

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Clifton Newman, Circuit Court Judge

RECEIVED

JAN 28 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CALVERT MYERS,

APPELLANT

APPELLATE CASE NO. 2014-001803

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ALPHONSO SIMON, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, SC 29202-0192
(803) 576-1800

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT	1
OPENING STATEMENT BY MR. STEADMAN.....	2
OPENING STATEMENT BY MR. MILLS	6
TESTIMONY	
KRISTEN ELLIS	
Direct Examination by Mr. Steadman	9
Cross Examination by Mr. Mills.....	18
ROBERT FURGAL	
Direct Examination by Mr. Steadman	22
Cross Examination by Mr. Mills.....	29
JACKIE RICHBURG	
Direct Examination by Ms. Walker	33
Cross Examination by Mr. Mills.....	35
JEFFREY HAZELBROOK	
Direct Examination by Mr. Steadman	36
Cross Examination by Mr. Mills.....	39
TONEY LOWMAN	
Direct Examination by Ms. Walker	40
Cross Examination by Mr. Mills.....	61
Redirect Examination by Ms. Walker	73
Recross Examination by Mr. Mills.....	74
SHERRY MEYERS	
Direct Examination by Ms. Walker	40
Direct Examination by Ms. Walker (continued)	87
Cross Examination by Mr. Mills.....	90
Redirect Examination by Ms. Walker	107
AMY DURSO	
Direct Examination by Ms. Walker	110
Cross Examination by Mr. Mills.....	128
Redirect Examination by Ms. Walker	139

KRISTEN POLIS	
Direct Examination by Mr. Steadman	140
Cross Examination by Mr. Mills.....	158
YVONNE WOODS	
Direct Examination by Ms. Walker	163
Cross Examination by Mr. Mills.....	179
JAMES MYERS	
Direct Examination by Ms. Walker	185
Cross Examination by Mr. Mills.....	198
Redirect Examination by Ms. Walker	208
AMANDA METZ	
Direct Examination by Ms. Walker	211
Cross Examination by Mr. Mills.....	228
JOHN BARRON	
Direct Examination by Mr. Steadman	231
Cross Examination by Mr. Mills.....	242
Redirect Examination by Ms. Walker	300
MEGAN FLETCHER	
Direct Examination by Ms. Walker	304
Cross Examination by Mr. Mills.....	311
Redirect Examination by Ms. Walker	315
MARVIN MOORE	
Direct Examination by Mr. Steadman	317
Cross Examination by Mr. Mills.....	324
MR. MILLS MOTION FOR A DIRECTED VERDICT	328
CLOSING ARGUMENT BY MS. WALKER.....	329
CLOSING ARGUMENT BY MR. MILLS.....	364
JURY CHARGE.....	377
VERDICT	406
SENTENCING	415
INDICTMENT	417
CERTIFICATE OF COUNSEL	419

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #4 (VIDEOTAPE)

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3).
4 STATE OF SOUTH CAROLINA,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 CALVERT MYERS,) 2013-GS-40-01493
9 DEFENDANT.)

10

11 AUGUST 12 THROUGH 14, 2014

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CLIFTON B. NEWMAN, JUDGE; AND A JURY

16

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

18 FOR THE PLAINTIFF:

19 MEGHAN WALKER, ESQ.

20 JOHN STEADMAN, ESQ.

21

22 FOR THE DEFENDANT:

23 ROBERT MILLS, ESQ.

24

25

1 which is presented to you in this courtroom because you're
2 to decide the case based on the evidence presented from this
3 witness stand applying the law that I give you.

4 Now, we're going to press on and have opening
5 statements by the State and then the Defense, if the Defense
6 chooses to give one, then we're going to break for lunch.

7 I want to mention one additional thing, and that
8 is that later in the process, I will appoint one of you to
9 serve as foreperson of the jury. And the foreperson will be
10 the spokesperson for the jury. You will have that
11 responsibility. Also, you will have the responsibility of
12 presiding over the jury deliberations and completing the
13 verdict form representing the unanimous verdict of the jury
14 once the jury at the end of the case reaches a unanimous
15 verdict.

16 Opening statements.

17 MR. STEADMAN: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. STEADMAN: Calvert Myers shot Neil Green in
20 the back that night while he was running for his life. Neil
21 Green is dead. He was shot to death that night because
22 Calvert Myers was looking for a fight.

23 December 29th, 2012, was supposed to be a good
24 night for Neil and his friend, Sherry Myers. They went to
25 Toney's Lounge in Gaston, South Carolina, which is a bar.

1 They went to the bar and went inside the bar. They went up
2 to the bar and were minding their own business when the
3 Defendant (indicating), Calvert Myers, approaches Sherry and
4 starts saying -- calling her names. For background
5 purposes, Sherry Myers is related to the Defendant, Calvert
6 Myers. She is his niece. There have been prior arguments.
7 There's bad blood between the two.

8 So Calvert goes up to Sherry and starts calling
9 her names. And, of course, Sherry gets up. They get into
10 it. They go back and forth. And at some point during that
11 argument at the bar, Sherry pushes Calvert. She gets so
12 heated that she pushes Calvert. Calvert is then restrained
13 by the bar owner named Toney Lowman. You'll hear from him.
14 Toney has to restrain Calvert. He has to take him outside
15 the bar.

16 He takes him outside the bar and tries to calm him
17 down. Toney talks to Calvert and agrees that if he's able
18 to control himself and calm down, he would let him back in
19 the bar. So Toney agrees to let Calvert back in the bar.
20 And what does Calvert do? He goes straight back to Sherry
21 and start the argument again. They get into it again and
22 then Calvert is kicked out of the bar for the second time by
23 Toney Lowman. Toney takes him outside, tells him he can't
24 come back inside the bar. He's done.

25 James Myers, who you will also hear from, is the

1 nephew of the Defendant. He was there that night and he
2 tried to calm Calvert down. He told Calvert we need to
3 leave. He tried, he tried to get Calvert to leave, but
4 Calvert once again refused. Refused to leave the bar. And
5 he insisted on going back inside the bar. Why? Because he
6 was looking for a fight.

7 MR. MILLS: Objection, Your Honor, he's arguing.

8 THE COURT: Objection is sustained. You may
9 proceed.

10 MR. STEADMAN: At some point, 10 minutes later,
11 Calvert sneaks back into the bar. He gets back into the
12 bar, but he doesn't go up to Sherry Myers this time. He
13 goes to Neil, Sherry's boyfriend, the victim in this case.
14 He goes up and starts an argument with Neil and starts
15 talking trash to Neil. Neil doesn't want to fight him.
16 They go back and forth a bit and then Toney, the bar owners,
17 comes back in. He sees that Calvert has been let back in
18 the bar or snuck back in the bar again and kicks him out for
19 the third time.

