirty-three?

2 MR. FOX: No.

3 THE COURT: It's in evidence without objection.

4 STATE'S EXHIBIT NUMBER THIRTY-THREE

5 ADMITTED INTO EVIDENCE

6 BY MR. DEBUSK:

7 Q: Would you please publish to the Jury the phone number that
8 was given to you and recorded on that booking card for Mr.
9 Charles Hakeem Johnson?

10 A: Number 2

11 Q: I'd like to direct your attention to State's Exhibit
12 Thirty-two and ask if you look at the highlighted portions of
13 that in pink; do you see that number, that same number?

14 A: Just the pink areas?

15 Q: Well, anywhere on there; is that phone number on that
16 record?

17 A: Yes, sir, it is.

18 Q: Let me ask you specifically. In this area at the top,
19 does that phone number appear there?

20 A: Yes, sir.

21 Q: Please answer any questions Defense might have.

22 THE COURT: Cross examination?

23 MR. FOX: No questions, Your Honor.

24 THE COURT: Do you wish this witness to be excused?

25 MR. DEBUSK: Yes, Your Honor, we'd ask that she be

1 excused to return to her duties.

2 THE COURT: Any objection?

3 MR. FOX: No, sir.

4 THE COURT: All right, ma'am, you are excused from your
5 subpoena. You may go back to your regular duties.

6 MR. DEBUSK: Your Honor, the State ---

7 THE COURT: Yes, sir.

8 MR. DEBUSK: The State calls Mitl Shah.

9 THE COURT: Come on up here, sir, meet the Clerk at the
10 desk.

11 CLERK: Place your left hand on the Bible and raise your
12 right hand please.

13 MITL SHAH, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please be seated. State your full name and spell
16 your last name for the Court, please.

17 MR. SHAH: Mitl Shah. S-H-A-H.

18 THE COURT: Could you spell your first name too, please,
19 sir?

20 MR. SHAH: Mitl. M-I-T-L.

21 THE COURT: Very good.

22 DIRECT EXAMINATION OF MITL SHAH BY MR. DEBUSK:

23 Q: Mr. Shah, who is your employer?

24 A: AT&T.

25 Q: How long have you been with AT&T?

- 1 A: Three and a half years.
- 2 Q: Where are you stationed; where is your office?
- 3 A: Columbia, South Carolina.
- 4 Q: Do you have responsibility over the Horry County area?
- 5 A: Yes, sir, I do.
- 6 Q: Describe briefly the nature of your work in this area.
- 7 A: I'm the radio frequency engineer. I maintain all the
- 8 towers that, in Myrtle Beach area, maintain means if anything
- 9 goes wrong, site goes down, try to make sure that everything
- 10 is up and running.
- 11 Q: What, what sort of training, training and education did
- 12 you receive to do your work?
- 13 A: Requires a technical engineering degree and specifically
- 14 you have to have special classes that they make us take so
- 15 once, you know, once I get those then they hire you and there
- 16 are other responsibilities.
- 17 Q: So you have a university training as an engineer as well
- 18 as specialized training in the equipment of AT&T?
- 19 A: Yes, sir.
- 20 Q: Now you said you've been with AT&T three and a half years.
- 21 How long have you been doing this kind of work?
- 22 A: I've been in telecom for fourteen years.
- 23 Q: Okay. Are you in -- I think you've answered this but are
- 24 you familiar with cell phone receiver array that AT&T uses in
- 25 Horry County?

1 A: Yes, sir.

2 Q: The location of the towers, types of equipment and all
3 that?

4 A: Yes, sir.

5 Q: Have you ever been qualified as an expert to testify in
6 Court before?

7 A: No, I'm ---

8 MR. DEBUSK: Your Honor, we would, based on his training
9 and experience and we would move to qualify this Mr. Shah as
10 an expert in cell phone communications?

11 THE COURT: Do you wish to voir dire the witness or
12 challenge the offer by the State?

13 MR. FOX: My first question would be for the Solicitor,
14 cell phone communications ---

15 THE COURT: Do you want, would you like the Solicitor to
16 narrow down the ---

17 MR. FOX: Narrow the qualifications just a tad.

18 THE COURT: Just narrow it down if you can to a
19 particular issue at hand, whatever that might be?

20 MR. DEBUSK: The function and location of cell phone
21 receivers in Horry County.

22 THE COURT: Okay. Why don't you ask him a question about
23 that particular scope?

24 BY MR. DEBUSK:

25 Q: Are you familiar with the -- I think I've already ---

1 THE COURT: All right. Just do it, just to be safe.

2 Q: Location and function of cell phone receivers used in
3 Horry County?

4 A: Yes, sir, I do.

5 Q: By AT&T?

6 A: Yes, sir.

7 THE COURT: Do you wish to, again, do you wish to voir
8 dire the witness or challenge the State's offer?

9 MR. FOX: Voir dire just briefly, Your Honor.

10 THE COURT: Yes, sir.

11 VOIR DIRE EXAMINATION OF MITAL SHAH BY MR. FOX:

12 Q: How long, with respect to the cell phone towers in Horry
13 County, how long have you been working with or responsible for
14 them?

15 A: For Horry County or for -- for Horry County the last three
16 months.

17 Q: Three months?

18 A: Yes.

19 Q: So, you were not responsible back in June of 2012?

20 A: Yes, sir.

21 Q: Okay.

22 MR. FOX: Your Honor, the importance would be I would
23 object to being qualified as an expert. He has knowledge
24 about this specific area now in the last three months, not the
25 condition they were in or how they operated in June of 2012.

1 THE COURT: All right. Y'all come up and talk to me for
2 a second, please.

3 (REPORTER'S NOTE: A bench conference was held off the record
4 in the presence of the Jury but out of hearing of the Jury.)

5 VOIR DIRE EXAMINATION OF MITL SHAH BY MR. DEBUSK:

6 Q: Are you familiar with the number of cell towers that were
7 pertinent in this case?

8 A: Yes, sir.

9 Q: Were they located in the same location in 2012 as they are
10 now?

11 A: Yes, sir.

12 THE COURT: Further questions, Mr. Fox?

13 VOIR DIRE EXAMINATION OF MITL SHAH BY MR. FOX:

14 Q: Anything different about -- outside the location, anything
15 different about the way they operated the equipment, anything
16 different along those lines in 2012 until today?

17 A: Nothing has changed.

18 Q: Thank you. No further questions.

19 THE COURT: All right, sir. I will qualify him to give
20 his opinion in the area offered by the State. You may
21 proceed.

22 DIRECT EXAMINATION OF MITL SHAH BY MR. DEBUSK:

23 Q: Could you explain briefly for the Jury, how do cell phones
24 work?

25 A: Basically when you, when a person turns his phone on, his

1 phone automatically detects the strongest serving site nearby
2 in order to place a call.

3 Q: What is a serving site?

4 A: A serving site is a tower; we call them a cell site.

5 Q: Is it fair to say that the cell phone is a little radio?

6 A: Yes, sir, it is.

7 Q: And it's sending a signal to pick up that one of these
8 serving sites?

9 A: Yes, sir. Yes, sir.

10 Q: What major structures would those server sites be on?

11 A: It could be a self-supported tower, it could monopole it
12 could be guyed tower, a different, different kind of
13 structure.

14 Q: Do they ever put them on, say, tall buildings?

15 A: Yes, they do that.

16 Q: How far will a receiver pick up a call?

17 A: Roughly range is about one mile.

18 Q: And because of that, do you have lots of different
19 receivers?

20 A: Yes, sir.

21 Q: And what does the, the phrase cell in cell phone come
22 from?

23 A: Could you repeat the question please?

24 Q: When they call it cell phones, what does the cell, what
25 does that refer to?

- 1 A: Cell sites.
- 2 Q: Okay. Is that the receiver sites?
- 3 A: Yes, sir.
- 4 Q: And they have certain areas?
- 5 A: Yes, sir.
- 6 Q: They cover sections. Okay. Now, in the course of your
- 7 employment, are you familiar with the records of phone calls
- 8 kept by AT&T?
- 9 A: Yes, sir, I do.
- 10 Q: Do you have access to such records in the course of your
- 11 duties?
- 12 A: Yes, sir, I do.
- 13 Q: And where are the records kept?
- 14 A: They are kept in the secure AT&T data base.
- 15 Q: It's in a computer base.
- 16 A: Yes, it is in a database.
- 17 Q: It's a secured ---
- 18 A: Secured database.
- 19 Q: And so they can't be altered and changed?
- 20 A: It cannot be.
- 21 Q: Okay. Specifically, with cell phones, what kinds of
- 22 information is kept in the records?
- 23 A: On the database, the time the call has been record --
- 24 coming into the cell site, the length of the conversation, the
- 25 nature of the call, it could be texting, it could be mobile to

- 1 mobile communication, or it could be web browsing.
- 2 Q: Can I draw your attention to, I'm sorry, it's marked at
- 3 page seventy-six -- it starts at page sixty-nine but it's
- 4 marked at page seventy-six, it's State's Exhibit Thirty-two,
- 5 and ask if you recognize this?
- 6 A: It's at page seventy-six.
- 7 Q: I'm sorry, what is that, that package; what is it?
- 8 A: It is ---
- 9 THE COURT: You need to -- you need to be behind the
- 10 microphone please, sir.
- 11 A: These are the records that have been seen in the database.
- 12 That's the record that AT&T keeps on the central database.
- 13 Q: For what phone number?
- 14 A: I received that for Number 2
- 15 Q: Okay. And for what timeframe?
- 16 A: I see calls were made on June 7th, 10:16 P.M. goes all the
- 17 way to June 8th, 9:41 P.M.
- 18 Q: So, mostly June 8th?
- 19 A: Yes, yes.
- 20 Q: Of what year?
- 21 A: 2012, sir.
- 22 Q: Thank you. Are those a fair and accurate representation
- 23 of what you have in your database?
- 24 A: Yes, sir.
- 25 Q: Okay. If you'd go to the highlighted page, page seventy-

1 six. Now, on that phone record there are two thinks that
2 appear to be from 1-843 and seven digits?

3 A: Yes, I see that.

4 Q: What do those two numbers represent?

5 A: It says originating call is -- the call was made from
6 Number 2 to Number 3

7 Q: So, in general, all those records which says originating
8 call, that's the phone that made the call happen, correct?

9 A: Yes, sir.

10 Q: And the receiving is the one who is taking the call?

11 A: Yes, sir.

12 Q: The person who called was the -- making the call ---

13 A: Initiating, yes, sir.

14 Q: I would like to go through the calls one by one, but first
15 I want to ask a couple of questions about some other data on
16 these phone records. After the phone numbers you have a
17 number of things. In the far right-hand column, there's a
18 series of numbers; it has a five-digit number, a slash,
19 another five digit number, and then a colon, and then what
20 appeared to be latitude and longitude.

21 A: Yes, I see that.

22 Q: What do those numbers represent?

23 A: All right. The first letter, the first five digits by the
24 slash is cell site number for AT&T.

25 Q: Okay.

- 1 A: And then it's just simply latitude and longitude.
- 2 Q: Okay. You have a slash and you have the first five-digit
3 number and a slash and a second five-digit number?
- 4 A: Yes.
- 5 Q: The first four digits of those, of that second five-digit
6 number, does that have significance?
- 7 A: Yes, it does. It represents the sites that calls were
8 being made.
- 9 Q: Okay. Referring to what's been marked as State's Exhibit
10 Six, I would ask you to look at what has been labeled as Tower
11 1 -- it has one of those five-digit numbers, four-digit
12 numbers -- are you familiar with that location?
- 13 A: Yes, sir, it is.
- 14 Q: What is that?
- 15 A: It is Site 9 for AT&T that serves for that area.
- 16 Q: And is that a fair and accurate representation of the
17 location of that?
- 18 A: Yes, sir, it is.
- 19 Q: How does that correspond to the phone -- the exhibit, I
20 forgot the exhibit; I'm sorry.
- 21 A: Thirty-two.
- 22 Q: Yes, sir. State's Exhibit Thirty-two, specifically, the
23 first time he called him, how does that cell site relate to
24 that first time when he called?
- 25 A: Okay. Looking at this Number 2 , time to initiate the

1 call?

2 Q: Yes.

3 A: The time this call was handled by the Site 9 which was
4 serving in that area.

5 Q: I show you what's been marked as State's Exhibit Thirty-
6 five and ask if you recognize that?

7 A: Yes, I do.

8 Q: So that first -- let's talk about that first line. Does
9 it correspond with that first time of the call on the phone
10 record?

11 A: Yes, it does.

12 Q: What was the time of that call?

13 A: 6:13 P.M.

14 Q: Okay. And based on the tower data there, what towers are
15 in proximity to the call?

16 A: It was serving cell 9, Number 9.

17 Q: And that was the same one on the other exhibit ---

18 A: Six.

19 Q: State's Exhibit Six, the upper -- is that correct?

20 A: Yes, sir.

21 Q: Now, what do those phone records that represent all the
22 calls made by a single phone to a series of times; is that
23 correct?

24 A: Yes, sir, it is.

25 Q: And you probably had multiple phone calls hitting off the

- 1 same tower or from the same site, right?
- 2 A: Yes, sir.
- 3 Q: Did there come a time after that first 6:13 P.M. call
- 4 where a cell phone began hitting on a different tower?
- 5 A: No, particularly for the 6:13 ---
- 6 Q: No, I mean, as you went through time and multiple calls?
- 7 A: Yes.
- 8 Q: Did it change from one tower to another?
- 9 A: Yes, it does, sir.
- 10 Q: What is the second tower that cell phone hits on after the
- 11 6:13 call?
- 12 A: It is Site 182.
- 13 Q: Okay. Is that represented on State's Exhibit Six, too?
- 14 A: Yes, sir, it is.
- 15 Q: And what's the four-digit number there for ---
- 16 A: 5182.
- 17 Q: 5182, and what's the tower number, again?
- 18 A: 182.
- 19 Q: No. I've given them separate numbers. You have the
- 20 yellow number and the white number; what is the white number.
- 21 A: It's Tower 2.
- 22 Q: Tower 2. Okay. Did there come a time when the cell phone
- 23 switched to another tower?
- 24 A: Yes.
- 25 Q: What tower did it switch to?

- 1 A: It switched from Site 9 to Site 182.
- 2 Q: What was the next one in time after 182?
- 3 A: It switched to 166.
- 4 Q: State's Exhibit Seven, I ask if you recognize that?
- 5 A: Yes, I do.
- 6 Q: And what is that?
- 7 A: That is Site 166.
- 8 Q: Again, also the corresponding number, what tower ---
- 9 A: Tower Number 3.
- 10 Q: Okay. And what's the next tower in time?
- 11 A: Tower 4.
- 12 Q: Okay. And again those first two exhibits, Six and Seven,
- 13 are those fair and accurate representations of the locations
- 14 of those towers?
- 15 A: Yes, it is.
- 16 Q: Let me go ahead and give you State's Six -- Eight through
- 17 Thirteen and ask you to review those.
- 18 A: These are all AT&T towers.
- 19 Q: And those are all AT&T receiver locations?
- 20 A: Yes, sir.
- 21 Q: Referring to the phone records and State's Exhibit Thirty-
- 22 five, does State's Exhibit Thirty-five clearly and accurately
- 23 represent the order with which those towers were hit on by
- 24 that cell phone through time, that 6:13 call until later that
- 25 evening?

1 A: Yes, sir, it does.

2 Q: What is the time range cover? From 6:13 P.M. to what?

3 A: 6:13 to 8:39 P.M.

4 Q: Is there some on the second page as well?

5 A: Sorry. 8:52 P.M.

6 Q: So, that is a fair and accurate representation of the
7 order in which those towers hit, that phone hit on those
8 towers from 8:13 to 9:52?

9 A: Yes, sir.

10 Q: On, again, June 6th, 2012?

11 A: Yes, sir.

12 Q: Now, is it fair to say that when a phone hits off that
13 tower, it's most likely proximity to, say, within a mile?

14 A: Yes.

15 Q: Okay.

16 THE COURT: Could you go over that date again, what date
17 it was, please?

18 MR. DEBUSK: June 8th, 2012.

19 THE COURT: I thought you said 6th, I'm sorry.

20 MR. DEBUSK: I may have, Your Honor. I ---

21 THE COURT: All right. But June -- it was June 8th,
22 2012?

23 A: Yes, sir.

24 MR. DEBUSK: It was June 8th.

25 THE COURT: All right, sir.

1 MR. DEBUSK: Your Honor, at this time the State would
2 move State's Thirty-five into evidence?

3 THE COURT: Any objection?

4 MR. FOX: No, Your Honor.

5 THE COURT: All right. State's Thirty-five is into
6 evidence without objection.

7 STATE'S EXHIBIT NUMBER THIRTY-FIVE

8 ADMITTED INTO EVIDENCE

9 MR. DEBUSK: State's Six through Thirteen, Your Honor?

10 MR. FOX: No objection, Your Honor.

11 THE COURT: All right. State's Six through Thirteen, the
12 photographs are in evidence without objection.

13 STATE'S EXHIBITS NUMBER SIX THROUGH THIRTEEN

14 ADMITTED INTO EVIDENCE

15 MR. DEBUSK: And State's Thirty-two?

16 MR. FOX: No objection.

17 THE COURT: All right. State's Thirty-two is also in
18 evidence without objection.

19 STATE'S EXHIBIT NUMBER THIRTY-TWO

20 ADMITTED INTO EVIDENCE

21 BY MR. DEBUSK:

22 Q: Mr. Shah, there are seven highlighted in pink phone calls
23 there. Do all those phone calls involve the same two phone
24 numbers?

25 A: Yes, it is.

1 Q: Okay.

2 THE COURT: And what was that that you were looking at?

3 MR. DEBUSK: State's Thirty-two, Your Honor.

4 THE COURT: All right. Thank you.

5 MR. DEBUSK: Your Honor, I would like to publish State's
6 Thirty-five to the Jury.

7 THE COURT: You may do so.

8 MR. DEBUSK: Could we have the screen please?

9 BY MR. DEBUSK:

10 Q: I just want to familiarize the Jury with this exhibit
11 we've put in as State's Exhibit Thirty-five and let's use
12 reference to also to State's Exhibit Six, which is the tower
13 map. Reference this first column, 6:13 and that same phone
14 hit on the same tower until 6:23; is that correct?

15 A: Yes.

16 Q: Okay. Under tower, it says 1, is that the white number on
17 that?

18 A: Yes, it does.

19 Q: And 5009, is that AT&T's tower identification?

20 A: Yes.

21 Q: And that's what you would refer to as AT&T Site 9?

22 A: Yes, sir.

23 Q: Okay. And then the 6:13 P.M. call Number 5 is that
24 correct, too?

25 A: Yes, it is.

1 Q: So what we have there is the time, the white tower number,
2 the yellow AT&T identification and then this one has the phone
3 number?

4 A: Yes.

5 Q: And then when it changed tower locations at 6:37, it went
6 to Tower 2 and the lower half of that exhibit AT&T ID number
7 5182; is that correct?

8 A: Yes, it is.

9 Q: So, if you go through these in order, you can tell which
10 phone tower the cell phone 2057 was close to when it made that
11 call?

12 A: Yes, that is correct.

13 Q: Okay. Now, that was State's Exhibit Thirty-five and its
14 related exhibits. Let me go to one specific call on this
15 record. That is the last call to cell phone number Number 4J
16 at 8:24 P.M., item number 2405. Which cell tower, using the
17 five-digit identification code, did that hit off of?

18 A: 5008.

19 Q: Showing you what's been marked as State's Exhibit Seven
20 and ask if Tower 5008 appears on that?

21 A: Yes, it does.

22 Q: Is it the upper picture or the lower picture?

23 A: It's the lower picture, sir.

24 Q: Okay. Let me show you what's been marked as State's
25 Exhibit Thirty-four for identification and ask if you

1 identify, if you can identify this?

2 A: Yes, it is the coverage we have that that particular site.

3 Q: Now, we're talking specifically -- let me get back over
4 here -- this call 8:24 P.M. to Number 5 , Tower 5008?

5 A: Yes, sir.

6 Q: How does that diagram relate to Tower 5008?

7 A: Site 8 -- most of the sites we have has three sectors, we
8 call it alpha, beta and gamma, and this is the coverage map
9 for the alpha, beta and gamma sectors.

10 Q: Okay. We've been referring to it as Tower 5008, but in
11 fact in the phone records, there's five digits not four?

12 A: That's right.

13 Q: What does that last digit represent?

14 A: The last digit is the particular sector for the serving
15 cell site.

16 MR. DEBUSK: Your Honor, at this time, we'd offer State's
17 Thirty-four into evidence.

18 THE COURT: Any objection?

19 MR. FOX: No, Your Honor.

20 THE COURT: All right. It's into evidence without
21 objection. You may proceed.

22 STATE'S EXHIBIT NUMBER THIRTY-FOUR

23 ADMITTED INTO EVIDENCE

24 BY MR. DEBUSK:

25 Q: Does Ronald McNair Avenue appear on this grid?

1 A: Yes, it does.

2 MR. DEBUSK: Your Honor, may I publish it to the Jury?

3 THE COURT: Yes, sir.

4 BY MR. DEBUSK:

5 Q: Okay. This is the diagram you have there. Specifically
6 as to the phone call at 8:24 P.M. to phone number Number 4
7 Which sector shown on this map did that call begin in?

8 A: It began at 50082.

9 Q: And that's the sort of bluish gray one at the bottom?

10 A: Yes, it is.

11 Q: When you move from phone -- one coverage area to another,
12 would it switch receivers?

13 A: Yes, it does.

14 Q: So, during that call at 8:24, it did switch receivers?

15 A: Yes, it did.

16 Q: And what was the -- it switched from 50082 to what?

17 A: 50081.

18 Q: What does that suggest to you about this coverage map?

19 A: That is pretty accurate coverage and the cell site was
20 within our signal area.

21 Q: Okay. And when it switches like that does that indicate
22 that during the course of that phone call the phone sending
23 the signal across this line in two coverage zones?

24 A: Yes, sir.

25 Q: So sometime during that 8:42, 8:24, 8:24 phone call, the

1 phone making that call passed from the blue area to the brown-
2 shaded area?

3 A: Yes, it does.

4 Q: And this is Ronald McNair Boulevard right there; is that
5 correct?

6 A: Yes, it is.

7 Q: And this is Carolina Bays Parkway right there; is that
8 correct?

9 A: Yes, it is.

10 Q: Thank you. Please answer any questions the Defense has.

11 THE COURT: Cross examination.

12 MR. FOX: No questions, Your Honor.

13 THE COURT: All right, sir. Do you wish the witness to
14 be excused?

15 MR. DEBUSK: Yes, Your Honor, we would. We would move to
16 have Mr. Mital excused.

17 THE COURT: Any objection?

18 MR. FOX: No, sir.

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

21 MR. SHAH: Thank you, sir.

22 THE COURT: Thank you.

23 All right. Do you want to put the screen back up,
24 Solicitor?

25 MR. DEBUSK: Yes, please.

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

(On the Record - 4:12 P.M.)

THE COURT: All right. Ask the Jury to come in please.

(REPORTER'S NOTE: Jury enters courtroom. 4:14 P.M.)

THE COURT: All right, Solicitor, the State's next witness please.

MR. DEBUSK: The State calls Dr. Edward Proctor.

THE COURT: All right. Please come around to be sworn, sir.

EDWARD L. PROCTOR, JR., HAVING BEEN

SWORN TESTIFIES AS FOLLOWS:

CLERK: Please be seated. State your full name and spell your last name for the Court, please.

DR. PROCTOR: Yes, ma'am. I am Edward Leroy Proctor, Jr. and that's P-R-O-C-T-O-R.

DIRECT EXAMINATION OF DR. EDWARD L. PROCTOR, JR. BY MR.

DEBUSK:

Q: Dr. Proctor, are you a duly licensed physician and surgeon?

A: I am a licensed physician in the State of South Carolina and North Carolina.

Q: Okay. How long you been licensed to practice?

A: Oh, about thirty years.

Q: Are you presently engaged in practice?

A: Yes, I am.

1 Q: Where are you -- where are you presently practicing?

2 A: I practice Pathology and Forensic Pathology and my office
3 is in Grand Strand Hospital in Myrtle Beach.

4 Q: Are you responsible for the autopsies in Horry County?

5 A: I am responsible for autopsies in Horry County, yes, sir.

6 Q: Where did you receive medical training?

7 A: I trained at the Medical University in Charleston, did my
8 Pathology Residency at Walter Reed Army Medical Center in
9 Washington, D.C.

10 Q: In your normal course of your work, do you do autopsies?

11 A: I do.

12 Q: How many have you done in your career?

13 A: Well over 5,000.

14 Q: And you told us what you specialize, what you specialized
15 branch was. Would you tell the Jury, what is Pathology, the
16 branch ---

17 A: The, the branch of Pathology, we're talking about today is
18 Forensic Pathology and Forensic Pathology is the medical legal
19 investigation of death. And I am contacted in the State of
20 South Carolina by the Coroner or his representative and upon
21 his request will perform a forensic autopsy, which is
22 specifically designed to find out what happened and give the
23 cause and the manner.

24 Q: Are you a member of any specialized medical groups or
25 associations?

1 A: I am Board Certified in Anatomic Pathology, Clinical
2 Pathology and Forensic Pathology by the American Board of
3 Pathology.

4 Q: What are the requirements of such?

5 A: The requirements are sitting for a long exam in all three
6 specialties.

7 Q: And have you ever been qualified as an expert in court in
8 the area of Pathology?

9 A: Yes, sir, I have.

10 Q: About how many times?

11 A: Several hundred I would think.

12 Q: Thank you, sir.

13 MR. DEBUSK: The State offers Dr. Proctor as an expert in
14 the field of Forensic Pathology.

15 THE COURT: All right, Mr. Fox, do you wish to voir dire
16 the witness or challenge the State's offer?

17 MR. FOX: I do not.

18 THE COURT: All right, sir. Dr. Proctor is qualified to
19 give his opinion. You may proceed, sir.

20 MR. DEBUSK: Thank you, Your Honor.

21 BY MR. DEBUSK:

22 Q: Did you have an occasion to perform an autopsy on Jose
23 Gutierrez?

24 A: Yes, sir, I did.

25 Q: Where was it done?

1 A: This autopsy was performed in the morgue at Grand Strand
2 Hospital in Myrtle Beach.

3 Q: What date?

4 A: The autopsy was performed on June 11th, 2012.

5 Q: What was the condition of Mr. Gutierrez' body when you
6 received it?

7 A: Well, Gutierrez had received a gunshot injury and had also
8 undergone what appeared to be surgical intervention with a
9 large surgical procedure performed to presumably try to save
10 his life.

11 Q: Did that surgical procedure interfere with your ability to
12 determine the cause of death?

13 A: No, sir, it did not.

14 Q: What external injuries did he have as a result from the
15 bullet?

16 A: This, this gentleman had a gunshot wound of entrance in
17 the medial aspect right at the midline of his right back. It
18 passed in a posterior to anterior direction through his
19 vertebral body portion of it, the rib, right by the vertebral
20 body through the lung and actually exited the body in the
21 medial aspect of the clavicle, which is the collarbone. There
22 was a defect in the skin there. There was no projectile
23 recovered.

24 Q: No -- is it safe to say it was a through-and-through shot?

25 A: It was a through-and-through shot, yes, sir.

1 Q: Before, those of us who are not as familiar with
2 anatomical terms as you, could you point it out on me where
3 the entrance and exit were?

4 THE COURT: You may step down, sir.

5 A: Yes, sir.

6 BY MR. DEBUSK:

7 Q: I'll turn my back to show the entrance.

8 A: The entrance was within the midline back at about the T-5
9 thoracic vertebral area and it passed through the rib coming
10 into the vertebral body and then went up in an upward
11 direction to exit the body, but the clavicle, collar bone,
12 comes to the middle and that big prominence right there is
13 where it came through, pretty much a wound like this.
14 Inferior to superior, through the lung and out of the body.

15 Q: Thank you, sir.

16 THE COURT: Just a second. Let him resume the seat right
17 there.

18 MR. DEBUSK: Yes, sir.

19 THE COURT: Go ahead.

20 BY MR. DEBUSK:

21 Q: What were the consequences anatomically of this bullet
22 passing through his body?

23 A: Well, the anatomic consequences were it caused extensive
24 laceration of the right upper lung lobe with the resulting
25 hemorrhage.

1 Q: And am I understanding, it caused lungs to bleed?

2 A: It causes the right upper lung lobe to undergo extreme
3 tissue damage with associated massive hemorrhage; yes, sir.

4 Q: What, what is the cause of, what would be the consequence
5 of such a wound?

6 A: The consequence of that would be rapid blood loss and
7 ultimate death.

8 Q: Was that the cause of the death?

9 A: Yes, sir, it was.

10 Q: And again, you didn't recover a projectile?

11 A: No projectile recovered.

12 Q: Based on that autopsy within the bounds of reasonable
13 medical certainty, did you form an opinion on the cause of
14 death?

15 A: The cause of death was gunshot wound, the exact cause of
16 death, gunshot wound in the back with massive trauma and
17 hemorrhage.

18 Q: Thank you. Please answer any questions Defense might
19 have.

20 THE COURT: All right, Mr. Fox, cross examination.

21 CROSS EXAMINATION OF DR. EDWARD L. PROCTOR, JR. BY MR. FOX:

22 Q: Dr. Proctor, one thing you said there was no projectile
23 recovered from the body?

24 A: That's correct.

25 Q: So you're not able to determine what type of weapon was

1 used -- I mean it was a gun obviously -- but not able to
2 determine caliber or anything of that sort?

3 A: No, sir.

4 Q: Now you indicated, based on the positioning of the
5 entrance wound in the back and exit wound in the front, you
6 were able to determine one path, one bullet?

7 A: One path, one bullet, yes, sir.

8 Q: And at least in relation to entrance wound in the back to
9 the chest exit wound, that it was rising?

10 A: Rising, that is correct.

11 Q: Now, do you had any idea from the autopsy what position
12 Mr. Gutierrez was when he was shot?

13 A: No, sir, I do not.

14 Q: So, it would be a rising wound if he was standing upright
15 like I am?

16 A: That's right.

17 Q: But if he were bent over, jumping, diving, it might just
18 as easily be a downward bullet path?

19 A: That is correct. That is correct. All I can give you is
20 the angle; I can't tell you the position of the, the victim
21 when he was shot.

22 Q: Okay. There was no -- did you see any indication of a
23 gunshot residue around the wound?

24 A: My examination -- I'm sorry, sir. My examination of the
25 wound itself, I did not. Now I did not have clothing because

1 when I received him, he'd already undergone surgical
2 procedure. I assume crime scene and law enforcement probably
3 had that, but I never saw the clothing.

4 Q: Okay. And may not have been without seeing the clothing,
5 may not have been able to determine?

6 A: I certainly would not make a comment regarding residue
7 other than the fact I did not see it on the body.

8 Q: In other words, you couldn't give any estimate of the
9 distance the gun was ---

10 A: No, sir.

11 Q: --- that fired the bullet?

12 A: No, sir, I cannot.

13 Q: Thank you. Thank you. That's all the questions I have.

14 THE COURT: Any redirect?

15 MR. DEBUSK: No, Your Honor. I'd ask that Dr. Proctor be
16 excused from the subpoena so he can return to his duties.

17 THE COURT: Any objection?

18 MR. FOX: No, sir.

19 THE COURT: All right, doctor, you are released from your
20 subpoena. You may go back to your regular duties.

21 DR. PROCTOR: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 BY THE COURT:

24 THE COURT: All right, ladies and gentlemen, as I told
25 you there, we have a somewhat lengthy legal matter that the

1 MR. FOX: No, no problem.

2 THE COURT: All right. Very good.

3 Just so that it's clear for the record, what I did was
4 send my Clerk to take care of that task.

5 *****OFF THE RECORD*****

6 (On the Record.)

7 THE COURT: All right, gentlemen, the Jury has now
8 selected Juror 349, Juror Number 349, Mary Roper, to be the
9 foreperson.

10 All right. So, with that, is the State ready for the
11 Jury to come in?

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: Defense?

14 MOTIONS:

15 MR. FOX: Yes, Your Honor. I'm sorry, very briefly, I do
16 need -- want to renew the objection I made yesterday just for
17 the record regarding the Woomer issue and the State presenting
18 evidence of the common scheme or plan before they present
19 other evidence. Your Honor allowed Mr. Spivey to testify.

20 THE COURT: Okay.

21 MR. FOX: Now that we heard Mr. Spivey as well as a
22 couple other witnesses, I would renew that objection. I think
23 the State needs to present evidence of the common plan amongst
24 the Defendants.

25 THE COURT: Solicitor, the -- I'm sorry, that's fine.

1 Solicitor, you want to respond?

2 MR. DEBUSK: I'm sorry?

3 THE COURT: He was renewing his Woomer objection stating
4 that he still does not believe that the State has introduced
5 evidence of a common scheme or plan.

6 MR. DEBUSK: Your Honor, I would argue that we did
7 through the first witness, that we showed the Defendants came
8 to the scene together, left together. While all together,
9 they executed an armed robbery plan and that is enough to show
10 a common scheme or plan by circumstantial evidence, Your
11 Honor.

12 THE COURT: All right, sir. I would disagree with you,
13 Mr. Fox, and would reaffirm the Court's prior ruling to allow
14 Mr. Spivey to testify. I do believe that the -- even if you
15 just look at the testimony of Mr. Spivey, who was the first
16 witness, that he testified to a number of things by which a
17 jury could use in finding that there was substantial
18 circumstance, substantial circumstantial evidence that the
19 Defendant in this matter, Mr. Butler, knew of the common plan
20 or scheme, that is a robbery, and whether or not the robbery
21 got out of hand and there was unintended action that took
22 place that is the shooting and the murder. Whether or not
23 they planned to murder them or not, again, and certainly there
24 was more than sufficient evidence of hand of one hand of all
25 presented based upon what Mr. Spivey testified to in his

1 testimony, you know, and adding to that the subsequent
2 evidence that has been added. But just looking at it from
3 that perspective, I would respectfully decline to grant your
4 motion and would reaffirm the Court's prior ruling that it was
5 proper to have Mr. Spivey testify and there has been evidence,
6 certainly substantial circumstantial evidence at least, of a
7 common scheme or plan.

8 Anything else, Mr. Fox?

9 MR. FOX: The only thing I would add for the record is
10 that our position is that all they've done, the State has done
11 to this point, even circumstantially, is his mere presence and
12 so that would be our argument for the record and I understand
13 the Court's ruling and the Court's reasoning, but just to
14 clarify our position.

15 THE COURT: All right, sir. Very good, sir. All right.
16 I appreciate that.

17 BY THE COURT:

18 THE COURT: All right. With that, is Defense ready for
19 the Jury to come in?

20 MR. FOX: Yes, Your Honor.

21 THE COURT: All right. Ask the Jury to come in, please.

22 (REPORTER'S NOTE: Jury enters courtroom. 9:57 A.M.)

23 THE COURT: All right. Ma'am, you are Ms. Roper; is that
24 correct?

25 JUROR 349: Yes, sir.

1 ma'am.

2 CLERK: Place your left hand on the Bible and raise your
3 right hand.

4 CHRISTINE SNYDER, HAVING BEEN SWORN
5 TESTIFIES AS FOLLOWS:

6 CLERK: Please be seated. State your full name and spell
7 your last name for the Court, please.

8 MS. SNYDER: My name is Christine Snyder, S-N-Y-D-E-R.
9 First name is C-H-R-I-S-T-I-N-E.

10 THE COURT: Very good, ma'am.
11 Go ahead.

12 MR. GROOMS: Thank you, Your Honor, thank you.

13 DIRECT EXAMINATION OF CHRISTINE SNYDER BY MR. GROOMS:

14 Q: Good morning, Ms. Snyder. Could you please tell the Court
15 where you work?

16 A: I work at J. Reuben Long Detention Center.

17 Q: And who is your employer, please?

18 A: Horry County Sheriff.

19 Q: All right. So you are a Sheriff's Deputy?

20 A: Yes, sir.

21 Q: All right. Can you, can you tell me or please tell the
22 Court what your general duties are in regards to mail at the
23 jail?

24 A: I screen incoming and outgoing mail for contraband and any
25 breach of security.

1 Q: And when you say mail, is this mail sent from guards or
2 from inmates?

3 A: Inmate mail.

4 Q: Okay. So, you scan inmate mail for contraband and what
5 was the other part?

6 A: Breach of security.

7 Q: All right. Thank you. And were you the -- were you the
8 working in this capacity in May of this year?

9 A: I was.

10 Q: All right. Can you tell me how you became involved in
11 this case?

12 A: I came across a letter and I was screening through it, I
13 saw the words kidnap in it.

14 Q: All right. I'm gonna stop you right there for just a
15 minute. Do you remember what day that was?

16 A: That was May 6th.

17 Q: All right. Thank you.

18 THE COURT: Of what year, ma'am?

19 A: 2014.

20 Q: I'm gonna show you what's been marked as State's Exhibits
21 Twenty-six and Twenty-seven for identification purposes. Can
22 you tell me whether or not you recognize those letters or that
23 letter and envelope?

24 A: I do.

25 Q: And is that the letter that you're referring to?

1 A: It is.

2 Q: Thank you. And you said it had the word kidnap in it;
3 would that be alarming to you; would that be a flag word?

4 A: Absolutely.

5 Q: Okay. And what did you do when you received this letter?

6 A: I notified our Office of Professional Standards.

7 Q: All right. And did you give the letter to anyone?

8 A: I turned it over the Solicitor's investigator, Ginger Pop.

9 Q: All right. And were you involved in this case in any way
10 other than this letter?

11 A: I was not.

12 Q: Okay. Thank you, Ms. Snyder. Please answer any questions
13 the Defense may have.

14 THE COURT: Cross examination.

15 CROSS EXAMINATION OF CHRISTINE SNYDER BY MR. FOX:

16 Q: Other than the name on the -- excuse me -- other than the
17 name on the letter, do you have any first-hand knowledge of
18 who actually wrote the letter?

19 A: I'm familiar with his style of handwriting and his alias.

20 Q: But you did not see this letter at the time it was
21 written, did you?

22 A: I did not witness him write it, no.

23 Q: Thank you. No further questions.

24 THE COURT: Redirect?

25 MR. GROOMS: Yes, sir, just briefly.

1 REDIRECT EXAMINATION OF CHRISTINE SNYDER BY MR. GROOMS:

2 Q: What was the name on the letter?

3 A: His alias?

4 Q: Well, how was it signed?

5 A: It was signed as Clyde.

6 Q: Okay. And you know what alias that name was for?

7 A: It's the alias that he uses.

8 Q: Who's he?

9 A: Shelton Butler.

10 Q: Okay. Thank you. Nothing further.

11 THE COURT: Anything on that question, Mr. Fox?

12 MR. FOX: No, Your Honor.

13 THE COURT: All right, ma'am, you may step down.

14 Do you wish the witness to be excused?

15 MR. GROOMS: Yes, sir, Your Honor.

16 THE COURT: Any objection?

17 MR. FOX: No, sir.

18 THE COURT: All right, ma'am, you are released from your

19 subpoena and may go back to your regular duties. Thank you.

20 Your next witness, please?

21 MR. GROOMS: Thank you, Your Honor. The State would call

22 Sandy Lowe.

23 THE COURT: All right, ma'am, come all the way around and

24 meet the Clerk right up here please, ma'am. Thank you.

25 SANDY LOWE, HAVING BEEN SWORN

1 TESTIFIES AS FOLLOWS:

2 CLERK: Please be seated. State your full name and spell
3 your last name for the Court, please.

4 MS. LOWE: Sandy Lowe, L-O-W-E.

5 THE COURT: And your first name, ma'am; with an I or a Y,
6 please?

7 MS. LOWE: Y; with a Y.

8 THE COURT: Thank you, ma'am.

9 DIRECT EXAMINATION OF SANDY LOWE BY MR. GROOMS:

10 Q: Thank you, Ms. Lowe. Would you please tell the Court
11 where you work?

12 A: I work for Horry County Sheriff's Office.

13 Q: And how long have you been there?

14 A: Twenty-two years.

15 Q: All right. And what are your general duties?

16 A: I maintain the inmate records while they're in and out of
17 the jail.

18 Q: All right. So do you work at the jail?

19 A: Yes.

20 Q: All right. And when you say records, what type of records
21 are you talking about?

22 A: The inmates' booking reports, any inmate requests,
23 grievances, any incident reports involving that inmate while
24 they're in the facility.