20 Neil goes outside. Toney goes outside. Sherry
21 goes outside and the Defendant goes outside. They're all in
22 front of the bar at this point arguing back and forth. Neil
23 and Sherry -- excuse me, Calvert and Sherry get into it
24 again. Then at some point during that argument, Sherry
25 pushes Calvert. Calvert pushes Sherry and Neil punches

1 Calvert. He knocks him to the ground.

2 After he knocks Calvert to the ground, Neil walks
3 off, Sherry walks off. Neil tries to go to his car, but he
4 realizes he doesn't have his keys. He realizes Sherry has
5 his keys. So he begins walking back over to Sherry and
6 that's when somebody screamed he had a gun. At that point,
7 Neil turns around and he see Calvert running towards him
8 with a pistol in his hand. Neil did the only thing he knew
9 to do, he ran for his life. Calvert, running toward him,
10 fired multiple shots, hitting Neil in the back. Neil, after
11 being shot, is able to circle around a parked car and
12 somehow, after being shot multiple times, he's able to
13 tackle the Defendant as he's being shot. He tackles Calvert
14 to the ground and punches him. Neil punches him repeatedly
15 until, finally, he breathes his last breath right there and
16 collapsed on the ground next to Calvert.

17 People rush to the aid of Neil. They put him on
18 his side, they call police. Police respond shortly
19 thereafter. Neil is transported to the hospital as well as
20 Calvert, but he's pronounced dead shortly thereafter.
21 Calvert is then charged with the murder of Neil Green.

22 You will hear from numerous witnesses, Sherry,
23 James, Toney, all of who were there that night and they saw
24 what took place. You will get to hear firsthand accounts of
25 the altercation inside the bar, the altercation outside of

1 the bar and then the murder in the parking lot.

2 Besides getting to hear these firsthand accounts
3 of the witnesses that were there, you will see a video of
4 the murder. Toney's Lounge had surveillance cameras. They
5 were in operation that night and they caught this murder on
6 camera. You will see that video. And in South Carolina,
7 murder is the unlawful killing of another with malice
8 aforethought. And in this case, it doesn't get any more
9 malicious than chasing after somebody while they're running
10 for their life and shooting them and killing them in their
11 back.

12 And once you've heard from the witnesses that we
13 will present you, once you've had a chance to view the
14 video, we'll come back before you and we will ask you to
15 render a verdict that is supported by the facts in this case
16 and that's to find Calvert Myers guilty of murder. Thank
17 you.

18 MR. MILLS: May please the Court, Your Honor?

19 THE COURT: Yes.

20 MR. MILLS: Ladies and gentlemen, this is Calvert
21 Myers (indicating). He sits here an innocent man. All the
22 statements you just heard are not evidence. Everything the
23 solicitor just told you has to be testified to under oath
24 before you as well as all of the other evidence that they
25 may produce. In this country, every one charged with a

1 crime is presumed innocent. And there's a reason for that.
2 In this country, we -- liberty is very important to all our
3 citizens. And when the government attempts to take away the
4 liberty of a citizen of this country, they have the highest
5 burden of proof of anything in this courthouse or any other
6 courthouse in this country.

7 Some of you may have sat on civil juries where a
8 car wreck or a contact dispute. Well, in those cases, in
9 most of those cases, the plaintiff has the burden of proof,
10 but the burden of proof is by the preponderance of the
11 evidence. So if you looked at the scales of justice,
12 preponderance of the evidence would be just tipping slightly
13 towards the plaintiff. But in a criminal case, in such a
14 criminal case where they have charged someone with murder,
15 the State has to prove beyond a reasonable doubt
16 (indicating). You have no reasonable doubt as to the charge
17 of murder in this case.

18 Now, you heard some of the allegations, basically,
19 is what the solicitor is telling you. And I ask you to
20 listen very closely to the testimony and the evidence that's
21 put in and the video that they will show you and you will
22 see that there is a reasonable doubt as to the charge of
23 murder.

24 Look for not only the evidence that they do
25 present to you because, remember, the Defense has no burden

1 of proof. The State has the entire burden of proof in this
2 case. And, also, look at what they do not present to you.
3 Look at what they don't bring to you in this case. Look for
4 the objective evidence, look for the subjective evidence.
5 Objective evidence is evidence that has no -- that you could
6 interpret yourself, that you could look at that everyone
7 will see, basically, the same. Subjective evidence is
8 evidence usually of lay witnesses who have different points
9 of view, different views, different memories of what
10 happened. So look at both the objective and the subjective
11 evidence. Look for inconsistent evidence to determine
12 whether or not the State has met their burden of proof.
13 Look for lack of evidence. Look for lack of investigation.
14 Look for lack of investigatory techniques to determine
15 whether something is fully recorded, fully put into audio or
16 video recordings, statements, anything else that would --
17 that could -- where memories could change or written down
18 differently. Look for that. Look for the lack of evidence
19 in this case.

20 And one thing you do not leave when you come into
21 the courtroom outside the courthouse is your common sense.
22 Use your common sense in this case. And remember something
23 the solicitor just told you, Mr. Myers was not knocked down
24 by the victim before any kind of shooting occurred. It's
25 very important to remember in this case. Very important.

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 After all of this case is done, I'm going to ask you to
2 return a verdict of not guilty for the crime of murder.
3 Thank you.

4 THE COURT: All right. We're going to take lunch
5 now. We need you back at 2:15. At 2:15. Please do not
6 discuss the case. We'll see you then.

7 (Whereupon, the jury left the courtroom
8 at 12:46 p.m.)

9 THE COURT: All right. We'll break until 2:15.

10 MR. MILLS: Thank you, Your Honor.

11 (Whereupon, a short recess was held.)

12 THE COURT: Okay. You ready?

13 MS. WALKER: Yes, Your Honor, the State's ready.

14 THE COURT: Okay. You may bring the jury in.

15 BAILIFF: Yes, Your Honor.

16 (Whereupon, the jury returned to the
17 courtroom at 2:33 p.m.)

18 BAILIFF: Your Honor, the jury's present.

19 THE COURT: Okay. Very good.

20 Okay. You may call your first witness.

21 MR. STEADMAN: The State calls Deputy Kristen
22 Ellis.

23 THEREUPON,

24 KRISTEN ELLIS,

25 after having been duly sworn, testified as follows:

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 THE CLERK: Have a seat in the witness stand,
2 please, and state your name for the record.

3 THE WITNESS: Kristen Ellis.

4 DIRECT EXAMINATION

5 BY MR. STEADMAN::

6 Q. Good afternoon, Deputy Ellis, what do you do?

7 A. I am a deputy with Richland County Sheriff's
8 Department.

9 Q. And in what capacity do you work with the sheriff's
10 department?

11 A. Right now, I'm a school resource officer, but.

12 Q. How long have you been employed with the sheriff's
13 office?

14 A. A little over four years.

15 Q. Can you briefly describe what you've done with the
16 sheriff's department in those four years?

17 A. Well, for a little over three years, I worked patrol, I
18 worked the road in region one. And then I left the
19 road to go to school resource office.

20 Q. In region one, what were your duties and
21 responsibilities as a patrol officer?

22 A. Responding to 911 calls, sending calls for emergencies
23 or anybody who needed help.

24 Q. And briefly describe what area is region one of
25 Richland County?

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 A. Region one is -- runs anywhere from the Olympia area
2 through all the way to 601 through Eastover, Bluff
3 Road, all the way over to Leesburg Road to Hopkins,
4 Eastover, Gaston, Columbia:

5 Q. Were you working as a region one patrol officer on the
6 night of the murder, December 29th, 2012?

7 A. Yes, sir, I was.

8 Q. Please -- can you please describe how you came to
9 become involved in the murder?

10 A. Okay. I was just on patrol that night, December 29th,
11 2012, in Richland County. About 1:30 in the morning, I
12 got a call saying there was a civil disturbance between
13 two black males out at Toney's Lounge on Congaree Road,
14 so we started heading out that way. On the way there,
15 it got upgraded to two people being shot. Upon
16 arrival, I observed two black males laying on the
17 ground, one was conscious and one was unconscious.

18 Q. Before you go any further --

19 A. Uh-huh.

20 Q. -- what was the address you were instructed to respond
21 to?

22 A. It's [REDACTED] Congaree Road:

23 (State's Exhibit No. 3 was marked for
24 identification.)

25 MR. MILLS: No objection, Your Honor.

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 BY MR. STEADMAN::

2 Q. I'm going to show you what's been marked as State's
3 Exhibit No. 3. Take a look at that, what is that?

4 A. That's is Toney's Lounge.

5 Q. Is that a fair and accurate depiction of the scene --

6 A. Absolutely.

7 Q. -- when you responded to it?

8 A. Yes, absolutely.

9 MR. STEADMAN: Your Honor, at this time, we would
10 move to introduce State's Exhibit No. 3 into evidence.

11 THE COURT: Admitted without objection.

12 (State's Exhibit No. 3 was admitted into
13 evidence.)

14 MR. STEADMAN: Permission to publish to the jury?

15 THE COURT: Yes.

16 BY MR. STEADMAN::

17 Q. If you can, describe what's shown in this photo.

18 A. All right. Back here is just a dark area. This is,
19 actually, Toney's Lounge right here. This is Congaree
20 Road. If you're going this way (indicating) -- if
21 you're going this way, you're going to go back into
22 Columbia, back into town, back into Columbia. And if
23 you go this way, you're going towards Gaston and Bluff
24 Road. This is the front of Toney's Lounge right here
25 (indicating). This is where we entered and the two

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 males were in this area (indicating) along with
2 multiple witnesses or people who were at Toney Lounge.

3 Q. Were there cars parked in that area?

4 A. Oh, yes. Yeah, there were cars parked over here. I
5 mean, they kind of park wherever they want to.

6 Q. And is this location in Richland County?

7 A. It is in Richland County.

8 Q. Okay. Thank you.

9 A. You're welcome.

10 Q. Now, tell me what you observed next after you showed up
11 on the scene?

12 A. Okay. Like I said, we were -- I pulled up on the
13 scene. There was multiple people standing around.
14 There was a lot of confusion. Like I said, there was
15 two black males on the ground. I did run over to one.
16 I ran over first to, actually, the Defendant,
17 (indicating) realized that he had not been shot. We
18 did only have one EMS on the way, so I did radio for a
19 second EMS to come and let him know that he had just
20 been severely assaulted. I ran over to the victim, he
21 was unconscious. EMS -- we did clear the scene,
22 secured the scene and that allowed -- once we secured
23 the scene, EMS came on the scene. Before we secured
24 the scene, we were trying to locate the gun. I was not
25 too involved with that, that was more of Deputy Furgal,

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1. who, actually, secured the weapon.

2 Q. And you said you secured the scene, what do you mean by
3 securing the scene?

4 A. Making sure that nobody else was in danger. And we
5 also secure the crime scene to make sure that -- when
6 we first come on, we just make sure that it's safe for
7 EMS to come in so that we don't have in casualties. We
8 make sure we find the weapon or, you know, it's, at
9 least, out of everybody's hands, then we secure the
10 criminal scene.

11 Q. And how do you secure the crime scene?

12 A. Move everybody out of the way, push it back. We figure
13 out where it all started and tape it off with crime
14 scene tape. we start a crime scene log. Nobody's
15 allowed inside of the tape after the tape is up.

16 Q. So when you got on scene, did you instruct everybody
17 besides the two black males that you observed --

18 A. Uh-huh.

19 Q. Did you tell everybody else to --

20 A. Yes.

21 Q. -- be outside?

22 A. We were telling them to move outside. It took a
23 little -- it was chaos, so it took a little bit of time
24 to get everybody to, actually, move out of the way.
25 And once other deputies started to arrive, it was

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 easier because, initially, there was just the two of
2 us.

3 Q. You said you observed that Neil, the victim in this
4 case, he was unconscious?

5 A. He was unconscious.

6 Q. What else did you observe about him?

7 A. He was breathing very shallow. I know when EMS came
8 on, we started immediately working on him.

9 Q. How did you work on him?

10 A. I assisted Deputy Furgal and myself -- Deputy Furgal,
11 actually, started performing CPR on him. One of the
12 EMS ladies was giving him oxygen and I was helping
13 remove his clothes so we could discover where he had
14 been shot.

15 Q. And what about the Defendant, what did you observe as
16 his condition at this point in time?

17 A. When I first ran up to him, he was -- he was very
18 bloody. I didn't recognize -- I couldn't have told you
19 what his -- I mean, his face was completely bloody. So
20 once I realized that he was okay, you know, he was not
21 a threat, and I still trying to determine who exactly
22 the victim and the subject were. We still had yet to
23 determine that.

24 Q. Was Mr. Myers, the Defendant, was he conscious?

25 A. He was conscious. The Defendant was conscious.

KRISTEN ELLIS DIRECT BY MR. STEADMAN

1 Q. Was he saying anything, doing anything?

2 A. He didn't say anything to me. I believe he did --

3 Deputy Furgal -- he did try to get up and Deputy Furgal

4 instructed him to sit back down because at that point,

5 I think we had determined that he was the one -- from

6 what everybody had --

7 MR. MILLS: Objection, Your Honor.

8 THE WITNESS: Yeah.

9 BY MR. STEADMAN::

10 Q. You mentioned that EMS showed up on scene. How quickly
11 did they show up on scene?

12 A. They, actually -- the one EMS was, actually, already
13 standing by, so they came on as soon as I secured the
14 scene. And then the second EMS was there not much
15 longer after that.

16 Q. And did you stay there until EMS transported the
17 Defendant and the victim to the hospital?

18 A. I was there much past that. Deputy Furgal followed the
19 EMS to the hospital. I stayed on scene.

20 Q. So once EMS transported them to the hospital, tell me
21 about what you did next?

22 A. That was when we finally get everybody out of the crime
23 scene. The tape was put up once they were transported
24 -- actually, the tape was put up before they were
25 transported. We started talking to some of the

KRISTEN ELLIS CROSS BY MR. MILLS

1 witnesses, trying to get an idea of what exactly
2 occurred.