25 Q: All right. And how does this grievance process work, do

1 -- I'm sorry -- do the Defendants have rights in jail?

2 A: Yes.

3 Q: And when they feel those rights are violated, they file a
4 grievance?

5 A: Yes.

6 Q: All right. Can you please tell the Court how a grievance
7 works?

8 A: Inmate would fill out the grievance. If a classification
9 or unit manager is not around to give it to, then they would
10 turn it into the officer. If they do not see one of us, then
11 they would place it in our basket that we have up at the
12 Movement Center for us to address.

13 Q: All right. And how do you address it? How does the
14 Defendant know it's been addressed?

15 A: When we find out the answer for him or if we forward it to
16 the appropriate department, we take the inmate down a copy
17 with the disposition of what's happened. The inmate signs for
18 his copy and then whoever gives it to him would sign it
19 letting them, you know, so we would keep a record that we gave
20 it to him on this date and he signed for it.

21 Q: All right. And is that done every time?

22 A: Yes.

23 Q: All right. How do you know who writes these grievances if
24 they're dropped off in the basket?

25 A: Their, their name is at the top and they sign it and date

1 it at the bottom.

2 Q: All right. And to your knowledge, were there any

3 grievances filed on this case? Let me show you what's been

4 marked as State's Exhibit Twenty-eight, Twenty-nine and

5 Thirty. Please note that those are front and back.

6 A: Yes, there are four grievances.

7 Q: I'm sorry, how many grievances?

8 A: Four.

9 Q: I handed you Twenty-eight, Twenty-nine and Thirty,

10 correct?

11 A: Yes. Some of them are inmate requests.

12 Q: Okay. Thank you. There are four grievances and two

13 requests?

14 A: Uh-huh (affirmative response), yes.

15 Q: And those all would've come to you at some point?

16 A: Yes, to the office I work in.

17 Q: Okay. And this is kept as a, as a record while the

18 inmates are there?

19 A: Yes.

20 Q: Thank you. Can you tell me who signed those grievances,

21 which inmate?

22 A: Shelton Butler.

23 Q: And for all of them?

24 A: Yes.

25 Q: All right. And can you please tell us, what are the dates

1 of the grievances or if they're all similar on or about what
2 ---
3 A: This one is 4/19 of 2014; 4/9 of 2014; 4/20 of 2014; and
4 4/11 of 2014.
5 Q: All right. And I believe there is an acknowledgement
6 section; who would sign that?
7 A: The inmate along with the person giving him the copy, the
8 officer giving him the copy.
9 Q: And do you recognize their names?
10 A: Yes.
11 Q: Can you please tell the Court their names?
12 A: Corporal Napalotano and Officer Small.
13 Q: And do you know them personally?
14 A: Yes, they both work for me.
15 Q: And when you say for you, they work for the Sheriff's
16 Department?
17 A: Yes.
18 Q: All right. Now would you have any further role in this
19 case other than these letters?
20 A: No.
21 Q: And what did you do with these letters?
22 A: Gave them to Solicitor DeBusk when I was asked if I had a
23 sample.
24 Q: Had a sample of what?
25 A: Of Shelton's handwriting.

1 Q: All right. Do you recognize those signatures?

2 A: Of the officers?

3 Q: Yes.

4 A: Yes.

5 Q: All right. Thank you. Nothing further.

6 THE COURT: All right, Mr. Fox, cross examination.

7 CROSS EXAMINATION OF SANDY LOWE BY MR. FOX:

8 Q: Ms. Lowe, in this case, did Mr. Butler hand those directly
9 to you or did they come to you through the other routes you
10 mentioned?

11 A: Through the other routes.

12 Q: Okay. So, you don't have direct knowledge of who wrote
13 them?

14 A: Correct.

15 Q: Okay. Are you aware -- did you have an inmate, to your
16 knowledge, out there by the name of Donovan Johnson?

17 A: Yes, sir.

18 Q: Okay. Are you aware yourself that Mr. Johnson has
19 attempted communications with Mr. Butler?

20 A: Not -- I don't have personal knowledge of that, no.

21 Q: Thank you. No further questions.

22 THE COURT: Any redirect?

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

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

1 MR. GROOMS: Yes, Your Honor.

2 THE COURT: Any objection?

3 MR. FOX: No, sir.

4 THE COURT: All right, ma'am, you are released from your
5 subpoena; you may go back to your regular duties. Thank you.

6 Next witness, please, sir.

7 MR. GROOMS: Thank you, Your Honor. The State would call
8 Gaile Heath.

9 THE COURT: All right, ma'am, you need to come all the
10 way around and meet the Clerk of Court up here, please, ma'am.

11 CLERK: Place your left hand on the Bible and raise your
12 right, please.

13 BRENDA GAILE HEATH, HAVING BEEN SWORN

14 TESTIFIES AS FOLLOWS:

15 CLERK: Please be seated. State your full name and spell
16 your last name for the Court.

17 MS. HEATH: My name is Brenda Gaile Heath, H-E-A-T-H.

18 THE COURT: Could you spell Gaile also, please, ma'am?

19 MS. HEATH: G-A-I-L-E.

20 THE COURT: Thank you very much.

21 MS. HEATH: Thank you.

22 THE COURT: All right, Solicitor.

23 MR. GROOMS: Thank you, Your Honor.

24 DIRECT EXAMINATION OF BRENDA GAILE HEATH BY MR. GROOMS:

25 Q: Thank you, Ms. Heath. Ms. Heath, can you please tell the

1 Court where you work?

2 A: I'm employed by the South Carolina Law Enforcement
3 Division, commonly referred to as SLED.

4 Q: How long have you worked there?

5 A: Thirty years in August.

6 Q: All right. And what is your title there at SLED?

7 A: I am a Forensic Scientist and I am in the Questioned
8 Document Department.

9 Q: All right. Can you please explain to the Court what your
10 general duties are?

11 A: My general duties are I administrate the -- handle all the
12 administrative issues of the department as well as working any
13 cases that could be assigned to the Questioned Document Unit
14 involving handwriting, hand printing, computers, typewriters,
15 anything involving written communication.

16 Q: Thank you. And who assigns these cases to you?

17 A: They come in through our evidence log-in take-in and they
18 come from local police departments, sheriff's departments, or
19 other state agencies.

20 Q: Thank you, ma'am. And what type of education do you have
21 to have to do a job in as a forensic scientist?

22 A: Well, I have two undergraduate degrees from the University
23 of South Carolina. I'm a graduate of the South Carolina
24 Criminal Justice Academy, I'm a graduate of the Federal Law
25 Enforcement Training Center, but I completed a two-year

1 internship at SLED in Forensic Document Examination, which is
2 the noted method of training for what I do. I've also
3 attended classes by the FBI and the United States Secret
4 Service and over the last thirty years, I've attended
5 continuing education courses in various aspects of questioned
6 documents and I'm certified by the American Board of Forensic
7 Document Examiners.

8 Q: Thank you. For those who don't know, what is continued
9 education that you referred to?

10 A: I go to classes two or three times a year on updates on
11 aspects of my job of various things that I may be doing in
12 looking at handwriting evidence or any, any form of written
13 communication. I go to training and classes and all.

14 Q: All right. And how many handwriting analysis cases would
15 you say you've handled over your thirty years?

16 A: Probably hundreds of thousands.

17 Q: So, you were in the position of forensics the entire time
18 you're with SLED?

19 A: That is correct.

20 Q: How many times have you been qualified as an expert?

21 A: I've been qualified as an expert 179 times.

22 Q: And what is a handwriting analysis?

23 A: Basically, a handwriting analysis is where an individual
24 has a known sample from an individual and they are comparing
25 it to something that is unknown. So we're trying to determine

1 whether somebody wrote something or whether something was
2 prepared by like a, if it's a computer generated document, a
3 particular computer or not, but basically you're trying to
4 associate whether one individual wrote a particular questioned
5 item.

6 Q: Thank you. Your Honor, at this time, we'd like to have
7 Ms. Heath admitted as an expert in this case to forensic
8 documentation as well as handwriting samples analysis?

9 THE COURT: All right, Mr. Fox, you wish to voir dire the
10 witness or challenge the State's offer?

11 MR. FOX: No, Your Honor.

12 THE COURT: All right. Very good. I find her qualified
13 to give her opinion in the fields of forensic document
14 examination and handwriting analysis. You may proceed.

15 MR. GROOMS: Thank you, sir.

16 BY MR. GROOMS:

17 Q: Ms. Heath, I'm gonna show you a few exhibits and tell me
18 if you recognize State's Exhibit Twenty-six and Twenty-seven?

19 A: Yes, sir, both State's Exhibit Twenty-six and Twenty-seven
20 contain my laboratory number, my item number and my initials.

21 Q: All right. Thank you. Can you tell me if you recognize
22 Exhibit Twenty-nine, Twenty-eight and Thirty and please note
23 they are front and back to each of those?

24 A: Yes, sir, State's Exhibits Twenty-eight, Twenty-nine and
25 Thirty all contain my laboratory number, my item number and my

1 initials. I've seen all of them, yes, sir.

2 Q: Thank you. Were you provided all of these exhibits in
3 this case?

4 A: Yes, sir, I was.

5 Q: And was the request?

6 A: The request was to determine if the writer of State's
7 Exhibits Twenty-eight, Twenty-nine and Thirty wrote the
8 questioned entries appearing on items Twenty-six and Twenty-
9 seven.

10 Q: All right. I'm gonna show you what's been marked as
11 State's Exhibit Number Thirty-one. Can you tell me if you
12 recognize that document?

13 A: Yes, that's a mock-up chart that I did using various
14 aspects of the documents that were submitted to the laboratory
15 for investigation -- for examination.

16 Q: So, in layman's terms, that aided you in your analysis?

17 A: That is correct.

18 Q: Would you mind explaining to the Jury how your analysis
19 works and how it worked in this particular case?

20 A: When documents are submitted to the laboratory and I bring
21 them upstairs, I microscopically examine each of the
22 questioned documents first making note of any similarities or
23 any differences that I might see in that particular document.
24 I look at how the words are written. I look at how the
25 letters are joined. I look at how the letters are placed on a

1 baseline. I look at the height ratios. I look at beginning
2 and ending strokes. I then microscopically examine all of the
3 known writing looking at those same features that I observed
4 in the question. I then make a photo copy of the documents
5 that I have received and I use a yellow highlighter for
6 similarities and a red ink pen for differences and I actually
7 mark on my copies the similarities I see between the
8 questioned and the known writing and the differences that I
9 may see between the questioned and the known writing.

10 Q: Thank you. What were the results of your analysis,
11 please?

12 A: The results of my analysis were that the writer of State's
13 Exhibit Twenty-eight, Twenty-nine and Thirty wrote the
14 questioned entries on State's Exhibit Twenty-six and Twenty-
15 seven.

16 Q: All right. And can you speak about the similarities,
17 whether they're significant or not significant?

18 A: There were a lot of significant similarities. The "i"
19 formation in the document did not come all the way -- and I've
20 got copies for the Jury if you would like for them to see
21 copies of the chart.

22 MR. GROOMS: Your Honor, I haven't moved this into
23 evidence yet, would it be proper to ---

24 THE COURT: Okay. Well, first ---

25 MR. GROOMS: I apologize.

1 THE COURT: --- have you seen, shown that to Mr. Fox?

2 All right. How about showing -- show that to Mr. Fox.

3 MR. GROOMS: Your Honor, we would ask that State's
4 Exhibit Thirty-one be allowed to be published to the Jury in
5 aid of this expert witness' testimony?

6 THE COURT: Any objection to that, Mr. Fox?

7 MR. FOX: Your Honor, there are portions of the writings,
8 the writings are in -- I believe are in evidence. I'd prefer
9 that they be seen themselves rather than snippets from the
10 different ---

11 THE COURT: All right, sir. Very good.

12 MR. FOX: If she can describe it ---

13 THE COURT: I'll sustain the objection. We'll just
14 proceed in the usual manner. Thank you very much.

15 BY MR. GROOMS:

16 Q: Ms. Heath, you did use State's Exhibit Thirty-one in
17 aiding you in the analysis in this case, correct?

18 A: That is correct.

19 Q: Okay. And were there any significant dissimilarities?

20 A: There were no significant dissimilarities, no, sir.

21 Q: And did you publish a report to this effect?

22 A: Yes, sir, I did.

23 Q: All right. Can you tell us in layman's terms what all
24 this means?

25 A: Basically, what it means is that the person that wrote

1 State's Exhibit Twenty-eight, Twenty-nine and Thirty, wrote
2 each of the questioned entries on State's Exhibit Twenty-seven
3 and Twenty-six. So, it means that every -- these are all
4 common authorship, one in the same person wrote everything on
5 -- well, with the exception of I think on the known writing,
6 there are signatures of some police officers, but the body of
7 the documents were all written by the same person.

8 Q: So, they are a match?

9 A: Yes, sir, they're a match.

10 Q: Thank you.

11 MR. GROOMS: Your Honor, we'd move to have State's
12 Exhibits Twenty-eight, Twenty-nine and Thirty entered into
13 evidence at this time.

14 THE COURT: All right, any objection to Twenty-six
15 through Thirty coming into evidence at this time?

16 MR. FOX: Your Honor, we would renew our objection to
17 Twenty-seven and Twenty-six -- I'm sorry -- Twenty-eight,
18 Twenty-nine and Thirty, I do not have objections to. So, the
19 ones that he just offered, Your Honor, I do not have
20 objections.

21 THE COURT: All right. So, based on matters you
22 previously raised to the Court about Twenty-six and Twenty-
23 seven and previously ruled upon by the Court ---

24 MR. FOX: Yes, sir.

25 THE COURT: You're renewing that objection.

1 MR. FOX: That's correct.

2 THE COURT: All right. Very good and I reaffirm the
3 Court's prior ruling in that matter and will allow State's
4 Exhibit Twenty-six and Twenty-seven to come into evidence and
5 as I understand it, Twenty-eight, Twenty-nine and Thirty are
6 in evidence without objection. Is that right?

7 MR. FOX: Yes, sir.

8 THE COURT: Very good.

9 STATE'S EXHIBIT NUMBER TWENTY-EIGHT THROUGH THIRTY

10 ADMITTED INTO EVIDENCE

11 MR. GROOMS: Your Honor, thank you. We would also move
12 to have State's Exhibit Twenty-six, Twenty-seven and Thirty-
13 one entered into evidence. I was trying to separate the two
14 for Ms. Heath.

15 THE COURT: I'm sorry. I talked about Twenty-six through
16 Thirty and that's how I addressed it with Mr. Fox. So Twenty-
17 six and Twenty-seven are the two that he had objected to
18 before and the Court's ruling is on the record and I renewed
19 or reaffirmed that ruling and allow it into evidence then and
20 he has no objection to Twenty-eight, Twenty-nine and Thirty.
21 All those are in evidence. The only one that is not in
22 evidence now is Thirty-one.

23 MR. GROOMS: Yes, sir, Your Honor. And this one Mr. Fox
24 is questioning in its entirety. The State would move to have
25 Thirty-one entered into evidence as part of this analysis.

1 THE COURT: How about let me -- you've seen it, Mr. Fox?

2 MR. FOX: Your Honor, this is the one that a moment ago I
3 objected to and you sustained the objection.

4 THE COURT: All right. Thank you.

5 I would like, before the Court rules on that, some
6 further explanation of where these particular samples come
7 from, what State's Exhibit they actually come from.

8 MR. GROOMS: Yes, Your Honor.

9 BY MR. GROOMS:

10 Q: Ms. Heath, will you please -- do you have a copy of this
11 State's Exhibit Thirty-one?

12 A: Yes, sir, I do.

13 Q: Can you please look at the items that are listed and tell
14 the Court whether or not those came from the items you've
15 already identified?

16 A: They did come from the items I've already identified. The
17 top one, Item 14, comes from State's Exhibit Number Twenty-
18 seven. The next one, my Item 16.1 comes from State's Exhibit
19 Thirty. The next one is 16.4, which comes from State's
20 Exhibit Twenty-nine. The next one is 16.3, which comes from
21 State's Exhibit Twenty-seven, Twenty-nine. The next word I
22 have on here also comes from 16.3, which is State's Exhibit
23 Twenty-nine. The next word comes from my item 16.2, which is
24 State's Exhibit Number Thirty. The next one on there is my
25 Item 16.4, which comes from State's Exhibit Number Twenty-

1 nine. And the final one is Item 16.1, which comes from
2 State's Exhibit Number Thirty.

3 Q: Thank you, ma'am.

4 MR. GROOMS: Your Honor, all items that she's mentioned
5 are already in evidence. We'd ask now that Exhibit Thirty-one
6 be admitted into evidence also.

7 THE COURT: So I understand, ma'am, basically what you've
8 done is copied from exhibits I've already allowed into
9 evidence onto Thirty-one and made some comparison for those?

10 A: That is correct, sir.

11 THE COURT: All right. Over the objection of the
12 Defense, I'm gonna allow State's Exhibit Thirty-one into
13 evidence.

14 STATE'S EXHIBIT NUMBER THIRTY-ONE

15 ADMITTED INTO EVIDENCE

16 MR. GROOMS: Thank you, Your Honor.

17 BY MR. GROOMS:

18 Q: And, Ms. Heath, one last question, would you mind -- Your
19 Honor, I'd like to publish State's Exhibit Twenty-seven to the
20 Jury by having Ms. Heath read it.

21 THE COURT: You may do so.

22 MR. GROOMS: Thank you.

23 BY MR. GROOMS:

24 Q: Ms. Heath, I'm gonna ask you please to read State's
25 Exhibit Twenty-seven to the Jury?

1 A: Okay. Mayo, what's goody, Bra. Hey, Bra, I really need
2 to help you. I need for Molley Trave not to show up to my
3 trial. I go to trial on June 2nd, Bra. I just need somebody
4 to kidnap the nigga or something, Bra. Nigga is not playing
5 fair my dude. I can pay you if you do this for me. When I
6 get home, my mother is going to take out a loan for me and my
7 people have the D on the deck. Bra, I would not ask you if
8 this shit wasn't real. If you can do this, just tell my
9 sister, Vonna, that I got, that you got me on that money for
10 my birthday. Feel me? Stay out there my nigga and let me
11 know something soon. Shelbo a/k/a ClyDol.

12 Q: Thank you, ma'am. The second sentence that you read,
13 would you please go over that one more time for the Court
14 beginning with I need?

15 MR. FOX: Your Honor, it's been actually published. He's
16 asked the questions. She read the entire letter.

17 Q: Very well. Can you tell me, I think you said Molley
18 Trave; could there be any other interpretations of that
19 writing?

20 A: Well, it looks like an M-O-L-L-E-Y and it looks like T-R-
21 A-V-E to me.

22 Q: Okay.

23 A: I don't ---

24 THE COURT: Continue on, sir.

25 Q: Thank you, Ms. Heath, nothing further.

1 THE COURT: Cross examination.

2 CROSS EXAMINATION OF BRENDA GAILE HEATH BY MR. FOX:

3 Q: Ms. Heath, excuse me. You indicated no significant
4 dissimilarities; did you find any dissimilarities in the
5 writings you compared?

6 A: No, sir, I did not.

7 Q: Do you know other than -- you're provided with these
8 documents in this case, I assume, from Horry County; they come
9 to your lab in Columbia, correct?

10 A: That is correct.

11 Q: Okay. And items submitted as a known sample of the
12 Defendant's writing or a person's writing, you're relying on
13 whoever submits those to you for that accuracy; in words, if
14 they say it belongs to Person X you have to trust that in fact
15 Person X wrote those, correct?

16 A: That is correct.

17 Q: And you've worked at SLED how long?

18 A: It will be thirty years in August.

19 Q: Okay. So you're familiar -- I'm not gonna ask you about
20 other departments -- but SLED does much more than handwriting
21 analysis, does it not?

22 A: That is correct.

23 Q: Okay. And they do ballistics?

24 A: Yes, sir.

25 Q: And they do DNA testing?

1 A: Yes, sir.

2 Q: Okay. And they were doing those in 2012?

3 A: Yes, sir.

4 Q: Thank you. No further questions.

5 THE COURT: Any redirect?

6 MR. GROOMS: No, sir, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MR. GROOMS: Yes, sir, please.

9 THE COURT: Any objection?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right, ma'am, you are released from your

12 subpoena and may go back to your regular activities just make

13 sure you leave the exhibits with us, please, ma'am.

14 A: Okay. Thank you.

15 THE COURT: Thank you, ma'am.

16 All right, Solicitor, your next witness, please, sir?

17 MR. DEBUSK: The State calls Joseph Trawicki.

18 THE COURT: All right, sir, if you'd come all the way

19 around up here and meet the Clerk right up here, please.

20 CLERK: Put your left hand on the Bible and raise your

21 right, please?

22 JOSEPH TRAWICKI, HAVING BEEN SWORN

23 TESTIFIES AS FOLLOWS:

24 CLERK: Please be seated. State your full name and spell

25 your last name for the Court, please?

1 MR. TRAWICKI: Joseph Trawicki, T-R-A-W-I-C-K-I.

2 THE COURT: All right, sir. As best you can, can you
3 stay right behind the microphone please, sir. Thank you.

4 All right, Solicitor.

5 DIRECT EXAMINATION OF JOSEPH TRAWICKI BY MR. DEBUSK:

6 Q: Mr. Trawicki, who is your employer?

7 A: Sprint.

8 Q: What is Sprint?

9 A: A wireless communications company.

10 Q: Does that include cell phones?

11 A: Yes, sir.

12 Q: What's the nature of your work?

13 A: I am a records custodian.

14 Q: Obviously, in the course of your employment, you're
15 familiar with the records and phone calls made by Sprint and
16 Nextel?

17 A: It's no longer Nextel; it's just Sprint now.

18 Q: It's just Sprint. Okay.

19 A: Yes, sir.

20 Q: Do you have access to those records in the normal course
21 of your duties?

22 A: Yes, I do.

23 Q: Where are the records kept?

24 A: Basically, they're kept electronically outside of Kansas
25 City and outside of Dallas.

1 Q: It's a secure system?
2 A: Yes, sir.
3 Q: Okay. Now, specifically as to the cell phones, what, what
4 records, what information is kept in the records?
5 A: The numbers involved, the date, the time, durations, and
6 some network information including the switch that was used,
7 things of that.
8 Q: So, the number making the call and the number being called
9 are both preserved?
10 A: Yes, sir, if they're available.
11 Q: And the time they called?
12 A: Yes, sir.
13 Q: And the date?
14 A: Yes.
15 Q: And did you bring to Court today records for the phone
16 number Number 5
17 A: Yes, I did.
18 Q: What date does that -- does the records you brought cover?
19 A: June 8th, 2012.
20 Q: I show you what's been marked as State's Exhibit Thirty-
21 six and ask if you recognize this?
22 A: Yes, sir.
23 Q: What is it?
24 A: This is a copy of the call detail records I provided this
25 morning for the telephone number Number 5

1 Q: Is that a fair and accurate copy of the records for that
2 number for that day?

3 A: Yes. Yes, they are.

4 MR. DEBUSK: Your Honor, at this time, we would move to
5 put State's Exhibit Thirty-six into evidence?

6 THE COURT: Any objection?

7 MR. DEBUSK: I think Mr. Fox has seen this.

8 MR. FOX: No, Your Honor.

9 THE COURT: All right. State's Thirty-six is in evidence
10 without objection.

11 STATE'S EXHIBIT NUMBER THIRTY-SIX

12 ADMITTED INTO EVIDENCE

13 BY MR. DEBUSK:

14 Q: On that first page, there's one item highlighted, what is
15 that?

16 A: That is the telephone number at the top.

17 Q: Okay. That's the telephone number the records are for?

18 A: That is correct.

19 Q: On the subsequent pages there are some other numbers
20 highlighted. What do those represent?

21 A: Records -- they are calls to and from two specific
22 numbers.

23 Q: What numbers are those?

24 A: The number for these records, X Number 5 ; the other
25 number Number 2

1 Q: How many are there; how many calls are highlighted.

2 A: Seven calls.

3 Q: Does the record show the approximate time of the call?

4 A: Yes, sir.

5 Q: Okay. Just to, for clarification, does the number Number 6
6 appear once for each call or twice for each call on that
7 record?

8 A: On the inbound calls, which are six of the seven calls,
9 you will see the two -- actually two lines with Number 2
10 because of routing.

11 Q: Okay. So each one, each call would have the number
12 calling listed twice on this incoming calls?

13 A: On the inbound calls; that's correct.

14 Q: And on the outbound call, how many times is the number
15 listed?

16 A: You'll only see it once.

17 Q: Okay. But the highlighted numbers represent each one of
18 those calls, seven of them altogether?

19 A: That's correct.

20 Q: Thank you. Please answer any questions Defense might
21 have.

22 THE COURT: All right, Mr. Fox, cross examination.

23 CROSS EXAMINATION OF JOSEPH TRAWICKI BY MR. FOX:

24 Q: Do you know who those numbers are assigned to? Were you
25 asked to find that out?

1 A: That was not part of the subpoena, sir.

2 Q: I'm sorry?

3 A: That was not part of the subpoena.

4 Q: Okay. But there's no request for phone records from
5 Shelton Butler?

6 A: Not to the best of my knowledge.

7 Q: Thank you. I don't have anything further.

8 THE COURT: Any redirect?

9 MR. DEBUSK: No, Your Honor.

10 THE COURT: All right. Do you wish the witness to be
11 excused?

12 MR. DEBUSK: Yes, Your Honor, thank you.

13 THE COURT: Any objection?

14 MR. FOX: No, sir.

15 THE COURT: All right, sir, you are released from your
16 subpoena and may go back to your regular duties; just leave
17 the exhibits please.

18 A: Thank you, sir.

19 THE COURT: Thank you.

20 All right, Solicitor, your next witness, please?

21 MR. DEBUSK: The State calls Deputy U.S. Marshall, Brian
22 Jordan.

23 THE COURT: All right. All right, if you want to come
24 all the way around up here and meet the Clerk right at the
25 front, sir.

1 CLERK: Raise your right hand and place your left hand on
2 the Bible.

3 BRIAN ARTHUR JORDAN, HAVING BEEN
4 SWORN TESTIFIES AS FOLLOWS:

5 CLERK: Please be seated. State your full name and spell
6 your last name for the Court, please.

7 MR. JORDAN: Brian Arthur Jordan, J-O-R-D-A-N.

8 THE COURT: Go ahead, Solicitor.

9 DIRECT EXAMINATION OF BRIAN ARTHUR JORDAN BY MR. DEBUSK:

10 Q: Marshall Jordan, who is your employer?

11 A: United States Marshall Service.

12 Q: How long you been with them?

13 A: Eleven years.

14 Q: Okay. What's, what -- tell the Jury what's the nature of
15 your work?

16 A: Well, the main job description we do is to find fugitives
17 to serve warrants.

18 Q: And in June of 2012 were you doing the same thing?

19 A: Yes, sir.

20 Q: Okay. Did you participate in locating suspects in the
21 shooting death of Jose Rico Gutierrez?

22 A: Yes, sir.

23 Q: What was your role in that?

24 A: I'm the -- well, at the current time, I was the deputy in
25 charge of the Horry County Fugitive Task Force.

1 Q: So -- I'm sorry.

2 A: We rotate through out of the Florence Office, it's a sub-
3 office of the Florence Federal Office.

4 Q: But in June of 2012, you were responsible for Horry
5 County?

6 A: Yes, sir.

7 Q: Did you have a warrant to serve on the Defendant, Shelton
8 Butler?

9 A: Yes, sir.

10 Q: Did you -- what did you do to locate him?

11 A: We conducted some interviews and did some investigations
12 online and were able to get information to lead to his
13 possible location off of Security Lane on Highway 701.

14 Q: Let me ask you to step back a minute and ask a general
15 question?

16 A: Yes, sir.

17 Q: How do you become involved in a case if it's not a federal
18 case?

19 A: We're requested -- we have Task Force Officers from other
20 local agencies that work on our Fugitive Task Force. They're
21 on loan to us from those different departments to go and
22 assist us in locating fugitives. They'll -- if we're not
23 working a federal case, they bring over local cases from their
24 departments and ask for our assistance, our manpower and our
25 other technologies to help them close those cases.

1 Q: So, was this a case where you were assisting the local
2 jurisdiction?

3 A: Yes, sir.

4 Q: Okay. And once again, where did your investigative leads
5 send you looking for Mr. Butler?

6 A: On Highway 701 towards Georgetown County right near the
7 line on a road called Security Lane.

8 Q: Okay. What happened -- did you go to Security Lane?

9 A: Yes, sir.

10 Q: Do you remember what date?

11 A: I believe it was first part of June, I want to say maybe
12 June 2nd; I might be off on that.

13 Q: Would it have been later in June?

14 A: Later, it might've been later in June.

15 Q: Okay. What did you do when you went to Security Lane?

16 A: We went down, it was towards the afternoon. There were
17 two trailers that we had narrowed it down to. We went to --
18 if you're driving down the road it would have been the trailer
19 on the, it's a dead end road; it's a trailer on the right-hand
20 side. We put officers around the trailer and knocked on the
21 door, found out that we were at the -- the one right across
22 the street was the one we should've been at. Went across the
23 street, went around back of the trailer, noticed that the rear
24 door was open on that trailer. We were able to figure out
25 that the subject had left that trailer, gone over a wooden

1 fence and into the woods behind the trailer.

2 Q: Did you search in the woods for that individual?

3 A: Briefly and then we were able to get through assistance
4 with our Task Force Officer with Horry a County, get perimeter
5 set up around the area.

6 Q: Explain to the Jury what a perimeter is?

7 A: Perimeter is just getting other officers out that can set
8 up a proximity to where we're located in order to hopefully
9 contain the fugitive wherever he's running. So just you kind
10 of make a judgment based upon how long you think the person's
11 been running and where to set up the different officers on the
12 road.

13 Q: And after you made the perimeter, were you able to locate
14 the person that fled from that trailer?

15 A: Yes, sir.

16 Q: Who was it?

17 A: Shelton Butler.

18 Q: Did you arrest him at that point?

19 A: I did not. It was one of the perimeter officers that,
20 after he was pushed out of the woods and then made the arrest
21 and brought him back over to where we were located.

22 Q: How long did it take to get him out of the woods?

23 A: From the time we went, about an hour and a half, a couple
24 of hours.

25 Q: Thank you. Please answer any questions the Defense has.

1 THE COURT: Cross examination.

2 CROSS EXAMINATION OF BRIAN ARTHUR JORDAN BY MR. FOX:

3 Q: In the end, Mr. Butler came out on his own that you didn't
4 -- he surrendered and came out; is that correct?

5 A: Yes, sir, there was the -- the Horry County Dog Tracking
6 Team also assisted and then we believe that it -- they were
7 close behind him. They weren't the ones that apprehended him,
8 but with being close proximity to him, he walked out onto the
9 perimeter and was arrested by one of the officers.

10 Q: You don't know anything about the situation that lead to
11 the warrant; you just know there's a warrant, go look for him,
12 correct?

13 A: Correct.

14 Q: Okay. So, you have no knowledge about the circumstances
15 that lead to that warrant being issued; it's not your job to
16 investigate that, correct?

17 A: Correct.

18 Q: It's not your job to make an assessment whether you had a
19 good reason to look for him or bad; you got a warrant, a valid
20 warrant, and it's just your job to go execute that warrant,
21 correct?

22 A: Correct.

23 Q: And that was the extent of your involvement in this case?

24 A: Yes, sir.

25 Q: Okay. Thank you. No further questions.

1 THE COURT: Any redirect?

2 MR. DEBUSK: Briefly, Your Honor.

3 REDIRECT EXAMINATION OF BRIAN ARTHUR JORDAN BY MR. DEBUSK:

4 Q: So would it be fair to say, you just testified that Mr.
5 Butler did not so much turn himself in as just flushed out by
6 the dogs?

7 A: Correct.

8 Q: Thank you.

9 THE COURT: All right. Anything on that, Mr. Fox?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right, sir. Do you wish the witness to
12 be excused?

13 MR. DEBUSK: Yes, Your Honor.

14 THE COURT: Any objection, Mr. Fox?

15 MR. FOX: No.

16 THE COURT: All right, sir, you are released from your
17 subpoena; you may go back to your regular duties.

18 All right, Solicitor, your next witness please, sir.

19 MR. GROOMS: Thank you, Your Honor. The State would call
20 Officer Michael Conti please.

21 MR. DEBUSK: Your Honor, may we approach briefly?

22 THE COURT: Certainly.

23 Officer, you just come all the way around and meet the
24 Clerk up here please.

25 (REPORTER'S NOTE: A bench conference was held off the record

1 in the presence of the Jury but out of hearing of the Jury.)

2 THE COURT: Go ahead, ma'am.

3 CLERK: Place your left hand on the Bible and raise your
4 right hand please?

5 MICHAEL CONTI, HAVING BEEN SWORN

6 TESTIFIES AS FOLLOWS:

7 CLERK: Okay. Please be seated. State your full name
8 and spell your last name for the Court please.

9 MR. CONTI: First name is Michael; last name is Conti, C-
10 O-N-T-I.

11 THE COURT: Go ahead, Solicitor.

12 MR. GROOMS: Thank you, Your Honor.

13 DIRECT EXAMINATION OF MICHAEL CONTI BY MR. GROOMS:

14 Q: Now, Mr. Conti, can you please tell the Court, although it
15 may be apparent, what you do for a living?

16 A: I'm a police officer.

17 Q: And where do you work?

18 A: Horry County Police Department.

19 Q: Thank you, sir. How long have you been with the County?

20 A: Almost eleven years.

21 Q: All right. And what areas of the county do you work?

22 A: Mainly the Myrtle Beach area, Carolina Forest, River Oaks.

23 Q: Is this -- how is it divided where you work?

24 A: It's divided by sectors.

25 Q: And can you give me the parameters of what sector you're

1 working in please?

2 A: I work in the North Precinct. The North Precinct is

3 divided by six sectors. I work sector twelve.

4 Q: All right. Thank you. Can you tell me were you working in

5 this same capacity during June of 2012?

6 A: Yes, sir.

7 Q: And were you working on June 8th, 2012?

8 A: Yes, sir.

9 Q: And did you receive a call related to this case?

10 A: Yes, sir.

11 Q: And what was the nature of that call?

12 A: It came in as a shooting call.

13 Q: Do you recall what time or about what time this was?

14 A: I got the call at 8:35 P.M.

15 Q: All right. And didn't I ask you to pull your notes for

16 today?

17 A: Yes, you did.

18 Q: Thank you. And where did you respond?

19 A: To the area of Ronald McNair; it's off of Forestbrook.

20 Q: Where is Ronald McNair?

21 A: Off of Forestbrook Road. Well, it's adjacent to

22 Forestbrook Road and Highway 501.

23 Q: What county is that in?

24 A: Horry County.

25 Q: Were you the first on the scene?

1 A: I was.

2 Q: What did you find when you arrived?

3 A: When I arrived at Ronald McNair, I found a shoe, a blood
4 trail and a broken cell phone.

5 Q: All right. And was there a victim on the scene?

6 A: No.

7 Q: Was there any witnesses on the scene?

8 A: Yes, there was.

9 Q: Do you remember speaking to Travis?

10 A: No, I didn't speak to Travis.

11 Q: Okay. Was the name Travis given?

12 A: Yeah, the name Travis was given.

13 Q: What did you do with that information?

14 A: Passed that along to the dispatch and to the detectives.

15 Q: All right. So, you talk about dispatch, how do you
16 communicate with other officers?

17 A: With portable radios.

18 Q: All right. And is that how you would've received the
19 call?

20 A: Yes.

21 Q: Okay. You said this was a shooting, what, if any further
22 information did you receive via dispatch?

23 A: Dispatch gave us a call that it came in as a shooting and
24 the caller stated that someone had been shot; they were placed
25 into a car by some females and then driven away.

1 Q: All right. And when you get there, you're the first on
2 the scene, please tell the Court what do you do, I mean ---

3 A: I set up a crime scene. I try to find the victim first
4 and if I can't find the victim then I'll set up the crime
5 scene.

6 Q: How does that work; how do you set up a crime scene?

7 A: We just set up the crime tape, the yellow tape that you
8 usually see, set that up in the area big enough to keep the
9 crime scene secure where people can't walk in or out or drive
10 through it.

11 Q: And was anyone walking in and out or ---

12 A: No.

13 Q: Were other officers arriving or were you by yourself?

14 A: I was by myself. Some other officers arrived fairly
15 quick.

16 Q: Okay. Were you involved in any follow-up investigation in
17 this case?

18 A: I wasn't, no.

19 Q: Okay. Court's indulgence just a second please, Your
20 Honor?

21 THE COURT: Yes, sir.

22 Q: And you say you've been an officer for eleven years in
23 Horry County. Would that require you to know the county
24 pretty well?

25 A: Yes.

1 Q: I'm gonna show you State's Exhibits Six -- State's Exhibit
2 Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen.
3 I'm gonna ask if you recognize those areas and please take
4 your time.

5 A: Yes, sir.

6 Q: Thank you, sir. I'm gone show you what's been marked as
7 State's Exhibit Number Five for identification purposes. Can
8 you tell me what this is?

9 A: It's a map of the 501 area and the south part of the Horry
10 County.

11 Q: So it's a map of Horry County, not in its entirety?

12 A: Right.

13 Q: And can you tell the Court if you recognize this area; is
14 this a fair and accurate representation of Horry County?

15 A: Yes.

16 Q: And this is an area you've worked for eleven years?

17 A: Yes.

18 Q: All right.

19 MR. GROOMS: Your Honor, we'd ask that State's Exhibit
20 Number Five be entered into evidence?

21 THE COURT: Any objection?

22 MR. GROOMS: Your Honor, I will withdraw that request at
23 this time.

24 THE COURT: All right.

25 BY MR. GROOMS:

1 Q: I'm gonna ask you a few more questions. Can you tell me
2 if you, if see any pen marks on that page?

3 A: Yes.

4 Q: And how are they notated?

5 A: By numbers.

6 Q: And can you tell the Court whether or not the items you
7 reviewed a few minutes ago, do those correspond to the pen
8 marks?

9 A: Yes.

10 Q: All right. And just to be clear on State's Exhibit, for
11 example, Six, at the top it says Tower 1; would that
12 correspond to number one on that map?

13 A: Yes.

14 Q: And can you verify that each one on there is in fact where
15 the marking is on that map?

16 A: Yes, Two matches with Two, Three matches with Three, Four
17 matches with Four, Five matches with Five, Six matches with
18 Six, Seven matches with Seven, Eight matches Eight, Nine
19 matches Nine, Ten matches Ten, Eleven matches Eleven, Twelve
20 matches Twelve, Thirteen matches Thirteen, Fourteen matches
21 Fourteen, Fifteen matches Fifteen, and Sixteen matches
22 Sixteen.

23 Q: Thank you, sir.

24 MR. GROOMS: Your Honor, at this point, we'd like to ask
25 to have State's Exhibit Number Five entered into evidence.

1 THE COURT: Any objection?

2 MR. FOX: Not at this point, Your Honor.

3 THE COURT: All right, sir, in evidence without
4 objection.

5 STATE'S EXHIBIT NUMBER FIVE

6 ADMITTED INTO EVIDENCE

7 MR. GROOMS: Thank you, Your Honor.

8 BY MR. GROOMS:

9 Q: So, Officer Conti, just to sum up, you received the call
10 at what time?

11 A: 8:35.

12 Q: And when did you respond?

13 A: I responded as soon as I got it. I arrived on the scene
14 at 8:36 P.M.

15 Q: And was all this documented?

16 A: Yes.

17 Q: And was it turned over to the detectives?

18 A: Yes.

19 Q: Is that the -- and what did you find on the scene again?

20 A: I found a sneaker, one sneaker, a pool of blood, a pool of
21 trail blood and a broken cell phone.

22 Q: And where was this ---

23 A: It was in front of the house, I think it was 470 Ronald
24 McNair Boulevard, right in front of the house off the street.