3 Q. Okay. And without telling me --

4 A. Uh-huh.

5 Q. -- what they said, after you've talked to witnesses,
6 what is your next step? Do you call crime scene?

7 A. Yes, crime scene is called. Investigator Woods
8 responded for the crime scene. Investigator Carwell
9 was notified and he responded to the scene as well.

10 Q. And is it at that point that you turn over various
11 pieces of evidence that you located at the crime scene?

12 A. Right. It gets turned over to either a crime scene
13 investigator if it's evidence, then the investigator
14 usually takes over, also.

15 Q. So at that point, when crime scene investigator shows
16 up?

17 A. Right.

18 Q. On the on-call investigators show up, is your duties
19 complete?

20 A. They are besides I keep -- the responding officer
21 always keeps up with the crime scene log until it's --
22 until everybody leaves the scene. I am -- whoever the
23 first responder is is responsible for the crime scene
24 log.

25 Q. So did you stay there until --

KRISTEN ELLIS CROSS BY MR. MILLS

1 A. I did.

2 Q. -- the very end?

3 A. I did.

4 Q. Until everybody leaves the scene?

5 A. Yes.

6 MR. STEADMAN: Thank you.

7 MR. MILLS: May it please the Court, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MILLS::

10 Q. Good afternoon, Deputy Ellis. So you were there before
11 Deputy Furgal?

12 A. We were there at the same time.

13 Q. Separate vehicles?

14 A. Separate vehicles.

15 Q. And you said you first heard it was a civil
16 disturbance?

17 A. Uh-huh.

18 Q. That's what the call came through as?

19 A. The initial call went out as a civil disturbance.

20 Q. And it was two people shot?

21 A. Uh-huh.

22 Q. Okay.

23 A. Yes, sir.

24 Q. And when you arrived on the scene, you stated that

25 there were vehicles in -- the body -- I mean, both the

KRISTEN ELLIS CROSS BY MR. MILLS

1 Defendant and Mr. Green were over here on this side of
2 the building?

3 A. They were on the left side of the building. There was
4 vehicles over here. There was also a line of vehicles
5 right here (indicating), which -- the Defendant and the
6 victim was over here and there were some more vehicles
7 over here. So it was kind of in between the cars.

8 Q. Okay.

9 A. But it was --

10 Q. All right.

11 A. It was a large gap.

12 Q. Okay. And was your duty to do any type of collection
13 of evidence?

14 A. No, sir. I mean, not detailed evidence. That's why we
15 call crime scene. Especially on something like that,
16 we call crime scene to come in and collect evidence.

17 Q. When you stated on direct examination that you turned
18 over evidence, what type of evidence did you turn over?

19 A. I personally did not turn -- I did not collect any
20 evidence myself.

21 Q. Okay, that's what I was looking for. So did you take
22 any photographs of the scene?

23 A. No, sir.

24 Q. And you stated that Mr. Myers, Calvert Myers, was
25 severely assaulted, correct?

KRISTEN ELLIS CROSS BY MR. MILLS

- 1 A. I'm not a doctor, but, I mean, he was very bloody, his
2 face was.
- 3 Q. In the face?
- 4 A. Uh-huh.
- 5 Q. And --
- 6 A. At that point, that's all I could see. It's 1:30 in
7 the morning, raining.
- 8 Q. Okay.
- 9 A. It was very --
- 10 Q. But he was severely assaulted?
- 11 A. Yes.
- 12 Q. Those were your words?
- 13 A. Yes.
- 14 Q. And then EMS -- when EMS arrived, you said you did help
15 remove clothing of Mr -- the victim in the case?
- 16 A. Uh-huh, we were helping the EMS with Mr -- the victim,
17 Mr. Green.
- 18 Q. Right. So you did help?
- 19 A. Yes, sir.
- 20 Q. Okay. And, again, you stated that Mr. Myers' condition
21 was very bloody, his face was bloody, correct?
- 22 A. His face was covered in blood.
- 23 Q. Okay. And you stayed there throughout the evening,
24 what time did you leave?
- 25 A. That --

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 Q. Actually, early morning, I'm sorry.

2 A. Crime scene, around 3:44 is when I wrote myself
3 leaving.

4 Q. Did you do any followup after that?

5 A. I didn't, no, sir.

6 Q. Pardon?

7 A. I did not, no, sir.

8 Q. So Deputy Furgal, actually, followed the EMS?

9 A. Yes, sir.

10 Q. Okay. In his vehicle?

11 A. Yes, sir.

12 Q. Okay. Was there anyone else in his vehicle?

13 A. In his vehicle?

14 Q. Yes.

15 A. I don't believe so.

16 Q. Okay. How about your vehicle?

17 A. I had a ride-along.

18 Q. Okay. And who was the ride-along?

19 A. I don't remember his name. He was a reserve deputy.

20 He stood back. He never -- he never had anything to do
21 with it, so he wasn't included in my report.

22 Q. But he was present at the scene?

23 A. He was present.

24 Q. Okay.

25 THE DEFENSE: Beg the Court's indulgence. That's

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 all the questions for the witness, Your Honor.

2 THE COURT: Redirect?

3 MR. STEADMAN: No, Your Honor.

4 THE COURT: Thank you. You may step down.

5 Call your next witness.

6 MR. STEADMAN: State call Deputy Robert Furgal.

7 THEREUPON,

8 ROBERT FURGAL,

9 after having been duly sworn, testified as follows:

10 THE CLERK: Thank you. Have a seat in the witness
11 stand, please, and state your name for the record.

12 THE WITNESS: Robert Furgal.

13 DIRECT EXAMINATION

14 BY MR. STEADMAN::

15 Q. Deputy Furgal, where are you employed?

16 A. Richland County Sheriff's Department.

17 Q. How long have you been employed with Richland County
18 Sheriff's Department?

19 A. Approximately two and half years.

20 Q. And in what capacity do you work with the Richland
21 County Sheriff's Department?

22 A. I work in the region one parole area. I'm a parole
23 deputy.

24 Q. Have you always worked as a region one patrol deputy?

25 A. Yes, sir, since I've been hired.

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 Q. And as a region one patrol deputy, does that require
2 you to respond to incident locations or calls for
3 assistance?

4 A. Yes, sir, as previously stated, all 911 calls for
5 service. We'll respond to all of those emergency
6 situations.

7 Q. Were you working in that capacity on December 29th,
8 2012, the night of the murder?

9 A. I was.

10 Q. What do you remember about that night and how you got
11 involved?

12 A. I remember the call came out as a civil disturbance,
13 that was upgraded to individuals being shot. So at
14 that time, pretty much all region one united started
15 working towards that location of Toney's Lounge out on
16 Congaree Road. It was raining, wet, dark, late. I
17 arrived pretty much simultaneously with Deputy Ellis to
18 the incident location.