25 Q: All right. If I showed you what's been marked as State's

1 Exhibit Fourteen, would you be able to tell the Court where
2 you found this blood? I'm sorry.

3 A: Where I found ---

4 THE COURT: Now, you need to speak up since you're away
5 from the microphone.

6 A: Where I found the blood?

7 Q: Yes, sir.

8 A: If you're coming up right here, Ron McNair is about right
9 here where this house is at, right in this area.

10 BY MR. GROOMS:

11 Q: All right. Thank you, sir. One last question, can you
12 tell me is the red pen location consistent with the crime
13 scene you responded to?

14 A: Yes, it is.

15 Q: All right. Thank you. Nothing further. Please answer
16 any questions Mr. Fox might have.

17 THE COURT: Cross examination?

18 MR. FOX: Yes, Your Honor.

19 CROSS EXAMINATION OF MICHAEL CONTI BY MR. FOX:

20 Q: Mr. Conti, if I understand that that next to the last
21 question, the blood that you found was located out from under
22 the overpass?

23 A: Before it.

24 Q: Right. So not under I call it the overpass?

25 A: Yes.

1 Q: Okay. Out in the open road. Now when you responded, did
2 you interview anybody while you were out there?
3 A: A female who lived in one of the houses, yeah.
4 Q: And that was Jeanette Washington, right?
5 A: Right.
6 Q: Do you recall what information you got from Ms.
7 Washington?
8 A: Yeah, she told me that she was inside her ---
9 MR. GROOMS: Objection, Your Honor, hearsay.
10 BY MR. FOX:
11 Q: Did she provide -- you don't have to tell me what she
12 said, did she give you any information that lead you to other
13 witnesses?
14 A: Yes.
15 Q: Okay. Do you recall who those witnesses were?
16 A: Yes.
17 Q: Okay. Could you tell us ---
18 A: Travis. She mentioned the name Travis.
19 Q: Okay. Anybody else?
20 A: No.
21 Q: Did she indicate whether they were any other people out
22 there, not involved in this, but any other people in the
23 neighborhood that may have seen what happened?
24 A: She didn't indicate, but there was some people standing
25 around when I got there.

1 Q: Did you speak to any of the people standing around?

2 A: Yes.

3 Q: Did anybody of the people standing around indicate that
4 they had helped, that they had seen anything?

5 A: No.

6 Q: Did anybody in that crowd indicate ---

7 MR. GROOMS: Objection, Your Honor. I think this is
8 another way of getting around hearsay.

9 THE COURT: I'm gonna allow the question so far.

10 MR. FOX: I'll rephrase it.

11 THE COURT: All right.

12 BY MR. FOX:

13 Q: Based on your conversation with this other crowd of
14 people, do you believe -- let me put it this way --- everybody
15 you talked to out there, who do you believe put Mr. Gutierrez
16 into the car to go to the hospital?

17 A: Some females.

18 Q: Okay. Just females?

19 A: Yeah.

20 Q: Okay. And that's based on your conversations with Ms.
21 Washington?

22 A: Right.

23 Q: In fact she is the mother of, I'm not sure if it's Travis
24 or Rico's girlfriend, but one of the people involved; is that
25 correct?

- 1 A: Right.
- 2 Q: Okay.
- 3 A: Right.
- 4 Q: And you also spoke to these other people around one of the
5 other trailers in the area, right?
- 6 A: Right.
- 7 Q: Okay. And so based on, and in fact, you were prepared
8 because you're required to on your job prepared an incident
9 report of what you did that evening, correct?
- 10 A: Right.
- 11 Q: I responded at this time to this location and talked to
12 these people that kind of thing?
- 13 A: Correct.
- 14 Q: Record keeping?
- 15 A: Right.
- 16 Q: And that's reflected, do you recall is that reflected
17 specifically about who put Mr. Gutierrez into the car; is that
18 reflected in your report?
- 19 A: Yes.
- 20 Q: Do you recall putting in there that females put him into
21 the car?
- 22 A: Yes.
- 23 Q: No mention of an unnamed tall black man?
- 24 A: Not in my report.
- 25 Q: Because you didn't have that information?

1 A: Right.

2 Q: And you were the first one there, correct?

3 A: Right.

4 Q: First responder?

5 A: Right.

6 Q: Within a few moments of the shooting, correct?

7 A: Right.

8 Q: Thank you. No further questions.

9 THE COURT: Any redirect?

10 MR. GROOMS: Just briefly.

11 REDIRECT EXAMINATION OF JOSEPH CONTI BY MR. GROOMS:

12 Q: Officer Conti, in referencing your report these witnesses
13 Mr. Fox spoke about, did any of them claim to be eyewitnesses
14 to the actual shooting?

15 A: No.

16 Q: Thank you, sir. Nothing further.

17 THE COURT: Anything on that question, Mr. Fox?

18 MR. FOX: Nope.

19 THE COURT: All right, sir. Do you wish the witness to
20 be excused?

21 MR. GROOMS: Yes, sir, Your Honor.

22 THE COURT: Any objection?

23 MR. FOX: No, sir.

24 THE COURT: All right, sir. You're released from your
25 subpoena; you may go back to your regular duties, sir.

1 A: Thank you.

2 THE COURT: Thank you very much.

3 MR. GROOMS: Your Honor, would it be all right if we have
4 a brief break?

5 THE COURT: Sure, we'll take a, we'll take a short break
6 at this point. Ladies and gentlemen, about five or ten
7 minutes and then we'll come back in and resume.

8 All right. Everyone else remain seated while the Jury
9 retires, please.

10 (REPORTER'S NOTE: Jury exits courtroom. 10:58 A.M.)

11 THE COURT: All right. We'll take a short break. Thank
12 you very much.

13 MR. GROOMS: Thank you, Your Honor.

14 (RECESS - 10:58 A.M.)

15 *****OFF THE RECORD*****

16 (On the Record - 11:11 A.M.)

17 BY THE COURT:

18 THE COURT: Thank you very much. You may be seated.
19 Thank you very much.

20 All right, Solicitor, you ready to go?

21 MR. GROOMS: Yes, sir, Your Honor.

22 THE COURT: All right. Mr. Fox?

23 MR. FOX: Yes, sir.

24 THE COURT: All right. Ask the Jury to come in please.

25 (REPORTER'S NOTE: Jury enters courtroom. 11:12 A.M.)

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

3 MR. GROOMS: Thank you, Your Honor. The State would call
4 Pete Cestare.

5 THE COURT: All right.

6 MR. GROOMS: He may be in the waiting room.

7 THE COURT: All right, sir. Please come around and meet
8 the Clerk right up here please, sir.

9 PETER CESTARE, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 THE COURT: Please be seated. State your full name and
12 spell your last name for the Court, please.

13 MR. CESTARE: Peter Cestare, C-E-S-T-A-R-E.

14 THE COURT: Go ahead, Solicitor.

15 MR. GROOMS: Thank you, Your Honor.

16 DIRECT EXAMINATION OF PETER CESTARE BY MR. GROOMS:

17 Q: Mr. Cestare, can you please tell the Court what your
18 position is?

19 A: I am the Lieutenant Commanding Officer of the Horry
20 County Police Crime Scene Unit.

21 Q: All right. And how long have you been in that position?

22 A: I've been with Horry County now; I'm starting my twelfth
23 year.

24 Q: Were you in law enforcement before that?

25 A: Yes, sir, I'm retired from the NYPD where I was a Police

1 Commander in the homicide division there.

2 Q: All right. Thank you. And what are your general duties
3 in your current occupation?

4 A: I oversee all of the operations of crime scene. Basically
5 all major crimes within the county, I respond primarily on
6 homicide investigations, oversee the staff while they're
7 working those cases.

8 Q: How many homicides would you say you've responded to?

9 A: In my total career, over a thousand.

10 Q: How about in the last twelve as a crime scene
11 investigator?

12 A: Probably over two hundred.

13 Q: Thank you. Do you have any, do you have to have any type
14 of education or how do you get to be a crime scene officer?

15 A: Yes, sir. I have a, a Bachelor's Degree in Clinical
16 Psychology Profiling. I've also been to numerous schools
17 throughout the country to include the police Academies; the
18 FBI Academy in Washington and Quantico, Virginia; the U.S.
19 Treasury Academy in Glynco, Georgia; the Chief Medical
20 Examiner in New York City on multiple occasions for different
21 disciplines within crime scene investigation, blood spatter,
22 crime scene reconstruction, crime scene processing, evidence
23 and processing.

24 Q: Thank you, sir. And were you working in this capacity
25 here in June of 2012?

1 A: Yes, sir, I was.

2 Q: All right. Were you working on June 8th?

3 A: Yes, sir.

4 Q: All right. And do you recall a, a call coming to you
5 regarding this case?

6 A: Yes, sir, I do.

7 Q: All right. What was the nature of that call?

8 A: I received a call on Friday, June 8th, 2012 at
9 approximately 9:00 P.M. from one of the other sergeants within
10 the Horry County Police Detective Division indicating that
11 there had been a shooting on Ronald McNair Boulevard. I
12 subsequently responded to that location.

13 Q: All right. And it looks like you're looking down. Are
14 those notes from ---

15 A: Yes, sir, these are just my field notes from that date.

16 Q: All right. And would that help you to testify here today?

17 A: Yes, sir.

18 Q: Does that help you recall what happened?

19 A: Yes.

20 MR. GROOMS: Your Honor, we just want to make sure
21 that's all right that he be able to use his notes?

22 THE COURT: Any objection, Mr. Fox?

23 MR. FOX: No, Your Honor.

24 THE COURT: He may do so. You can use those to refresh
25 your memory, sir.

1 A: Thank you.

2 MR. GROOMS: Thank you.

3 BY MR. GROOMS:

4 Q: And just briefly backing up, where did you respond to?

5 A: I responded to Ronald McNair Boulevard in the Myrtle Beach
6 Section of Horry County.

7 Q: All right. And what time did you respond?

8 A: I arrived on-scene at about 9:30 P.M.

9 Q: What did you find when you arrived; was there a crime
10 scene established?

11 A: Yes, sir. Uniformed patrol officers from Horry County had
12 already established a perimeter for a crime scene. They had
13 basically shut down Ronald McNair Boulevard and that section
14 of the street of the roadway with crime scene tape and with
15 police vehicles on each side of it to keep anybody outside of
16 the scene. Because it was an outside scene and due to the
17 time of night, I came into the area and, and used lighting
18 from my vehicle and some additional outside lighting to light
19 the street up so I could begin processing that scene.

20 Q: And how did you know this is the scene?

21 A: There were several items in the roadway and I was going
22 based on information that I had received from the patrol
23 officers on the scene and from one of the detectives, who was
24 at Conway Hospital.

25 Q: All right. And you say shut down the road; is this a busy

1 road?

2 A: No, sir, it generally is not.

3 Q: Is there an exit to this road?

4 A: This road comes off of Dick Scobee Road, the Forestbrook
5 extension and it, and it goes back up under Highway 31.

6 There's a, there's a limited number of residences along this
7 roadway, but it's pretty much a, not a well-traveled road.

8 Q: Okay. So you don't know whether or not the road stops
9 down at the crime scene?

10 A: It will stop at, it'll stop actually at a wood line, yes,
11 sir.

12 Q: Okay. Thank you. I'm gonna show you what's been marked
13 as State's Exhibit Number Fourteen. Can you tell me if this
14 is the area that you're referring to?

15 A: Yes, sir, that's Ronald McNair Boulevard here and Highway
16 31 overpass is up here.

17 Q: All right. Can you tell the Jury where the crime scene
18 was in this case?

19 A: Yes, sir, it was right here in the roadway. It, it
20 extended from about here on up to just in the, in the driveway
21 area of this residence here.

22 Q: All right. And which, which side did you respond to the
23 scene from; in other words, which direction did you arrive
24 from?

25 A: I came in from this direction down here.

1 Q: Okay. Because that's the only direction you can arrive
2 from?

3 A: Yes, sir.

4 Q: All right. Thank you. And what did you find in that
5 location?

6 A: Within the roadway area, I found several different areas
7 of interest that pertained, I believe, to this scene. I found
8 a reddish stain in the roadway that appeared to have the
9 presence of, of blood in it. I also found a cell phone and
10 parts of that same phone scattered about. I found a, a male
11 sneaker. I also found a black, like a small computer bag, a
12 Targis bag.

13 Q: What type of sneaker did you find?

14 A: A Nike sneaker; it was a right shoe, size 10.

15 Q: All right. And I show you what's been identified as
16 State's Exhibit Twenty-five; is this the bag that you found?

17 A: Yes, sir, it is.

18 Q: All right. Please tell the Court what happened when you
19 found these items; what do you do, just pick them up and put
20 them in a barrel; how does that work?

21 A: No, sir, basically what happens is when you come onto any
22 scene and you observe things that you feel may be related to
23 the scene, prior to doing anything with it, we do an overall
24 photograph of the area to show it as we see it by eye. At
25 that point, we then throw evidence markers down to indicate

1 each physical piece of evidence that we want to try and
2 collect. It, it is again photographed with the evidence
3 markers in place to show relativity and location of where each
4 piece is to one another. In addition, each one of those items
5 is measured and calculated off of at least two fixed points so
6 that when we go to do a sketch or drawing of the scene, we can
7 recreate it for courtroom purposes later on to be able to tell
8 or replace where the items were within a particular area.
9 Once those items are completed and once a thorough search of
10 the area is done, those items are, are collected and taken
11 into our custody as evidence in the case.

12 Q: All right. Thank you, sir. I'm gonna show you a few more
13 photos. First of all what's been identified as State's
14 Exhibit Fifteen, State's Exhibit Seventeen, State's Exhibit
15 Eighteen, State's Exhibit Nineteen, Twenty, Twenty-two and
16 Twenty-three; are those the photos that you took at the crime
17 scene?

18 A: Yes, sir, those are all photographs that I took that
19 evening.

20 Q: All right. And can you tell the Court what, what has,
21 what angle this picture was taken from?

22 A: Yes, sir, it would help, if you don't mind, could I step
23 down and show the photo against your overhead map?

24 MR. GROOMS: Your Honor, would that be all right?

25 THE COURT: Any objection, Mr. Fox?

1 MR. FOX: No, Your Honor.

2 THE COURT: You may do so.

3 A: Can y'all see that good enough? looking at the overhead
4 photograph -- this is actually an overhead google map of that
5 street area, which is indicated as State's Exhibit Fourteen.

6 Looking at this here, State's Exhibit Fifteen, this is a
7 photograph taken from here looking back under the highway.

8 See you see the elevated highway that runs over the top of
9 Ronald McNair Boulevard.

10 BY MR. GROOMS:

11 Q: Will you please read the name -- the number ---

12 A: Looking at State's Exhibit Seventeen, this is a photograph
13 standing on Ronald McNair Boulevard looking at this residence
14 here, which is indicated with 481 as the address according to
15 the mailbox.

16 Okay. This here, State's Exhibit Twenty, is again
17 standing on Ronald McNair Boulevard and I'm taking photographs
18 looking in this direction going towards Highway 31 overpass
19 and what you see here is evidence markers to indicate spots in
20 the roadway that I felt were relevant to this case where -- to
21 go ahead and collect evidence from. One second. Each one of
22 these markers will correspond, the number will correspond with
23 an item of evidence that I collected from that roadway.

24 State's Exhibit Nineteen is again standing on Ronald
25 McNair Boulevard taking a look towards the lawn area of this

1 residence here and this is a sneaker that, that I had
2 mentioned a few moments ago that, that black Nike sneaker, and
3 it was actually on the edge of the lawn here at this house is
4 -- the address on it is 470.

5 Q: Were you able to find what would look to be a match to
6 that sneaker?

7 A: Yes, sir, later on an identical sneaker left shoe was
8 recovered in the vehicle.

9 Q: All right.

10 A: Okay. State's Exhibit Eighteen, again is a close-up
11 looking at the lawn area here of what would be 470 Ronald
12 McNair Boulevard and it's of a cell phone that I found at that
13 location in the grassy area there. And again, if I can just
14 reflect back to this photo for one minute, you'll see how this
15 is marked item number three and if you look closely at this
16 photograph, you'll see the item numbers and it's one of the
17 items back here on the grass.

18 Q: Thank you, sir. And you identified this earlier, but
19 State's Exhibit Number Twenty-five, where was this located?

20 A: Okay. This State's Exhibit Twenty-five is what I spoke of
21 earlier, a black Targis bag containing some crinkled up looked
22 like sandwich type bags. This was found in the roadway a
23 little bit further down almost adjacent to where this field
24 area is here. It was approximately two hundred feet from the
25 other items of evidence in this direction of the roadway.

1 Q: So, if you found that in the roadway, were you looking for
2 evidence ---

3 A: Yes, sir.

4 Q: --- walking down the road?

5 A: What -- part of my examination of, of the, of this entire
6 area that night was to go back beyond Highway 31, come back up
7 into this area here, and to come all the way back to the
8 adjoining roadways here. So the entire roadway was covered as
9 well as the, the curtilages for the, for the, for the
10 residences and the wood line here as well.

11 Q: I see. And you've referred to a red stain on the road
12 earlier. Is that where they believe the victim was last
13 located?

14 A: Yes, sir, it is.

15 Q: All right. And was there any indications from the
16 concrete of any type of gouge mark or mark that a bullet might
17 be?

18 A: No, sir. I lit the roadway up pretty well with -- using
19 alternate lighting from my vehicle and I was looking
20 particularly for any strike marks, any, any tire wear
21 impressions, skid marks, anything of that nature, which would
22 help me to determine what may have happened in that area.
23 Part of that included, because of the blood, looking for any
24 projectile strikes that may have hit the roadway and I did not
25 find any of those.

1 Q: Would you have done the same type of, of I guess search
2 further back as far as tire marks go?

3 A: Yes, sir, I did. I went back to about the other side of
4 the roadway here of the elevated roadway and pretty much
5 concentrated my search from here all the way down to about the
6 next connector road here.

7 Q: Okay. So it would be the same for the gouge marks, no
8 gouge marks?

9 A: Yes, sir.

10 Q: All right. Were you able to find any, any casings that
11 belonged to a bullet?

12 A: No, sir, I did not.

13 Q: Okay. Were you able to find any projectiles?

14 A: No, sir, I did not.

15 Q: The evidence that you did find, it's noted in your report
16 that it was scattered. What does that suggest to you?

17 A: Movement. Any time you hear -- you're looking at evidence
18 in a crime scene, if it, if it's gathered in one spot, you
19 can, you can almost come to a conclusion that the event
20 happened at that one location. When I was -- or, or, or
21 scattered about, over, over a larger distance, the larger the
22 distance would indicate movement in that, in the event that
23 occurred leading up to what you find. So, in this case,
24 because of the fact the items were scattered about on the lawn
25 and on the roadway and continuing down the roadway, I had

1 determined that there, that there was some type of movement in
2 the event leading up to my being there.

3 Q: Was Travis Spivey on-scene during your investigation?

4 A: Yes, sir. I did, later on during the investigation, speak
5 with him and as a result of speaking with him, we went and
6 looked at other areas.

7 Q: All right. What did you find in those other areas?

8 A: He lead me to an area along the wood line in the property
9 here where, where two handguns had been thrown into the woods.

10 Q: All right. I show you what's been marked as State's
11 Exhibit Number Twenty-three. Can you identify that as what
12 you're referring to?

13 A: Yes, sir, State's Exhibit Twenty-three is also a
14 photograph that I took indicating evidence items Seven and
15 Eight. Seven is a semi-automatic pistol; Eight is a revolver;
16 both of those items were recovered in the wood line here just
17 in from where the event occurred in the roadway.

18 Q: Thank you. And this has been identified as State's
19 Exhibit Number Twenty-two. Can you tell me if you, excuse me,
20 can you identify State's Twenty-two and is that Twenty-four or
21 Twenty-one; Twenty four?

22 COURT REPORTER: Twenty-four.

23 Q: Twenty-four for the Court, please?

24 A: Yes, sir, State's Exhibit Twenty-two is my evidence Item
25 Number Eight from this photograph and this is simply a close-

1 up of it once it was removed from where it was in the wood
2 line. State's Exhibit Twenty-four is that same evidence Item
3 Number Eight and what I had done was manipulated the, the
4 firearm, open it to see what had occurred inside the firearm
5 as far as looking at it. Looking at this photo, you can see
6 that this particular firearm is capable of firing six
7 projectiles. There are six casings loaded in the weapon so
8 it's fully loaded. Four of them are live; there are no strike
9 marks on the back of them. Two of them have strike marks and
10 the projectile was missing from the casing indicated and they
11 have been fired. And one last thing is this positioning,
12 based -- some revolvers as you pull the trigger will either,
13 their cylinder will either rotate clockwise or
14 counterclockwise. In this case, this weapon, the way you see
15 it, this was the last cartridge that had been fired that was
16 sitting in what we will refer to as top dead center underneath
17 the firing pin. The cartridge to the right of it would've
18 been in the circular motion and clockwise motion that would
19 have been fired prior to this one.

20 Q: Thank you, sir. Your Honor, we would like to have State's
21 Exhibit Twenty-one, Twenty-two and Twenty -- Twenty-four
22 entered into evidence at this time?

23 THE COURT: All right. So any objection to Twenty-one,
24 Twenty-two and Twenty-four?

25 MR. FOX: No, Your Honor.

1 THE COURT: All right. They're in evidence without
2 objection.

3 MR. GROOMS: Your Honor, maybe I misspoke. One of them
4 is Number Twenty-three. I apologize. It's Twenty-three,
5 Twenty-two and Twenty-four; yeah, I said Twenty-four.

6 THE COURT: All right. So, it's Twenty-two, Twenty-three
7 and Twenty-four?

8 MR. GROOMS: Yes, sir, Your Honor.

9 THE COURT: Any objection, Mr. Fox?

10 MR. FOX: No, sir.

11 THE COURT: All right. They're in evidence without
12 objection.

13 STATE'S EXHIBIT NUMBERS TWENTY-THREE, TWENTY-TWO AND TWENTY-

14 FOUR ADMITTED INTO EVIDENCE

15 BY MR. GROOMS:

16 Q: I think that's all of the actual crime scene photographs.

17 A: Okay.

18 Q: Mr. Cestare, just a few more questions. You told me that
19 you, did you ever have a chance to see the victim in this
20 case?

21 A: Yes, sir, I did. Not until -- let me just recall the
22 time. Yes, sir, I did. On June 11th, I attended an autopsy
23 at Grand Strand Regional Medical Center for the victim in this
24 case.

25 Q: All right. Were you able to recover any projectiles at

1 that time?

2 A: No, sir, I did not. The only items that were recovered at
3 the autopsy were clothing and X-rays, a blood swab and gunshot
4 residue kit was conducted on, on his, on his hands.

5 Q: Okay. And what's the procedure on those items? Where are
6 they sent or where are they kept?

7 A: Again, those were collected as evidence and, and brought
8 back to the police department. Determinations are then made
9 from there if anything needs to be sent off for further
10 forensic processing, in which case, we used the State's lab,
11 commonly referred to as SLED. They do all of our firearms,
12 ballistics, DNAs, biological, serology evidence, anything of
13 that nature.

14 Q: All right. So, would it be fairly standard to take these
15 items and then you hold them to determine whether or not they
16 have evidentiary value; is that what you're telling the Court?

17 A: Yes, sir; that's correct.

18 Q: Okay. Were you able to recover any of the victim's
19 clothing in this case?

20 A: Yes, I recovered a red t-shirt that was soaked in a red
21 substance determined to be blood. That t-shirt also had
22 projectile holes in it.

23 Q: Now, could you tell from the holes on the shirt or for
24 lack of a better way to put it, holes in the victim, whether
25 or not this was a close-range shot?

1 A: I examined the shirt and the victim both at autopsy and
2 the shirt again back at the Horry County Police lab. Based on
3 what I could see from the shirt, I could not determine that it
4 was a close, close, what we would refer to as a contact wound,
5 which would indicate that the shot was from some distance
6 greater than probably a few inches from the shirt.

7 Q: Now is this just an eye test or how do you determine this?

8 A: The shirt is looked at by eye and using various wave
9 lengths of light, what we refer to as an ultimate light
10 source.

11 Q: All right. And when I say close range, I probably didn't
12 go into enough detail. Close range versus close range is that
13 a major difference?

14 A: Yes, sir, it is. What I referred to before was contact.
15 When you have a contact wound or, or, or a no contact shot to
16 a, to a piece of fabric or a wound to skin, there is
17 indicators that would tell you that the gun was placed against
18 an article of clothing or material or against a person's skin
19 or against an article of clothing up against someone's skin.
20 There are distinct events that happen to the skin that would
21 tell you that a weapon was placed up against it. In this
22 case, I could not determine that a weapon was placed against
23 the shirt or the skin.

24 Q: Okay. And for those of us who don't know, what indicators
25 are those?

1 A: Generally when you, anytime you fire a projectile, bear in
2 mind you've got a piece of metal traveling at extremely high
3 speed and along with it is particles of metal and, and hot
4 gases that are propelling that projectile out of the weapon.
5 It forms something on the skin that we refer to as stippling.
6 It looks like a pimpling around the wound. If you could
7 imagine a wound in my hand from, from a weapon being placed
8 against it, you would see almost like a burn ring where the
9 muzzle flash from the weapon strikes that skin or that
10 material and you'll also see a stippling. The further the
11 weapon comes away from that article or that skin, the wider
12 the pattern begun, becomes until it gets to a point where
13 those hot gases and metal don't reach the skin, but the
14 projectile does and, at that point, there's no visual
15 appearance of any stippling or, or that burn ring or anything
16 else and that tells you that basically the simplest way to put
17 it is there's three types of, of projectile wounds; contact
18 with that burn ring and the stippling, close contact where you
19 don't have the burn ring, but you've got the stippling and no
20 contact where the weapon is a greater distance away and you
21 don't have any of the effects other than just the hole.
22 Q: Thank you, sir. Now were there any items in the clothing
23 that you recall, that you recovered? Was there any money
24 recovered?
25 A: No, sir, not that I recall. Oh, I'm sorry, yes, hang on

1 one second. Yes, at the hospital, prior to autopsy, the blue
2 jean shorts that he was wearing, I recovered \$30 in U.S.
3 currency from his front left pants pocket, two keys from his
4 front left pants pocket also and purple in color lighter from
5 his front right pants pocket.

6 Q: Thank you, sir. Were you able to locate the vehicle in
7 this case; the vehicle that he's believed to have been shot
8 in?

9 A: What happened subsequent to this was two vehicles were
10 towed in to the police department. One was the vehicle that
11 it was believed the victim was transported to the hospital in.
12 I processed that vehicle as well. And a secondary vehicle and
13 I don't recall the circumstances offhand of the secondary
14 vehicle, but I processed that one as well.

15 Q: Okay. Thank you, Mr. Cestare, excuse me. Please answer
16 any questions Mr. Fox may have.

17 A: Okay.

18 THE COURT: All right, Mr. Fox, cross examination.

19 CROSS EXAMINATION OF PETER CESTARE BY MR. FOX:

20 Q: Officer, you didn't recover -- this was nighttime when you
21 were out there, correct?

22 A: Yes, sir, that's correct.

23 Q: And you had to use lighting from your own vehicle; it was
24 a considerably dim lit area out there, wouldn't you say?

25 A: It is, very dim lit.

1 Q: There's three or four trailers but it's a fairly out of
2 the way kind of place; is that fair to say?

3 A: Yes, sir.

4 Q: Okay. You did not find, at least initially, guns in the
5 road?

6 A: No, sir.

7 Q: Okay. And no bullets or shell casings?

8 A: No, sir, correct.

9 Q: And when the one gun, of course -- and I may be using the
10 wrong terminology in State's Twenty-four, what I would term,
11 the casings are still in the gun; in other words, the bullet
12 ejects but the shell stays in the, in the chamber or in the
13 cylinder, correct?

14 A: Yes, sir. In a revolver the shell casings stay in the
15 gun.

16 Q: So, in that case, you'd be looking for a bullet?

17 A: Correct.

18 Q: If this is a gun you know had been fired and you'd expect
19 to find a bullet, not like an automatic where the casing gets
20 ejected to the side or rear?

21 A: That's correct.

22 Q: Okay. Could you tell -- now you recovered another weapon,
23 right? That's a .38 caliber revolver?

24 A: Yes, sir.

25 Q: In State's Twenty-four. The other one, I believe, was a

1 .40 caliber Iberia; is that right?

2 A: That is correct.

3 Q: Could you tell, did that have any empty rounds or how is
4 that magazine, how are the bullets loaded in that type of gun?

5 A: That weapon had three live rounds in it; one was in the
6 chamber and two were in the magazine.

7 Q: Okay. So, that's got a magazine or clip that fits into
8 the -- does it fit into the handle in this case?

9 A: That's correct.

10 Q: Okay. So, that holds six, seven, eight bullets?

11 A: I don't know what the capacity is ---

12 Q: Sure.

13 A: --- but yes, it would hold more than what was loaded in
14 it.

15 Q: Could you tell, other than it not being fully loaded,
16 whether that gun had been fired that evening?

17 A: No, sir, I could not.

18 Q: Is there any way to determine that; anything that could
19 have been done to determine that?

20 A: Not to my knowledge. I mean, you can -- you can tell
21 generally if a gun has been fired, but the time length and how
22 long it's been, generally not.

23 Q: But did in fact have -- it was not fully loaded, the clip,
24 the magazine was not fully loaded, was it?

25 A: That's correct.

1 Q: Correct. Okay. And those were in fact hollow tip
2 ammunition; is that correct, in that gun?

3 A: I don't recall the ammo without physically seeing them
4 again.

5 Q: Okay. Now, you don't have a way of determining which of
6 these guns -- well, let me step away from that for a second.
7 Now when you attended the autopsy, you, you're able to observe
8 Mr. Gutierrez' body?

9 A: I'm sorry, I couldn't hear you.

10 Q: Were you able to observe the body at the autopsy?

11 A: Yes, that's correct.

12 Q: And you attempted to do -- would you recall whether his
13 body, at the time that you arrived and were examining, whether
14 there were plastic baggies on the hands?

15 A: I do not. If you don't mind, I will refer to my notes and
16 take a look. No, sir, there was no bags on his hand at that
17 time.

18 Q: You took -- what's involved in taking gunshot residue;
19 what do you do?

20 A: Gunshot residue is a State approved test and what it
21 entails is using, in this case, it was two different types of
22 applications. One is called an STM cartridge and what it does
23 is you dab the back of the hand with one cartridge; you dab
24 the palm of the hand with the second cartridge and then what
25 they're doing is picking up any particles that may be on the

1 hand, particles left from firing a weapon. The second part of
2 the test is a, is a liquid portion of the test and it involves
3 swabbing the back of the hand and the palm of the hand with
4 separate swabs; again, looking to collect any particles of
5 gunshot residue or gunshot metals, powders that may have
6 deposited on the hand in firing a weapon. So, yes, I did
7 conduct that test on him at the autopsy.

8 Q: Whose decision is that? Is that your decision to do that
9 or does that come from one of the investigators? How is that
10 determined?

11 A: That was my decision.

12 Q: Okay. And why did you feel that might be important?

13 A: In any investigation where, where you have a shooting,
14 obviously you want to try and determine if that person handled
15 a firearm. And in this case, since the victim is deceased,
16 they can't speak for themselves. So, all you have is a
17 scientific test to try and determine what may or may not have
18 occurred.

19 Q: Were you able to make a determination based on the gunshot
20 residue test as to whether Mr. Gutierrez had fired a weapon
21 before he died?

22 A: I did not make that determination. That test was sent to
23 the State labs, SLED, for processing and to my knowledge, has
24 not been processed as of to date.

25 Q: Would they -- if you're the one that sent it, if there had

1 been an analysis done at SLED, they would generate a report,
2 correct?

3 A: Yes, sir, that's correct..

4 Q: And then that report would come back -- since you're the
5 submitting person, it would come back or at least a copy would
6 come back to you, correct?

7 A: Yes, sir. Any case that we send to SLED all of their full
8 reports from any police investigation that are conducted at
9 SLED come back to me.

10 Q: Okay. And you have not received any in this particular
11 instance?

12 A: That's correct, I have not received it.

13 Q: Were you aware -- now, you say it was June the 11th that
14 you went to the autopsy, were you aware that Detective
15 Frebowitz of Horry County Police had done a gunshot residue
16 test at the hospital the evening of the shooting?

17 A: I later found out that that was done. I was not aware of
18 it when I conducted it at autopsy that morning.

19 Q: Are you aware yourself whether there were ever any results
20 returned from SLED on that test?

21 A: No, sir. One of the gunshot residue kits is in Horry
22 County Police evidence; the other one is at SLED awaiting
23 processing.

24 Q: The one you collected went to SLED; is that correct?

25 A: No, sir, I believe the one that Detective Frebowitz

1 collected went to SLED because that would've been the first
2 one collected.

3 Q: Well, I misunderstood. I thought you indicated that your
4 GSR sample was submitted?

5 A: No, no.

6 Q: You put it at Horry County for safekeeping or storage; is
7 that correct?

8 A: Correct. What I meant was a gunshot residue kit from this
9 victim was sent to SLED for testing.

10 Q: So, the one that actually went was the one that was
11 collected the evening of the shooting at the hospital?

12 A: Yes, sir, that's what I believe.

13 Q: But no report back from that?

14 A: Correct.

15 Q: Okay. And the one that you did two or three days later
16 has not left Horry County?

17 A: Correct, it's still in Horry County evidence.

18 Q: Did you observe on -- do you recall seeing on Mr.
19 Gutierrez' body at the autopsy, any scrapes or bruising?

20 A: I don't know if I'm able to make that determination.
21 That's something -- his condition and all, would have been
22 articulated by the Forensic Pathologist that performed the
23 examination on him.

24 Q: Well, you've attended many autopsies, correct?

25 A: I have.

- 1 Q: You've -- do you have children?
- 2 A: Yes, sir, I do.
- 3 Q: Okay. And you were a child once yourself?
- 4 A: Correct.
- 5 Q: All right. You or your kids ever fall down and scrape
- 6 their knee?
- 7 A: Sure.
- 8 Q: Okay. You recognize what a knee scrape looks like; you
- 9 can distinguish a scrape from a bruise?
- 10 A: I would think so, sure.
- 11 Q: Okay. If you bang into something, you're more likely to
- 12 get a bruise; if you rub against the cement or on the ground,
- 13 you might scrape your skin, right?
- 14 A: Uh-huh (affirmative response).
- 15 Q: Okay. So that's -- and in your experience as a law
- 16 enforcement officer, you probably observed -- probably
- 17 responded back in the day, domestic violence calls and things
- 18 of that nature and made a judgment; this looks like a bruise,
- 19 you know, from a punch or something like that in a domestic
- 20 violence situation or observed a body, the body had a scrape
- 21 like the person fell or was drug or something like that?
- 22 A: Yes, sir; that's correct.
- 23 Q: Okay. And that's what I'm asking. Did you -- were there
- 24 abrasions on Mr. Gutierrez shoulders, one of his shoulders?
- 25 A: And again, I would say I'm quite capable of making those

1 determinations but, in this case, I've got a Forensic
2 Pathologist that's there and I would leave that responsibility
3 to him. He's more qualified than me to determine any types of
4 injuries.

5 Q: Maybe, but what did you see?

6 A: Without seeing full photos of the autopsy, I couldn't be
7 specific with you.

8 DEFENDANT'S EXHIBIT NUMBER THREE

9 MARKED FOR IDENTIFICATION

10 Q: Let me show you what has been marked for identification
11 please. All right. Let me show you what's been marked as
12 Defendant's Exhibit Number Three for identification. Tell me
13 if you recognize that?

14 A: Yes, sir. State's Exhibit or Defendant's Exhibit Three is
15 a photograph that I took as well.

16 MR. GROOMS: Your Honor, I ---

17 MR. FOX: I'm sorry, I didn't.

18 MR. GROOMS: Thanks.

19 BY MR. FOX:

20 Q: Now, on this -- I'm gonna show it to the Solicitor first
21 -- again, what is that?

22 A: That is Defendant's Exhibit Number Three. It is a
23 photograph that I took at autopsy.

24 Q: Okay. And what does it depict?

25 A: It's basically, the photograph is showing a projectile

1 hole in, in the center of the back.

2 Q: Generally, what is it a picture of more broad?

3 A: It's a picture of the back of the victim rolled up on his
4 side with a tape measure along the back of the victim to show
5 -- we use tape measures to show ---

6 THE COURT: All right. You can't show that to the Jury;
7 it's not in evidence yet.

8 A: Okay.

9 Q: Now, more specifically, does it appear to be his shoulder
10 area up here?

11 A: Yes, sir, it does.

12 Q: Okay. And what do those appear to be -- do you see any
13 marks or anything on his shoulder?

14 A: I see marks, but again, I'm not gonna make a determination
15 on it; I'm not a medical doctor.

16 Q: Okay. Now, but no question something's happened to the
17 skin there; is that fair to say?

18 A: Yes, sir, I would believe something happened based on what
19 you showed me.

20 Q: You make no conclusion as to what, but something has
21 happened. Now, did you not also collect DNA samples from a
22 certain witness, Travis Spivey, specifically?

23 A: Yes, sir, I did.

24 Q: And what was, what kind of -- how was the DNA collected
25 from Mr. Spivey?

1 A: It's referred to as a Buccal swab. It's, using sterile
2 swabs, swabbing inside the cheek of someone to collect saliva
3 deposits, which would, would or should be able to generate a
4 DNA profile for that person.

5 Q: And then once you have that profile, you can compare it to
6 something that's got an unknown origin, correct?

7 A: SLED would do that, yes, sir; I just collect it.

8 Q: Okay. So in this case, you collected the swab. Did you
9 collect anything else to submit to SLED along with that swab
10 for them to compare?

11 A: I don't recall without going back through notes.

12 Q: Look at your notes.

13 A: Yes, sir, several items were sent to SLED.

14 Q: Okay. And in fact those were -- what were they related to
15 or what were those items specifically?

16 A: The items that would, that I had sent to SLED following
17 this case was a gunshot residue kit from Travis Spivey, a
18 gunshot residue kit from the victim, Buccal swabs or cheek
19 swabs from Travis Spivey, a blood standard from the victim
20 which was collected during autopsy, swabs from the grip of
21 that .38 caliber revolver that you saw in the photograph,
22 swabs from the bullets from that .38 caliber revolver, swabs
23 from the slide and grip of the Iberia semiautomatic .40
24 caliber handgun and swabs from the magazine of that Iberia .40
25 caliber handgun.

1 Q: Okay. And again, what was the reason for sending, for
2 getting Mr. Spivey's DNA and sending it with swabs from these
3 guns?

4 A: Just basically to establish any involvement in, in the
5 incident.

6 Q: Because at that point, there was a possibility that maybe
7 he fired the fatal shot?

8 A: No, sir, at that point, he's on the scene as a potential
9 witness and it was collected from him.

10 Q: All right. So, you're telling me when you go to the crime
11 scene and there are potential witnesses out there, you get
12 swabs from everybody?

13 A: Depending upon the case, that's correct.

14 Q: Okay. Well, there were other witnesses on the scene here,
15 were they not?

16 A: Not to my knowledge.

17 Q: There wasn't a trailer full of people just up the road
18 right nearby in this neighborhood at the end of that street?

19 A: Well, sure there's people that live in that area, but you
20 have to take the totality of the circumstances and where
21 people indicate that they were during a particular incident to
22 determine whether or not you may want to use them as a
23 potential candidate for, for a, for a swab or any type of
24 evidence.

25 Q: That makes sense. So it's more than being close by that

1 would make you want to check somebody's DNA, more than being a
2 witness?

3 A: Correct.

4 Q: Okay. Maybe things that they themselves said?

5 A: No, sir, it may -- it may be just their relevance to the
6 scene. In this case, Mr. Spivey's relevance to the scene
7 indicated that night that we should take a swab from him.

8 Q: Because he was there, number one?

9 A: And because he lead us to where the weapons were.

10 Q: He admitted having guns?

11 A: Correct.

12 Q: He admitted hiding guns?

13 A: Correct.

14 Q: And he admitted shooting guns or a gun?

15 A: That I don't know.

16 Q: Okay. It's not your job to make the determination whether
17 someone's a suspect, correct?

18 A: Not all the time, no, sir.

19 Q: So, and there are other detectives on scene, Detective
20 Frebowitz was there as kind of lead investigator, correct?

21 A: Yes.

22 Q: Okay. And there were other officers there doing different
23 duties, interviewing people?

24 A: Yes.

25 Q: I'm sure assisting you in certain things. Okay. But

1 regardless, Mr. Spivey's DNA was collected along with swabs
2 from the -- or at least the grips of these handguns, correct?

3 A: That's correct.

4 Q: Now based on your observations at the autopsy, and I think
5 we've already heard from Dr. Proctor, no bullet was recovered
6 at the autopsy from the body of Mr. Gutierrez, correct?

7 A: That's correct. No projectiles were recovered.

8 Q: And based on your view of the body, it would be fair to
9 say this is what we call a pass-through shot?

10 A: Yes, sir, it's referred to as a through and through.

11 Q: Through and through. So in other words, it came in one
12 side of one part and exited out of another, correct?

13 A: Correct.

14 Q: Okay. No, no bullets are recovered on the scene?

15 A: Correct.

16 Q: Based on Mr. Spivey's statements, there should have been
17 at least another two -- we know one bullet hit Mr. Gutierrez;
18 we know Mr. Spivey fired at least, said he fired two rounds
19 and that corresponds to one of those weapons, doesn't it, the
20 .38 that appeared to be two spent rounds in the .38, correct?

21 A: There was two spent rounds from it; I don't know what Mr.
22 Spivey fired.

23 Q: Right. And you don't know when -- no way to tell when
24 that gun was fired. Okay. But regardless, you weren't able
25 to find any bullets on the scene, none from Mr. Spivey. No

1 way to tell what kind of weapon caused the wound to Mr.
2 Gutierrez?

3 A: And again, I'm not a medical doctor. I can't make that
4 determination.

5 Q: And I understand you testified that it was not a contact
6 wound. In other words, the muzzle of the gun was not up
7 against the skin, correct?

8 A: That's correct.

9 Q: And not at close range?

10 A: I can't tell you what the range was, but it was -- it was
11 at least several inches or further away from the body.

12 Q: Several inches or further away. Okay. So you can't tell
13 what the distance was of the shot that hit Mr. Gutierrez?

14 A: No, sir.

15 Q: You don't have any idea from your investigation, what the
16 position of the body was, his position, Mr. Gutierrez was when
17 he was hit; you don't know if he was upright, lying down,
18 falling down, you have no way to determine that, do you?

19 A: No, sir, I do not.

20 Q: And you mentioned movement, that you find the different
21 items you testified to over a certain area and not all close
22 together which indicated movement during the event, correct?

23 A: Yes, sir.

24 Q: Now, were you aware at the time of how it was that Mr.
25 Gutierrez was removed from the scene; was that information you

1 had?

2 A: I was told that he was loaded into a private vehicle and
3 taken to Conway Medical Center.

4 Q: So, that's movement after, after the incident, right,
5 that's movement after the shooting?

6 A: I would think so, yes.

7 Q: And we know from the fact that Mr. Spivey had to lead you
8 off into the woods to find the guns so again, that's movement
9 after the shooting itself, correct?

10 A: Yes.

11 Q: Based on whet -- the information you had and the bag that
12 you found, you don't know how that got up the road, correct?

13 A: I do not, no.

14 Q: So the movement you referred to, you just, in this
15 instance you really can't make any conclusion about what
16 happened. In other words, you don't know what was going on at
17 the moment of the shooting based on the things you found --
18 things were moved and altered after the shooting, correct?

19 A: No, not everything was moved and altered.

20 Q: I didn't say everything, but things were?

21 A: Yes, some were -- the guns were.

22 Q: The body?

23 A: Uh-huh (affirmative response).

24 Q: Which may have explained why you got shoes in different
25 places. Not unreasonable to assume that perhaps if Mr. Spivey

1 removed bullets from obvious view, rather guns from obvious
2 view, maybe he removed bullets from the road? You didn't find
3 any bullets?

4 A: I can't make that determination.

5 Q: Bullets didn't disappear though, right? I mean, bullets
6 are tangible objects, if you've got -- if I fire a bullet, it
7 goes somewhere; it ends up somewhere?

8 A: Correct.

9 Q: It either hits something and sticks or eventually it falls
10 back to the ground because of gravity, correct?

11 A: Correct.

12 Q: It might be hard to find?

13 A: Correct.

14 Q: But it doesn't disappear?

15 A: Correct.

16 Q: Okay. And we know and you know, from your own
17 conversations, Mr. Spivey, at the very least, hid the guns;
18 told you about it later, but he removed them from where they
19 were, got them out of sight and left the scene, correct?

20 A: Yes.

21 Q: Thank you. No further questions.

22 MR. GROOMS: Just briefly, Your Honor.

23 REDIRECT EXAMINATION OF PETER CESTARE BY MR. GROOMS:

24 Q: Mr. Cestare, you testified the victim was wearing blue
25 jeans, shorts?

1 A: Yes, sir.

2 Q: And you also testified that there were no tire marks on
3 the road?

4 A: Correct, I found nothing in the roadway that would
5 indicate skid marks or acceleration marks, anything of that
6 nature.

7 Q: Thank you. And if someone did fall from a vehicle, would
8 it not be possible for them to have injuries at any part on
9 their body?

10 A: Of course, yeah.

11 Q: But if they're traveling at a normal rate of speed or even
12 at a not an heavy, accelerate rate of speed, there may not be
13 those type of injuries?

14 A: Again, every case is different. It would, it would be
15 based on the surface they're hitting and the speed in which
16 they're hitting it at.

17 Q: Okay. And you're obviously not a doctor?

18 A: Correct.

19 Q: Thank you. And when you got there, you testified that you
20 did not know the, what officers had known as far as what
21 Travis had said and what he hadn't said and you collected all
22 this evidence anyway?

23 A: That's correct. In processing the scene, as I mentioned
24 earlier, my scope went well beyond in all directions where the
25 evidence was, where the items were recovered from and I was in

1 the process of searching the wood line when I was told that
2 there were weapons there. In other words, I was coming up on
3 that area.

4 Q: Okay. And as far as this swab of Travis', was that given
5 by consent?

6 A: Yes, sir, it was.

7 Q: So, it would be safe to say that you gathered above and
8 beyond what you knew was relevant at the time?

9 A: Yes, sir; I believe I did.

10 Q: And then the detectives determine whether or not it's
11 relevant down the road in normal cases?

12 A: In any case, you, you would collect what you feel may be
13 related to that case. There are times later on where you
14 determine items that you've collected may or may not have
15 relevance to it, but nevertheless, you collect them in the
16 beginning to try and have the best case you can, you can get.

17 Q: Okay. Court's indulgence, Your Honor. All right. Mr.
18 Cestare, you referenced the vehicle the victim was in
19 regarding the shoe?

20 A: Yes.

21 Q: Where was that vehicle located?

22 A: I processed the vehicle back at the police department
23 following that incident. Hold on one second. Also, on June
24 11th, I processed a 2007 Hyundai Sonata with a South Carolina
25 tag on it. This was the vehicle that I was told the victim

1 was transported from the scene to Conway Hospital in. The
2 vehicle was towed to Horry County Police impound from Conway
3 Hospital. Once officers arrived on the scene there, located
4 the vehicle, there were items within the vehicle that would
5 indicate that it may be involved in this case. The vehicle
6 was then towed to our impound lot for processing.

7 Q: And was this search done by consent?

8 A: Yes, a consent search was done on that vehicle and inside
9 that vehicle there, there was a Nike sneaker, black-and-white
10 in color, size 10, matching the other sneaker from the roadway
11 recovered from there and a wallet with an identification for a
12 Ms. Vereen also recovered from inside that vehicle.

13 Q: All right. And was consent also given by Travis to search
14 his vehicle?

15 A: Yes, it was, a 1984 Oldsmobile Cutlass was also searched,
16 South Carolina tag on that vehicle as well, on the same date,
17 June 11th. This vehicle, I was told, was used by Travis
18 Spivey to go to the hospital after the incident.

19 Q: All right. Thank you. And were these the only two
20 vehicles you were able to locate?

21 A: Yes, sir, those are the only two vehicles that I searched
22 in reference to this case.

23 Q: Thank you, sir. Nothing further.

24 THE COURT: Anything else on those questions, Mr. Fox?

25 MR. FOX: Yeah.

1 RECROSS EXAMINATION OF PETER CESTARE BY MR. FOX:

2 Q: Mr. Cestare, you indicated because you were being thorough
3 in your search of the area that you were at the wood line very
4 close to where the guns were found anyway before anyone came
5 to you and said, hey, there might be guns in there, correct?

6 A: Yes.

7 Q: Do you feel like if no one said anything, you would have
8 discovered the guns anyway?

9 A: I can't make that determination but, based on where they
10 were, I probably would have found them.

11 Q: And with regards to Mr. Spivey voluntarily giving his DNA,
12 he wasn't under arrest at the time; that is true, correct?

13 A: He was not under arrest, correct.

14 Q: But he was -- law enforcement was all around the scene,
15 were they not, you and other officers?

16 A: Yes, sir.

17 Q: Okay. Now, and when was your search of the '84 Olds Mr.
18 Spivey drove; how long after the shooting was that that you
19 searched it?

20 A: The shooting occurred on June 8th. Both of those vehicles
21 were searched on June 11th.

22 Q: And there's no question from the information you had that
23 Mr. Spivey got in that vehicle, left Ronald McNair Boulevard,
24 traveled to somewhere and eventually ended up at Conway
25 Hospital, but no question he used that vehicle to leave the

1 scene?

2 A: No question -- I'm sorry, I did not hear you.

3 Q: No question that Mr. Spivey used the '84 Olds to leave
4 Ronald McNair Boulevard and go by some undetermined route to
5 Conway Medical Center?

6 A: That's what he told us was that he left in that vehicle.

7 Q: Thank you. No further questions.

8 MR. GROOMS: Very briefly, Your Honor.

9 REDIRECT EXAMINATION OF PETER CESTARE BY MR. GROOMS:

10 Q: Was the information regarding the guns relayed to you from
11 another officer or from Travis himself?

12 A: From Travis himself.

13 Q: Okay. Thank you. Nothing further.

14 THE COURT: You wish this witness to be excused?

15 MR. GROOMS: Yes, sir, Your Honor.

16 THE COURT: Any objection?

17 MR. FOX: No, sir.

18 THE COURT: All right, sir. You're released from your
19 subpoena; you may go back to your regular duties. Thank you,
20 sir.

21 A: Thank you, Your Honor.

22 THE COURT: Counsel, can you come talk to me for a
23 second, please?

24 (REPORTER'S NOTE: A bench conference was held off the record
25 in the presence of the Jury but out of hearing of the Jury.)

1 Ginger Pop.

2 THE COURT: All right. Please come around and be sworn,
3 ma'am. Meet the Clerk right over here.

4 GINGER POP, HAVING BEEN SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK: Please be seated. State your full name and spell
7 your last name for the Court, please.

8 MS. POP: Ginger Pop, P-O-P.

9 DIRECT EXAMINATION OF GINGER POP BY MR. DEBUSK:

10 Q: Investigator Pop, who is your employer?

11 A: Fifteenth Judicial Circuit.

12 Q: And what is the nature of your work?

13 A: I'm an investigator here at the Solicitor's Office.

14 Q: What do you do in the course of being an investigator for
15 the Solicitor's Office?

16 A: I do follow-up investigations on cases that are assigned
17 to the Solicitor's Office.

18 Q: Now, how long have you been with the Solicitor's Office?

19 A: Since 2012.

20 Q: And how long have you been with law enforcement?

21 A: Since 1999.

22 Q: Now, did you conduct any investigation concerning the
23 death of Jose Rico Gutierrez?

24 A: Yes, sir.

25 Q: Did you have occasion during that time to investigate --

- 1 to interview the Defendant Shelton Butler?
- 2 A: Yes, sir.
- 3 Q: Where and when did that interview take place?
- 4 A: That interview occurred here at the courthouse last
- 5 Tuesday, I believe that was May the 22nd.
- 6 Q: Who was present?
- 7 A: I was present, Mr. Butler was present, his attorney, Eric
- 8 Fox was present, Senior Solicitor George DeBusk and Assistant
- 9 Solicitor Steven Grooms.
- 10 Q: Okay. Was Mr. Butler allowed to speak to his attorney in
- 11 private before giving the interview?
- 12 A: Yes, sir.
- 13 Q: And was his attorney present throughout the interview?
- 14 A: Yes, sir.
- 15 Q: Did you threaten or coerce Mr. Butler in any way to get
- 16 him to give a statement?
- 17 A: No, sir.
- 18 Q: Did you make any promises or issue any threats to get him
- 19 to give a statement?
- 20 A: No, sir.
- 21 Q: Did you deprive him of anything he needed to get him to
- 22 give a statement?
- 23 A: No, sir.
- 24 Q: Did you inform him of his Miranda rights?
- 25 A: Yes, I did.

- 1 Q: Do you use a form to do Miranda rights?
- 2 A: Yes, sir, I do.
- 3 Q: I show you what's been marked as State's Exhibit Number
- 4 Thirty-eight and ask if you recognize this?
- 5 A: Yes, sir, I recognize it.
- 6 Q: What is it?
- 7 A: It's the Advisement of Rights Form that I read to Mr.
- 8 Butler that he signed and I signed.
- 9 Q: Okay. And you did that in the presence of the attorney?
- 10 A: Yes, sir, I did.
- 11 Q: And you witnessed him signing that?
- 12 A: Yes, sir, I did.
- 13 Q: What rights did you inform him of off that form?
- 14 A: Would you like me to read them?
- 15 Q: Please.
- 16 A: You have the right to remain silent. Anything you say can
- 17 be held against you in a court of law. You have the right to
- 18 talk with an attorney and have him or her present with you
- 19 while you're being questioned. If you cannot afford to hire
- 20 an attorney, one will appointed to represent you before any
- 21 questioning if you desire. If you make a statement or answer
- 22 questions today, you have the right to stop at any time during
- 23 that statement or question.
- 24 Q: Did he indicate his understanding of those rights?
- 25 A: Yes, sir.

1 Q: And then he signed it?

2 A: Yes, sir.

3 MR. DEBUSK: Your Honor, we would move to admit State's
4 Thirty-six?

5 THE COURT: Any objection to ---

6 MR. DEBUSK: Thirty-eight. Thirty-eight.

7 THE COURT: --- Thirty-eight coming into evidence?

8 MR. FOX: No, Your Honor.

9 THE COURT: It's in evidence without objection.

10 STATE'S EXHIBIT NUMBER THIRTY-EIGHT

11 ADMITTED INTO EVIDENCE

12 BY MR. DEBUSK:

13 Q: Was Mr. Butler under the influence of alcohol or drugs
14 when he gave his statement?

15 A: No, sir.

16 Q: Did he appear to be physically uncomfortable in any way?

17 A: No, sir.

18 Q: But did you record his statement?

19 A: I did.

20 Q: I show you what has been marked as State's Exhibit Number
21 Thirty-seven and ask if you recognize that?

22 A: I do.

23 Q: What is it?

24 A: This is a disk that contains my portion of Mr. Butler's
25 interview.

1 Q: Okay. Now is -- in your interview on that particular
2 disk, is it the entirety of the ---

3 A: No, sir.

4 Q: It has been altered in ways that were based on pre-trial
5 rulings; is that correct?

6 A: Correct.

7 MR. DEBUSK: Your Honor, at this time we'd move State's
8 Thirty-seven into evidence?

9 THE COURT: Any objection to State's Thirty-seven?

10 MR. FOX: No, Your Honor.

11 THE COURT: All right. It's in evidence without
12 objection.

13 STATE'S EXHIBIT NUMBER THIRTY-SEVEN

14 ADMITTED INTO EVIDENCE

15 MR. DEBUSK: We'd move to publish it to the Jury, Your
16 Honor.

17 THE COURT: You may do so.

18 (REPORTER'S NOTE: State's Thirty-seven played for Jury. Not
19 transcribed herein.)

20 BY MR. DEBUSK:

21 Q: Please answer any questions the Defense may have.

22 A: Yes, sir.

23 THE COURT: Cross examination.

24 MR. FOX: Thank you, Your Honor.

25 CROSS EXAMINATION OF GINGER POP BY MR. FOX:

1 Q: Investigator, to start with, you received a subpoena from
2 my office in this case, did you not?

3 A: I did.

4 Q: Okay. And being here, you know the witnesses in this case
5 have been sequestered at my request, correct?

6 A: Yes, sir.

7 Q: Okay. Would you explain to the Jury briefly what that
8 means when a witness is sequestered?

9 A: Basically, it just means that you are set to testify in a
10 trial that you are not to be present during the testimony of
11 other witnesses.

12 Q: Okay. You have been here throughout the trial though
13 however, haven't you?

14 A: Yes, sir, I have.

15 Q: Okay. And is that because you've been designated by the
16 Solicitor's Office as their lead investigator in this case?

17 A: Yes, sir.

18 Q: Okay. And that simply means, basically, of course you're
19 an investigator with the Solicitor's Office?

20 A: Yes, sir.

21 Q: Okay. But in this case what they have done is designated
22 you sort of the, to paraphrase, the coordinator for all the
23 information that has been gathered both before that we've
24 heard testimony from other officers as well as your own
25 investigation during the course of this case?

1 A: I'm the investigator on this case for the Solicitor's
2 Office, yes.

3 Q: What -- one of your responsibilities would be to be
4 familiar with all the information and with the statements,
5 physical evidence, whatever it may be that relates to this
6 case?

7 A: Sometimes, I mean, I'm not always familiar with everything
8 in the case, but yes.

9 Q: But you pride yourself, I mean, you'd want to be -- so you
10 would want to be before you came to testify about anything and
11 helping Mr. DeBusk, you'd want to be familiar with the
12 evidence in the case; is that a fair statement?

13 A: For the most part that would be a fair statement, yes,
14 sir.

15 Q: Now, this interview, this interview occurred when?

16 A: Last Tuesday, May 22nd.

17 Q: Okay. So, just last Tuesday and it occurred where?

18 A: Here at the courthouse.

19 Q: Okay. Now, typically -- and present was also myself,
20 correct?

21 A: Yes, sir.

22 Q: Okay. And I was there of course because I was Mr.
23 Butler's attorney?

24 A: Yes, sir.

25 Q: Typically, and interview -- at the point when you

1 interview a witness, a Defendant specifically, not just any
2 witness, a Defendant, that would normally come at the point
3 where they're -- because you cannot force someone to speak to
4 you, correct?

5 A: No, sir.

6 Q: Okay. And you have a different role than law enforcement
7 does at the beginning, right, they go and investigate and
8 perhaps make an arrest or interview witnesses during their
9 investigation. You come in only after an arrest has been
10 made, case has been sent to the Solicitor's Office, correct?

11 A: Yes.

12 Q: Okay. So typically, if you in fact are interviewing a
13 Defendant, it's with a view to that Defendant being perhaps a
14 cooperating witness, correct?

15 A: I -- typically, I don't know the behind the scenes of, you
16 know -- I'm asked to interview people and that's what I do.

17 Q: But Defendants who are denying guilt, who are gonna go to
18 trial, they wouldn't talk -- their lawyers wouldn't let them
19 talk to you; fair to say?

20 A: Well, I've had confessions from guilty people -- I mean,
21 people either admit to what they did or they don't.

22 Q: Were you in -- were you in close consultation with Mr.
23 DeBusk in the weeks leading up to trial in this ---

24 A: Yes, sir.

25 Q: Okay. You were updating him about things you knew and

1 learned?

2 A: If, if, if, if new information arises, yes, sir.

3 Q: Sure. Is it fair to say he was keeping you up to date on
4 any involvement or developments with regards to scheduling of
5 the case, for example, so that you'd be available to testify?

6 A: Yes. Yes, sir.

7 Q: So you knew that Donavon Johnson, Charles Johnson and
8 Shelton Butler were scheduled for trial starting this week?

9 MR. DEBUSK: Objection, Your Honor.

10 THE COURT: Sustained.

11 Do you have a matter of law you'd like to talk to the
12 Court about?

13 MR. FOX: Yeah, I would, Your Honor. Just so I don't ---

14 THE COURT: Ladies and gentlemen of the Jury, go to your
15 jury room please.

16 (REPORTER'S NOTE: Jury exits courtroom. 2:44 P.M. The
17 following takes place outside the presence of the Jury.)

18 BY THE COURT:

19 THE COURT: Ask the investigator the questions that you
20 want to ask her, so you know what it is, what it is you're
21 trying to do?

22 MR. FOX: I just -- I know there's an objection and I'm
23 not sure what the basis was. I'm not sure what I've ---

24 THE COURT: I'm positive it has to be relevance because
25 there's absolutely no relevance to this particular matter.

1 MR. DEBUSK: That's correct, Your Honor.

2 MR. FOX: Well, thank you for answering for the
3 Solicitor. However, Judge ---

4 THE COURT: Excuse me?

5 MR. FOX: Your Honor, I would prefer if the Solicitor
6 could make his arguments and the Court could rule on those
7 arguments, that would be my preference, but I understand the
8 ruling has been -- he's objected and it's been sustained.

9 Now, Your Honor, my point is, this investigator has been
10 allowed to stay in the courtroom. She is the lead
11 investigator. The context of this statement -- that's what
12 I'm getting at -- this statement didn't have to -- it happened
13 in a very specific context, which was just last week and the,
14 and the ---

15 THE COURT: So, I mean, you're trying to get from this
16 witness that last week Mr. Butler was gonna be a cooperating
17 witness and when he changed his mind and decided not to be a
18 cooperating witness ---

19 MR. FOX: The other ---

20 THE COURT: --- and decided he wanted to have a jury
21 trial.

22 MR. FOX: Yes, sir, because ---

23 THE COURT: That's what you want her to say?

24 MR. FOX: And more. It's not just -- it's not just he
25 changed his mind, Judge. They've introduced, over my

1 objection but introduced a letter that portrays him as a
2 kidnapper after the fact when that's -- they took this
3 statement from him three weeks after he wrote that letter;
4 they had it in their possession; they know what a bad man he
5 is and yet, they're still willing to work with him. I
6 understand that happens all the time and I'm sure Ms. Pop will
7 say that we have to deal with bad people sometimes. I want
8 the Jury to know that this didn't come out of the clear blue
9 and what changed was not just Mr. Butler's mind. What changed
10 was the very next day he came for pretrial motions that didn't
11 happen because Your Honor wasn't here, which I didn't know,
12 Mr. Butler was transported and Mr. Donavon Johnson was
13 transported from the jail. And guess where they ended up,
14 Your Honor, in the same damn jail cell back here. And guess
15 what happened? They talked. And guess what? They were there
16 for several hours. And guess what? After that conversation,
17 then Mr. Butler changed his mind. They don't want the Jury to
18 know any of that, but it's relevant to the context of this
19 statement; it didn't happen in a vacuum. They can't hide the
20 ball on that; it is completely relevant for his state of mind.

21 THE COURT: So ---

22 MR. FOX: And his position in the ---

23 THE COURT: Let me just understand this. Okay. He, he's
24 gonna testify against these people for -- however it occurred,
25 he comes to court and he sits there and talks with them and

BY THE COURT

1 the Jury can surmise then conspires with them to not cooperate
2 with the State in furtherance of their previous scheme and
3 plan to rob somebody ---

4 MR. FOX: Or out fear ---

5 THE COURT: And now to keep quiet so that hopefully all
6 three of them don't face any repercussions of this; that's
7 what you want the Jury to know?

8 MR. FOX: No, I also want them to know -- I don't know if
9 they're gonna play the first statement Mr. Butler gave where
10 he talks over and over again, he again repeatedly denies, just
11 like this one, denies prior knowledge and involvement and says
12 over and over again, I don't want to say nothing, I'm afraid.
13 That puts everything in context including why he might change
14 his mind after he's face to face with Donavon Johnson in a
15 jail cell for several hours. Yes, they might conclude that it
16 was in furtherance of their plan, but they might well conclude
17 it's because he was afraid, as he said, for two years.

18 THE COURT: All right. So, how do you expect to have
19 them hear that he's afraid or where do you expect that to come
20 from?

21 MR. FOX: Well, either ---

22 THE COURT: I mean, you've been careful about not
23 introducing in, any evidence in this case so far.

24 MR. FOX: So far, Your Honor.

25 THE COURT: So far. So how is it you expect this to come

BY THE COURT

1 out to the Jury?

2 MR. FOX: Well, either they will play his first statement
3 if they're being complete. If not, when it's all -- if not,
4 then I'll cross examine Ms. Pop about it and if necessary,
5 perhaps we'll have to introduce it but -- and, of course, Mr.
6 Butler still has the option to testify himself. I believe
7 there's several ways to get that in front of the Jury.

8 THE COURT: All right, Solicitor, let me hear from you.

9 MR. DEBUSK: I still argue it's not relevant to the
10 purpose of this case. The question is what his involvement
11 was in the crime of June 8th, 2012, not what his motivation
12 was for making a statement or not making a statement. He made
13 the statement and to have -- it's simply not relevant to the
14 facts in this trial.

15 MR. FOX: His motivation and state of mind, they're not
16 explicit promises but his expectation is always relevant for
17 any -- each one or the things Your Honor will make a finding
18 about, was he promised anything, threatened. So the context
19 that he is making that statement is -- goes to his state of
20 mind and his voluntariness. I'm not suggesting it wasn't
21 voluntary, but it's obviously relevant in that context and it
22 is in the context I'm trying to bring it in.

23 MR. DEBUSK: Well, if he wants to ask Ms. Pop if he was
24 promised anything in exchange for his statement, he can do
25 that.

1 MR. FOX: That goes to what was -- why was he there;
2 because he was cooperating. What were the discussions? We
3 haven't even touched that, Judge. We'll go into the fact that
4 they were willing to let him plead to voluntary manslaughter;
5 we'll go into that -- we intend to go into that, too

6 MR. DEBUSK: Your Honor, that wasn't on, on the books at
7 the time of this ---

8 MR. FOX: Absolutely it was part of our discussion,
9 George, and I'll call you a witness ---

10 THE COURT: Well, I appreciate -- Mr. Fox, all right.
11 I've let y'all have enough say because you're addressing the
12 Court. Gentlemen, you're talking to me; you're not talking to
13 each other. You understand that, both of you?

14 MR. FOX: Yes, sir, Your Honor.

15 THE COURT: Solicitor?

16 MR. DEBUSK: Yes, Your Honor, yes.

17 THE COURT: All right. Now, I'm gonna give you some
18 leeway as to the circumstances of why he came to talk to, but
19 I'm also allow the State to explore that Mr. Butler decided
20 after talking to the other Defendants to not go forward with
21 his agreement and to have a jury trial after he discussed it
22 apparently in full with the Defendants that he wants to not
23 cooperate, which you understand is gonna be a two-edged sword.
24 You can say what you want to say about it, but the State can
25 use it and clearly continuing evidence of a common scheme and

1 plan in this matter. There was one to begin with and there
2 continues to be one now. You understand that?

3 MR. FOX: Yes, sir.

4 THE COURT: And you've talked about that with Mr. Butler
5 and told him about this that that's your defense strategy and
6 you want to do that; you've sat down and talked to him about
7 that?

8 MR. FOX: We've talked of many things, Your Honor, so
9 maybe we should give ourselves a minutes to quiet down and
10 talk with Mr. Butler to make sure.

11 THE COURT: I think it would be best so that he
12 completely understands your strategy and that's not an issue
13 sometime ---

14 MR. FOX: Yes, sir.

15 THE COURT: --- later on down the road. All right.
16 We'll take a short break about five minutes.

17 MR. FOX: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (RECESS - 2:52 P.M.)

20 *****OFF THE RECORD*****

21 (On the Record - 3:19 P.M.)

22 THE COURT: All right, Solicitor, you ready for the
23 Jury?

24 MR. DEBUSK: Yes, Your Honor.

25 THE COURT: And, Mr. Fox, you ready?

1 MR. FOX: Yes, sir.

2 THE COURT: All right. Very good. Ask the Jury to come
3 in, please.

4 (REPORTER'S NOTE: Jury enters courtroom. 3:20 P.M.)

5 THE COURT: All right, Mr. Fox, you may continue, sir.

6 MR. FOX: Yes, sir. Thank you.

7 CONTINUATION OF CROSS EXAMINATION OF GINGER POP BY MR. FOX:

8 Q: Investigator, let's talk about other things you did with
9 this case. Let's get off of Mr. Butler for the moment. As
10 part of your investigation, you interviewed Travis Spivey or
11 were you present with the interview with Travis Spivey in
12 preparation for this case?

13 A: Yes, sir.

14 Q: Okay. Do you recall how many times you met with Mr. --
15 and when I say you, you -- would you have done that alone or
16 with members of the Solicitor's office.

17 A: I met with Mr. Spivey, my recollection is three times and
18 all three times Solicitor George DeBusk was with me.

19 Q: Okay. So you took careful notes of those interviews?

20 A: No, sir.

21 Q: No? You don't -- when you interview witnesses, you don't
22 take careful notes?

23 A: It was, my meetings with Mr. Spivey were in trial
24 preparation just, you know, getting to know him on the first
25 occasion, introducing myself.

1 Q: So, different than say the more formal interview you had
2 with Mr. Butler; is that fair to say?

3 A: Yes.

4 Q: Okay. So, in something like that with Mr. Butler, you --
5 of course, you're recoding it?

6 A: Yes, sir.

7 Q: But you're also gonna take good ---

8 A: Yes.

9 Q: Okay. I understand. Now, you're familiar as an
10 investigator and specifically as an employee of the
11 Solicitor's office, of discovery requirements, correct?

12 A: Yes.

13 Q: And discovery is basically just a lawyer's word for the
14 evidence in the case, more or less, right?

15 A: Yes, sir.

16 Q: And you have testimony as evidence, but in other words,
17 photographs or bags or witness statements, that's the things
18 that would be, that would constitute discovery?

19 A: To the best of my knowledge, yes, sir.

20 Q: Okay. And you and as -- in your own knowledge, you
21 understand that when you gather information that for the most
22 part it could be required by the rules of evidence to come to
23 the, to the Defendant as well; he's entitled to have the
24 evidence that's gonna be presented against him, correct?

25 A: To the best of my knowledge, yes, sir.

1 Q: And that's a long way around of saying. Now, you
2 interviewed Mr. Spivey or were present when he was meeting
3 with the solicitors on three different occasions, correct?

4 A: Yes, sir.

5 Q: Wasn't the first time that he made any mention at all of
6 Mr. Butler saying that this overpass, which is State's
7 Fourteen, this overpass that we've heard about, the end of
8 Ronald McNair Boulevard, the first time Mr. Spivey made any
9 mention that Mr. Butler supposedly said that overpass would be
10 a good place to body somebody -- in other words, I suppose
11 kill somebody, turn them into a body -- was in the last
12 interview, the last session that y'all had with Mr. Spivey?

13 A: Correct.

14 Q: And that was actually just last Sunday, correct?

15 A: Yes, sir.

16 Q: The day before this trial began?

17 A: Yes, sir.

18 Q: Okay. And you've had a chance -- of course you've been
19 present during testimony this week so you have heard, if you
20 hadn't before, the three prior times Mr. Spivey spoke to the
21 police in the case, correct?

22 A: Yes, sir.

23 Q: And he at no time in any of those statements did he
24 mention that phrase, this would be a good place to body
25 somebody?

1 A: I don't recall that he did.

2 Q: Okay. Did you notice -- now, there's no question Mr.

3 Spivey, after the shooting, stayed behind when the mystery man
4 and his girlfriend and Rico's girlfriend put Rico in the car.

5 So, Mr. Gutierrez is placed in the back of the lady's car -- I
6 forget whose -- Ms. Anderson or Ms. Vereen, but her mother's
7 car, correct?

8 A: Yes, sir.

9 Q: Okay. Mr. Spivey, no question he stayed behind based on
10 the witness testimony.

11 MR. DEBUSK: I'm gonna object to this, Your Honor. All
12 of this would call for the testimony of other witness that's
13 already testified ---

14 THE COURT: I appreciate that. For the present time, I'm
15 gonna allow Mr. Fox to ask the question.

16 MR. FOX: Thank you, Your Honor, I'm asking -- she's the
17 lead investigator, if she's unfamiliar with any of this, then
18 she can say so, Your Honor.

19 BY MR. FOX:

20 Q: So, no question that Mr. Spivey removed evidence from the
21 scene or at least moved evidence, being a handgun, handguns,
22 correct?

23 A: Correct.

24 Q: Okay. I'm interested in -- there was a phone, Mr.

25 Gutierrez' phone was in the road, correct? Do you recall?

1 A: I'm not sure exactly where, where it was at that location.

2 Q: It was smashed, right, broken?

3 A: My recollection is it was -- I don't recall if it was
4 smashed or damaged.

5 Q: Okay. I think the testimony was it was in pieces, but --
6 now, with regard to Mr. Butler, the statement that you took,
7 and we've listened to it. He inconsistently says through
8 there I had no plan to participate in the robbery; isn't that
9 correct? That's his position all through that statement?

10 A: Right, he says that they -- he knew they were going to do
11 a robbery or rob ---

12 Q: Well, he says he knew Donavon and Charles said they were
13 gone do something after he was in the car, right, that's how
14 he put it?

15 A: Yes, he says he knew they were going to do a robbery.

16 Q: Right.

17 A: Right.

18 Q: Those two?

19 A: Yes.

20 Q: Okay. And in fact when he first got in, he was told let's
21 go get some weed, let's buy some marijuana?

22 A: Yes.

23 Q: That's his -- okay. And all through that statement, he
24 says over and over I didn't know what they were gone do; I
25 didn't do anything; I didn't negotiate with anybody to get the

1 weed.

2 A: Yeah, he said he wasn't a part of the negotiation.

3 Q: Right. And in talk -- other than talking to Travis about
4 where they went to school, are you aware of any evidence that
5 was collected in this case whether by from a witness or
6 physical evidence that indicates Mr. Butler had a weapon and
7 had a gun with him in that car?

8 A: I'm not aware of any physical evidence. I did ask him in
9 my interview.

10 Q: And he denied having a gun?

11 A: He denied having a gun.

12 Q: And there's no other that you're aware of, in your role as
13 investigator, no other witnesses specifically Travis Spivey,
14 that said he saw a gun in Mr. Butler's hand?

15 A: He did not see -- he did not say that.

16 Q: And there's no other evidence that there was any kind of
17 plan ahead of time to commit a robbery other than what Shelton
18 said Donavon and Charles had mentioned to him? In other
19 words, Shelton's statement that Donavon and Charles said you
20 know, we're gonna rob this guy, when we go down to get the
21 weed, we're gonna jack him; there's no other conversations
22 that you know of, there's no statements from Donavon and
23 Charles about that, are there?

24 A: I don't, I don't believe so from Donavon and Charles about
25 that, no, I don't believe.

1 Q: And there are no witnesses that overheard that

2 conversation before they left?

3 A: You mean other than Mr. Butler saying ---

4 Q: I know what Mr. Butler said.

5 A: Okay.

6 Q: That's right. There is nobody else that says they heard
7 about this, correct?

8 A: Other than Mr. Butler.

9 Q: That's understood, other than Mr. Butler. Okay.

10 A: Correct.

11 Q: So, the answer is no.

12 THE COURT: The witness is allowed to explain her answer.

13 MR. FOX: Yes, sir, Your Honor.

14 THE COURT: She can respond to your questions. She's
15 allowed to explain it also.

16 BY MR. FOX:

17 Q: Now, in fact, in his own description, Mr. Butler says that
18 he doesn't know if Donavon Johnson, actually hit, actually
19 shot Jose Gutierrez, does he?

20 A: He said he did not -- I believe he said he didn't see him
21 get shot; he didn't see the bullet.

22 Q: Right. And no bullets were recovered from Mr. Gutierrez?

23 A: It went through and through.

24 Q: Right. And no, no bullets recovered in the roadway?

25 A: Not to my knowledge, there were any bullets recovered.

1 Q: I mean, Detective Cestare testified earlier that he
2 searched all around and he found, found no bullets, right?
3 And from everybody's testimony, statements, Donavon and
4 Charles Johnson and Mr. Butler with Charles driving and in
5 control left the scene. Whatever happened in that car, once
6 Travis and Rico bailed out and shots were fired, they left,
7 they didn't stop and they didn't come back; is that right?
8 A: According to my interview with Mr. Butler?
9 Q: According to anything you know about this case, did
10 anybody say that silver car came back later?
11 A: Not to my knowledge.
12 Q: Okay. And from, again, from your conversation with Mr.
13 Butler and from Mr. Spivey, and with anybody that you're
14 familiar with in reviewing for this case, everybody agreed
15 that whatever happened in the car, that silver four-door car
16 left Ronald McNair Boulevard, it drove off?
17 A: From my interview with Mr. Butler, yes, they left and they
18 went to Conway.
19 Q: Okay. My question isn't just about that, because again,
20 you have more knowledge about this case than just your
21 interview with Mr. Butler. You've interviewed -- you've
22 talked with Mr. Spivey?
23 A: Uh-huh (affirmative response).
24 Q: You clearly helped prepare -- you're the -- the reason
25 you're here instead of in the little waiting room down the

1 hall is because you're the lead investigator. I assume you've
2 at least looked over, privy to incident reports and things
3 that were filed by the other detectives there on the scene
4 that night to at least be familiar with those things and the
5 autopsy and all that. So what I'm asking is, based on all of
6 your knowledge from whatever source, there's nothing that
7 indicates that anybody grabbed any bullets or anything off the
8 road from that silver car, that that car left and they didn't
9 come back or stop on their way out and grab anything, like say
10 bullets?

11 A: No, sir. I mean, Mr. Butler said in the interview with me
12 that he -- the shell casing was found in the car and thrown
13 out the window in the country.

14 Q: Right. Now, don't know what happened to the bullets that
15 Mr. Spivey admits firing from his gun?

16 A: I do not know.

17 Q: All right. And there's been no testimony about that from
18 any other witness, correct?

19 A: No, sir.

20 Q: And Dr. Proctor -- no one can say which bullet from which
21 gun it was that hit Mr. Gutierrez?

22 A: It's my understanding they don't know what caliber -- it's
23 just a gunshot wound, I mean, they don't know what caliber it
24 is.

25 Q: Correct. So, one of the -- we know two people fired guns?

- 1 A: Yes.
- 2 Q: Donovan Johnson, Travis Spivey?
- 3 A: Per ---
- 4 Q: We've heard nothing -- anything different than that? Has
5 there been any other evidence you've collected, presented,
6 that you're aware of from any source that indicates anyone
7 other than those two fired guns?
- 8 A: Those are the statements that have been provided, yes.
- 9 Q: Okay. And the testimony that has been given?
- 10 A: Correct.
- 11 Q: Now, in fact, law enforcement were investigating the
12 people they took -- initially, they took gunshot residue from
13 Mr. Spivey and from Mr. Gutierrez, matter of fact.
- 14 A: That's the testimony, yes.
- 15 Q: Now, and two guns were found, correct, outside, two guns
16 were located, hidden by Mr. Spivey and located?
- 17 A: Yes.
- 18 Q: Okay. Now, the -- in your position as lead investigator,
19 have you in fact read those incident reports and, and reports
20 that other investigators and other detectives at Horry County
21 PD prepared pursuant to their investigations during this?
- 22 A: I have browsed through.
- 23 Q: In your browsing, are you aware of any information that
24 came to a detective's attention that there was a witness who
25 had information that in fact it was Travis Spivey who shot and

1 killed Mr. Gutierrez?

2 MR. DEBUSK: I'm gonna object, Your Honor, it calls for
3 hearsay.

4 MR. FOX: I asked him ---

5 THE COURT: I'll allow the question.

6 A: To my knowledge there is -- and I don't know the exact
7 wording, so forgive me on that but there, in one of the
8 deputy's -- I don't know if it's an investigator, I think it's
9 a deputy's statement -- there is -- somebody provided some
10 sort of information to what you're saying, yes.

11 BY MR. FOX:

12 Q: And in fact, somebody went and looked -- there was a woman
13 by the name of Jackie Owens that detectives from Horry County
14 Police went to interview, correct?

15 A: I don't recall her name.

16 Q: But there was a woman they went and interviewed?

17 A: I'm not -- I'm not sure if they interviewed her or not. I
18 apologize.

19 Q: Did you -- were you requested to follow-up with either
20 that woman or any information she might have?

21 A: No, sir.

22 Q: Okay. And are you aware whether, from your browsing,
23 whether anyone from Horry County Police Department ever
24 followed up that lead?