19 Q. So y'all arrived at the same time?

20 A. I might have been 20 seconds, 30 seconds later. It was
21 right around the same.

22 Q. What did you do once you got to the crime scene?

23 A. Once I got there, exited my vehicle, immediately
24 started to work the crowd back from the two
25 individuals, the Defendant and the victim, who was

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 noticeably both in the same vicinity on the ground,
2 tried to get them back to make the scene safe so that
3 EMS would come on scene. People pointed in the
4 direction where the handgun was, so I went over and I
5 observed the handgun and I went and retrieved it and
6 made it safe. I went and secured it in my vehicle, put
7 it in the trunk, which is locked, and I locked my
8 patrol vehicle, so I'm the only one that can get in it
9 once that happens.

10 Q. Now, in relation to where the Defendant and victim
11 were, where was the handgun?

12 A. I'd say, just guessing, probably within 15, 20 feet of
13 where they were at the most. I mean, I had to take a
14 few steps to get to it.

15 Q. And what did you observe about the pistol, if anything?

16 A. The pistol was with the action, which would be the
17 slide in a semi-automatic pistol, was locked back,
18 meaning, usually, that the magazine has expired, all of
19 the rounds had been fired. I did remove the magazine
20 to ensure that no more rounds were in that to make it
21 safe before I transported by my person to the car.

22 Q. And you said the action was locked back to the rear?

23 A. Yes, sir.

24 Q. What does that mean?

25 A. It's hard to explain. I'm not a gun expert, but

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 there's a slide part where it ejects the round out that
2 will lock to the rear if there are no more rounds to be
3 fired. And there were no more rounds in the magazine,
4 I checked.

5 Q. There were no more rounds in the magazine, were there
6 any rounds in the chamber?

7 A. No, nothing was in chamber. It was empty.

8 (State's Exhibit No. 6 was marked for
9 identification.)

10 BY MR. STEADMAN::

11 Q. Deputy Furgal, I'm going to show you what's been marked
12 for identification purposes State's Exhibit No. 6.
13 What is that?

14 A. That is the exact way that I found the weapon, locked
15 back just like that. That is the weapon that I
16 retrieved from the ground.

17 Q. And it was -- this is the exact way you found it?

18 A. Yes, sir. I mean, other than the magazine still in the
19 stock of the weapon, that's how the weapon was.

20 Q. And how did you secure the weapon?

21 A. I removed the weapon and magazine. I brought it to the
22 trunk of my vehicle, put it in the trunk of my vehicle,
23 closed it and made sure my vehicle was locked. Nobody
24 could get in it unless I was there.

25 Q. And after you secured the vehicle -- secured the

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 weapon, what did you do next?

2 A. I then returned to assist Deputy Ellis with crowd
3 control, getting them to be back away from the
4 victim -- both victims at the time, the victim and the
5 Defendant today, so that we could get EMS on and start
6 being treated. The victim was not conscious at all and
7 the Defendant, he was conscious. He attempted to get
8 up. I instructed him to sit back down. He wasn't to
9 move from where I had him.

10 Q. So he was conscious?

11 A. He was.

12 Q. And after you -- after you instructed the Defendant to
13 sit back down once he attempted to stand up, what did
14 you do after that?

15 A. EMS pretty much arrived within a second. They came
16 over and started attending to the unconscious
17 individual, the victim. I made sure the crowd stayed
18 back. I noticed the victim needed a hand, so the one
19 paramedic went to assist the Defendant and I started
20 assisting the other paramedic in administering CPR to
21 the victim.

22 Q. And were you able to achieve anything through CPR?

23 A. I'm not a medical professional, so I don't know if it
24 helped or not. I just did what I was told.

25 Q. Well, what did you observe about what EMS was doing?

ROBERT FURGAL DIRECT BY MR. STEADMAN

1 A. I just took over doing compressions. And then they
2 had, I guess, they call it a bag or whatever, and then
3 they were squeezing oxygen into him to help with
4 inflating the lungs or whatever that is.

5 Q. So after EMS was working on the victim what happened
6 next?

7 A. After pretty much -- also, assisted with removing his
8 clothing. We got him to the back of the ambulance.
9 The Defendant was also loaded in a separate ambulance
10 at almost the same time. And my supervisor instructed
11 me to follow them to the hospital. So we all left the
12 scene pretty much within the next couple of minutes.

13 Q. Who did you follow to the hospital?

14 A. Both ambulances.

15 Q. So the ambulances --

16 A. The Defendant and the victim. There were two separate
17 ones. One had the Defendant and one had the victim.

18 Q. And you were behind both of those ambulances?

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

20 Q. Once you -- when you followed them to hospital, when
21 you got to the hospital, what did you do?

22 A. I parked my car, which was pretty much right next to
23 them. They unloaded both the Defendant and the victim,
24 brought them into the trauma base. The victim went in,
25 I believe, it was trauma room one and the Defendant was

ROBERT FURGAL CROSS BY MR. MILLS

1 in trauma room two, where I stayed. I was by his side.
2 They were cutting his articles of clothing off. I
3 instructed them that I needed to put it in a bag, so
4 they put it in a bag and I collected it. I, also,
5 instructed them to put paper bags over his hands as
6 well as the victim's hands to preserve the gunshot
7 residue.

8 Q. So -- and this is all in the --

9 A. All in the hospital.

10 Q. It's all in the hospital and this is all with respect
11 to the Defendant?

12 A. Yes.

13 Q. And what evidence did you retrieve from the hospital
14 after they cut the clothes off?

15 A. Just his clothing was in the bag and then I turned it
16 over to CSI Investigator Woods when she arrived there,
17 along with the weapon that I had.

18 Q. Did she come to the hospital?

19 A. She came to the hospital.

20 Q. And then you turned over -- what exactly did you turn
21 over to the CSI investigator?

22 A. Whatever clothing he had. I couldn't tell you what it
23 was that was in the bag. It was just whatever they cut
24 off of him. And then I walked out to my trunk with her
25 and physically handed her the nine millimeter weapon

ROBERT FURGAL CROSS BY MR. MILLS

1 that you just showed me. I physically handed it over
2 to her.

3 Q. So after you handed over the evidence that you
4 collected at the hospital as well as the pistol you
5 collected at the scene, what was next step of your
6 involvement in this case?

7 A. I was just there waiting to be relieved. The hospital
8 rotation was set up. I was there with the Defendant
9 while he was receiving treatment.

10 Q. Thank you.

11 A. Yes, sir.

12 MR. MILLS: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. MILLS::

16 Q. So when you arrived on the scene, you said the weapon
17 that you just identified was quite a few feet away from
18 both Mr. Green and Mr. Myers?

19 A. I stated it was dark. It might have been 15 or 20 feet
20 out.

21 Q. Fifteen or 20 feet?

22 A. Something like that. I think I took maybe six steps
23 toe get there. I'm a large individual, so --

24 Q. Okay.

25 A. -- somewhere around there.

ROBERT FURGAL CROSS BY MR. MILLS

- 1 Q. So you picked it up with your bare hands?
- 2 A. No, sir, I had gloves on.
- 3 Q. Okay. And you stated you put that into your trunk of
- 4 your vehicle?
- 5 A. Yes, sir, my assigned Richland County parole vehicle.
- 6 Q. Was it in any kind of a box like or was it just loose?
- 7 A. It was placed -- I placed it on top of the box that I
- 8 had in my truck at the time. It was empty, but it was
- 9 loose, yeah.
- 10 Q. Okay. Were there any -- did you collect any of the
- 11 other evidence from the scene?
- 12 A. No, sir. The weapon was the only thing I took from the
- 13 scene.
- 14 Q. Did you see projectiles or casings or anything of that
- 15 nature?
- 16 A. Again, it was dark, low lighting, and I didn't really
- 17 look for it. I was more concerned of getting back to
- 18 assist my partner with making the scene safe.
- 19 Q. Okay. And who told you to follow the ambulances?
- 20 A. One of my supervisors.
- 21 Q. Supervisor --
- 22 A. It might have been the corporal on that evening or the
- 23 sergeant. I don't remember which one --
- 24 Q. Okay.
- 25 A. -- but I was instructed to follow.

ROBERT FURGAL CROSS BY MR. MILLS

1 Q. And when you arrived at the hospital, you stated that
2 you stayed with Mr. Myers?

3 A. I did.

4 Q. Okay. And he went into one of the trauma rooms?

5 A. Yes, sir. The first was in a trauma room. After they
6 got him stabilized, they did move him to another room
7 in the emergency room section just around the corner,
8 but he was still in the emergency room.

9 Q. So you saw what he looked like at that time?

10 A. Well --

11 Q. You were in the same room with him?

12 A. I was in the same room, yes.

13 Q. So you saw him bleeding from the face, the injuries to
14 the face?

15 A. I did see that he did sustain some injuries, yes, sir.

16 Q. This is Mr. Myers we're talking about?

17 A. Yes, sir.

18 Q. Okay. And were you responsible for taking any
19 photographs of those injuries?

20 A. No, sir, I was not.

21 Q. Who would have been responsible for that?

22 A. I believe our crime scene investigator was responsible
23 for that.

24 Q. Okay. Have you seen the photographs?

25 A. No, sir, I have not looked at them.

JACKIE RICHBURG DIRECT BY MS. WALKER

1 Q. Okay. You stated that you instructed the hospital
2 staff to turn the clothing over to you?

3 A. Yeah, they cut it and it landed on the floor, so to
4 stay out of their way, I just had them put it in a bag.
5 I didn't leave the site. I watched them do it and I
6 held it in my possession..

7 Q. Okay. You held it in your possession until someone --

8 A. Until the crime scene investigator arrived, then I
9 turned it over to them.

10 Q. Okay. Then you also said there were paper bags put
11 over the hands --

12 A. The Defendant's hands, yes, sir, for any gunshot
13 residue that may have been present from firing a
14 weapon.

15 Q. Okay. That was for Mr. Myers. How about Mr. Green,
16 were there also --

17 A. There were also bags put on his hands, yes, sir.

18 Q. Paper bags for that, too, okay. All right. And that's
19 for gunshot residue collection later on?

20 A. Yes, that's correct.

21 Q. Okay. And you turned that over to -- both the bags
22 that were on the hands of Mr --

23 A. I didn't turn any of that over, the crime scene
24 investigator dealt with that. They remained on his
25 hands until she did what she needed to do.

JACKIE RICHBURG DIRECT BY MS. WALKER

1 Q. Okay. Okay.

2 MR. MILLS: Beg the Court's indulgence.

3 That's all the questions I have of this witness,

4 Your Honor.

5 THE COURT: Any redirect?

6 MR. STEADMAN: No, Your Honor.

7 THE COURT: All right. Thank you, sir.

8 MS. WALKER: Your Honor, the State calls Jackie

9 Richburg.

10 THEREUPON,

11 JACKIE RICHBURG,

12 after having been duly sworn, testified as follows:

13 THE CLERK: Thank you. Have a seat in the witness

14 stand, please. State your name for the record.

15 THE WITNESS: Jacqueline Richburg.

16 DIRECT EXAMINATION

17 BY MS. WALKER::

18 Q. Good afternoon?

19 A. Hi.

20 Q. Where are you currently employed?

21 A. Columbia Richland 911 Communications.

22 Q. How long have you been there?

23 A. Thirty-two years.

24 Q. Thirty-two?

25 A. Yes.

JACKIE RICHBURG DIRECT BY MS. WALKER

1 Q. What do you do for 911?

2 A. I'm the deputy director, so one of my responsibilities
3 is to make recordings and pull closings and reports.

4 Q. And do you testify in court about the recordings that
5 you make?

6 A. Yes.

7 Q. Have you had an opportunity to listen to the recording
8 pertaining to the trial that we're here for this week?

9 A. Yes.

10 Q. I want show you what's been marked as State's Exhibit
11 No. 5. Those recording that you listened to, do they
12 fairly and accurately depict the 911 recordings?

13 A. Yes.

14 Q. Do you guys keep those in the regular course of
15 business?

16 A. Yes, we do.

17 MS. WALKER: Your Honor, at this point, the State
18 seeks to admit State's 5 into evidence.

19 THE COURT: What says the Defense?

20 MR. MILLS: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (Whereupon, a bench conference was held
23 off the record, in the presence of the
24 jury, but out of the hearing of the
25 jury.)

JEFFREY HAZELBROOK DIRECT BY MR. STEADMAN

1 MR. MILLS: Cross-examination?

2 THE COURT: Yes.

3 CROSS-EXAMINATION

4 BY MR. MILLS::

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. So you were asked to look at the five 911 calls from
8 this evening of 12/29/2012?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. Was there -- how many were there?

13 (There was no response.)

14 Q. How many 911 calls were there?

15 A. I want to say six.

16 Q. Six, okay. So -- and this is one of the calls?

17 A. Yes.

18 Q. Okay. So there were, maybe, five more calls than the
19 one that the -- State's Exhibit No. 5?

20 A. Yes.

21 Q. Okay.

22 MR. MILLS: That's all the questions I have of
23 this witness.

24 THE COURT: Anything else?

25 MS. WALKER: Nothing, Your Honor.

JEFFREY HAZELBROOK DIRECT BY MR. STEADMAN

1 THE COURT: All right. You may step down.

2 Next witness.

3 MR. STEADMAN: The State calls Jeffrey Hazelbaker.

4 THEREUPON,

5 JEFFREY HAZELBAKER,

6 after having been duly sworn, testified as follows:

7 THE CLERK: Thank you. Have a seat in the witness
8 stand, please, and state your name for the record.

9 THE WITNESS: Deputy Jeffrey Hazelbaker with the
10 Richland County Sheriff's Department.

11 DIRECT EXAMINATION

12 BY MR. STEADMAN::

13 Q. Deputy Hazelbaker, what do you do for the Richland
14 County Sheriff's Department?

15 A. I work in the civil process department now -- I was in
16 region one.

17 Q. Were you working as a road deputy in region one around
18 the time of this murder on December 29, 2012?

19 A. I was.

20 Q. And did you at some point become involved in this case?

21 A. Yes, sir.

22 Q. How did you become involved in this case?

23 A. I got a phone call from my corporal, Corporal Ulmer,
24 said that the investigations had been contacted by the
25 lounge, Toney's Lounge, and said that he found some

JEFFREY HAZELBROOK DIRECT BY MR. STEADMAN

1 shell casings in the approximate area where the murder
2 happened and Corporal Ulmer assigned me to go out and
3 collect the evidence.