25 A: I'm not -- I'm not sure.

1 Q: Okay. Now -- One moment, Your Honor. Now, Ms. Pop ---
2 A: Yes, sir.
3 Q: --- n your interview with Mr. Butler ---
4 A: Yes, sir.
5 Q: --- he was answering your questions?
6 A: Yes, sir.
7 Q: He was trying to respond to everything you asked him.
8 When you asked him to explain further, he did that; would that
9 be fair to say?
10 A: That, that's fair. There were times when he, you know,
11 couldn't remember things. I mean ---
12 Q: Right. Some things he just couldn't remember, but -- and
13 really before he spoke to you, you didn't have any direct
14 information, any confirmation over who fired the gun inside
15 the car, that came from inside the silver car that was there
16 because Travis Spivey said I bailed out. I heard a shot but
17 -- and I assumed it came from Donavon but I don't -- because
18 you heard that statement. Detective Frebowitz said, well, you
19 don't know who had the gun, do you, you assume, but you really
20 don't know and he had to say you're right, I just assumed, so
21 Travis doesn't know. Charles and Donavon aren't talking
22 because they're defendants and they don't have to, they have
23 that right. And unfortunately, Mr. Gutierrez can't tell us so
24 the one person who can that's left out of the five then comes
25 Mr. Butler. And he really was the first one that confirmed

1 for you what was suspected about what happened in the car; is
2 that correct?

3 A: It's my understanding, there are previous interviews with
4 him.

5 Q: That's right.

6 A: Okay.

7 Q: And, in fact, that previous interview was shortly --
8 actually, was at the time -- I guess he had been apprehended
9 -- at the time of his arrest in 2012, correct?

10 A: Correct.

11 Q: And at that time, is it fair to say, he said the same
12 thing, Donavon Johnson was the one who fired his weapon?

13 A: Basically, yes, sir.

14 Q: Okay. And would it be fair to say that he testified --
15 not testify but his statement in that 2012 interview, at least
16 in terms of his own involvement, was consistent. I didn't
17 know ahead of time what was gonna happen. I didn't plan to do
18 anything. He said the same thing in 2012, did he not?

19 A: It's my recollection that they're similar, but they're not
20 -- they're not the same as my interview with -- that there is
21 more information in my interview.

22 Q: It was consistent ---

23 A: Okay.

24 Q: And specifically -- well, what he said, the things that
25 were consistent is he denied knowing or being a part of the

1 plan, that it was Charles Johnson who was on the phone to
2 whoever to whoever, bound to be Rico, we know from the phone
3 records, but that it was Charles Johnson. Those things are
4 consistent in both statements, right?

5 A: I don't believe he discussed -- and just correct me if I'm
6 wrong -- but I don't believe he discussed knowing about a
7 robbery beforehand in that first ---

8 Q: That's right.

9 A: Okay. So I don't, I don't recall there being -- him
10 saying knowing anything about a plan. I think that was more
11 in my interview when he talked about the robbery.

12 Q: Well, he knew -- he said going to get weed; that was his
13 understanding in both, initially ---

14 A: Uh-huh (affirmative response).

15 Q: --- going to get weed?

16 A: Yes, sir.

17 Q: When he first got in the car. There was some phone calls
18 back and forth to get directions ---

19 MR. DEBUSK: Your Honor, I object, he's bringing in
20 hearsay at this time.

21 THE COURT: All right, sir. At this point in time, I'm
22 going to sustain the objection. Thank you very much.

23 BY MR. FOX:

24 Q: Without getting into what was said, the last question
25 about that first interview, that first interview occurred when

1 he was in police custody, correct? Without getting into what
2 he said, he was in police custody?

3 A: I believe so.

4 Q: And have you had the chance to listen to, at some point
5 over all this time ---

6 A: Yes, sir.

7 Q: And he was Mirandized and made aware of his rights and so
8 forth?

9 A: Yes, sir.

10 Q: Okay. During that first interview, Mr. Butler expressed
11 fear of Mr. Johnson ---

12 MR. DEBUSK: Your Honor, I would object to hearsay.

13 THE COURT: Sustained.

14 BY MR. FOX:

15 Q: Do you know -- are you familiar with the people here in
16 the courtroom today, specifically, some of the spectators?

17 A: Am I familiar with them?

18 Q: Yes, do you know them?

19 A: I know the victim's mother and grandmother are here. I'm
20 making an assumption as about the Defendant's family, but I'm
21 not familiar with them.

22 Q: Okay. All right. Are you aware if any members of Donavon
23 Johnson's family are here in the courtroom?

24 A: No.

25 Q: Mr. Butler gave his first -- without going into what was

1 said, gave his first statement in June of 2012 about a week
2 after this shooting, right?

3 A: I actually don't know -- I don't remember the date.

4 Q: Well, it was in fact June of 2012, I don't know the exact
5 date, but -- okay. And the State was aware of his version of
6 things at that time. You have the letter that he tried to
7 mail from May of this year, May the 6th, correct?

8 A: I don't know the exact date but ---

9 Q: Well, I'll show you, that was the letter to Mayo, you know
10 what's up Goody Bra -- I think the testimony doesn't say on
11 here actually, but I believe the testimony was early May,
12 sometime within the last few weeks?

13 A: Okay.

14 Q: Okay. Now, you interviewed along with these two
15 Solicitors and myself, Mr. Butler, on May the 27th of this
16 year?

17 A: Yes, sir.

18 Q: Last week?

19 A: Yes, sir.

20 Q: Okay. And that was generally speaking in anticipation of
21 trial this week; fair to say?

22 A: I was asked to interview him.

23 Q: And -- but you were unaware of what was going on?

24 A: What do you, what do you mean?

25 Q: I mean, were you unaware of this -- now, the goal of that

1 interview was to find out -- they already had one interview,
2 the State, you, Solicitors, was to have Mr. Johnson be a
3 witness in the trial of either Mr. Donavon or Charles Johnson
4 or both; am I right?

5 A: The goal of that interview?

6 Q: That was the reason for it?

7 A: It was trial preparation, sir. I ---

8 Q: Right, anticipating ---

9 A: --- interview him and turn over the disc, that was my ---

10 Q: That's not the usual process for a defendant who's heading
11 -- going to trial? You don't get that right because defense
12 lawyers are gonna stop you, right? That's how it works?

13 A: I don't know who made the arrangements, I mean ---

14 Q: Okay. But you were speaking to a defendant in a murder
15 trial?

16 A: With his attorney present.

17 Q: Sure.

18 A: Yes, sir.

19 Q: Correct. But that's not -- it's not something that's
20 automatic; you don't have a right to do that. It has to be
21 something that the defendant agrees to, correct?

22 A: He, he voluntary spoke to us.

23 Q: And that's -- even if it wasn't written down for you, did
24 you have any doubt what the intention of that, purpose of that
25 interview was for? I mean really -- how long have you been an

1 investigator with the Solicitor's Office?

2 A: Since 2012.

3 Q: Okay. And how long have you been in law enforcement

4 before that?

5 A: Since 1999.

6 Q: Okay. So that's fifteen years?

7 A: Working on it.

8 Q: So, that's a lot of cases?

9 A: Yes, sir.

10 Q: And I'm guessing dozens if not triple digit murder

11 investigations by now; would that be fair?

12 A: No.

13 Q: Okay.

14 A: No.

15 Q: Well, let's make it even easier. You and I personally

16 have dealt with several murder cases in the last year or so?

17 A: Yes, sir.

18 Q: Okay. The times when you've sit down with my clients is,

19 would it be fair to say that has because they are cooperating

20 witnesses and we both know -- I'll just say it -- we named the

21 hillbilly fellows; we all know who that, you and I both know

22 -- if I say the hillbilly family, you know who that is, right?

23 A: They were voluntary statements that were given to me.

24 Q: Okay.

25 A: To me.

- 1 Q: Okay. And in fact that fellow ended up being a
2 cooperating witness, a testifying witness at that trial?
- 3 A: Yes, sir.
- 4 Q: Okay. Now, again, did you really have any doubt what was
5 going on when all of us sat down with Mr. Butler in the
6 courthouse, in one of the unoccupied courtrooms last week?
- 7 A: Did I have any doubt about what was going on? I didn't
8 speculate on it. Truthfully and honestly, I showed up and
9 did the interview and turned the disc over.
- 10 Q: Okay. But the interview clearly was after that letter was
11 written?
- 12 A: Yes, if it was the May 6th, yes.
- 13 Q: You were aware that that letter had been written when you
14 sat down and spoke to Mr. Butler?
- 15 A: I was aware of the letter, yes, sir.
- 16 Q: Okay. And if you were, is it fair to say, more than
17 likely, Mr. DeBusk and Mr. Grooms were aware of that same
18 letter?
- 19 A: Yes.
- 20 Q: Okay. So, would it be fair to say that everyone
21 understood that Mr. Butler as of that moment would be
22 testifying in this trial next week involving one, if not both,
23 of the Johnsons?
- 24 A: I don't know that to be a true statement.
- 25 Q: Okay. Let me ask you this, What on earth would be the

1 reason other than that? Why would a person accused of murder,
2 other than that, other than hoping to have something favorable
3 happen for his giving the statement at this stage, a week, not
4 even a week before a trial, that statement, what on earth
5 would be the reason for any defendant to speak to the people
6 that are trying to put him away for life other than hoping to
7 show my cooperation and I hope something good happens for me?
8 Can you think of any?

9 A: I could.

10 Q: But there's not, is there, there's really not. So, I
11 guess my point and I won't belabor the point, this interview
12 did happen in a bathroom, did it; it didn't just happen --
13 there's a context to that interview last week?

14 A: Again, I was asked to interview him and, and I did and I
15 immediately left the courthouse after that to burn a disc.

16 Q: I understand that it's not your call what happens as a
17 result of that interview, correct?

18 A: Correct.

19 Q: You don't get to make that decision?

20 A: No, sir.

21 Q: But tell me, isn't it generally true that as part of the
22 investigative staff, the solicitors do solicit your opinion,
23 not that you get to make the call, they're the lawyers,
24 they're the ones that have to make the final decision, but
25 they frequently ask your opinion about who should we treat

1 with, who should we deal with, if we've got multiple people,
2 what do you think, who should be the one that we should
3 approach? But they talk to you about those things, don't
4 they?

5 A: At times, yes, sir.

6 Q: Okay. Because you have a lot of familiarity with the
7 different cases; some maybe more than others and different --
8 you work with different solicitors, correct?

9 A: I do.

10 Q: They all got their own approach?

11 A: Yes, they do.

12 Q: Okay. Now, so that's something that happens. Did
13 anything -- to your knowledge, was anything implied if not
14 expressly offered to Mr. Butler if he were to be cooperative?
15 Are you aware of anything like that? Again, you can't make
16 that decision, so were there any, that you're aware of, any
17 implied promises if he cooperates?

18 A: I'm not aware of any implied promises.

19 Q: Did -- would it be in your experience at all unusual for a
20 cooperating witness to end up in a better position than those
21 that don't and are convicted at trial?

22 A: In general?

23 Q: Yeah.

24 A: Most people that are cooperative and, and assist.

25 Q: And what frequently happens -- again each case is

1 different, what frequently happens perhaps their charge gets
2 reduced?

3 A: I don't -- I don't know.

4 Q: You know that happens sometimes. I'm not -- in this case
5 it didn't happen, but you know that that happens. It happened
6 with our hillbilly, Mr. Ray, correct?

7 A: I can say that it, it happened in a previous trial with
8 you and I.

9 Q: And another break you're looking for is a break on
10 sentencing, right?

11 A: The defendant?

12 Q: Yes, a cooperating defendant?

13 A: Yes.

14 Q: Okay. And there's great incentive if you have multiple
15 defendants, sometimes the only way you can break open a case
16 is if one of those defendants is willing to testify against
17 the others; is that fair to say that there's not always other
18 witnesses that witness a crime, there's not always DNA laying
19 around, sometimes you've got to have somebody break ranks?

20 A: In some cases, yes, sir.

21 Q: Or indicate -- not even say break ranks or indicate, look,
22 they called me up with these guys, but look, I've got nothing
23 to do with them. Regardless, sometimes the only people that
24 know about it are the people accused; is that fair to say?

25 A: Would you mind re-asking that, sir?

1 Q: I'll move on. Now -- thank you, Your Honor and thank you,
2 Ms. Pop. That's all I have.

3 THE COURT: Redirect?

4 MR. DEBUSK: Yes, Your Honor. Thank you.

5 REDIRECT EXAMINATION OF GINGER POP BY MR. DEBUSK:

6 Q: Mr. Fox was asking you to speculate a little bit about the
7 reasons someone might give a statement in a case?

8 A: Yes.

9 Q: They might give it to cooperate and make themselves better
10 off; is that correct?

11 A: Yes, sir.

12 Q: Is it also correct that they might to do so to divert
13 blame on other people?

14 A: Yes, sir.

15 Q: Now, in this case, you took a statement from the
16 Defendant, right?

17 A: I did.

18 Q: In that statement, he admitted he knew ahead a time they
19 were gonna rob Rico Gutierrez?

20 A: He did.

21 Q: And he said he went there and he saw Donavon Johnson fire
22 a gun towards Rico Gutierrez; is that correct?

23 A: He did.

24 Q: And he said that they -- after that happened, that they
25 looked in the car and didn't find any bullet?

- 1 A: He did.
- 2 Q: He said that after that the Defendant -- that the victim
3 went out the door and he didn't see anything else; is that
4 correct?
- 5 A: Correct.
- 6 Q: He said that he left that scene with the other two in the
7 car, Charles Johnson and Donavon Johnson; is that correct?
- 8 A: He did leave with them.
- 9 Q: And then did he testify that as soon as he got to a place
10 he could leave, he left the company of those two people?
- 11 A: No, sir.
- 12 Q: What did he testify to?
- 13 A: That they went to a birthday party at his cousin's house.
- 14 Q: And they stayed there and ate; is that correct?
- 15 A: They ate.
- 16 Q: And then they split up after that?
- 17 A: No, sir.
- 18 Q: Where did they go after that?
- 19 A: I believe he said they went to a girl's house named
20 Sanquill or Shanquall.
- 21 Q: How about Travis? Talk a little about Travis and the guns
22 that he removed from the scene. Did he take them and -- how
23 far did he take them? Did he take them miles and miles away
24 and dump them in the river?
- 25 A: No, sir.

- 1 Q: Where were they?
- 2 A: A short distance in front of Rico's girlfriend's mother's
3 trailer at a wood line.
- 4 Q: And then how does the police find them?
- 5 A: He told them where the guns were.
- 6 Q: Okay. And how did the police know he fired a gun?
- 7 A: He told the police.
- 8 Q: Months and days later?
- 9 A: That night.
- 10 Q: In fact, it was within an hour of the shooting, wasn't it?
- 11 A: Correct.
- 12 Q: Okay. So if he was hiding evidence, he's about the worse
13 evidence hider in the world?
- 14 A: He would be.
- 15 Q: Once again, the Defendant's own words stated Donavon
16 Johnson fired the gun towards Rico Gutierrez, right?
- 17 A: Yes, he did.
- 18 Q: And that there was no bullet hole in that car?
- 19 A: Yes, he said that.
- 20 Q: That bullet hole -- that bullet had to be somewhere else?
- 21 A: Correct.
- 22 Q: And it would be consistent with going through Rico
23 Gutierrez and taking his life?
- 24 A: Yes.
- 25 Q: Thank you.

1 THE COURT: Anything on those questions just asked?

2 MR. FOX: Yeah, briefly.

3 RECROSS EXAMINATION OF GINGER POP BY MR. FOX:

4 Q: Now, the Solicitor asked you several specific questions
5 you seemed to be able to answer really well about the scene.
6 Let's talk about Travis a minute. He asked you about those
7 guns. Travis, the fact is he only said, told the police, told
8 Peter Cestare where those guns were as Peter Cestare
9 approached the wood line where they were. He was about to
10 find them, correct?

11 A: It was my understanding that he, he told them within a
12 short period of time.

13 Q: As Peter Cestare testified this morning that as he
14 approached the wood line close in range, then he was told.
15 And the fact is Travis, yes, he admitted firing the weapon,
16 but that was only after Detective Frebowitz said -- asked him
17 and said, you know we're gonna test your palms, you know we're
18 gonna find out if you shot, then he said yes, I did; isn't
19 that right?

20 A: Yes.

21 Q: And again, to be clear, Shelton never said he planned to
22 go rob anybody, did he?

23 A: He said they told him they were going to rob somebody.

24 Q: Thank you. That's all I have.

25 THE COURT: All right, ma'am, you may step down. Thank

1 you very much.

2 All right, Solicitor, your next witness please.

3 MR. DEBUSK: Thank you, Your Honor. The State calls
4 Detective Alex Smith.

5 THE COURT: All right. All right, sir, come all the way
6 around up here and meet the Clerk up here at the corner,
7 please, sir.

8 ALEX SMITH, HAVING BEEN SWORN

9 TESTIFIES AS FOLLOWS:

10 CLERK: Please be seated. State your full name and spell
11 your last name for the Court, please.

12 MR. SMITH: My name is Alex Smith, S-M-I-T-H.

13 THE COURT: Go ahead, Solicitor.

14 MR. DEBUSK: Thank you, Your Honor.

15 DIRECT EXAMINATION OF ALEX SMITH BY MR. DEBUSK:

16 Q: Detective Smith, who's your employer?

17 A: Horry County Police Department.

18 Q: How long you been with them?

19 A: Since 2005.

20 Q: How long have you been in law enforcement?

21 A: Since 2000.

22 Q: Okay. What are your duties right now?

23 A: I am an investigator for the arson and bomb with the Horry
24 County Police Department.

25 Q: How about in June of 2012?

1 A: I was working with the violent crimes division with the
2 Horry County Police Department.

3 Q: Did you participate in the investigation of the killing of
4 Jose Rico Gutierrez?

5 A: Yes, sir, I did.

6 Q: What was your role?

7 A: To assist the lead investigator, Neil Frebowitz, with his
8 investigation.

9 Q: Okay. During the course of your work on this case, were
10 you present during an interview of Shelton Butler?

11 A: Yes, sir, I was.

12 Q: Where and when did that interview take place?

13 A: It occurred at the M.L. Brown Building and I believe it
14 was June 19th, 2012.

15 Q: All right. Was that the day he was arrested?

16 A: No, sir or yes, sir, it was the day he was arrested.

17 Q: Okay.

18 A: Not the date of the incident.

19 Q: That incident was June 8th; is that correct?

20 A: Yes, sir.

21 Q: So, it was some eleven days later that they arrested him?

22 A: Yes, sir.

23 Q: Okay. Who was present during this interview?

24 A: Myself, Detective Frebowitz and Shelton Butler.

25 Q: Now, did you or Detective Frebowitz threaten or coerce

1 Butler in any way to get him to give his statement?

2 A: No, sir, we did not.

3 Q: Did you or Detective Frebowitz make any promises or issue
4 any threats to get him to give his statement?

5 A: No, sir, we did not.

6 Q: Did you or Detective Frebowitz deny him of anything he
7 needed to get him to give his statement?

8 A: No, sir, we did not.

9 Q: Did you or Detective Frebowitz inform him of his Miranda
10 Rights?

11 A: Yes, sir, we did.

12 Q: How did you do so?

13 A: With the Horry County approved Miranda right form.

14 Q: Let me show you what's been marked as State's Exhibit
15 Thirty-nine and ask if you recognize that?

16 A: Yes, sir.

17 Q: What is that?

18 A: That's an Horry County approved victim's Miranda Right
19 form.

20 Q: I know it's a standard rights, but what, what rights did
21 you inform him of?

22 A: That you have the right to remain silent, anything you say
23 can or will be used against you in a court of law. You have
24 the right to talk with a lawyer and have him present with you
25 while you are being questioned.. If you cannot afford to hire

1 a lawyer, one will be appointed to represent you before any
2 questioning if you so desire. If you make a statement or
3 answer any questions, you have the right to stop at any time.
4 And then the individual either marks yes or no to do you
5 understand your rights as I have read them to you. He prints
6 and signs his name.

7 Q: Did Mr. Butler sign such a form?

8 A: Yes, sir, he did.

9 Q: What did he indicate, yes or no?

10 A: He indicated yes.

11 Q: And did he sign underneath?

12 A: Yes, sir, he printed and signed his name.

13 MR. DEBUSK: Your Honor, we would move to admit State's
14 Exhibit Thirty-nine.

15 THE COURT: Any objection?

16 MR. FOX: No, Your Honor.

17 THE COURT: It's in evidence without objection.

18 STATE'S EXHIBIT NUMBER THIRTY-NINE

19 ADMITTED INTO EVIDENCE

20 BY MR. DEBUSK:

21 Q: Was Mr. Butler under the influence of drugs or alcohol
22 when he gave his statement?

23 A: No, sir, he was not.

24 Q: Did he appear to be physically uncomfortable?

25 A: No, sir, he did not.

1 Q: Did you or Detective Frebowitz record that statement?

2 A: Yes, sir, it was recorded.

3 Q: Let me show you what has been marked as State's Exhibit
4 Thirty-seven. It's already in evidence and ask if you
5 recognize this?

6 A: Yes, sir, I do.

7 Q: What -- what is that?

8 A: This is the recorded statement with Shelton Butler that
9 day that was taken.

10 Q: Now, is that a full unaltered statement or have certain
11 parts been taken out?

12 A: Certain parts have been taken out.

13 Q: Okay. So, it is slightly edited?

14 A: Correct.

15 Q: Is it -- is it a fair and accurate representation of ---

16 A: Yes, sir, it is a fair and accurate representation.

17 MR. DEBUSK: Your Honor, I believe this is already in
18 evidence, but we're -- foundation for the second track on this
19 disc?

20 THE COURT: All right. So what number is that?

21 MR. DEBUSK: State's Thirty-seven, Your Honor.

22 THE COURT: So the second track, any objection to that,
23 Mr. Fox?

24 MR. FOX: No, Your Honor.

25 THE COURT: It's into evidence.

1 STATE'S EXHIBIT NUMBER THIRTY-SEVEN

2 ADMITTED INTO EVIDENCE

3 MR. DEBUSK: Your Honor, may I publish it to the Jury?

4 THE COURT: Yes, sir.

5 (REPORTER'S NOTE: State's Exhibit Thirty-seven played in the
6 presence of the Jury. Not transcribed herein.)

7 BY MR. DEBUSK:

8 Q: Detective Smith, did you really have his phone tapped?

9 A: No, sir, we did not.

10 Q: Was that just a tactic?

11 A: Yes, sir, it was.

12 Q: How about sort of minimizing his involvement; is that a
13 tactic, too?

14 A: That is correct.

15 Q: What is the purpose in that?

16 A: To let him think and feel a little bit comfortable with
17 us, that we kind of understand with him, have feelings with
18 him, that kind of thing and then allow him to tell us the
19 truth of what actually happened.

20 Q: Keep him talking, basically?

21 A: Correct.

22 Q: Please answer any question the Defense has.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION OF ALEX SMITH BY MR. FOX:

25 Q: Deceive him, in other words?

- 1 A: Pardon, sir?
- 2 Q: Deceive him, in other words?
- 3 A: Deceive him with what, sir?
- 4 Q: Well, with false promises, false understanding of his
5 position, that kind of thing.
- 6 A: No promises were made, sir.
- 7 Q: No -- well, not directly, but there were certainly some
8 implied, weren't there?
- 9 A: If you think so.
- 10 Q: Well, let's decide. Now, when you and, I know, Detective
11 Frebowitz, you were there during the whole interview, right,
12 you heard everything and you and Detective Frebowitz operate
13 as a team, correct?
- 14 A: Excuse me. Yes, sir.
- 15 Q: Okay. So, when Detective Frebowitz says after he -- after
16 Shelton had basically laid everything out toward the end of
17 that tape when he says, you got the best seat on the bus as
18 long as you're willing to keep telling the story and
19 cooperating, there's a pretty good chance you'll get some
20 help. How is Mr. Butler or any defendant supposed to take
21 that?
- 22 A: As, as the best seat on the bus.
- 23 Q: Keep the telling the story that we like for you to say and
24 keep telling that story?
- 25 A: Keep telling the story, correct.

- 1 Q: Right. Now, that in fact was the same type of
2 conversation that was going on with Mr. Spivey, wasn't it?
3 A: I have no idea. I didn't sit in on that interview, sir.
4 Q: Okay. Have you -- did I understand the Solicitor describe
5 you as a lead investigator in this case?
6 A: I was not the lead investigator.
7 Q: Well, what are you now?
8 A: Frebowitz was.
9 Q: What is your status now, just for this interview?
10 A: Correct, yes, sir.
11 Q: Okay. Detective Frebowitz was the lead investigator?
12 A: That is correct, sir.
13 Q: Okay. So, he'd be the one most familiar with the entire
14 investigation?
15 A: That is correct.
16 Q: Okay. Now, let's see, when y'all talk about getting the
17 best seat on the bus or the first seat, how many best seats on
18 the bus are there in any given case; one, right?
19 A: That's correct.
20 Q: All right. First come, first served?
21 A: That's correct.
22 Q: At some point, y'all have to make a decision who is
23 deserving of that seat?
24 A: That is correct.
25 Q: Okay. And if it's already been promised to one, it can't

1 be offered to another?

2 A: It's not up to us to offer anything to anybody.

3 Q: But you've said it because you want to get people to talk

4 you say, well, maybe we tapped your phones, and look, we

5 understand your position, I mean, you do things ---

6 A: We never told him we tapped his phone; we didn't tell him

7 that we didn't.

8 Q: I understand. Now, Mr. Butler told you how many times he

9 didn't shoot anybody; many, many times, right?

10 A: That's correct.

11 Q: And he said over and over again, I didn't know ahead of

12 time what was gonna happen, correct?

13 A: That's correct.

14 Q: And he told you multiple times, I don't want to name names

15 because I'm scared?

16 A: Correct.

17 Q: And he said that over and over, I'm scared for me and I'm

18 scared for my family?

19 A: That's correct.

20 Q: I ain't gonna try -- I ain't trying to have nobody go

21 after my family, right?

22 A: Correct.

23 Q: Sort of like I say, I don't want nothing to happen to me

24 and my family; I mean that was a recurring theme?

25 A: Correct.

1 Q: All right. And he also said over and over again, I didn't
2 do it, I didn't know it ahead of time?

3 A: Excuse me, what was that last part?

4 Q: He said over and over again, I didn't do it and I didn't
5 know ahead of time what was gonna happen?

6 A: That's correct.

7 Q: All he knew was they went down there to buy some weed?

8 A: Correct.

9 Q: Now, towards the end -- he also said over and over,
10 another recurring theme was I want to talk, but I'm not taking
11 a charge, a murder charge for something I didn't do; he said
12 that on several occasions, correct?

13 A: That is correct.

14 Q: And in addition to getting the best seat on the bus,
15 Detective Frebowitz talked about down the road when the
16 arrests are finally made for Charles and Little D for Donavon
17 Johnson and he'd make sure -- we'll make sure you guys ain't
18 together, right?

19 A: That's correct.

20 Q: Okay. Because that would be bad if they were together?

21 A: That is correct.

22 Q: Just a moment please. Do you know, Detective, whether
23 last week Mr. Butler and Mr. Donavon Johnson in fact ended up
24 in a cell together here in the courthouse?

25 A: Only from what I've been told. I don't have any direct

1 knowledge of that.

2 Q: That's information you have that they ended up not just in
3 the courthouse together, but in the same cell?

4 A: In the same cell, correct.

5 Q: And that was last week?

6 A: Correct.

7 Q: And last question, I've asked you about getting the best
8 seat on the bus -- no, I think I asked that question already.

9 Thank you. No further questions, Your Honor.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION OF ALEX SMITH BY MR. DEBUSK:

12 Q: During the course of his statement, he told you, didn't
13 he, that they picked him up on Ninth Avenue, Conway, correct?

14 A: That's correct.

15 Q: Then went down to the beach -- down beach way to get some
16 weed; is that correct?

17 A: That's correct.

18 Q: And then directly from Ninth Avenue to, to the place they
19 were gonna get the weed, right?

20 A: That's what we understood, yes, sir.

21 Q: Thank you.

22 THE COURT: You may step down.

23 A: Thank you, sir.

24 THE COURT: All right, Solicitor, who's your next
25 witness?

1 MR. DEBUSK: Court's indulgence just a moment.

2 THE COURT: Yes, sir.

3 MR. DEBUSK: Your Honor, I think I've inadvertently
4 forgot to move State's Twenty-five into evidence?

5 THE COURT: All right. Any objection to State's Twenty-
6 five coming into evidence?

7 MR. FOX: No, Your Honor.

8 THE COURT: All right. State's Twenty-five is in
9 evidence.

10 STATE'S EXHIBIT NUMBER TWENTY-FIVE

11 ADMITTED INTO EVIDENCE

12 MR. DEBUSK: At this point, the State rests.

13 THE COURT: All right. Very good. Mr. Fox, there are
14 matters of law that you need to take up with the Court at this
15 time?

16 MR. FOX: There are, Your Honor.

17 THE COURT: All right. Very good.

18 BY THE COURT:

19 THE COURT: All right, ladies and gentlemen, the State
20 has finished its presentation of the case at this point in
21 time. That does not end this matter. There are legal matters
22 the Court must pick up outside your presence and since it is
23 the time that it is, I'm gonna send you home for the evening
24 and we'll take care of that tonight and we'll resume tomorrow
25 morning.

1 Again, I'd like for y'all to be downstairs in the Jury
2 Assembly Room at 9:15. We'll come back -- they'll bring you
3 upstairs and we'll come back in the courtroom at 9:30. The
4 Clerk's office will have something different for you tomorrow
5 morning. So, look forward to that.

6 Don't talk about the case. Don't allow anybody to talk
7 to you about it. Don't go home and talk to anybody about it.
8 Don't do any research, look up anything. You decide this case
9 solely and completely on the facts and evidence you hear in
10 the courtroom and from no other source. When you took your
11 oath, that's what you told me. So with that, I'll see you
12 back tomorrow morning at 9:15. Thank you very much.

13 (REPORTER'S NOTE: Jury exits courtroom. 4:47 P.M. The
14 following takes place outside the presence of the Jury.)

15 THE COURT: All right, Mr. Fox, I'll be glad to hear from
16 you, sir.

17 MOTIONS:

18 MR. FOX: Your Honor, it would be two motions. First, it
19 would be renew the motion regarding Woomer that we made
20 previously yesterday and today regarding requiring that case,
21 specifically requiring the hand of one hand of all type of
22 situation that this certainly is. That the State be required
23 to, first, offer evidence of the plan or the cooperation
24 between the Defendants prior to offering any testimony about
25 the underlying events in this case of murder. And reason for

1 that, Your Honor, the reason we object, is what's happened, I
2 believe, is the Jury has now been tainted: They've been
3 allowed to hear about a very gruesome event, the murder of an
4 individual and that colors everything that follows. So,
5 before they heard word one about any plan, and really the only
6 direct testimony about that came from Mr. Butler, although not
7 about himself being involved in the plan, there is nothing
8 that indicates, other than his mere presence that he was a
9 part of that plan. But that that, allowing the State to not
10 follow the dictates of Woomer, means that they were tainted by
11 the underlying gruesome crime and unable to separate that from
12 later evidence that came in. There's a reason for that
13 requirement in Woomer and I believe it was error not to
14 require the State to proceed in that fashion would not have
15 denied them the ability to present their entire case, it
16 simply would've done in proper order it would not have been
17 prejudicial to Mr. Butler. For that reason, I don't believe
18 there's any remedy other than a mistrial on that count. So we
19 would renew that motion.

20 THE COURT: All right, Solicitor, your response?

21 MR. DEBUSK: Your Honor, with the first witness we
22 presented circumstantial evidence of the pre-existing plan.
23 The Defendants came to the -- by pre-arranged plan, by call --
24 pre-arranged by calls, came together to the scene. They
25 conducted a robbery with the words, you know what time it is,

1 steeling the marijuana from Mr. Gutierrez, by fleeing the
2 scene together, that is substantial circumstantial evidence of
3 a pre-existing plan that was executed at the scene, which
4 satisfies the dictates of Woomer -- of Woomer, Your Honor.
5 And the only way to present it was, since it's all one in the
6 same, is to present the witness and to get the evidence all
7 together, Your Honor.

8 MR. FOX: Just a brief reply to that, Your Honor. Mr.
9 Spivey's response to the question was, at one point was, I
10 think it was just a drug deal gone bad, that was also from Mr.
11 Spivey. He undercut his own circumstantial evidence, if any.
12 I disagree with that characterization. But the testimony was
13 it was just a drug deal gone bad.

14 THE COURT: All right, sir. It was clear from the
15 testimony of Mr. Spivey that the State has presented
16 substantial circumstantial evidence that the Defendant knew of
17 the matter ahead of time. He was present. The car was
18 pointed in the direction out of the road where it's a dead-end
19 road. He said directly to Mr. Spivey that this was a perfect
20 place to body somebody. He also indicated Mr. Spivey
21 testified that when words were spoken, you know what time it
22 is, there was no surprise or reaction in any way by any of the
23 participants in the matter, including the Defendant. He had
24 no reaction to it indicating prior knowledge of what was going
25 to occur. There's no question that at that point in time, the

1 State has, through the first witness, has -- and through the
2 entirety of the testimony of Mr. Spivey, taking it as a whole
3 -- and again, all I'm looking at, it's not my job to judge
4 credibility and believability, whether there is some conflict,
5 there isn't any conflict in this testimony. It's whether or
6 not the evidence exists. Certainly, through his testimony and
7 through the presentation of other witnesses, but it was clear
8 from the beginning that the State has presented a substantial
9 circumstantial evidence case and they started doing so through
10 the very first witness. And, therefore, your motion under
11 Woomer is respectfully denied.

12 MR. FOX: And, Your Honor, the second motion would be a
13 directed verdict. Your Honor, I believe there is no -- even
14 in the light most favorable to the State, I believe there is
15 not evidence of that there was a kind of common plan pre-
16 arranged plan, prior plan. Again, take -- their own testimony
17 of their own witnesses, Mr. Spivey said it was just a drug
18 deal gone bad. Your Honor, the same testimony Mr. Spivey,
19 while there was no reaction, he had also testified that he had
20 already got in the car. So, while that may have been true,
21 and it doesn't have to be -- it's not a debatable point. He
22 testified he was out of the car. So, it's rather irrelevant
23 whether he heard any reaction or not, he was out of the car.
24 Those are his own words. But, Your Honor, we believe they've
25 not proven the elements, really the hand of one the hand of

1 all other than -- the only thing they've proven is that Mr.
2 Shelton Butler was present at the scene. There's no evidence
3 that he participated in a plan to take part in this, that he
4 organized it, discussed it, profited from the proceeds, et
5 cetera. We'd move for a directed verdict on those grounds,
6 Your Honor.

7 THE COURT: Solicitor?

8 MR. DEBUSK: Your Honor, again, there is substantial
9 circumstantial evidence in the record to support a verdict.
10 The Defendant, again, they went there together, they left
11 together, they had a pre-arrangement, he admits that he knew
12 ahead of time that there was a plan. He stayed in the car
13 with him, was the plan, stayed with them together and
14 afterwards went to a party together in fact. Showed no
15 inclination to part from his co-conspirators. That there is
16 substantial circumstantial evidence in this case, Your Honor,
17 to support a verdict of guilty under hand of one hand of all.

18 THE COURT: All right, sir. Regarding directed verdict,
19 the Defense is entitled to a directed verdict when the State
20 fails to produce evidence of the offense charged. As I
21 indicated before, I'm concerned with the existence of the
22 evidence not with its weight. I don't judge credibility and
23 believability. It's not my job; that's the Jury's job to
24 judge credibility and believability. My job at the directed
25 verdict stage is only to see whether or not evidence exists

1 and if there's any direct evidence or substantial
2 circumstantial evidence reasonably tending to prove the guilt
3 of the accused is properly submitted to the Jury. Again, I
4 don't have the beyond a reasonable doubt standard that the
5 Jury has. My standard is if there is any direct evidence or
6 substantial circumstantial evidence reasonably tending to
7 prove the guilt of accused in then the case is properly
8 submitted to the Jury.

9 Now, in this matter, there was the testimony of Mr.
10 Spivey -- and I'm just pointing a couple of things. I'm
11 taking all the evidence that has been presented in this case
12 as a whole in this ruling regarding your directed verdict
13 motion, but I've already highlighted a couple of things from
14 Mr. Spivey -- but in the statement of the Defendant, which was
15 clearly freely and voluntarily made, he knew prior to the time
16 of the occurrence, the shooting of the victim, that there was
17 a plan to rob the people they were making or meeting to go get
18 drugs and he indicated and was clear that they were gonna take
19 it and everybody was talking about it at that point; that's
20 what he says. He saw the two individuals, Rico and Travis,
21 walk up. He indicates I know them. He indicates at that
22 point in time, in his statement, I know they're gonna get
23 robbed. He doesn't do anything. He doesn't leave. He
24 doesn't issue a warning of any kind. He remains silent. He
25 goes -- and the Jury can assume this in any way that they want

1 to -- but by his own statement, he had a towel wrapped around
2 his head. The Jury could take that as indication of
3 concealment, trying to hide his identity from people he
4 already said he knew. He never departed from them after the
5 robbery and the shooting. He never left their presence until
6 the next day. He had a clear and distinct opportunity to
7 separate himself from them. He continued to stay with them
8 until the next day, the next morning. He did nothing to try
9 and alleviate the situation in any way. He didn't try to
10 report it. He didn't try to help anyone. All that is
11 indication of a common plan and scheme taken in concurrence
12 with all the other evidence that has been testified to.
13 Clearly, there is direct evidence and substantial
14 circumstantial evidence reasonably tending to prove him guilty
15 of the crime for which he has been accused under the theory of
16 hand of one hand of all. Understanding part of that mere
17 presence at the scene of the crime is not sufficient in and of
18 itself to prove somebody guilty of a crime but there's clearly
19 more affirmative actions on behalf of the Defendant that the
20 Jury can use, substantial circumstantial evidence that
21 reasonably tends to prove him guilty of the crime of murder.
22 Whether or not there was a common plan and scheme to go kill
23 somebody, there was clearly a common plan and scheme to go rob
24 somebody. If there is a bad consequence from that, they are
25 responsible for it whether it was intended or not. Again,

1 clearly more than sufficient evidence to find him guilty of
2 the crime of murder. But, that's not my standard. All it is
3 is reasonably tending to prove his guilt and there is clearly
4 more than sufficient evidence in that regard. Therefore, I
5 respectfully decline to grant your motion for directed
6 verdict.

7 Further motions from the Defense?

8 MR. FOX: No, Your Honor.

9 BY THE COURT:

10 THE COURT: All right. Do you want to, regarding his
11 right to testify, I'll cover that with you in the morning.
12 You can have an opportunity to discuss the matter tonight or
13 before that, before we get started with Mr. Butler to decide
14 whether or not, you know, he can make his decision as to what
15 he wants to do and then we'll cover that in the morning.

16 If your intention, I will tell you also, if your
17 intention is to present evidence on behalf of the Defense, if
18 that was your intention, I will wait until all that evidence
19 has been presented by the Defense and the only remaining thing
20 that could then be put forth by the Defense is the testimony
21 of the Defendant. I'll be glad to wait until that point in
22 time to talk to him about his constitutional rights so that he
23 has the benefit of all that before he makes a decision, but
24 you can inform me as to what the Defense's intentions are
25 tomorrow morning. If you don't intend to, then obviously

1 we'll need to cover the matter about his constitutional
2 rights. But y'all talk about that and let me know in the
3 morning. All right.

4 MR. FOX: Yes, sir.

5 THE COURT: All right, anything else from the State at
6 this point in time?

7 MR. DEBUSK: Briefly, Your Honor. Detective Alex Smith
8 was under subpoena from State, of course -- we rested at the
9 completion of that. He remains under -- he and Detective
10 Wilson remain under subpoenas from the Defense. Do we need
11 them here in the morning?

12 THE COURT: Yes, sir. Unless the Defense tells us now
13 otherwise.

14 MR. FOX: I do need, Your Honor ---

15 THE COURT: All right, sir. You want them to remain
16 under subpoena?

17 MR. FOX: They have to remain under subpoena. I may be
18 able to release them first thing in the morning.

19 THE COURT: All right. Very good. However it is, but
20 they remain under subpoena and need to be present in the
21 morning.

22 MR. DEBUSK: 9:30, Your Honor.

23 THE COURT: By 9:30, we're gonna -- I want y'all to be
24 here by 9:15.

25 MR. DEBUSK: Yes, sir.

1 MR. FOX: Yes, sir.

2 THE COURT: Especially since I need to know from Mr. Fox
3 what's gonna transpire. So, y'all be here by 9:15 and then
4 we'll go from there, okay?

5 MR. DEBUSK: Thank you, Your Honor.

6 THE COURT: Thank y'all very much.

7 (RECESS - 5:02 P.M.)

8 *****OFF THE RECORD*****

9 (END OF DAY THREE.)

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1 JUNE 5, 2014

2 (On the Record - 9:45 A.M.)

3 (REPORTER'S NOTE: The following takes place outside the
4 presence of the Jury.)

5 THE COURT: You may be seated. Thank you.

6 All right, Mr. Fox?

7 MR. FOX: Yes, sir.

8 THE COURT: Have you spoken to your client; is he ready
9 to speak to the Court about his right to testify in this case?

10 MR. FOX: Yes, he is ready, Your Honor.

11 THE COURT: All right, sir. Do you have an intention to
12 put up other witnesses besides the Defendant Mr. Butler?

13 MR. FOX: No, Your Honor.

14 THE COURT: All right, very good.

15 MR. FOX: No, Your Honor.

16 THE COURT: All right, very good.

17 All right, Mr. Butler, would you please stand up?

18 Madam Clerk, would you place him under oath?

19 CLERK: Please raise your right hand.

20 SHELTON BUTLER, HAVING BEEN SWORN

21 TESTIFIES AS FOLLOWS:

22 THE COURT: All right, Mr. Butler, at this point in time,
23 we're going to talk about certain of your constitutional
24 rights. If at any point in time, you don't understand what
25 I'm talking about, if you have any questions, any doubt in

1 your mind about what's going on, you need to stop me. You
2 know, you can raise your hand; you can tell your attorney; but
3 in some way, you've got to indicate to me that you got a
4 question or you don't understand. Are we in agreement there?

5 MR. BUTLER: Yes, sir.

6 THE COURT: All right, very good. Now we've reached the
7 stage in the trial where you can present your defense if you
8 so choose; that's your, your right to do or not. You have the
9 right given to you to claim the protection under the Fifth
10 Amendment to the Constitution of the United States of America,
11 which states in part that no person shall be compelled in any
12 trial to be a witness against themselves. That means nobody
13 can make you testify. You can testify if you want to, but
14 it's your choice, nobody can make you do it; you understand
15 that?

16 MR. BUTLER: Yes, sir.

17 THE COURT: All right. Now with that, you know,
18 obviously you can talk to, talk to your attorney and talk to
19 anybody about it, but you understand it's your decision to
20 make, correct?

21 MR. BUTLER: Yes, sir.

22 THE COURT: All right. Now, if you decide to testify,
23 it's gonna be under the same rules as you've seen all the
24 other witnesses who have testified in this case. You'll be
25 asked questions or examined by your attorney and then you'll

1 be cross examined or asked questions by the Solicitor as to
2 any matters the Court deems proper or relevant; you understand
3 that?

4 MR. BUTLER: Yes, sir.

5 THE COURT: Now part of that could be any prior
6 convictions. Are there any prior convictions involved that
7 the State would be questioning Mr. Butler about?

8 MR. DEBUSK: Yes, Your Honor, 2010 conviction of common
9 law robbery and failure to stop for a blue light.

10 THE COURT: All right, very good. So, the State would be
11 able to ask you if you had been convicted of those offenses,
12 you know, at that point in time. And if you said yes, then
13 that would be the end of it, they can't explore it, they can't
14 talk about what happened, but they can, for the purposes of
15 credibility and believability, bring out for the Jury that you
16 had those convictions; you understand that?

17 MR. BUTLER: Yes, sir.

18 THE COURT: All right, sir. If you decide to testify as
19 I've indicated, it's got to be your choice freely made,
20 voluntarily made, made with the understanding and knowledge of
21 everything we've talked about here today. If you decided not
22 to testify, I will instruct the Jury that they can't give that
23 fact any consideration whatsoever. I'll tell them they can't
24 use it in their deliberations, they can't even think about it.
25 It's not part of this case and I'll explain that to them. You

1 understand that?

2 MR. BUTLER: Yes, sir.

3 THE COURT: All right, sir. Before I ask you what you
4 want to do, do you want to -- first, do you understand what
5 we've talked about?

6 MR. BUTLER: Yes, sir.

7 THE COURT: All right. Do you want to ask your attorney
8 anything or a family member or anybody else?

9 MR. BUTLER: No, sir.

10 THE COURT: All right, sir. Do you wish to testify in
11 this case?

12 MR. BUTLER: No, sir, I do not.

13 THE COURT: Very good, sir. Thank you very much. You
14 may be seated. Thank you.

15 All right, sir. With that and from what you've explained
16 to me, Mr. Fox, it's my understanding that the Defense would
17 rest; is that correct?

18 MR. FOX: That is correct, Your Honor.

19 THE COURT: All right, sir. So, what I would like to do
20 if we can and certainly you will do that again in front of the
21 Jury, but I would appreciate it if that is the case, and you
22 have decided to, to rest the defense in this matter, that we
23 go forward with any renewal of motions that you might have in
24 this particular matter.

25 MR. FOX: Yes, sir, I would at this time, since we are

1 now at the close of all evidence, renew all previously made
2 motions. I articulate the same reasons that I have
3 previously, the Woomer, specifically the Woomer motion, the
4 issue of the order of the State's presentation of witnesses
5 and evidence as well as a motion for directed verdict, Your
6 Honor.

7 THE COURT: All right, sir. Very good. Again, I don't
8 think it's -- I don't think it's necessary for us to go back
9 over all the things we discussed at the time you made your
10 directed verdict motion and your motion under Woomer at the
11 end of the State's case. What I'll say is the Court reaffirms
12 and reiterates and accepts your arguments that you made before
13 and I reaffirm and reiterate all the Court's decision and the
14 position that I explained at that point in time when we went
15 through the process at the end of the State's case and thereby
16 reaffirming all that, your motions are respectfully denied.

17 All right. Hold on one second.

18 BY THE COURT:

19 THE COURT: All right, gentlemen, probably what it would
20 be best is that I go over with you my intentions as to the
21 charge and then each of you can suggest to the Court any
22 additions to that that you may wish me to consider. So, in
23 doing that ---

24 All right. We'll talk to the Jury about things that we
25 normally talk to them about in every case, credibility and

1 believability of the witnesses, their, their job and their
2 role, usual rule about expert witnesses just because the Court
3 qualifies somebody to give their opinion, doesn't give it any
4 special weight; they consider all the evidence, weigh all the
5 evidence presented in the matter. I'll talk about a prior
6 record of a witness because the very first witness, Mr.
7 Spivey, had a criminal record and the essence that a person
8 who has a past criminal record can testify during a trial. A
9 past record does not affect their ability to testify. It is
10 considered by the Jury, if at all, determining witnesses'
11 credibility and believability remembering that they are the
12 sole judges of the facts and credibility and believability of
13 the witnesses. A prior inconsistent statement, it was my
14 intention, I think, that regarding, again, Mr. Spivey and
15 potentially with Mr. Butler, I think it's important, that the
16 testimony of the witness can be discredited or impeached by
17 showing that they previously made a statement which are
18 inconsistent with their current presentation or testimony.
19 They're also admissible. I'm sorry. It's again the province
20 of the Jury to judge credibility and weight to be given any of
21 the statements and that would be the intention of the Court.
22 Statement of the Defendant, again, the usual things, that
23 while the Court determined that it was proper for the jury to
24 hear it, they ultimately make the decision. It's their
25 decision as to whether or not, one, the Defendant made the

1 statement. If he made the statement, did he make it
2 voluntarily of his own freewill; was it caused by pressure,
3 force, fear, threats, coercion, intimidation, open promise of
4 leniency or any reward. They can look all the factors
5 surrounding the statement. And again, the State has the
6 burden of proving beyond a reasonable doubt that the alleged
7 statement was the voluntary statement of the Defendant.
8 That's with all things, the State has the burden of proof.

9 Direct and circumstantial evidence, I intend to use the
10 essence of the expanded charge that the Supreme Court set
11 forth last year in State v. Logan, including with the normal
12 language that to the extent the State relies on circumstantial
13 evidence, all the circumstances must be consistent with each
14 other and when taken together pointing conclusively to the
15 guilt of the accused beyond a reasonable doubt. The State has
16 the burden of proving the Defendant guilty beyond a reasonable
17 doubt. The burden rests with the State regardless of whether
18 the State relies on direct evidence, circumstantial evidence
19 or some combination of the two.

20 As I explained to Mr. Butler, I will talk to the Jury
21 about the Defendant did not testify and I'll tell them it
22 shall not be discussed in the jury room. They're not to think
23 about it; they're not use it in making their decision; the
24 State has the burden of proving the Defendant guilty beyond a
25 reasonable doubt.

1 Talk about the presumption of innocence as we always do;
2 reasonable doubt, the kind of doubt that would cause an
3 ordinary, reasonable person to hesitate to act. I intend to
4 charge intent to the Jury. Let me just -- it's fairly short.
5 Let me just read it to you so you know exactly what I'm gone
6 say. In order to establish criminal liability, criminal
7 intent is required. Criminal intent must be proven by the
8 State beyond a reasonable doubt. Criminal intent is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation. There is no way to
11 prove intent to a mathematical certainty. There's no way for
12 medical science to look into a person's brain and determine
13 what they have in mind. So the law says that criminal intent
14 can be inferred from the circumstances shown to have existed
15 at the time. This is how you make a determination of whether
16 or not the element requiring intent was present. It's not
17 necessary to establish intent by direct and positive evidence,
18 but intent may be established the same way as any other fact,
19 by taking into consideration the acts of the parties and all
20 the facts and the circumstances of the case.

21 Define murder to them. We'll -- it's my intention, you
22 talked to me about this, to include the lesser included
23 offense of voluntary manslaughter. I intend to charge that
24 law to the Jury.

25 With that, I will also charge, the charge about greater

1 or lesser offense. If you've got a reasonable doubt whether
2 the Defendant is guilty of the greater or lesser offense, it's
3 your duty to resolve that doubt in favor of the Defendant to
4 find him guilty of the lesser offense if that is their view of
5 the evidence and it has been proven to them beyond a
6 reasonable doubt.

7 And then I will charge to them the law of the hand of one
8 hand of all and since it's fairly important in this particular
9 case, I'm just gonna read it to you so that you understand
10 what it is are my intentions. If a crime is committed by two
11 or more people who are acting together in committing a crime,
12 the act of one is the act of all. A person who joins with
13 another to commit an unlawful act is criminally responsible
14 for everything done by the other person, which happens as a
15 probable or natural consequence of the acts done in carrying
16 out the common plan in furtherance. The act of one is the act
17 of all or as is sometimes said, the hand of one is the hand of
18 all.

19 Prior knowledge that a crime is going to be committed
20 without more is not sufficient to make a person guilty of that
21 crime. Mere knowledge that another person is going to commit
22 a crime, even if the Defendant is present when the crime is
23 committed is not sufficient to convict the Defendant as a
24 principal. Guilt as a principal is shown by actual or
25 constructive presence at the scene as a result of prior

1 arrangement. The State must prove beyond a reasonable doubt
2 by competent evidence the theory of hand of one hand of all.
3 A principal in a crime is one who either actually commits the
4 crime or who is present, aiding, abetting, or assisting in the
5 committing of the crime. When a person does an act in the
6 presence of and with the assistance of another, the act is
7 done by both. Where two or more acting with a common plan or
8 intent are present at the commission of a crime, it does not
9 matter who actually committed the crime. All are guilty. The
10 hand of one is the hand of all.

11 Present at the commission of a crime means to be
12 sufficiently near to aid, abet, or assist in the commission of
13 the crime. However, mere presence at the scene of a crime is
14 not sufficient to convict one as a principal on the theory of
15 aiding and abetting or hand of one, hand of all.

16 Intent is a necessary element for there must have been a
17 common design or intent to commit the crime and the crime must
18 have been committed with the person aiding and abetting by
19 some overt act. Intent means intending the result which
20 actually occurs, not accidentally or involuntarily. Intent
21 may be shown by acts and conduct of the Defendant and the
22 other circumstances from which you can naturally and
23 reasonably infer intent. And again, the State must prove all
24 of this to you beyond a reasonable doubt.

25 So that's in essence, gentlemen, the intention of the

1 Court regarding the charge. Would the State like to talk
2 about any of the things I have said to change them or to add
3 to it in any way?

4 MR. DEBUSK: Well, Your Honor, I would argue that the
5 manslaughter charge might be given in this case because the
6 only evidence on the record of any acts by the victim before
7 he was shot was of resisting an armed robbery and such an act
8 is been held repeatedly South Carolina Courts to not be
9 sufficient legal provocation. So, I was trying to get the
10 case but it hasn't arrived yet, but there are multiple cases
11 out there that say resisting a crime is not sufficient legal
12 provocation and that's all there is on the record here, Your
13 Honor.

14 THE COURT: Mr. Fox?

15 MR. FOX: Well, I believe there's some testimony or
16 argument that they tussled over the gun, there was some
17 dispute over who was gonna rip off who, based on different
18 versions of, of statements. There certainly was testimony,
19 but it was the gentleman in the car who robbed Mr. Gutierrez,
20 but it was some at different times, questions and statements
21 and it may have been the other way around. It was the
22 rustling and tussle over the gun and I would argue that at
23 least some evidence in the record to support that, Your Honor.

24 THE COURT: All right, sir.

25 MR. DEBUSK: Your Honor, I would say that the question

1 was asked by interrogators are not evidence in this case, only
2 the actual testimony of the

3 THE COURT: Well, the statements ---

4 MR. DEBUSK: The statements by the people answering the
5 questions, yes, sir, but when the interrogators ask a
6 question, that doesn't, that's not evidence of someone with
7 knowledge.

8 THE COURT: I'm sorry, I don't understand what you're
9 saying to me.

10 MR. DEBUSK: It would be officers interrogating, for
11 instance, Mr. Butler. Mr. Butler's answers are evidence of --
12 that can support a manslaughter charge, but the questions
13 asked by the, the interrogator are not and the only time that
14 -- the only question out there about who was ripping off of
15 who was a question, it wasn't an answer.

16 THE COURT: I'm, I'm not sure that I, number one, agree
17 with what you're saying to me or truly, again, understand what
18 you're trying to say to me. You're trying to say that if
19 somebody asks a question in a recorded statement, okay, they
20 ask a recorded statement and they put forth whatever scenario
21 and the Defendant agrees with that scenario, you're saying to
22 me that's not evidence the Jury can consider?

23 MR. DEBUSK: If the Defendant agrees with it, yes. The
24 answer, if the answer is in agreement, yes.

25 THE COURT: All right.

1 MR. DEBUSK: But if the question is answered and not
2 agreed with, that isn't.

3 THE COURT: All right. Well, I appreciate that, but I
4 don't think that's what's happened here. So all right. I
5 appreciate that. I appreciate that. I understand the State's
6 position, but respectfully stand by my previous -- I'm gonna
7 charge voluntary manslaughter to the Jury.

8 All right. Anything else the State would like me to add
9 to the charge?

10 MR. GROOMS: Your Honor, can we excuse the detectives
11 that are waiting outside?

12 THE COURT: Well, I was gonna get to that in a second,
13 but is there any problem with that, Mr. Fox?

14 MR. FOX: No, not at this point.

15 THE COURT: All right, sir. Very good. You can tell
16 them they are excused.

17 MR. GROOMS: Thank you.

18 THE COURT: All right, Solicitor, is there anything else
19 you want to add to or delete from the charge?

20 MR. DEBUSK: Yes, Your Honor, I would ask that -- I'm
21 waiting for the case, but a charge that efforts to resist a
22 robbery would not be sufficient legal provocation for
23 manslaughter.

24 THE COURT: All right. Well, I'm gonna need to read that
25 case.

1 MR. DEBUSK: Yes, Your Honor. We'll have it up here
2 hopefully for you very soon.

3 THE COURT: All right, very good.
4 Anything else?

5 MR. DEBUSK: No, Your Honor.

6 THE COURT: All right. Mr. Fox?

7 MR. FOX: No, Your Honor, you actually touched everything
8 I was gonna request. So, I have no further additions or
9 exceptions to what intend to charge.

10 THE COURT: All right. Obviously, Solicitor, whenever
11 you bring that case up, just deliver it to me. Deliver a copy
12 to Mr. Fox.

13 With that, is the State ready for the Jury to come in?

14 MR. DEBUSK: Proceed with closing, yes, sir.

15 THE COURT: Yes, sir. Mr. Fox?

16 MR. DEBUSK: May I have just a few minutes to get the
17 exhibits I need to go, Your Honor.

18 THE COURT: Sure. Okay. We'll just take a short break
19 for about five minute and then -- obviously, Mr. Fox, did not
20 present any evidence so the State will open in full and the
21 Defense will close. All right.

22 Thank you.

23 (RECESS - 10:08 A.M.)

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

25 (On the Record - 10:18 A.M.)

1 THE COURT: All right, the State ready to proceed?

2 MR. DEBUSK: Yes, Your Honor.

3 THE COURT: All right. And Mr. Fox?

4 MR. FOX: Yes.

5 THE COURT: Very good. Yes, sir. Please ask the Jury to
6 come on in. Thank you. Go ahead and bring the Jury on in.
7 Thanks.

8 (REPORTER'S NOTE: Jury enters courtroom. 10:19 A.M.)

9 THE COURT: All right, Mr. Fox, the position of the
10 Defense?

11 MR. FOX: The Defense rests, Your Honor.

12 THE COURT: All right. Very good.

13 All right, ladies and gentlemen, the State and the
14 Defense have rested. That means that there will be no more
15 presentation of any evidence in this case. You have received
16 all of the evidence that you will receive in this case to make
17 your decision upon whether or not the State can prove the
18 Defendant guilty of the crimes charged beyond a reasonable
19 doubt. What's gonna happen now is we will go into the closing
20 arguments. The State will give you their closing argument and
21 then the Defense will give you their closing argument. After
22 which the Court will give you the law which you will apply to
23 the facts and evidence you find to be true in this particular
24 case and after that, of course, we will submit the case to you
25 for your deliberations and your unanimous decision in this

1 particular matter. Please remember what I told you at the
2 very beginning. The closing arguments are not evidence. They
3 cannot be considered by you as evidence in the case, but
4 they're important. They are each side's summation to you of
5 what they believe the evidence as shown to you during the
6 course of the trial emphasizing the points they want you to
7 consider when you are deliberating and making your decision
8 remembering, of course, that you are the judges of the facts
9 of this particular case.

10 Solicitor?

11 MR. DEBUSK: Thank you, Your Honor. May it please the
12 Court?

13 THE COURT: Yes, sir.

14 CLOSING BY MR. DEBUSK:

15 MR. DEBUSK: Ladies and gentlemen, this case is about the
16 killing of Jose Rico Gutierrez on June 8th, 2012 in a pre-
17 planned armed robbery to get marijuana executed by the
18 Defendant, Shelton Butler, along with Donavon Johnson and
19 Defendant Charles Johnson. Those five things I just told you
20 come directly from his own statements. I'm here today to tell
21 you how the evidence in this case proves him guilty.

22 My name is George DeBusk, I am an Assistant Solicitor
23 here in Horry County along with Mr. Grooms. We work with the
24 Solicitor's Office and that means we represent the State. The
25 Judge tells you the State has the burden; that's our burden.

1 We take it very seriously because that burden is one of the
2 most important protections we have in our legal system.
3 Because it's important, I want you to know exactly what it is
4 we have to prove.

5 This morning I need to talk with you a little bit about
6 the law. At the end of the case the Judge will instruct you
7 on the law and his word rules, the Judge instructs you on the
8 law. If I have to give you framework so you can understand
9 the evidence in this case.

10 Could I get the screen, please?

11 Now the crime in this case is murder. Murder has fairly
12 simply elements. Could we get the light down a little bit so
13 we can see the screen?

14 THE COURT: If we do then it'll be completely black.
15 This is the best we can do without every single light going
16 off. I've had them work on it and this is the best we can do
17 right now.

18 MR. DEBUSK: Well, hopefully you can read that. Murder
19 is the unlawful killing of a person with malice aforethought
20 either expressed or implied. Unlawful killing in this case,
21 is the killing during the course of an armed robbery and the
22 person killed was Rico Gutierrez with malice aforethought.
23 Expressed or implied means you can either say it; you can say
24 I'm gonna kill you and that's expressed malice or you can
25 imply it from the actions that they carry out, malice

1 aforethought either expressed or implied. And in this case
2 it's murder under a theory of hand of one hand of all. Well,
3 let me just step back and talk about malice. Malice
4 aforethought doesn't mean it's premeditated. Malice
5 aforethought means they had ill will or evil intent at the
6 time the blow was struck. They could've come up at that
7 instance and they just have to have ill will towards the
8 victim at the time that blow was struck. In this case it goes
9 under the hand of one hand of all. Hand of one hand of all is
10 also called accomplice liability. What it means is a crime is
11 committed by two or more persons acting in concert or acting
12 together in the commission of a crime and the act of one is
13 the act of all. It's the example that was given in this
14 trial. Like a bank robbery, one person goes in, presents a
15 gun and the teller gives him the money. The guy that stands
16 outside and all he does is act as a lookout even though he
17 doesn't got inside, he's just a guilty. He's the accomplice;
18 he's just as guilty. Hand of one is the hand of all.
19 Everything that guy that goes in the bank done, does, is
20 charged to the guy standing out front. Hand of one is the
21 hand of all. And there has to be a crime planned, there has
22 to be illegal intent to commit some crime, but they don't have
23 to know what the crime is gonna be; it doesn't have to be the
24 crime planned necessarily. In the case of murder, if someone
25 is killed in the course of a robbery, it is sufficient that

1 they have a common design to commit a robbery to hold the
2 person accountable for murder committed during that robbery.
3 Going back to the bank example, if the person goes in the bank
4 and shoots the teller during the course of the robbery, the
5 person outside is guilty of murder as well because murder is a
6 probable or natural consequence of the act. So, when you
7 commit an armed robbery and someone getting killed is a
8 probable or natural act as a result of the robbery. And so
9 the person who commits the robbery and all his accomplices are
10 just as guilty of the murder. Killing is a probable and
11 natural consequence of armed robbery.

12 In this case, there another crime you'll be asked to
13 consider and that's voluntary manslaughter. Voluntary
14 manslaughter is distinguished from murder because there is
15 sufficient legal provocation. In this case, the, the only
16 possible provocation was that while he was being robbed, Rico
17 Gutierrez resisted. He tried to fight being robbed. Our
18 issue is that's not enough, that an effort to resist a crime
19 cannot reduce murder to manslaughter. If you kill someone in
20 the course of an armed robbery that's a natural awful
21 consequence of that armed robbery is murder. Everybody that
22 helped you is just as guilty of murder. Hand of one is the
23 hand of all.

24 Then, I argue to you that Shelton Butler, in his own
25 statements he gave you the elements of murder. He told you

1 the shot and killed Rico Gutierrez came from that car he was
2 in. In that very first statement, he said the shot was fired
3 from the right front seat, front passenger seat, it hit Rico
4 as he was going out the door. He was certain of that. When
5 they asked him, Well, did Travis shoot him?, he said, Oh, no,
6 Travis was his friend. Travis didn't start shooting until
7 after Rico had been shot already. That shot hit him as he was
8 going out the door. He was certain of it. By the time the
9 second statement came around, he changed his tune a little
10 bit. He said, Well, I don't know whether the shot hit him or
11 not. But, he also said when he looked at the door and there
12 weren't any bullet holes in the car, that bullet had to go
13 somewhere and that somewhere was directly through Rico
14 Gutierrez, killing him.

15 Now, not only did Shelton say that Rico was killed by a
16 shot from the car, but it's also that's what the evidence in
17 this case says. It couldn't have been Travis because Travis
18 was standing up shooting at the car. If by some bazaar freak
19 he missed his aim and shot Rico while he was on the ground,
20 that bullet would have went right through Rico and made a mark
21 on the pavement. And you heard Detective Cestare tell you
22 that he looked carefully all around that pavement and there
23 were no marks where bullets had hit the pavement. The bullet
24 that killed Rico Gutierrez came from inside that car. It came
25 from the three coconspirators committing armed robbery in that

1 car. We also know that Donavon Johnson and Charles Johnson
2 believed that that bullet had killed Rico Gutierrez. How do
3 you know that, because Shelton Butler's own statements how
4 they acted after this happened. Charles Johnson was freaking
5 out in the car. He wouldn't be freaking out, he wouldn't be
6 upset if he didn't think, if he didn't know with some degree
7 of certainty that that bullet fired from this car had hit Rico
8 Gutierrez. You know that Donavon Johnson knew it too. Why?
9 Because the first thing he does is dispose of the evidence.
10 He looks through that car, finds that shell casing and throws
11 it out somewhere out in the country. Again, everybody in that
12 car was certain that the fatal shot had been fired from inside
13 that car.

14 Now, when the police finally caught up to Shelton and got
15 him out of the woods, he gave a statement on June 19th and
16 oddly enough the statement given June 19th backed up pretty
17 much everything Travis Spivey had said a week or so before.
18 He corroborated that there were calls to get directions to
19 Rico and from the driver. He corroborated the car drove by
20 Rico and Travis as they were walking down the driveway; they
21 saw them there in the driveway and drove right on by, turned
22 around when they got past the bridge and came back and parked
23 under a bridge, he corroborated that. He corroborated that
24 Travis recognized Shelton, they talked about school. He
25 corroborated that the weed, the marijuana was passed up front

1 in the car. He corroborated that when Travis was getting out
2 the car, the car, the car took off leaving Travis behind and
3 putting Rico by himself in the car with the three
4 coconspirators. Corroborated the phrase, you know what time
5 it is. Corroborated that Little D was the front passenger
6 with the gun just as Travis had said. Corroborated that no
7 money had passed hands. Corroborated that Rico was shot while
8 he was exiting the car. Corroborated that there was three
9 shots altogether. In fact, you've heard from three witnesses
10 that had some knowledge of what happened at the scene, Travis
11 Spivey, Shelton Butler and Sherita Anderson. And there is a
12 lot of agreement among those three individuals about the
13 calls, about the directions, that Rico and Travis walked down
14 the driveway together, the car drove past them. About the
15 three shots, you remember Sherita Anderson, she said there was
16 a two to five second delay between the shots; the first shot,
17 then the two shots together. It was like bang, one thousand
18 one, one thousand without, bang, bang, all the way up to the
19 bang, one thousand one, one thousand two, one thousand three,
20 one thousand four, one thousand five, bang, bang; separation
21 between the shots.

22 And of course, Shelton Butler, his two, two statements,
23 he gave a lot more detail about the robbery, things that
24 Travis was not in a position to know. Things like how much
25 money Charles Johnson had. He said he had more than the \$1200

1 it would have taken to buy that weed. He knew there was four
2 and a half ounces of the weed. He knew about the conversation
3 in the car before the killing when everyone was talking about
4 the robbery. He knew about the conversation in the car after
5 when Charles Johnson was freaking out about the fact they had
6 just shot Rico Gutierrez.

7 And, folks, you have to look at all the evidence, not
8 just the statements. Take all the evidence of all the
9 witnesses and put it together then you've got a pretty good
10 idea of what happened on the night of June 8th of 2012. And
11 you start with those phone records we talked about. Now you
12 have testimony on the record of, or you have the phone records
13 on the record of the phone number Number 6. You have Charles
14 Johnson's booking card, where he said, what's my phone number,
15 Number 2. You even have the second statement by Shelton
16 Butler, what was Charles' phone number, Number 6. Looking at
17 the records, you can see that number called -- called the
18 number Number 5 seven times that night. You heard Sherita
19 Anderson say I knew Rico's number well and that was Rico's
20 number; she identified it on the phone records. That number
21 highlighted in pick, that's a call to Rico. So he called Rico
22 or Rico called him seven times; six calls from Charles Johnson
23 to Rico; one call to Rico to Charles Johnson. The first call
24 at 6:13; the last call at 8:24. And then you heard the
25 expert, Mr. Mital Shah. He went through the tower locations.

1 He showed you the maps, each tower, where they're located.
2 Then he went through that record. He said that this list
3 gives you the towers that Charles Johnsons' phone hit off of
4 in the order they hit, with the times. He drove through by
5 tower and you go one, two, three, four, five, six; you can
6 trace his call and trace where he went. You have State's
7 Exhibit Number Five that has all those tower numbers on there,
8 1 through 16, and you can take this list and go through them
9 one and by one and see where the car went. So let's take a
10 look at that. There, you have the red spot that is the crime
11 scene off of Ronald McNair Boulevard and then you have all the
12 tower locations. You have the first tower, the first call at
13 6:13 from Charles Johnson to Rico Gutierrez hit off of tower
14 Number 1 up here in Conway at 6:13 P.M. Next phone call hit
15 off Tower Number 2. Next phone call, Tower Number 3 and so on
16 4, 5, 6, and at 6, at 6:58 P.M. there's another phone call
17 from Charles Johnson to Rico Gutierrez. There he was down
18 near Myrtle Beach. Then they went and at 7:01 was the one
19 call Rico Gutierrez made to Charles Johnson. Interesting
20 thing about that tower, you can't see it very well, but that's
21 Tower Number 7. If you look at the tower photos, Tower Number
22 7 is at 17th Avenue South in Myrtle Beach. That's where they
23 testified Rico Gutierrez' phone was. So, he was down around
24 Rico Gutierrez' home calling him and getting called back. But
25 you also heard Sherita say that Rico wasn't there; he had

1 spent the day with her. He was at her house over on Ronald
2 McNair. So what did they do next; they were on the beach a
3 little bit; they've already talked to Rico three times, four
4 times. What do they do; they go all the way back to Conway
5 one tower after another from Myrtle Beach all the way up 501
6 to Conway. That's a long trip when you're down there. And on
7 that way, they went right by Ronald McNair Boulevard where
8 Rico was. And they went back to Conway a little bit and went
9 up to North Conway back to central Conway, and then at 8:13 --
10 8:05 P.M. they called Rico again from Tower 13. Now, what's
11 interesting about Tower 13? Tower 13, you can look at the
12 photograph, Tower 13, Tower ID Number 5189 is on 9th Avenue in
13 Conway. In his very first statement given to police just a
14 week or so after this happened, two weeks after this happened,
15 Shelton Butler said they picked me up on 9th Avenue, then we
16 went down beach way to get the drugs. Okay. Then they know
17 they got a call on 9th Avenue, a call to Rico, and now that
18 we've been to 9th Avenue, we're on our way and what do they
19 do? Back to central Conway, down 501, straight towards Rico.
20 Now, why are you gonna go thirty miles out of your way, go
21 from the beach all the way back to Conway only to turn around
22 and come all the way back down to the spot where they're gonna
23 meet Rico? Only one reason, they're picking somebody up.
24 Just as Shelton Butler said, they picked him up on 9th Avenue
25 in Conway. And he told you in that first statement, when they

1 picked him up, they told him we're going to get some weed.
2 What he didn't tell in that first statement and what he didn't
3 tell law enforcement that at the time they were picking him on
4 9th Avenue, there was a plan to go rob Rico Gutierrez. He
5 admitted that in his second statement. In his second
6 statement he said, yeah, when they first told me we were going
7 to get some weed, they told me, well, to tell you the truth,
8 what we're going to do go down and rob somebody. Now, in the
9 second statement, he said that happened at the Microtel, at
10 the light, the last light on 501 before you get to the
11 controlled access part, to where the Tanger Outlets are.
12 He said I didn't find out until I was there. I would argue to
13 you that he found out when he was picked up on 9th Avenue.
14 That first statement he said I didn't know what they were
15 gonna do, I would've gotten out of that car and not taken any
16 part in it. In the second statement he said, yeah, I knew
17 what they were gonna do but it was too late for me to get out
18 the car. I would argue to you, he knew when he left Conway.
19 But even taking him at his word that he found out when they
20 were at that light at the Microtel, that light near Tanger
21 Outlets. He still had plenty of opportunities to get out of
22 that car. In order to get to Ronald McNair, you've got to get
23 off at Forestbrook, there are businesses right there at the
24 exit at Forestbrook. He could've gotten out right there at
25 the scene -- at the Tanger Outlets and hang out at the Tanger

1 Outlets. I'd argue he had another chance and he actually
2 admitted this one. That was Ron Jon's. If you follow the --
3 it goes down here and at 8:21 they hit off a Tower Number 9.
4 If you look at the map, Tower Number 9 is near Broadway at the
5 Beach. It's past the cover zone of the tower that covers the
6 crime scene. They missed their exit. In order to get back to
7 Forestbrook, you have to turn around. The place to turn
8 around was George Bishop Parkway. And what's there? Ron
9 Jon's. And he said it was near Ron Jon's, where we went to
10 pull this rip off. He knew Ron Jon's -- he could've got out
11 of the car right there if he didn't want to be an active
12 participant. He could've gotten out of the car right there
13 and said I'm gonna hang out here at Ron Jon's; y'all go do
14 what you have to do and pick me up when you're done. I don't
15 want to have anything to do with this. He didn't do that. He
16 stayed in that car, an active and willing participant in the
17 crime.

18 Then comes that last phone call at 8:24. You heard the,
19 the officer, Officer Conti, said the call for service came at
20 about 8:35. And by that point, they already said they had put
21 Rico in the car and taken him to the hospital. This call
22 started at 8:24 and it hit off Tower Number 4. You can look
23 at that map, Tower Number 4 is right here at the Myrtle Beach
24 Speedway and this is the covered zone of Map Number 4 of Tower
25 Number 4. There's the crime scene. You can see it's labeled

1 on the map. When you get the map in your hand, you can see it
2 says Ronald McNair Boulevard; that's where it happened.
3 What's interesting about that is if you look at the phone
4 records at that last call at 8:24, it hits off Tower 5008 --
5 that's it right there, what I call Tower Number 4; ATT&T calls
6 it Tower Number 5008 -- if you're looking at the phone
7 records, it starts out hitting on Sector 5008-2 and in the
8 middle of the call it switches to 5008-1. As Mr. Mital said
9 that means that they crossed the border between the blue
10 region and the brownish region there. From 5008-2 to 5008-1
11 and that line runs directly through Ronald McNair Boulevard.
12 So, that places Charles Johnson and his phone at the crime
13 scene in the car where Shelton Butler admittedly was. So,
14 there again, you can trace the movements from Conway at the
15 first call, goes down to the beach, down to the area where
16 Rico Gutierrez's home was, passes right back where Rico
17 actually was at his girlfriend's house or girlfriend's
18 mother's house, goes all the way to Conway, doesn't turn
19 around and go back to the crime scene until he's at 9th Avenue
20 where Shelton Butler admits he was picked up.

21 And again, you don't go thirty miles out of your way
22 unless you're getting something important; unless you're
23 picking up an extra person for reinforcements for your plot.
24 Once again, he had sufficient chance to get out of that car if
25 he wanted to. Even if he'd only found out when he was at the

1 light at Tanger, he could've gotten out at Tanger. He
2 could've gotten out at Ron Jon's or anywhere in between and
3 said I'll just hang out here, y'all go do what you have to do.
4 He stayed in the car because he was an active participant in
5 that crime.

6 And then you can look at what happened at the scene and
7 most of that you can reconstruct from Shelton's own
8 statements. Shelton Butler admits he saw Rico and Travis
9 walking up the driveway and then they walked -- when they
10 drove up on Ronald McNair across that border between 5008 and
11 -- 5008-2 and 5008-1. He admits they saw them in the street
12 and he recognized them. He admits he knew Travis from school;
13 he admits he knew Rico. Says Rico is cool; Rico is cool as
14 hell, man. He admits that the three in the car decided where
15 to park that car; they chose the spot. He admits they drove
16 right past Rico and Travis and went up under that bridge,
17 turned around and came back and parked right up under the edge
18 of the bridge, nice quiet spot, having the advantage of not
19 being close to the house where Rico could have gotten help.
20 It had the advantage of being out of sight. As he said, a
21 great place to body somebody; the right place where you can do
22 what you need to do. He admits in his first statement that
23 when he got there, he had a towel over his head. And of
24 course, he knew already that the robbery was gonna occur. Why
25 would you put a towel over your head and a robbery is about to

1 occur; hide your identity. He's sitting there with a towel
2 over his head and he already knows these guys know him. They
3 see him when he drove by, that's Travis and Rico, I know them.
4 He has a towel over his head. And of course, a person with a
5 towel over his head, they're gonna attract attention; why does
6 that guy have a towel over his head. When Travis was --
7 attention was drawn to the man with a towel over his head,
8 what did he do? He recognized him. Hey, Shelton, what's up?
9 we went to school together, remember? How you doing? That
10 probably wasn't the plan. The plan was for them to go there,
11 meet Rico Gutierrez, and rip him off. He claims he, in his
12 second statement, I wasn't really paying attention when we got
13 there. You come there knowing that an armed robbery is about
14 to occur and you're not paying attention; you're just -- on
15 what's going on in that car? Of course, you're paying
16 attention. Now, if you are planning a robbery -- and
17 remember, he said in his statement, everybody in the car was
18 talking about the robbery driving down there. Everybody in
19 the car was talking about the robbery. They all knew what was
20 going on. They were making plans. And you are planning an
21 armed robbery, you're not gonna put somebody that's not
22 participating in the spot directly next to your victim. They
23 have to be in on it. They've got the prime position. He was
24 in there for a reason. It's just like military strategy. You
25 don't have to be George S. Patton or Alexander the Great to

1 figure it out. You look for a numerical advantage. You have
2 to get there the firstest with the mostest, as General Jackson
3 would say. So, how you get numerical advantage? One, you
4 travel all the way from the beach, past the target scene, back
5 to Conway to pick up another person. You get that person and
6 you go directly back to the scene. You add one extra person,
7 you get more numerical advantage. Another way to get
8 numerical advantage, two people showed up -- they probably
9 weren't expecting two people; they probably weren't expecting
10 Travis to come out there with Rico. When the robbery
11 happened, Travis stood up and started getting out of the car.
12 At that point, you know what time it is; the car accelerates
13 and Travis falls. They separated Travis and Rico; again,
14 numerical advantage like military strategy.

15 And also when you're planning military strategy, you have
16 to deploy your assets to the best maximum advantage. What are
17 you gonna do? You decide where your shooter's gonna be, where
18 your gun is gonna be. You place things where they have to be.
19 So what was the role or what was the purpose for putting
20 Shelton Butler in the rear passenger seat? If he was sitting
21 there, nobody could get in that seat and be behind Donavon
22 Johnson. They had to sit on the other side in the back seat
23 where they would be in target range, they'd be in the killing
24 zone. It would've been the person in the front seat holding
25 the gun and he would be handy, close by, if extra muscle was

1 needed if he tried to resist or tried to pull a gun or
2 something. You've got an extra person right there handy.
3 Force the victim into the killing zone and have an asset on
4 hand ready to go.

5 Now, what else did Shelton Butler do? He admitted that
6 Rico passed them the weed and got nothing in return, no money
7 ever went back. People in the car got the weed and Rico got
8 the bullet, no money. He admits the car took off as soon as
9 Travis started exiting. Again, this -- numerical advantage.
10 He admits the robbery started with, you know what time it is,
11 you know what time it is, just like Travis had said before
12 Shelton was even arrested. You know what time it is, the
13 modern day equivalent of stick'em up or stand and deliver.
14 Now you say, you know what time it is, like -- And then
15 there's a black bag. Travis told you about this black bag.
16 He said he went to Rico's house down there on 17 South and he
17 got the black bag at Rico's request and brought it to the
18 scene. They took that bag in the car because inside of it was
19 marijuana, that where it was carried. And then you heard
20 Shelton say they took the marijuana out of the black bag and
21 when it was handed up front, it was just in a plastic bag.
22 The black bag stayed in the back seat. Where was the black
23 bag recovered? Again, you heard Lieutenant Cestare, testify
24 about that, the man who worked the crime scene, who's worked
25 thousands of crime scenes. It wasn't found down here by the

1 bridge where Travis was getting out of the car and was knocked
2 down as the car sped off; it wasn't found over here by the
3 house where Rico's blood was found on the street where he had
4 fallen, where his shoe and his phone had been left; it was
5 found way down here, down here close to this field. The only
6 way it could've got down there is it stayed in the car when
7 the robbery took place. It stayed in the car and they got rid
8 of it because it's evidence that leads them back to the scene.
9 It didn't go up front; it stayed in the back seat. Only one
10 person could have found that bag in the back seat and thrown
11 it out the window to get rid of it, Shelton Butler. That in
12 itself is yet another act in furtherance of the plan to commit
13 the armed robbery. So he was there, he had knowledge, he knew
14 what was going on. He had the chance to avoid it; he could
15 have gotten out anywhere from Conway all the way down past Ron
16 Jon's and Ronald McNair. He was present with knowledge and he
17 was aiding and abetting. Again, hand of one is the hand of
18 all.