4 Q. And how long after the murder did you go out and
5 retrieve these shell casings?

6 A. The murder happened on December 29, 2012, and I went
7 out on the 10th of January.

8 Q. And I'm going to show you a map -- an overhead map of
9 Toney's Lounge. Are you familiar with this?

10 A. Yes, sir. Not the map, but familiar with Toney's
11 Lounge.

12 Q. This being Toney's Lounge, can you show me
13 approximately where you found the shell casings?

14 A. About 25 yards off of the front of the building,
15 straight out in this area right here, almost straight
16 across from the front of the building in this area
17 right here.

18 Q. And how many shell casings did you find?

19 A. Three, three brass nine millimeter shell casings,
20 spent.

21 Q. And how did you collect those shell casings and
22 preserve that evidence?

23 A. I -- I put gloves on, picked up the shell casings
24 individually and stuck them in a small manila folder
25 and labeled them with the case number 81 and put them

JEFFREY HAZELBROOK CROSS BY MR. MILLS

1 in the evidence bag.

2 BY MR. STEADMAN::

3 Q. Deputy Hazelbaker, I'm going to show you what's been
4 marked as State's Exhibit 7. Please take a look at
5 this and tell me what that is.

6 A. This is the evidence bag with the three folders that I
7 marked as evidence that I collected from Toney's Lounge
8 at [REDACTED] Congaree Road.

9 Q. And once you secured them in the manila envelopes, then
10 secured it inside that sealed plastic bag, what did you
11 do?

12 A. Then went to the headquarters and went in the evidence
13 drop box for processing.

14 Q. And when did you drop it off in the evidence room?

15 A. At 12 -- at 1805.

16 MR. STEADMAN: Your Honor, at this time, the State
17 would move to introduce State's Exhibit No. 7 into evidence.

18 MR. MILLS: Your Honor, I object. There's no
19 relevance to this. This is days after the alleged incident.
20 I don't see any relevance to this evidence that's been
21 linked to anything that's involved in this issue.

22 THE COURT: Yes, sir, response?

23 MR. STEADMAN: Your Honor, if I may, the relevance
24 will be established at a later point, Your Honor, but
25 they're are clearly relevant for various reasons that we

JEFFREY HAZELBROOK CROSS BY MR. MILLS

1 haven't established yet.

2 THE COURT: All right. Relevance must be
3 established at the time of admission of the evidence. It
4 will be marked for identification purposes at this time.

5 (State's Exhibit No. 7 was marked for
6 identification.)

7 MR. STEADMAN: Thank you, Deputy Hazelbaker, no
8 further questions.

9 MR. MILLS: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. MILLS::

13 Q. Deputy Hazelbaker, let me show you again this
14 photograph, this satellite photograph and google map.
15 Now, show me again where you said you found these. I'm
16 not sure where that pointer went, but -- oh, there it
17 is.

18 A. It was approximately 25, 30 yards off the front of the
19 building, off this front corner here, around in this
20 area right here (indicating).

21 Q. Okay. And did you take any photographs of the -- these
22 --

23 A. No, I didn't.

24 Q. -- casings before you picked them up?

25 A. No, I did not.

TONEY LOWMAN DIRECT BY MS. WALKER

1 Q. And this was on January the 10th, did you say?

2 A. January 10th is when I picked them up.

3 Q. Okay. So you were called to go out there and you saw
4 some casings, shell casings on the ground?

5 A. Yes, sir.

6 Q. You did not take any photographs of them as far as what
7 their location was, correct?

8 A. No, I did not.

9 Q. This was on January 10th, 2013?

10 A. Yes.

11 Q. Okay. About what time did you go out there?

12 A. I believe it was in the morning.

13 Q. Okay. Was anyone with you?

14 A. No, I was by myself.

15 Q. Okay.

16 MR. MILLS: That's all the questions I have.

17 THE COURT: Anything further?

18 MR. STEADMAN: No, Your Honor.

19 THE COURT: You may step down.

20 Next witness.

21 MS. WALKER: State calls Toney Lowman.

22 THEREUPON,

23 TONEY LOWMAN,

24 after having been duly sworn, testified as follows:

25 THE CLERK: Thank you. Have a seat in the witness

TONEY LOWMAN DIRECT BY MS. WALKER

1 stand, please, and state your name for the record.

2 (No response.)

3 THE CLERK: State your name, please.

4 THE WITNESS: Toney Lowman.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MS. WALKER::

8 Q. Mr. Lowman, can you hear me?

9 A. Yes, sir.

10 Q. Okay. Do you have difficulty hearing, though?

11 A. Small amount.

12 Q. Small amount. Okay. I'm going to try to keep my voice
13 raised, but if I get to talking too low, just let me
14 know.

15 A. Okay. I appreciate it.

16 Q. Where do you live? Where do you currently live?

17 A. Beg your pardon?

18 Q. Where do you live? Do you live in Columbia?

19 A. Where do I live? Eastover, South Carolina, Congaree
20 Road.

21 Q. Okay. And do you have a job?

22 A. No, disability. I'm disabled.

23 Q. You're disabled?

24 A. Yeah..

25 Q. Do you -- what's your connection to Toney's Lounge?

TONEY LOWMAN DIRECT BY MS. WALKER

- 1 A. I'm the owner.
- 2 Q. You own it?
- 3 A. Right.
- 4 Q. And kind of describe for the jury what type of place
- 5 Toney's Lounge is?
- 6 A. What size?
- 7 Q. Like, what kind of place is it? Is it a restaurant, is
- 8 it a bar, what is it?
- 9 A. Well, basically, a bar, restaurant type business.
- 10 Q. And where is Toney's Lounge?
- 11 A. It's [REDACTED] Congaree Road in Eastover.
- 12 Q. Before we go any further, I want to ask you one
- 13 question. Do you know the Defendant (indicating)?
- 14 A. Yes, I do.
- 15 Q. How long have you known him?
- 16 A. I say, basically, all our -- 30, 40 years. We -- me
- 17 and his brother and the family kind of grew up
- 18 together.
- 19 Q. So you've known him all your life?
- 20 A. Yeah.
- 21 Q. And how long have you owned Toney's Lounge?
- 22 A. Thirty-five years.
- 23 Q. And did you know -- did you know Cornelius Green? Did
- 24 you know the victim in this case?
- 25 A. Yes, I do.