19 Beginning -- yet he was participating even he was just
20 muscle waiting there to help if there was trouble. Just like
21 the lookout man in the bank robbery. He may never see
22 anybody, he may never give a warning to the man inside but
23 he's still present aiding and abetting. He was participating
24 even if he was only filling that seat to keep Rico on the
25 other side in the kill zone. He was participating. He was

1 present, with knowledge, actively taking part in the plot.
2 Before they got there, everybody was talking about it was
3 actively engaged in the planning of it. And you further see
4 his participating in how he acted afterwards, after the
5 killing.

6 There was that last call at 8:24. Sometime between 8:24
7 and 8:35, Rico Gutierrez was killed; he was shot. One bullet
8 from that car through him at an angle that the Judge told you
9 -- I'm sorry -- that Dr. Proctor told you. The angle was sort
10 of like that (indicating), descending, just as it would be if
11 you were bent over trying to get out of the car running for
12 your life trying to escape from that car. And that bullet at
13 that angle, instead of going out to hit the pavement and leave
14 a mark, it would have gone out into the woods and lawns of
15 Ronald McNair drive and never been seen again. It couldn't
16 have been found.

17 After Rico was killed, after they got the weed, disposed
18 of the bag, threw it out, they headed back to Conway, just as
19 Mr. Butler said, followed it tower by tower back to Conway.
20 So, they left the scene, went back down to Conway just as he
21 said. And what do they do when they get back to Conway? In
22 his first statement he says that they went to Huckabee Heights
23 and he got out and separated himself from the other two and
24 smoked a cigarette and thought, sort of pensively sat there
25 and thought Rico didn't have to die. In his second statement,

1 he tells the truth. And what we did is we went to Huckabee
2 Heights and went to a birthday party and we ate and had a good
3 time. This was after they'd killed Rico, after on the, the
4 way there they'd thrown the casing out to, to eliminate
5 evidence, after they'd thrown the bag out to eliminate
6 evidence. They went to a birthday party together. If he was
7 really not part of this, this conspiracy, this plot to rob
8 Rico Gutierrez, that would've been another perfect time, but
9 he didn't, he stayed with them. Crowded birthday party,
10 could've walked away, found a friend, gone somewhere else. He
11 said he stays with them and they go to I think he said
12 Shanquell's house and they spent the night there together,
13 Charles, Donavon and Shelton. He was still with, still with
14 his coconspirators. In fact, he never left his
15 coconspirators; they left him. He said he stayed at that
16 house until Charles left and Donavon left and when they were
17 gone, he just went over to his girlfriend's house.

18 He admits -- Shelton Butler admits, that he shared some
19 of that weed stolen from Rico with Charles Johnson; they
20 smoked it together. Smoking a dead man's weed. Not only is
21 it cold but its further evidence of his participation in this
22 plot; it's sharing the proceeds.

23 More evidence that he knew he was guilty of, when the
24 U.S. Marshall's came to find him, what did he do? He saw the
25 Marshalls and he ran out the back door, headed for the woods.

1 It was so far back in those woods, they had to get all the
2 officers there and get a perimeter and send in the dog team.
3 They didn't capture him until the dog team had him chased out
4 of there out in the perimeter and the officers could find him.
5 Again, you don't run, you don't hide, you don't hide in the
6 woods, in middle of June out there in the snakey woods, unless
7 you know you're guilty. You're hiding from something. You're
8 from punishment; that's why you run out in the woods.

9 Then there was another, another effort to escape
10 punishment of what he knew he did. He knew he was guilty, but
11 he knew the way to avoid that is get rid of Travis. You can
12 read the letter for yourself. It says I need you -- for you
13 -- I need for Money-Trav not to show up to my trial. You can
14 look at it there, there it is, Money-Trav, the very nickname
15 for Travis admitted to. I need Money-Trav not to show up at
16 trial. This is in evidence. You'll be able to look at it
17 closely. It's signed by Shelbo a/k/a Clyde. The envelope
18 that came with it, Shelton Butler. Handwriting analyst said
19 that's his handwriting. Same handwriting on those forms he
20 turned into the jail. That is Shelton Butler trying to get
21 rid of the one witness that can put him at the scene.

22 Again, he's got something to hide. He was part of that
23 plot. He is acting in furtherance of that plot by trying to
24 keep Travis from testifying against him. And then when that
25 didn't work, when that didn't work and the letter was

1 intercepted, he went back to his original strategy. You
2 remember what that was in his first statement. In his first
3 statement with the police, that's when he was saying what's
4 gonna happen to me, what's gonna happen to my family. Seconds
5 later, he threw Donavon Johnson under the bus. Oh, I was
6 there and Donavon Johnson did it. He's the one that shot him.
7 What was he afraid of? What was he afraid for himself and his
8 family? He was afraid of punishment. He wasn't afraid of
9 Donavon Johnson because he threw him under the bus. If he was
10 afraid of him, he would have said, shoot, I guess Travis shot
11 him; it wasn't us. It was the perfect chance to say it and he
12 didn't say that. He wasn't afraid of Donavon Johnson. He was
13 afraid of punishment. He threw Donavon under the bus. He
14 said Donavon did it. I didn't even know what was gonna
15 happen. If I had known that was gonna happen, I would have
16 gotten out of that car. Then the second -- the letter is
17 written, the letter is intercepted, so he loses his chance to
18 keep Travis from testifying. He's got to find another
19 strategy. So, he goes back to his original strategy. I'm
20 gonna throw my coconspirators under the bus. He never
21 mentioned any fear in his second statement. What he did, was
22 he threw Charles and Donavon under the bus. So, we're in that
23 car and they planned it because I didn't know nothing about
24 it. I wasn't any part of it. I was just sitting there, a
25 spectator. I couldn't get out even though we passed by this

1 bar, Ron Jon's. I could've gotten out there and hung out, but
2 no, I didn't. I just went to the scene with them, just a
3 spectator. Again, there's a strategy; throwing his
4 codefendants under the bus. And then miraculously, he changes
5 his strategy after being in the cell with Donavon Johnson. He
6 goes back to being part of the conspiracy. He joins the
7 conspiracy. I'm no longer going to fight for that best seat
8 on the bus that Detective Frebowitz told me about. I'm no
9 longer sitting in that best seat on the bus. I'm gonna sit
10 back there with my friends and we're gonna fight this
11 together.

12 Again, he rejoined the conspiracy. From the very
13 beginning, they picked him up at 9th Avenue. They told him
14 they were going down to the beach way and get some weed. They
15 really told him, to tell you the truth, what we're really
16 gonna do is rob him. We need you here to sit in that seat to
17 keep him from betting behind Donavon, because you can help
18 grab him if something happens. You can help dispose of the
19 evidence. You get to share the weed with us. He was part of
20 that plot from the beginning. He says himself when they were
21 in the car everybody was talking about it, everybody was
22 talking about the plan to rob him. He admits in his first
23 statement he covered his head with a towel, something you
24 would do in a robbery. He admits he knew what they were doing
25 when they went over there. He admits he knew it was gonna be

1 a robbery. He never expressed any surprise when they
2 committed a robbery, no outrage. He knew what was going on.
3 He wasn't afraid of his Codefendants, Donavon Johnson and
4 Charles Johnson. He threw them right under the bus; he wasn't
5 afraid of them. He was afraid that he would be put in front
6 of a jury like you and be held accountable for his actions,
7 that he would be found guilty of murder because he
8 participated in the robbery of Rico Gutierrez, which resulted
9 in the murder of Rico Gutierrez. Now Rico, according to
10 Shelton, he fought that robbery. He reached up there and
11 tried to fight off that gun with Donavon Johnson. He was
12 resisting. I'll put it to you again, when you're resisting a
13 robbery, that doesn't reduce murder to manslaughter; it's
14 still murder because he was being robbed and he tried to flee.
15 When Rico Gutierrez tried to flee that robbery and he was shot
16 in the back. A shot in the back is the very epitome of
17 malice. He knew where they were going when he got in that car
18 with them on 9th Avenue in Conway that day at 8:05. The next
19 twenty minutes they traveled down missing their exit, turning
20 around going by multiple places where he could've gotten out
21 of that car and gotten out of this spot. He knew what was
22 going down. He willingly went, he willingly participated, he
23 willingly shared in the proceeds. He made great efforts to
24 avoid detection and then he made great efforts to throw it off
25 on his codefendants and he made great efforts to try to keep

1 the one witness from testifying. And you can look at peoples'
2 motivation for their testimony. What motivation would Travis
3 have to lie about, about the killing of his best friend. He
4 admitted right up front that within an hour of the killing,
5 yeah, I fired a gun. I was trying to help my friend. He told
6 you about you know what time it is. He named Shelton Butler.
7 He did all those things. What was the motivation for Shelton;
8 motivation for Shelton was to avoid punishment. First to
9 avoid being caught and when that didn't work, to blame it on
10 others; if that didn't work, to stop the witness from
11 testifying; if that didn't work, go back to blaming others.
12 And now it's to stand together with his two coconspirators
13 that he killed -- that he joined with to kill Rico Gutierrez.
14 Again, Shelton was part of that plan from the beginning.
15 From 9th Avenue right down to where he died, back to Conway,
16 smoking the weed, hiding from police. Now, this case is not
17 about Travis, it's not about Ginger Pop, it's not about Peter
18 Cestare and Neil Frebowitz and Detective -- it's about Shelton
19 Butler and his role in the killing of Rico Gutierrez. His
20 role in that plot to go down to Ronald McNair and steal his
21 weed and in the course of carrying out that plot, the killing.
22 And again, he didn't have to know -- he had to have the intent
23 to participate in the robbery to be guilty of the hand of one
24 hand of all. He didn't have to know they were gonna kill
25 somebody because killing somebody, again, is the natural

1 probable consequence of committing an armed robbery. And
2 anything that happens in the natural probable consequence of a
3 planned crime, everybody participating in the crime is guilty
4 under hand of one hand of all.

5 The Judge is gonna instruct on the law in a little bit
6 and he's gonna tell you all the applicable law and he's gonna
7 tell you what the burden of proof is; he'll tell you it's
8 proof beyond a reasonable doubt. And he'll give you some
9 guidance on what proof beyond a reasonable doubt is. He'll
10 tell you things like it's, it's proof that leaves you firmly
11 convinced of the guilt of the Defendant. But he can't draw
12 you a picture of proof beyond a reasonable doubt. That is a
13 standard that comes from you as a cross section of the
14 community. You have to decide is the evidence in this case
15 sufficient to hold the Defendant responsible for his actions.
16 I put to you this is one just verdict here and that is to find
17 Shelton Butler guilty of murder under the theory of hand of
18 one hand of all. Thank you.

19 THE COURT: Solicitor?

20 MR. FOX: May it please the Court, Your Honor?

21 THE COURT: Just one second, let me ---

22 Go ahead, Mr. Fox.

23 MR. FOX: Thank you, Your Honor.

24 CLOSING BY MR. FOX:

25 MR. FOX: Ladies and gentlemen, I first want to thank you

1 for your attention. When we pick jurors for any case,
2 frankly, we don't have a whole lot of information. It's hard
3 to judge just for the few minutes we look at anybody how a
4 juror will is gonna react to the presentation -- The one thing
5 I think any lawyer would want out of any juror is simply that
6 they pay attention; if we can get a juror to pay attention.
7 The one thing I know is all of you paid very close attention
8 to what's going on and I truly appreciate that.

9 Now there are some things I want to draw your attention
10 to. First of all, I would disagree -- I would disagree with
11 the Solicitor on a great many things. I disagree that there
12 is not a paintable picture or definable definition for
13 reasonable doubt. The Judge will tell you exactly what it is.
14 There's an absolutely definition to it. Certainly it's got to
15 be applied on a case-by-case basis. It is the highest
16 standard of proof that exists in our judicial system. If we
17 were in a Civil Court down the hall arguing over a contract or
18 arguing over money, the standard of proof is a preponderance
19 of the evidence. And if you think of the scales of justice,
20 in a Civil Court you simply need to tilt those scales in your
21 favor ever so slightly. If you tilt them in your favor, you
22 prevail; you win. General Sessions Court, Criminal Court,
23 beyond a reasonable doubt, not beyond all doubt. One thing
24 that we know one hundred percent is that none of you were
25 there on Ronald McNair Avenue on June 8th, 2012. You cannot

1 know one hundred percent beyond all doubt what happened and
2 the law doesn't require that, but it is the highest standard
3 of proof there is. You may not -- you cannot by your oath,
4 guess, speculate this could've happened, this might've
5 happened, this should've happened. And ladies and gentlemen,
6 that is the State's entire case. Well, he must have known
7 this; he had to know this and that; and this is why they went
8 here and there. Even Mr. DeBusk, with all due respect, is
9 speculating, guessing what -- is far less complete, far less
10 direct and certainly does not, other than Mr. Butler being in
11 the car, to Mr. Butler being guilty of murder.

12 The State has the burden of proof and they have things to
13 present to you and it's not their job to do my job. But, you
14 have not gotten the full picture from just the State's
15 evidence. Hand of one is the hand of all; that is true. The
16 Judge is gonna define it for you and explain that what it
17 means to you. But like I told you on Monday, there's a little
18 bit more to it and the more to it is the most important part
19 in this case and that is the mere presence at the scene of a
20 crime, even if you have prior knowledge a crime is going to
21 occur, does not make you an accomplice. You must commit some
22 overt act, some affirmative act in furtherance of that plan.
23 Being there, even knowing something's gonna happen is not
24 enough and it's a moral question of whether you should've
25 removed yourself from the scene. I heard this was gonna

1 happen; I don't want to be a part of it. Morally, I should
2 get out of this car. That's not the determination. The
3 determination, the question is, did you know ahead of time and
4 did you participate, did you commit some overt act, some
5 positive act. You don't have any evidence that that happened.
6 It's all speculation.

7 Now, what is the evidence that you have. Mr. DeBusk
8 talked and I guess I'll start with speculation. Mr. DeBusk
9 talked about this military operation, made it sound like this
10 was a commando raid. If it was, it's one of the sloppiest
11 things I've ever seen. If you're going to rob somebody and
12 you're going on a commando raid, a military operation, are you
13 going to put yourself in a position where you're at the end of
14 a dead-end road, not in your own territory, not in your own
15 neighborhood, at the end of a dead-end road that you need
16 directions to find under an overpass where the only way out is
17 back in front and across the people that you're supposedly
18 going to conduct this operation against. That's your military
19 operation? And I'm gonna park at a dead-end street and my
20 only way out is past the people that I'm supposedly going
21 there to rob and who knows how many of their friends and
22 family, not knowing how many people are gonna be getting there
23 before you show up. Are you gonna put the gun in the front
24 seat or you gonna put it in the back seat closest to the
25 person that you intend to rob? If you're conducting a

1 military operation and your design is to get away with it, are
2 you gonna bother to keep this thing and then just a short
3 distance down the road toss it out right there in the plain
4 view of everybody or maybe even carry it off with you or maybe
5 did it fall out with either Spivey or Mr. Gutierrez went out.
6 It's pure speculation that Shelton Butler was the one that
7 took that thing and threw it out of the car. It's a guess
8 whether it even got thrown out of the car. You have no
9 evidence about that, no testimony that anyone saw it fly out
10 of the car, no DNA recovered from it. I don't know if they
11 could or not, but you don't have that evidence in front of
12 you. It is a total guess as to how it ended up farther down
13 the road.

14 You want to talk about circumstances and circumstantial
15 evidence, who was the person on the scene that we know from
16 his own admission that was moving stuff around? Travis
17 Spivey. Travis Spivey was moving guns. Travis Spivey is
18 hiding evidence. Maybe, Travis Spivey saw it because it had
19 marijuana in it. They don't want the police around. How do
20 we know they don't want the police around, because they're out
21 there selling marijuana, because they don't call EMS when
22 their best friend is lying shot in the middle of the road.
23 They become their own ambulance service and rush him there
24 because that's better. Really? Better than having trained
25 professionals come and perform, give blood transfusions, stop

1 the bleeding, do CPR if necessary. Better than that? Driving
2 all the way to Conway. How far is it Conway? They drove him
3 all the way to Conway instead of up the road to Grand Strand because
4 they didn't want the cops there.

5 I don't know what happened to the bullets. The bullets
6 are somewhere out there; I don't know where. Not unreasonable
7 that perhaps they were picked up as well; the guns were moved.
8 And Travis Spivey, they dressed him up nice and he looked
9 pretty in his purple polo, but Travis Spivey is shifty at
10 best. They want to portray him as the begrieved friend and
11 hero in this matter. But he's there to commit an illegal act
12 himself, to sell weed. The detective questioned him. They
13 said how come you're standing there by the back of the car in
14 a backup lookout position? Actually questioned him whether in
15 fact they were there to rob the guys in the car. They wanted
16 -- the Solicitor would have you to believe that Travis was
17 very forthcoming. He admitted he fired a gun. He showed them
18 where the guns were. Well, you remember Cestare, he said I
19 was walking up canvassing the area, I was about to that wood
20 line when -- and about to find them when someone came up and
21 told me, Travis came up and told me. He was about to stumble
22 on them. Same thing at the hospital when he was talking to
23 Detective Frebowitz. Yes, he said, I shot the gun after
24 Detective Frebowitz said, did you fire the gun and you better
25 tell me because, you know, I'm about to do gunshot residue on

1 you. Yeah, I fired the gun. He did it because he had no
2 choice. It's not like he was volunteering information about
3 this thing. He lied about every little thing or he just
4 doesn't remember. Little things that make me question
5 everything Travis Spivey said. He was very specific about
6 getting that little boy -- getting Rico's little boy out of
7 the road, right? I had to get him, I so concerned, that's one
8 of the reasons I didn't go with everybody to the hospital. It
9 had nothing to do with hiding evidence. It had nothing to do
10 with me taking money from Rico. We'll talk about that in a
11 minute. It had everything to do with that little boy. Well,
12 what did the mother of that little boy tell you? She said I
13 heard a gunshot. My son was scared and I made sure he went in
14 the house. Between the two of them, who do you think was more
15 believable? That's a small point, but there are a lot of
16 those things in Travis Spivey's testimony. Very sinister
17 sounding phrase when he walks up to the car, this would be a
18 good place to body somebody. I assume that means to kill
19 somebody, never heard specifically but that's what it sounds
20 like. This would be a good place to body somebody. Travis
21 Spivey spoke to the police twice on the night of the shooting.
22 Again later you heard, when I cross examined him, the length
23 of those statements were probably an hour or so total of those
24 statements. He admits he talked with the police numerous
25 other times. They took him back to the scene so he could

1 reenact everything. He met with the Solicitors, by their own
2 admission, three times. That's six different times at least
3 that he spoke to the State either law enforcement or the
4 Solicitor's office. And the only time he ever mentioned this
5 would be a good place to body somebody -- when did he mention
6 that for the first time? The day before the trial started.
7 Is that believable? We are two years removed from his, you
8 know, excitement and despair over his friend's death and I
9 don't dispute that that's genuine. It had to be a shocking
10 thing. But when he talked to the police the third time, that
11 was well over -- that was several days down the road. He had
12 a chance then. He had a chance over his several meetings with
13 the Solicitor. Sounds like that's a pretty important point to
14 me; they're making it sound like an important point. But it
15 doesn't spring to mind until the day before the trial when
16 they're trying to tighten everything up to get the tightest
17 case they can against Mr. Butler.

18 What changed from the week before? What was the
19 difference of posture of this case? The week before, Mr.
20 Butler was sitting with the Solicitor and Ginger Pop and
21 myself in the courtroom down the hall talking about this case.
22 The week before he was gonna be an ally, maybe not a friend,
23 an ally in the prosecution of Donavon and Charles Johnson.
24 When that changed, he became the target. When he became the
25 target, they need the ammo to bring him down. They really

1 don't have any ammo. Nobody says he had a gun. Nobody saw
2 him fire a shot. They don't have any ammo, so they've got to
3 craft circumstances to make it sound like he's a part of
4 everything. They've got to bring him in under this hand of
5 one hand of all and bring these sinister sounding phrases that
6 no one has spoken before. So Sunday before the trial, all of
7 a sudden, Shelton is saying, this would be a good place to
8 body somebody. You are the finders of fact. If you find that
9 to be a credible and believable statement and important, well
10 so be it, there's nothing I can do, but I'm extremely
11 skeptical and I hope you are over the circumstances of that.

12 And that goes to -- it's not uncommon in a case with
13 multiple Defendants to have to pick someone that you're gonna,
14 as a Solicitor, that you're gonna make a deal with, but if
15 this is as bad -- if they're convinced that Shelton is a full
16 part of it, that he's equally responsible, that he has every
17 liability, criminal responsibility, moral responsibility that
18 Charles and Donavon Johnson had, then what were we doing a
19 here a week ago. I mean, Ginger Pop, God love her, didn't
20 want to state -- you don't have to be a lawyer to know, that
21 when the investigator from the Solicitor's office and the
22 Solicitor sit down with the Defendant and his lawyer, it ain't
23 about preparing for his prosecution. It's about his
24 cooperation. Oh no, we weren't gonna promise anything. Well,
25 maybe they didn't. You heard -- they didn't specifically say

1 anything, but think of the context and think of the things
2 that have already been said to him by Neil Frebowitz, the
3 detective. You get the first seat on the bus. You keep
4 telling the truth and cooperating and we'll look out for you;
5 we'll make sure you get help. You're afraid, we'll make sure
6 you stay away from Donavon Johnson and Charles Johnson. They
7 failed there. What did Shelton say over and over again in
8 that first statement? I'm afraid. I don't want to speak. I
9 appreciate and I'm touched by the concern that the Solicitor
10 has for Donavon and Charles today -- no, he threw them under
11 the bus. Poor Donavon. Poor Charles. Shelton didn't throw
12 them under the bus. Listen to that statement again. Neil
13 Frebowitz had to drag those names out of him. He didn't want
14 to say. He was making gestures instead of answering.
15 Frebowitz said over and over again, this is radio, not T.V.
16 You can't just nod your head or shake your head. So, when I
17 say was Donavon on the passenger seat, you have to say yes,
18 Donavon was in the passenger seat. Who had the gun? Well, we
19 know you didn't have the gun, right? Yeah. Who shot the gun?
20 Travis was out of the car? Yeah -- he had to go by process of
21 elimination to get to Donavon and even then, he didn't want to
22 say the name. He didn't throw Donavon and Charles under the
23 bus in that first statement. He did everything he could not
24 to. But he also answered the questions and acknowledged, yes,
25 it was Donavon Johnson in the passenger seat. Yes, it was

1 Donavon Johnson with the gun. Yes, Donavon Johnson fired that
2 bullet. He don't know if he hit him or not. But know for
3 sure, that was the whole conversation on the way back after
4 the shooting. Did you hit him? Do you think you hit him?
5 Why did you shoot? Do you think you hit him? They clearly
6 didn't know that was gonna happen before. Travis Spivey said
7 or at least agreed with Neil Frebowitz -- Neil Frebowitz said
8 it first and Travis Spivey agreed. This was a drug deal gone
9 bad. It was a drug deal gone bad between two willing parties.
10 One party gonna bring the weed, one party gonna sell the weed
11 -- buy the weed and it went bad. There was no plan ahead of
12 time to do anything. You've got no evidence of any plan.
13 Phone calls, all those phone calls prove to you is that
14 they're in communication and like everybody said, they were
15 getting together to buy weed. You don't know, you don't have
16 any evidence in front of you what was said during those
17 conversations. You've got no evidence of any conversation
18 between Donavon and Charles about what they're gonna do. I
19 think the Solicitor, again, just like he left out the mere
20 presence part of hand of one hand of all. He left out a
21 little bit of Shelton's statement. Shelton Butler said --
22 they're asking him about he learned about the fact that
23 Charles and Donavon planned to rob these guys, the question
24 was, Was it a joint conversation between them that you were
25 gonna rob the dude? And he said everybody was talking about

1 it at that point. And then there's the rest, What did you
2 say? I didn't say nothing, meaning those two were talking
3 about it and that's repeated over and over through his
4 statements, I didn't say nothing, I didn't do nothing, I
5 didn't negotiate with anybody down there, I didn't put a gun
6 on anybody, I didn't talk. He said he had a towel over him.
7 Again, military precision, you're going down there presumably
8 to get familiar with what it is you went down there for and
9 there's three of you and you're gonna draw attention to
10 yourself by being the only one in the car with a towel over
11 your head. And according to Travis, the person who spoke
12 first when he walked up was Shelton to Travis. You're now
13 going to identify yourself to the person that can recognize
14 you or maybe you're going to turn and hide. I mean come on;
15 he made no secret of who he was. He made no secret of how he
16 knew him, Travis. He might try to hide who he is and there's
17 nothing that supports that idea.

18 Ladies and gentlemen, please have doubts about this
19 thing. You've heard the statements. They clearly were
20 skeptical about Travis Spivey. They were asking him what
21 really was going on, why the -- what happened. They went over
22 it with him over and over again. They said direct to him, I
23 think maybe you guys were there robbing them; it's your bag
24 and gun. You took the lookout position yourself. But they
25 also made it clear, he's the one person they're able to talk to

1 that night. And Detective Frebowitz made it very clear,
2 you're our guy. They got in bed and made a decision to go
3 with Travis' version of events right away. You're our guy.
4 We don't care if you've lied to us; that's okay, no big deal,
5 we're with you. It's all right, guy. And they followed
6 through with that. Who got the first seat on the bus; Travis
7 got the first seat on the bus. They had talked about the bus
8 when the spoke Shelton later but that seat was already taken
9 and you know their mind was made up. But, guess what, after
10 all that nice talk about Shelton, how you gonna get the on the
11 bus et cetera, whether they -- and Shelton says, okay, what
12 happens next and they said, we're gonna serve this murder
13 warrant on you. Fair enough. They're certainly allowed to do
14 that and there's certainly a reason to do that at that point.
15 But that goes into another issue. Why was Shelton
16 running? Why is he scared not just of Donavon and Charles who
17 have said don't say nothing; don't say anything, keep this
18 between us. And he's saying over and over again to the
19 detectives I'm worried about my family. I ain't going down
20 for something I didn't do. Y'all need to get me out of this
21 or what's gonna happen to me and my family? Over and over
22 again you heard his tone of voice; you heard the way he
23 sounded. You can decide if that was all nonsense or not.
24 When Detective Frebowitz plays him like that -- and Alex Smith
25 said that's part of the game, you pretend to tap their phone,

1 pretend to be their friend; that's all a part of it, that's
2 technique, interrogation technique and that's all fine. But
3 after that's just happened, you're good, you can get the first
4 seat on the bus. What's gonna happen to me? Oh you have a
5 murder warrant. All right. What does Shelton know as a young
6 black man? He knows that the cops are not always your friend
7 and even if your idiot friends do something that you had
8 nothing to do with, you just might catch a murder charge no
9 matter what you say. Is that maybe the smart adult way to
10 look at it? Is that the way maybe people from a different
11 background would look at it? Maybe not, but that's his life;
12 that's his experience. I'm a young black male and when there
13 are dead bodies on the ground and if my name gets caught up in
14 this, I'm going to jail and that is exactly what happened.
15 His name got called and he gets arrested and despite telling
16 the police what happened, despite this talk of being the first
17 one off the bus, he's got a murder warrant and he's been in
18 jail ever since. Which goes to his letter, which speaks for
19 itself, a horrible thing. No indication that it ever got --
20 well, it didn't communicate, it never left the jail, but it
21 speaks for itself. But the whole thing, read the context.
22 He's now been there for two years. No one wants to hear what
23 he has to say. The Solicitors have made up their minds that
24 he ain't gonna be sitting, as far as he knows, in the courtroom
25 either by himself or with his codefendants despite what he's

1 told them before, despite getting the first seat on the bus
2 and he's got no way -- for him it seems like a hopeless way
3 out and he's young and he's scared and he ain't the brightest
4 on this -- he's not acting bright and he writes this letter.
5 What else does it say in that letter? Kidnap this guy, don't
6 let him come to court; he ain't being fair. He's lying on me.
7 Travis ain't being straight about what happened. Travis --
8 no, it wasn't like that. He ain't being fair. I don't have a
9 good explanation for it. There's not. It never should have
10 been done. But I do believe it was a fear reaction more than
11 any kind of action -- here's the other thing, if it supposedly
12 showed some plan -- Well, there's no indication at all in that
13 letter that it was discussed with Donavon and Charles that it
14 was -- that they had any knowledge it was gonna be done.
15 Whatever it is, was it Shelton's doing -- in reaction to his
16 own situation, not in reaction to any plan he had with these
17 other two.

18 The Solicitor told you at the beginning -- excuse me --
19 don't worry about Donavon and Charles; they're not here this
20 week. And as I said, they're all through this case, you can't
21 ignore them. I'm gonna agree with him now. Your decision has
22 to be based on the evidence or lack of it that proves or
23 disproves that Shelton Butler is guilty of murder and by
24 everybody's agreement and by all the evidence you have, the
25 only way he can be found guilty of murder is if you find that

1 he's part of the plan, if the hand of one is the hand of all
2 because there is no evidence at all that he shot the gun. So
3 he can only be guilty if you believe he was part of the plan.
4 Not a plan to buy marijuana, a plan to rob and that he took
5 overt action to assist in that plan. Again, even prior
6 knowledge is not enough if you don't take overt steps to
7 further that plan. You do not have to end this for the
8 Gutierrez family. Donavon and Charles Johnson at some point,
9 will answer for their part in this. It's not your job to seek
10 justice or to find justice for the Gutierrez family. It's
11 your job to render a true verdict based on what you've heard
12 this week as it relates to Shelton Butler. There is not
13 evidence that he knew, that he took active -- nobody says he
14 did anything other than he sat there. Everything else is
15 speculation. Whether he threw the bag out or not, whether he
16 was somehow improving the kill zone -- do you really that
17 these guys thought in terms of a kill zone if they did have a
18 plan to rob anybody? Do you really think that these
19 knuckleheads were that sophisticated? It's a horrible thing
20 that happened. I do not understand. I've been doing this
21 longer than he's been alive and I do not understand why people
22 take something and turn it into a deadly thing. If you got to
23 smoke weed, fine, lots of people do, but you don't have to
24 kill people and I will never understand that. But that
25 doesn't mean that being around that kind of nonsense makes you

1 a guilty party to murder. I'd ask you to return the verdict
2 of not guilty for Mr. Butler.

3 BY THE COURT:

4 THE COURT: All right, ladies and gentlemen, we're gone
5 take a short break before the Court gives you the law in this
6 case. So if you'll retire to the jury room for about five or
7 ten minutes and then we'll come back. Everyone else remain
8 seated. Thank you.

9 (REPORTER'S NOTE: Jury exits courtroom. 11:35 A.M.)

10 THE COURT: Solicitor, you had indicated that at some
11 point in time there was a case you wanted me to look at. I
12 found some case in the interim. Let me tell you what it is
13 and you tell me if that's the one you wanted me to look at.
14 State v. Shuler found at 344 S.C. 604, 545 S.E. 2d 805, 2001.

15 MR. DEBUSK: Yes, Your Honor, and also State v. Holland,
16 it's referring the same case. 682 S.E. 2d 898.

17 THE COURT: All right, sir. And the second one was what
18 now? Do you have a copy of those for Mr. Fox if he needs
19 them?

20 MR. GROOOMS: Your Honor, they just brought them up. I
21 can make a copy.

22 THE COURT: All right. 682 S.E. 2d ---

23 MR. DEBUSK: 898, State v. Holland, Your Honor. But I
24 think it's cites back to ---

25 THE COURT: All right, sir. All right. Thank you.

1 Let's take a short break. Thank you very much.

2 And, Mr. Fox, you look at those ---

3 MR. FOX: I will, Your Honor.

4 THE COURT: --- and we'll talk about them when we come
5 back.

6 (RECESS - 11:35 A.M.)

7 *****OFF THE RECORD*****

8 (On the Record - 11:52 A.M.)

9 THE COURT: All right, the State ready for the Jury?

10 MR. DEBUSK: Yes, Your Honor.

11 THE COURT: Defense?

12 MR. DEBUSK: Does the Court need copies of Shuler or ---

13 THE COURT: I've got Shuler. What you want me to do,
14 Solicitor, and so that I'm clear ---

15 MR. DEBUSK: Yes, sir.

16 THE COURT: There's a statement in Shuler when it talks
17 about the definition of voluntary manslaughter and there is a
18 sentence right after the basic definition of voluntary
19 manslaughter and, and -- about provocation necessary has to
20 come from the victim. Right after that there's a sentence
21 that says a victim's attempt to resist or defend himself from
22 a crime cannot satisfy the sufficient legal provocation
23 element of voluntary manslaughter; is that what you want me to
24 add?

25 MR. DEBUSK: Exactly. Yes, Your Honor. That was it

1 exactly.

2 THE COURT: Mr. Fox?

3 MR. FOX: Your Honor, I would, I would object. That'd be
4 a comment on the facts, but one of the bones of contention is
5 whether or not it was plan to rob these people.

6 THE COURT: Well I, I appreciate that, but I'm not
7 telling them that there was a ---

8 MR. FOX: Yes, sir.

9 THE COURT: --- resisting or anything. If I went beyond
10 that, right after that sentence ---

11 MR. FOX: Right.

12 THE COURT: --- it says evidence of a struggle between
13 the victim and the defendant during an armed robbery is not
14 sufficient. If I did that, I mean that'd be a comment on the
15 facts, but the statement before I think is an explanation or
16 statement of the law. So I, I really don't think I, I thought
17 about that, but I don't really think it's a comment on the
18 facts. It's, I'm not telling them anything happened, but it
19 just -- if they believe that from the facts that it occurred,
20 this is what the law says.

21 MR. FOX: Yes, sir.

22 THE COURT: So ---

23 MR. FOX: If it's a further explanation of voluntary
24 manslaughter.

25 THE COURT: Right. So I'm just gonna add that one

1 sentence, just that one sentence there to the voluntary
2 manslaughter. Now, I want it to be clear and, and you had
3 made some requests to charge to the Court, but I don't --
4 through my Clerk -- but I want it to be clear and make sure
5 you are requesting the Court on behalf of the Defense to
6 charge voluntary manslaughter and submit that to the Jury; is
7 that right?

8 MR. FOX: May I -- if I may have just a moment.

9 THE COURT: Yes, sir.

10 MR. FOX: But I have talked to the Defendant about that
11 ---

12 THE COURT: Okay. Well, I want to be clear. I mean, if
13 you're not then ---

14 MR. FOX: Yes, sir.

15 THE COURT: --- I'm not going to.

16 MR. FOX: All right, Judge, and we've -- and I have had
17 discussions, to make it clear for the record, with Mr. Butler
18 about that and the options and consequences of the various
19 verdicts and possibilities and after speaking with him
20 further, we do not request voluntary manslaughter charge.

21 THE COURT: All right, sir. Very good. I'm not going
22 to. If the Defense is not gonna ask for it, I'm not charging
23 it and I'm not gonna submit that to the, to the Jury as a
24 possible verdict in this matter. It will be simply he's
25 either -- they're either gonna find him guilty beyond a

1 reasonable doubt of the crime of murder or not guilty, one of
2 the two. So, all right. Very good.

3 Ask the Jury to come in then, please.

4 (REPORTER'S NOTE: Jury enters courtroom. 11:56 A.M.)

5 CHARGE TO JURY:

6 THE COURT: All right, ladies and gentlemen, it's now my
7 duty and responsibility to give you the law that you will
8 apply to the facts and evidence you find to be true in this
9 case.

10 Now I told you at the very beginning that you were the
11 judges of the facts and that I will not comment on the facts
12 or tell you, you know, what the evidence is that I believe or
13 don't believe, whatever that is, because that's your job and
14 your responsibility. In that same vein, if you came into this
15 courtroom with any preconceived ideas of what the law is, what
16 it ought to be, what it should be, what you hoped it would be,
17 you'll disregard that. You will take the law as I now give it
18 to you and apply it to the facts and evidence you find to be
19 true. Now, I'm gonna remind you that, what I told you at the
20 very beginning regarding your job and responsibilities. One
21 of them was to judge credibility and believability of the
22 witnesses that had testified in this case. You can believe
23 one against several, several against one, you can believe a
24 portion of what a witness says and disregard the remaining
25 portion of it. If you've got a good and sound reason for

1 doing so, you could disregard it in its entirety the testimony
2 of a particular witness. You consider whether or not the
3 witness has exhibited to you any kind of interest, motive,
4 bias, prejudice they might have in giving you the testimony
5 that they gave you from the witness stand. You consider the
6 opportunity for knowledge. How did they come about that
7 information that they gave you from the witness stand? You
8 can even consider the demeanor of the witness. How did the
9 witness appear when they testified? How they delivered their
10 testimony to you, you can take that into consideration if you
11 want to. Again, we're asking you to use your good common
12 sense and your good judgment in, in determining credibility
13 and believability, who do you believe. As I told you, it's
14 something you do every single day of your life. Use your good
15 common sense, apply it to the facts and evidence you hear in
16 this case. Find the evidence you believe to be true. You
17 don't have any friends to reward. You don't have any enemies
18 to punish. Your verdict can't be the result of any kind of
19 passion, prejudice, or sympathy. It has to be an examination
20 of the facts and the evidence in this case. Find that
21 evidence that you are convinced that's true and then weigh
22 that evidence you find to be true against the State's burden
23 to prove the Defendant guilty beyond a reasonable doubt.

24 In this case, I qualified at least two witnesses to give
25 their opinions. Sometimes they're called expert witnesses.

1 Now, just because I qualified somebody to give their opinion,
2 which is something obviously we don't normally allow people to
3 do. They have to tell you what they saw, what they heard,
4 what actually happened, not their opinion. But by reason of
5 experience, training, work in a specialized field, we
6 sometimes allow those witnesses to give you their opinion.
7 Now, just because I did that and found that they could so
8 testify doesn't give them any special status or special
9 meaning. You judge all the witnesses the same. You find that
10 evidence which convinces you of its truth no matter from what
11 source.

12 The prior record of the witness. A person who has a past
13 criminal record can testify during the trial. Their past
14 record does not affect their ability to testify. The past
15 record may be considered by you only and if at all in
16 determining the witness' credibility or believability. That's
17 up to you to use it or not use it. You are the sole judges of
18 the facts including credibility and believability.

19 The testimony of a witness may be discredited or
20 impeached by showing that the witness previously made a
21 statement which is inconsistent with the present testimony or
22 statement. The earlier contradictory statements are
23 admissible to establish the truth of those statements. But
24 it's the province of the Jury to determine again credibility
25 and believability to be given to those statements. Whatever

1 portion of it, all of it, none of it, that's your job, your
2 responsibility judging that credibility and believability and
3 what weight, if any, is gonna be given to them.

4 Now, in this particular case, a statement is alleged to
5 have been made by the Defendant and the Court admitted such
6 statement or statements into evidence in the case. Now, while
7 I determined this was proper evidence, it was admissible in
8 the trial. Again, you collectively, the Jury make the
9 ultimate decision of whether or not -- and there's a couple of
10 those -- did the Defendant made the statement; if he made the
11 statement, you have to determine whether or not the statement
12 was made by the Defendant voluntarily and of his own free
13 will. That means the statement wasn't caused by pressure,
14 force, fear, threats, coercion, intimidation, hope or promise
15 of leniency or award of any kind. In determining whether the
16 statement was voluntarily made by the Defendant, his choice to
17 make this statement, you can consider the characteristics of
18 the Defendant and the details of the questions. You can, if
19 you want to, look at the age of the Defendant, the Defendant's
20 education or lack thereof, the Defendant's mental ability or
21 capacity, the Defendant's background and environment, place
22 and length of the detention, the nature of the questioning and
23 the advice or lack thereof to the Defendant of their
24 constitutional rights commonly called the Miranda Warnings,
25 including, but not limited to: Any statement you make can and

1 will be used against you in a court of law; you have the right
2 to have a lawyer present; if you cannot afford a lawyer, one
3 will be appointed to represent you; during the taking of the
4 statement, you can stop at any point in time if you choose to
5 do so. The State has the burden of proof on this and
6 everything else. As I've told you, the State has the burden
7 of proof. The State has the burden of proof of proving beyond
8 a reasonable doubt that the Defendant made the statement and
9 that it was his free and voluntary statement. And you decide
10 again what weight you're gonna give to the statement, if you
11 find it to be his statement and the Defendant gave it freely
12 and voluntarily. Again you judge credibility and
13 believability. You believe all, some, none; that's your
14 prerogative and your job.

15 Now, there are two types of evidence which are presented
16 in virtually every single case that's tried and they're called
17 direct and circumstantial evidence. Direct evidence, that's
18 the testimony of a person who asserts or claims to know an
19 actual fact, like an eyewitness to something. Circumstantial
20 evidence is proof of a chain of facts indicating the existence
21 of a fact and the law doesn't make any distinction between the
22 two and the value to be given to direct or circumstantial
23 evidence and a greater degree of certainty is not required of
24 one over the other. However, to the extent the State in its
25 prosecution relies on circumstantial evidence, all of the

1 circumstances must be consistent with each other and when
2 taken together conclusively point to the guilt of the accused
3 beyond a reasonable doubt. Again, the State has the burden of
4 proving the Defendant guilty beyond a reasonable doubt. That
5 burden rests on the State whether or not the State relies on
6 direct evidence, circumstantial evidence, or some combination
7 of the two. After weighing all of the evidence, if you are
8 not convinced of the guilt of the Defendant beyond a
9 reasonable doubt, you must find the Defendant not guilty.

10 The Defendant, in this case, didn't testify. Now, I
11 instruct you and emphasize and tell you this is not part of
12 this case. The State has to prove the case beyond a
13 reasonable doubt. The Defendant doesn't have to prove
14 anything to you. The Defendant doesn't have to show anything
15 to you. The fact that the Defendant did not testify may not
16 be considered by you. You can't talk about it in the jury
17 room and you can't use it mentally to make your decision. It
18 is not part of this case. Again, the State has to prove, from
19 the evidence presented, guilt of the Defendant beyond a
20 reasonable doubt.

21 At the very beginning, when the State issued and brought
22 forth the indictment, the charge against the Defendant,
23 charging him with the crime of murder, at that point in time,
24 the Defendant answered and pled not guilty. That immediately
25 put the burden of proof on the State of South Carolina to

1 prove that Defendant guilty of the crime of murder beyond a
2 reasonable doubt. A person charged with any criminal offense
3 is never required to prove themselves innocent. It's an
4 important rule of law in criminal proceedings that no matter
5 the seriousness of the charge, a Defendant will always be
6 presumed to be innocent of a crime for which they were charged
7 and that presumption hadn't ended now. It didn't end at the
8 beginning of trial and it does not end unless and until you
9 are convinced from the evidence, the evidence you find to be
10 true, of the guilt of the Defendant beyond a reasonable doubt.

11 The presumption of innocence, we liken it to a robe of
12 righteousness. It's placed on the shoulders of the Defendant
13 and it stays on the shoulders of the Defendant unless and
14 until the State rips that robe of righteousness from the
15 shoulders of the Defendant by evidence and proof that
16 convinces you of the guilt of the Defendant beyond a
17 reasonable doubt. This isn't just some legal phrase or legal
18 theory. It's a substantial right to which every Defendant, to
19 which every American is entitled unless you the Jury are
20 satisfied from the evidence of the Defendant's guilt beyond a
21 reasonable doubt.

22 So, what's reasonable doubt? The kind of doubt that
23 would cause an ordinary reasonable person to hesitate to act.
24 Proof beyond a reasonable doubt is proof that leaves you
25 firmly convinced of the Defendant's guilt. Now, there are

1 very few things we can know with absolute certainty and the
2 law does not require the State of South Carolina to give you
3 that kind of proof. What is required is based upon your
4 consideration of the evidence, the evidence you find to be
5 true, you are firmly convinced that the Defendant committed
6 the crime charged, you must find the Defendant guilty. On the
7 other hand, based upon your review of the evidence, the
8 evidence you find to be true, you are not firmly convinced
9 that the Defendant is guilty of the crime charged, you must
10 give the Defendant the benefit of the doubt and find him not
11 guilty.

12 In order to establish criminal liability, criminal intent
13 is required. Criminal intent must be proven by the State of
14 South Carolina as with everything else, beyond a reasonable
15 doubt. Criminal intent is a matter that must be determined by
16 you the Jury from the circumstances surrounding the situation.
17 There is no way you can prove intent to some mathematical
18 certainty. There's no way medical science can look in
19 somebody's brain and tell you what they intended to do. So
20 the law says criminal intent may be inferred from the
21 circumstances shown to have existed at the time. This is how
22 you make a determination of whether or not the element
23 requiring intent is present. It is not necessary to establish
24 intent by direct and positive evidence, but intent may be
25 established as with any other fact by taking into

1 consideration and account the acts and the parties and all the
2 facts and circumstances of the case. Criminal intent is a
3 mental state, conscious wrongdoing. It's up to you to
4 determine what the Defendant intended to do based upon the
5 facts and circumstances shown to have existed.

6 The Defendant is charged with the crime of murder. The
7 State must prove to you beyond a reasonable doubt that the
8 Defendant killed another person with malice aforethought.
9 Malice, that's hatred, ill will, hostility towards another
10 person. It's the intentional doing of a wrongful act without
11 just cause or excuse with an intent to inflict an injury or
12 under circumstances that the law will infer an evil intent.
13 It indicates a wicked or crazed spirit intent on some
14 wrongdoing. Malice aforethought does not require that malice
15 exists for any particular time before the act is committed,
16 but malice has to exist in the mind of the Defendant just
17 before and at the time the act is committed. It has to be in
18 combination of this evil intent and the act. You can prove
19 this through direct or circumstantial evidence. And malice --
20 I'm sorry; I'll stop there.

21 Another principal of law that applies in this particular
22 case is referred to as the hand of one is the hand of all. If
23 a crime is committed by two or more people who are acting
24 together in committing a crime, the act of one is the act of
25 all. A person who joins with another to commit some unlawful

1 act is criminally responsible for everything done by the other
2 person, which happens as a probable or natural consequence of
3 the acts done in carrying out that common plan or scheme. The
4 act of one is the act of all or it is sometimes said the hand
5 of one is the hand of all. Now prior knowledge that a crime
6 is going to be committed without something more is not
7 sufficient to make somebody guilty of that crime. Mere
8 knowledge that another person is going to commit a crime, even
9 if you are present when the crime is committed, is not
10 sufficient in and of itself to convict a Defendant as a
11 principal. Guilt as a principal is shown by the actual or
12 constructive presence at the scene as a result of a prior
13 arrangement. The State has to prove beyond a reasonable doubt
14 by evidence you believe the theory of the hand of one is the
15 hand of all. A principal in a crime is one who either
16 actually commits the crime or who is, a person who is present,
17 aiding, abetting or assisting in some way the committing of
18 the crime. When a person does an act in the presence of and
19 with the assistance of the other or others, the act is done by
20 all. When two or more acting with a common plan or intent are
21 present at the commission of a crime, it does not matter who
22 actually commits the crime; all are guilty. The hand of one
23 is the hand of all.

24 Now, present at the commission of a crime means to be
25 sufficiently near to aid, abet and assist in the commission of

1 the crime. Mere presence at the scene of a crime is not
2 sufficient to convict one as a principal on this theory of
3 aiding and abetting or hand of one hand of all. Intent is a
4 necessary element. For there had to've been some common
5 design or intent to commit a crime and the crime must have
6 been committed with the person, person charged, aiding and
7 abetting by some overt act. Intent means intending the result
8 which actually occurs, not accidentally or involuntarily.
9 Intent may be shown by acts and conduct of the Defendant in
10 other circumstances from which you could naturally and
11 reasonably infer intent. And as with everything else, the
12 State has to prove this to you beyond a reasonable doubt.

13 That, ladies and gentlemen, is the law that you will
14 apply to the facts and evidence you find to be true in this
15 case. The verdict form in this matter is very
16 straightforward. The State of South Carolina, County of Horry
17 versus Shelton Lathal Butler, Jr., Defendant, murder. On the
18 charge of murder, we the jury, by unanimous consent, find the
19 Defendant, Shelton Lathal Butler, Jr. -- and there's two
20 choices. I put one before the other, don't assign anything on
21 that; I've got to put one before the other -- not guilty or
22 guilty; there's two choices.

23 So, Madam Forelady, when your Jury deliberates in this
24 matter and they have reached their unanimous decision in this
25 particular case, you will take the verdict form that the Court

1 provides to you, check the appropriate block, sign your name
2 where it says foreperson signature and put today's date.

3 Now, I have said unanimous I don't know how many times,
4 at the beginning and throughout this. It means exactly what
5 you think it means, everybody agrees, 12/0; not 11/1, 10/2 or
6 any combination thereof.. Whatever the verdict of the Jury is,
7 Madam Forelady, when you check that block and you sign your
8 name, you are telling me that every single member of the Jury
9 agrees that's their verdict. Where if they are polled later,
10 asked later, they will say that's my verdict.

11 What I'm gonna ask that you do, Madam Forelady, is to
12 take the Jury to the jury room. The alternates -- and I don't
13 have it right in front of me, ma'am -- but if you'll stay with
14 us at the present time, but take all the other members of the
15 Jury back to the jury room. Madam Forelady, but do not begin
16 your deliberations. I understand lunch is here. They'll
17 deliver that to you. Y'all go ahead and start eating lunch.
18 While you're doing that, they will bring in the verdict form
19 and the exhibits. When y'all are ready, you get started.
20 Just because they bring them in, don't mean you have to stop
21 lunch. You can get done with that and then when you're ready,
22 you get started and start deliberating. All right. Thank you
23 very much.

24 The alternate stay with us, please, ma'am.

25 (REPORTER'S NOTE: Jury exits courtroom. 12:22 P.M.)

1 BY THE COURT:

2 THE COURT: Ms. Scott, I'm sorry I forgot your name. I
3 couldn't remember it right then when I needed to. But your
4 job as the alternate is to step in the shoes of one of the
5 other members of the Jury and they all seem ready, willing and
6 able to go forward and take care of those duties, so I can
7 excuse you from your duties and responsibilities.

8 Any objection to that from the State?

9 MR. DEBUSK: No, Your Honor.

10 THE COURT: From the Defense?

11 MR. FOX: No, Your Honor.

12 THE COURT: All right. So, you are excused from your
13 duties and responsibilities. Your jury service for the week
14 has ended and I appreciate it and you are free to go. Thank
15 you very much.

16 JUROR 361: Thank you.

17 THE COURT: All right. Exceptions, deletions and
18 additions to the charge from the State?

19 MR. DEBUSK: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. FOX: None, Your Honor.

22 THE COURT: Very good. All right, gentlemen.

23 Gentlemen, I wanted to tell all of you, you did exactly
24 what the Court expected of you. You did everything that you
25 knew to do to represent the interest of your respective

1 parties, the State and the Defendant, and commend all three of
2 you regarding it. Thank you very much.

3 Will you please get with Ms. Kay to make sure we've got
4 all the exhibits to go into the jury room and after that,
5 we'll be at ease until the Jury needs us.

6 MR. DEBUSK: All right.

7 THE COURT: Thank y'all.

8 (REPORTER'S NOTE: Deliberations begin - 12:22 P.M.)

9 (RECESS - 12:22 P.M.)

10 *****OFF THE RECORD*****

11 (On the Record - 1:31 P.M.)

12 BY THE COURT:

13 THE COURT: All right, Counsel, as was indicated to you,
14 the Jury has requested that the Court recharge them the law,
15 the act of one is the act of all. And they have since they've
16 so requested, I'm gonna call them back into the courtroom to
17 do that.

18 All right. Ask the Jury to come in.

19 (REPORTER'S NOTE: Jury enters courtroom. 1:32 P.M.)

20 THE COURT: All right, Madam Forelady, the Jury had
21 requested that the Court recharge the aspect of law called the
22 act of one, the act of all and I'll do that at this point in
23 time.

24 CHARGE TO JURY:

25 THE COURT: If a crime is committed by two or more people

1 who are acting together in committing a crime, the act of one
2 is the act of all. A person who joins with another to commit
3 an unlawful act is criminally responsible for everything done
4 by the other person, which happens as a probable or a natural
5 consequence of the acts done in carrying out the common plan
6 or purpose. The act of one is the act of all or as it is
7 sometimes called, the hand of one is the hand of all. Prior
8 knowledge that a crime is going to be committed without
9 anything more is not sufficient to make somebody guilty of
10 that crime. Mere knowledge that another person is going to
11 commit a crime without anything else, even if the Defendant is
12 present when that crime is committed, is not sufficient to
13 convict the Defendant as a principal. Guilt as a principal is
14 shown by actual or constructive presence at the scene as a
15 result of a prior arrangement.

16 Again, the State has to prove all this to you beyond a
17 reasonable doubt by competent evidence, evidence that you
18 believe of this theory of the hand of one is the hand of all.
19 Now a principal in a crime is one who either actually commits
20 the crime or who is present aiding or abetting or assisting in
21 some way the committing of the crime. When a person does an
22 act in the presence of and with the assistance of another, the
23 act is done by all. Where two or more acting with a common
24 plan or intent are present at the commission of a crime, it
25 does not matter who actually commits the crime. All are

1 guilty. The hand of one is the hand of all. Present at the
2 commission of a crime means to be sufficiently near to aid or
3 abet or assist in the commission of that crime. Again, mere
4 presence at the scene of a crime is not sufficient in and of
5 itself to convict one as being a principal. Intent is a
6 necessary element for there has to have been some common
7 design or intent to commit a crime and the crime must have
8 been committed with the person aiding or abetting by some
9 overt act. Intent means intending, which act the result,
10 which actually occurs not by accident or involuntarily.
11 Intent may be shown by acts and conduct of the Defendant in
12 any other circumstances from which you could naturally and
13 reasonably infer intent. And once again, all this must be
14 shown to you by the State by facts you believe that prove the
15 guilt of the Defendant beyond a reasonable doubt.

16 That, ladies and gentlemen, is the law of the act of one
17 is the act of all or the hand of one is the hand of all.

18 Is that sufficient, Madam Forelady?

19 JUROR 349: Yes, sir.

20 THE COURT: Very good. Go back and resume your
21 deliberations please. Thank you very much.

22 (REPORTER'S NOTE: Jury exits courtroom. 1:37 P.M. The
23 following takes place outside the presence of the Jury.)

24 THE COURT: Any objections, additions, deletions to that
25 charge from the State?

1 MR. DEBUSK: No, Your Honor.

2 THE COURT: From the Defense?

3 MR. FOX: No, Your Honor.

4 THE COURT: Very good. All right, gentlemen, again we'll
5 be at ease until the Jury needs us. Thank you very much.

6 (RECESS - 1:38 P.M.)

7 *****OFF THE RECORD*****

8 (On the Record - 4:51 P.M.)

9 BY THE COURT:

10 THE COURT: All right, Solicitor and Mr. Fox, I
11 understand the Jury has reached a verdict in this matter. Is
12 the State ready to receive it?

13 MR. DEBUSK: Yes, Your Honor.

14 THE COURT: All right. Defense?

15 MR. FOX: Yes, sir.

16 THE COURT: All right. Before I bring the Jury in, I
17 want to explain this as I always do, we asked this Jury to do
18 an extremely difficult thing, that is for twelve people to
19 agree using the Court's instructions on this particular
20 matter. I don't know what the verdict is. We'll all receive
21 it together at the same time. This verdict will be received
22 with respect and silence. There will be no reaction in any
23 way to the Jury's verdict. If there is any outward show of
24 emotion, statement, indication of any kind, reaction to the
25 Jury, you will be detained by the Horry County Sheriff's

1 Office. When these proceedings are over, I will then conduct
2 a hearing on that particular person to see if I will find them
3 in contempt of court by which you can be sentenced to one year
4 in the Department of Corrections. If you cannot abide by
5 these instructions, I'm giving you an opportunity now to leave
6 the courtroom. If you stay in the courtroom, you will be
7 bound by these instructions. So, if anyone wishes to leave,
8 please do so now.

9 Very good. Everyone in the courtroom is bound by the
10 instructions. Thank you very much.

11 Ask the jury to come in.

12 (REPORTER'S NOTE: Jury enters courtroom. 4:54 P.M.)

13 VERDICT OF THE JURY:

14 THE COURT: All right, Madam Forelady, has the Jury
15 reached a verdict in this matter?

16 JUROR 349: Yes, sir, we have.

17 THE COURT: Very good. Could you hand the verdict form
18 to the Clerk please, ma'am?

19 You may publish the verdict.

20 CLERK: In the Court of General Sessions, Fifteenth
21 Judicial Circuit, Indictment Number 2012-GS-26-04016, State of
22 South Carolina, County of Horry, State of South Carolina,
23 Shelton Lathal Butler, Jr., on the charge of murder, we, the
24 Jury, by unanimous consent find the Defendant, Shelton Lathal
25 Butler, Jr., guilty. Foreperson Mary Roper, June 5th, 2014.

1 Ladies and gentlemen of the Jury, if this is your verdict
2 so signify by raising your right hand.

3 THE COURT: Thank you very much.

4 The jury having affirmed the verdict, does the State wish
5 the Jury polled?

6 MR. DEBUSK: No, Your Honor.

7 THE COURT: Does the Defense wish the Jury polled?

8 MR. FOX: Yes, Your Honor.

9 THE COURT: By juror number only, poll the jurors.

10 POLLING OF JURY:

11 CLERK: Please stand when I call your number. I will ask
12 you two questions. After you answer them, please be seated.

13 Juror 349, is this your verdict?

14 JUROR 349: Yes, ma'am.

15 CLERK: Is this still your verdict?

16 JUROR 349: Yes, ma'am.

17 CLERK: Juror 118, is this your verdict?

18 JUROR 118: Yes, ma'am.

19 CLERK: Is this still your verdict?

20 JUROR 118: Yes, ma'am.

21 CLERK: Juror 8, is this your verdict?

22 JUROR 8: Yes, ma'am.

23 CLERK: Is this still your verdict?

24 JUROR 8: Yes, ma'am.

25 CLERK: Juror 295, is this your verdict?

1 JUROR 295: Yes.
2 CLERK: Still your verdict?
3 JUROR 295: Yes, it is.
4 CLERK: 408, is this your verdict?
5 JUROR 408: Yes.
6 CLERK: Still your verdict?
7 JUROR 408: Yes.
8 CLERK: Juror 301, is this your verdict?
9 JUROR 301: It is.
10 CLERK: Still your verdict?
11 JUROR 301: It is.
12 CLERK: Juror 448, is this your verdict?
13 JUROR 448: Yes, ma'am.
14 CLERK: Still your verdict?
15 JUROR 448: Yes, ma'am.
16 CLERK: Juror 28, is this your verdict?
17 JUROR 28: It is.
18 CLERK: Still your verdict?
19 JUROR 28: It is.
20 CLERK: Juror 225, is this your verdict?
21 JUROR 225: Yes.
22 CLERK: Still your verdict?
23 JUROR 225: Yes.
24 CLERK: Juror 19, is this your verdict?
25 JUROR 19: Yes, ma'am.

1 CLERK: Still your verdict?

2 JUROR 19: Yes, ma'am.

3 CLERK: Juror 410, is this your verdict?

4 JUROR 410: Yes.

5 CLERK: Still your verdict?

6 JUROR 410: Yes.

7 CLERK: Juror 186, is this your verdict?

8 JUROR 186: Yes, ma'am.

9 CLERK: Still your verdict?

10 JUROR 186: Yes, ma'am.

11 THE COURT: All the jurors having affirmed their verdict
12 after being polled, is there anything further from the Defense
13 as to the Jury itself?

14 MR. FOX: No, Your Honor.

15 THE COURT: Very good. As to the State for the Jury
16 itself?

17 MR. DEBUSK: No, Your Honor.

18 BY THE COURT:

19 THE COURT: Very good. All right, ladies and gentlemen
20 of the Jury, I want to thank you for your jury service in this
21 particular case. I know, the parties know, we asked you to do
22 a very difficult thing, that is to hear this matter and for
23 twelve people to unanimously agree on a verdict in this
24 particular matter and, by your verdict, you have spoken the
25 truth of this particular matter.

1 I appreciate your service very much. You are now
2 excused. You are released from your jury service for the
3 week. You've earned an exemption for three years from coming
4 back to Circuit Court jury duty. If you wish to remain during
5 sentencing, that is your choice, but the deputies will have
6 you come back in the courtroom, but to give anyone an
7 opportunity that wants to leave an opportunity to leave, Madam
8 Forelady, if you'll take all your jury members to the jury
9 room please. Thank you.

10 (REPORTER'S NOTE: Jury exits courtroom. 4:58 P.M.)

11 MOTIONS:

12 THE COURT: All right, Mr. Fox, motions on behalf of the
13 Defense.

14 MR. FOX: Yes, Your Honor. We move for a new trial,
15 based on all previously made objections, move for a new trial,
16 specifically on the grounds -- again, Court's -- I won't re-
17 argue it but our position regarding the Woomer case and the
18 evidence presented, our position being that by allowing the
19 State to present evidence they did not start with or first
20 begin with, a common plan, a hand of one scheme, that that
21 tainted when they're able to first hear about a murder that
22 that impermissibly and irrevocably tainted them with the
23 underlying crime and therefore the Defendant was not able to
24 get a fair trial after that.

25 Also I believe there was error for the Court to admit --

1 and I forget that State's Exhibit -- but the letter from the
2 jail or the mail, rather, in which referencing kidnapping of
3 Mr. Spivey. That although it did meet the Edwards test for
4 admissibility, I believe the final prong in that, the
5 prejudicial value greatly outweighed its probative effect,
6 particularly because it did not touch on any elements of the
7 crime that the State had to prove and it would not have
8 prevented them in any way from presenting the full case.
9 However, it did have, I believe, extremely prejudicial effect
10 of portraying the Defendant as something of a monster. And
11 for those reasons, Judge, we'd ask for a new trial.

12 THE COURT: Very good. Any response from the State?

13 MR. DEBUSK: Your Honor, the same argument we made
14 earlier, which is that the first witness did present
15 substantial circumstantial evidence of a common scheme and
16 plan that was sufficient to satisfy the requirements of
17 Woomer.

18 THE COURT: Thank you, sir.

19 All right. On the matters raised in the motion for a new
20 trial, in a motion for a new trial, after the Jury renders a
21 verdict of guilty, the Court cannot simply change that
22 decision and the decision I made in the directed verdict
23 motion simply because I might disagree with the verdict if I
24 did disagree with the verdict. That's not the standard where
25 there is competent evidence to sustain the Jury's verdict,

1 which I so find. There is more than sufficient competent
2 evidence presented in this matter direct and substantial
3 circumstantial evidence proving beyond a reasonable doubt the
4 Defendant guilty of the crime of murder. There is no reason
5 to overturn the Jury's verdict in this matter.

6 As to the matters raised, the Court renews my statements
7 at the end of the State's case regarding the directed verdict
8 motion made by Mr. Fox as to the Woomer matter stating that
9 the first witness presented -- did present substantial
10 circumstantial evidence of a common plan or scheme and there
11 was no violation of Woomer.

12 Further that I do find that there was proper evidence
13 submitted to deny the motion for a directed verdict and
14 further regarding the arguing about State's Twenty-six and
15 Twenty-seven, the letter and the envelope, and the 403
16 analysis, that is the probative value of those as opposed to
17 the prejudicial value to the Defendant, I do find and reaffirm
18 the Court's prior ruling that the Jury's necessity of hearing
19 this information to gauge credibility and believability of
20 witnesses and to properly test the evidence that the matter
21 was much more probative than not and also was proper under
22 State v. Edwards and outweighed any prejudice to the
23 Defendant, if any. Therefore, the motion for a new trial is
24 respectfully denied.

25 Anything further by the way of motions from the Defense?

1 MR. FOX: No, Your Honor.

2 THE COURT: Is the State ready to proceed with
3 sentencing?

4 MR. DEBUSK: Yes, Your Honor.

5 THE COURT: You have the sentencing forms?

6 MR. DEBUSK: Working on it, Your Honor.

7 THE COURT: Do you need a minute to ---

8 MR. DEBUSK: To prepare it, Your Honor.

9 THE COURT: All right. I'm sorry, do you want a minute
10 or two to get one prepared?

11 MR. DEBUSK: We are preparing it, Your Honor.

12 THE COURT: You're preparing one right now; all right,
13 sir.

14 So with that, while you're doing that, does the State
15 wish to say anything to the Court regarding sentencing in this
16 matter?

17 SENTENCE OF THE COURT:

18 MR. DEBUSK: Your Honor, I'll say two things, just to the
19 prior record, which you have already gone over in trial
20 motions was that common law robbery and failure to stop for a
21 blue light in 2010 for which the Defendant received a YOA
22 sentence which was revoked and he was then confined on that
23 during the pretrial confinement.

24 Your Honor, none of the family members wish to speak, but
25 they wanted you to know that the mother, father and sister are

1 all here present in Court because Rico was very important to
2 them and they've been supporting this case all the way
3 through. They don't wish to speak at this time, but they
4 wanted you to know that they are here and they are supporting
5 this case.

6 THE COURT: All right, sir. Thank you very much.

7 All right, Mr. Fox, on behalf of the Defendant, do you
8 wish to address the Court?

9 MR. FOX: Yes, Your Honor.

10 THE COURT: Very good.

11 MR. FOX: Your Honor, obviously you've heard the entire
12 case, I'm not gonna reword that. Mr. Butler's now twenty-
13 three years old and his family are also present and they've
14 been here throughout, including his mother, sister and he also
15 is a loved one. I think Your Honor has heard this very
16 clearly, it was a hand of one case. The Jury obviously felt,
17 they felt that Mr. Butler fell within that. There's been no
18 indication -- and that makes it a murder -- but there's been
19 no indication that he was the one that fired a gun or -- and
20 he said many times, that's certainly not what was expected.
21 He's got to bear the consequences now but they certainly
22 didn't go there with that purpose. I think it really was a
23 drug deal gone bad. However, the sad thing is he's now going
24 to have to live with that consequence.

25 It's one of the most frustrating trials I've ever had to

1 endure because although it may not have been relevant, but we
2 really were at the point where Mr. Butler was cooperating and
3 anticipated testifying. And I don't feel for a minute it was
4 done deliberately, but last week a day after he was here --
5 there was the expectation of pretrial motions. Mr. Donavon
6 Johnson and Mr. Butler were transported and through a mistake,
7 someone should have caught it, but they were both put in the
8 same cell right back there and they stayed there for several
9 hours. I don't know and I don't feel there was necessarily
10 any threatening going on, but I know in talking to Mr. Butler
11 after, they got in each other's ears and the jailhouse lawyers
12 in them came out and they began to discuss how could they beat
13 this thing and how it wasn't such a strong case and there's
14 some truth in that. But literally, twelve hours before --
15 twenty-four hours before Mr. Butler had sat down and given a
16 full statement including the part that said he knew there
17 would be a robbery before and this was the second time he
18 talked -- he talked to the police at his arrest. And after
19 being put in that cell, no action that he took, he did not
20 seek out Mr. Johnson, no action that we took, he came out
21 determined to go to trial. I didn't think that was the best
22 outcome for him. The anticipation was that he would plea to
23 voluntary manslaughter and although there wasn't a deal on
24 time, when I asked, when I approached Mr. DeBusk later in the
25 week about the ten-year sentence, the response was it didn't

1 shock his conscience. He didn't say I'll recommend it or
2 we'll negotiate it but he did say that doesn't shock my
3 conscience. I have no idea what Your Honor would've done if
4 Mr. Butler had been here this week with a voluntary
5 manslaughter plea. He might've gotten thirty years, and he
6 was aware of that, but, but for that mistake, Mr. Butler would
7 have been here as a cooperating witness in someone else's
8 trial and pleading guilty to a less serious charge and I, I
9 feel for the young man because that's not something that --
10 ultimately, he made the decision whether to go to trial, but I
11 strongly feel we wouldn't be here if it hadn't been for that.

12 Judge, you've heard his record, I would ask obviously for
13 credit for whatever time he's been in jail. He was at some
14 point in Department of Corrections on his parole violation,
15 but I would ask for time since his arrest in June, I believe
16 it was June the 18th. Whatever time he is entitled to, it's
17 about two years, almost two years, and we certainly ask for
18 credit for that.

19 MR. DEBUSK: Your Honor, he never bonded out so he's
20 entitled to credit to the day of his arrest.

21 THE COURT: All right. So since the date of the arrest

22 ---

23 MR. DEBUSK: June 19th, 2012.

24 THE COURT: June 19th?

25 MR. DEBUSK: Yes, sir.

1 THE COURT: All right.

2 MR. FOX: Your Honor, I believe his mother would like to
3 address the Court.

4 THE COURT: I'd be glad to hear from her.

5 Yes, ma'am, can you just tell me your name and then I'll
6 be glad to hear from you, ma'am. Just come a little bit
7 closer to the microphone so, so the Court Reporter can -- I'll
8 be glad to hear you, ma'am.

9 MS. WILLIAMS: Lisa Williams.

10 THE COURT: Yes, ma'am.

11 MS. WILLIAMS: Judge, I'd just like to say that my son,
12 Shelton, I know he's not perfect but I know he's not a killer.
13 And my son was shot several years, about two years ago and he
14 didn't even go after the guy that shot him. I'm sorry for the
15 loss of the family that the young man that did die, but I know
16 my son, he's not a killer. And he's twenty-three years old
17 and he have no kids, he have -- you know, he don't -- he's not
18 married and for him to go to jail for I don't know how long --
19 I don't know if you gonna put him in there for life, but he
20 didn't kill anybody. It's not fair that the murderers are
21 still out in large.

22 THE COURT: Thank you, ma'am. I appreciate it.

23 Anyone else, Mr. Fox?

24 MR. FOX: No, Your Honor.

25 THE COURT: Very good.

1 MR. FOX: I'm sorry, Your Honor. I do believe Mr. Butler
2 would ---

3 THE COURT: Mr. Butler, I'll be glad if you'd like to say
4 something, I'd be glad for you to; you don't have to. If you
5 want to rely on your lawyer, you're certainly welcome to do
6 that..

7 MR. BUTLER: I want to say -- I'm found guilty but a
8 lighter sentence because I really didn't have nothing to do
9 with killing that boy, I didn't. I was going -- I was gonna
10 cooperate but he told me he was gonna try for a lesser
11 sentence, he told that and she told me that. She got up there
12 and lied. Like I'm not saying, I'm not saying, sir, like --
13 but it's all lies. I never said nothing in that car. Mr.
14 Spivey, he never said -- he never said none of that. He --
15 when he got in the car, I looked at him and then he asked me
16 about school. I never said nothing. I didn't do nothing to
17 nobody.

18 THE COURT: All right.

19 MR. BUTLER: And now I charged with murder and ---

20 THE COURT: All right, sir. I appreciate that. Thank
21 you, sir. Thank you very much.

22 Anything else, Mr. Fox?

23 MR. FOX: No, Your Honor.

24 THE COURT: All right. Thank you, sir.

25 2012-GS-26-4016, State of South Carolina, County of Horry

1 versus Shelton Lathal Butler, Jr. regarding the crime of
2 murder. Based on the facts and circumstances as presented,
3 the finding of guilt by the Jury to the crime of murder and
4 the facts and circumstances that have been set forth during
5 the course of this trial, the Court finds that the Defendant
6 shall be committed to the State Department of Corrections for
7 the minimum sentence of thirty years. He's given credit for
8 the time he has served since the date of his arrest on June
9 19th, 2012.

10 Thank you very much.

11 I don't know if it can be any help in this matter or
12 would be any help in this matter, but the Court will retain
13 jurisdiction as to the sentence regarding 172565, reduction of
14 sentence for substantial assistance to the State.

15 Thank you very much.

16 MR. FOX: Thank you, Your Honor.

17 MR. DEBUSK: Thank you, Your Honor.

18 **(ADJOURNED - 5:15 P.M.)**

19 **(END OF DAY FOUR.)**

20

21

22

23

24

25

26

ORIGINAL

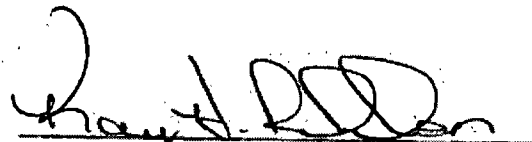
State v. Butler - 2012-CP-26-04016
CERTIFICATE OF COURT REPORTER

530

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Shelton Lathal Butler, Jr., held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on June 2-5, 2014.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

August 3, 2014.

Mayo,

What's goodie Bro? A Bro I really
need in help. I need ~~some~~ Money travel that
to show up to my trial. I go to trial
on June 2nd Bro. I just need some body
to kidnap the nigga, or something Bro.
Nigga's do not playing fair my Uncle. I can
pay you if you do this for me. When I
get home my mother is going to take out a
loan for me, and my people have the D on
back. Bro I would not ask you if
this shit wasn't real. If you can do
just tell my sister Vona, that you got
the ~~the~~ money for my Birth Day, tell me.
Stay up out there my nigga, and let me
know something soon.

Shil-Bo
AKA
Cly Del

L-12-7811

14 + 15 +

The State's Exhibit 37
“CD of Appellant's Statements”
(To filed by The State)

WITNESSES

Michael Conti Horry County Police Department

ARREST WARRANT NUMBER

M972956

CDR: 0116 16-03-0010, 0020

DOA: 6/19/2012

ACTION OF GRAND JURY

For person of Grand Jury
Date: OCT 25 2012

VERDICT

For person of Peace
Date: 2014 JUN -9 AM 11:25

CERTIFIED COPY

DOCKET NO. 2012-GS-26-04016

The State of South Carolina

County of Horry

George H. Debusk

12H02986

COURT OF GENERAL SESSIONS

September, 2012 TERM

THE STATE

VS.

Shelton Lathal Butler Jr
B/ M
1815 Ernest Finney Ave Unit A
Conway, SC 29627-3136
DOB: 1991-04-28
SSN: 044884298

ATTORNEY: Fox, J. Eric

Indictment for

Murder

J. Gregory Hembree, Solicitor

ORIGINAL

CLERK OF COURT
2014 JUN -9 AM 11:25
HORRY COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

At a Court of General Sessions, convened on September 27, 2012, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010.0020

That Shelton Lathal Butler Jr. along with others, did in Horry County, on or about June 8, 2012, willfully, feloniously, and intentionally kill the victim, Jose Noel Gutierrez, with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about June 8, 2012 in Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

HORRY COUNTY
2014 JUN -9 AM 11:25
CLERK OF COURT

CERTIFIED COPY
2014 JUN -9 AM 11:30
CLERK OF COURT
HORRY COUNTY

ARREST WARRANT

M-972956

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Horry

THE STATE

against

Shelton Lathal Butler, Jr

Address:

Phone:

SSN:

Sex: M

Race: B

Height: 6

Weight: 150

DL State: SC

DL #:

DOB:

Agency ORI #: SC0260400

Prosecuting Agency:

Horry County Police Department

Prosecuting Officer:

Neal Frebowitz - 0584

Offense: Murder / Murder

Offense Code:

0116

Code/Ordinance Sec:

16-83-0010, 0020

This warrant is

CERTIFIED FOR SERVICE

in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Shelton Lathal Butler, Jr.

06-19-12

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

PO Box 677

1301 2nd Avenue

Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Horry

Personally appeared before me the affiant

Neal Frebowitz

being duly sworn deposes and says that defendant

Shelton Lathal Butler, Jr.

did within this county and state on or about

06/08/2012

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Horry

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On or about June 8, 2012 at 8:30 PM the sound of gunshots was reported to the Horry County Police in the area of the 400 Block of Ronald McNair Blvd, in the Myrtle Beach section of Horry County. Upon arrival of Uniformed Patrol Officers, puddles of blood were found in the roadway. Simultaneously, a victim arrived via private automobile at the Conway Hospital Emergency Department. The victim, a human being, was subsequently pronounced dead the proximate cause being sustained blood loss from the wound gunshot. Investigation including eye witness accounts revealed the victim was seated in a vehicle with the defendant and yet unidentified co-defendants when an argument ensued. The victim was observed being pushed from the back seat of the car and immediately determined to have suffered the fatal wound. Therefore, there is probable cause to believe the defendant was a principal in the victim's murder.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Horry

Affiant's Address

2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone

(843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/8/2012

defendant Shelton Lathal Butler, Jr.

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Horry

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me for trial to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on

06/09/2012

(L.S.)

Signature of Issuing Judge

Christopher John Arakas

Judge Code:

5080

Judge's Address

J. Ruben Long Detention Center

Conway, SC 29526-1071

Judge's Telephone

(843)365-9222

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

CERTIFIED COPY

Form Approved by
U.S. Attorney General
Apr 8 '11 2003
SCCA 6-18

who

violate the criminal laws of the

CLERK OF COURT
HORRY COUNTY

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Steven H. John, Circuit Court Judge

CASE NO: 2012GS2604016

HORRY COUNTY
2014 JUN -9 AM 11:24
CLERK OF COURT
Respondent

The State, ... Respondent,

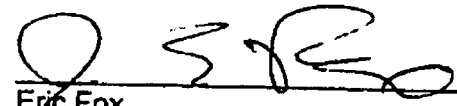
V.

Shelton Butler, ... Appellant.

NOTICE OF APPEAL

Shelton Butler, appeals the conviction and sentence in this case. The sentence was imposed by the Honorable Steven H. John, on June 5, 2014.

June 6, 2014


Eric Fox
Public Defender
Horry County Public Defender Office
Post Office Box 1666
Conway, SC 29528
843-915-5385
Attorney for Appellant

Other Counsel of Record

George DeBusk
Solicitor
Post Office Box 1276
Conway, SC 29528
843-915-5460
Attorney for Respondent

RECEIVED

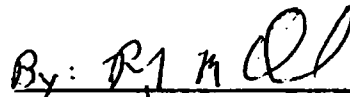
JUN 11 2014

SC Court of Appeals

CERTIFIED COPY
2014 JUN -9 AM 11:26
CLERK OF COURT
HORRY COUNTY

CERTIFICATE OF COMPLIANCE

The undersigned Counsel for Appellant, Shelton Lathal Butler, Jr., certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning personal identifying information and other sensitive information in Appellate Court Filings, issued April 15, 2014.

By: 

ELIZABETH BROOKE HURT, ESQUIRE
Query Sautter Forsythe, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
(843) 795-9500

ROBERT M. DUDEK
Chief Appellate Defender

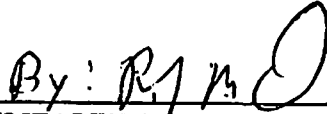
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

May 29, 2015
Charleston, South Carolina

CERTIFICATE OF COUNSEL

The undersigned Counsel for Appellant, Shelton Lathal Butler, Jr., certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 
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ROBERT M. DUDEK
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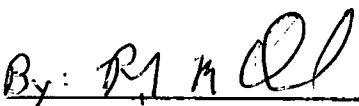
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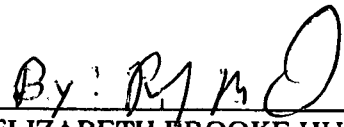
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Columbia, SC 29211-1589
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ATTORNEYS FOR APPELLANT

May 29, 2015
Charleston, South Carolina

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MAY 29 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County
Steven H. John, Circuit Court Judge

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MAY 29 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

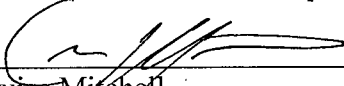
SHELTON BUTLER,

APPELLANT

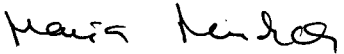
APPELLATE CASE NO. 2014-001274

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 29th day of May, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 29th day of May, 2015.


(L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.