TONEY LOWMAN DIRECT BY MS. WALKER

1 Q. How long had you known him?

2 A. I would put it on 20 years or so.

3 Q. Is he a good bit younger than y'all?

4 A. Yes, he's a little younger than I am.

5 Q. I want to talk to you about the night this murder
6 happened, okay?

7 A. (The witness nodded head.)

8 Q. Were you working at Toney's Lounge that night, were you
9 there?

10 A. Well, I was there at the time this happened. I was on
11 the outside, basically, when this first started.

12 Q. Okay. And who all was there? Was the Defendant there
13 that night?

14 A. When the Defendant -- when the Defendant was there, I
15 kind of like saw come in. I'd say he had been there
16 about an hour or so roughly, you know.

17 Q. Okay. And did you have a chance to talk to him some
18 that night?

19 A. Well, someone -- I was on the outside of the bar.
20 Someone came to the door and told me, said, Well,
21 Toney, you need to come inside --

22 MS. WALKER: Objection, Your Honor.

23 THE WITNESS: -- at that time.

24 MS. WALKER: Hold on one second.

25 THE COURT: The objection is sustained.

TONEY LOWMAN DIRECT BY MS. WALKER

- 1 BY MS. WALKER::
- 2 Q. At some point, did you go inside?
- 3 A. Yeah, I go inside.
- 4 Q. Okay. When you went inside of the bar, what did you
- 5 see?
- 6 A. Well, I kind of like -- kind of like observed what's
- 7 going on in the bar, you know. And when I been in the
- 8 bar a while, I say a minute or two, kind of like
- 9 observed around, I didn't -- when I picked up the
- 10 disturbing going on, it was Calvin.
- 11 Q. Okay. You picked up a disturbance and it was Calvert
- 12 Myers?
- 13 A. Yeah.
- 14 Q. What was he doing?
- 15 A. He was up in Sherry's face. They was arguing.
- 16 Q. He was up in Sherry's face?
- 17 A. Right, Sherry's face.
- 18 Q. And did you know Sherry?
- 19 A. Yeah -- I didn't know at that time. I knew her, but I
- 20 didn't know her name.
- 21 Q. You didn't know her name, you had just seen her before?
- 22 A. Yes.
- 23 Q. Did you know whether or not she was related to him?
- 24 A. Not at that point.
- 25 Q. Okay. You didn't know that at that time?

TONEY LOWMAN DIRECT BY MS.. WALKER

1 A. No.

2 Q. And when you say he was up in her face --

3 MS. WALKER: Your Honor, can the witness step
4 down?

5 THE COURT: Sure.

6 BY MS. WALKER::

7 Q. Here, I'm going to help you get down, okay?

8 A. Okay.

9 Q. If I'm Sherry, okay, I'm going to be Sherry and you're
10 Calvert, what was he doing? How was he?

11 A. He was up in Sherry's face.

12 Q. Were they this close or were they closer?

13 A. Yeah. Sherry was kind of like -- she was sitting at
14 the bar.

15 Q. So she's sitting down, so she's like this (indicating)?

16 A. Yeah.

17 Q. And what was he doing?

18 A. When Calvin went up in her face, Calvin -- she stood
19 up.

20 Q. Like this?

21 A. Yeah.

22 Q. Okay.

23 A. And Calvin was calling her the baddest names a man
24 could call a young lady.

25 Q. What kind of names -- and I know it's uncomfortable to

TONEY LOWMAN DIRECT BY MS. WALKER

- 1 say it, but you can say it now because it's what he
2 said. What kind of names was he calling her in her
3 face? Stand right here, okay?
- 4 A. He was calling her stamp whore, just bitch, just that
5 and the other.
- 6 Q. Okay.
- 7 A. Any words like that. I can't remember all of them.
- 8 Q. But that's what you heard?
- 9 A. Yeah.
- 10 Q. And was she getting upset about that?
- 11 A. No, I -- at that time, I kind of like got between them.
- 12 Q. Okay.
- 13 A. And he steady was cussing at Sherry. So at that time,
14 she tried to hit Calvin over me.
- 15 Q. Like this (indicating)?
- 16 A. Yeah. So at some point at that time, Neil come and got
17 her to sit back down?
- 18 Q. So Neil was trying to calm everybody down?
- 19 A. Calm everybody down. He wasn't bothering nobody at
20 that time. So we got Calvin -- we managed to got
21 Calvin out the door. Got Calvin out the door. At that
22 point, when I got Calvin out the door, me and Calvin
23 walked to the side, the two of us, nobody else --
- 24 Q. Uh-huh.
- 25 A. And I start telling him about -- we start talking about

TONEY LOWMAN DIRECT BY MS. WALKER

1 how easy trouble is to get into, how our family and
2 stuff grow up together. And he -- at some point, he
3 told me that was his niece.

4 Q. So that's when you found out they were related?

5 A. Yeah, uh-huh.

6 Q. And at that point, were you trying to calm him down?

7 A. No, we was outside talking.

8 Q. Was he calm then?

9 A. Yeah, when I started talking to him, he mostly like
10 calm down. And so after I told him, I said, Calvert,
11 I'm not going to let you go back inside. And after we
12 got through talking, he said, Toney, he said, what you
13 telling me is the truth. He said, I'm going to let all
14 this go.

15 Q. And you believed him?

16 A. I believed him.

17 Q. Is that why you let him back inside?

18 MR. MILLS: Objection to the leading.

19 THE COURT: All right. Don't lead.

20 MS. WALKER: Yes, Your Honor.

21 BY MS. WALKER::

22 Q. Is that why you let him back inside?

23 A. Yes. And I promised him -- and he said, Well, Toney,
24 he said --

25 MR. MILLS: Your Honor, I think that would be

TONEY LOWMAN DIRECT BY MS. WALKER

1 further hearsay. These aren't statements against interest.

2 I think that would be --

3 THE COURT: Objection is overruled.

4 MR. MILLS: All right.

5 BY MS. WALKER::

6 Q. You can keep going now. Did y'all go back inside?

7 A. Yeah, once we talked. We stayed out there, I would
8 say, five minutes or so, could have been that long. I
9 can't remember everything word for word, but after we
10 talked.

11 Q. Yes, sir.

12 A. He promised me that no more disurbment [sic] for the
13 night out of him. So I said, Well, Calvin -- Calvin
14 said, Well, Toney, let's go back inside. He said, Get
15 me a drink. I'm going in the back and I'm going to let
16 all of the foolishness go.

17 Q. Yes, sir.

18 A. That's what he told me. I took him back inside and
19 told my sister at the bar back him up a drink. At that
20 point, I kind of like take my eyes off of him because
21 he done promised me everything going to be all right.

22 Q. Now, when y'all got back inside, though, if this is the
23 bar area, where is everybody? Could you see where
24 Sherry was at that point?

25 A. Sherry was still at the bar.

TONEY LOWMAN DIRECT BY MS. WALKER

1 Q. Was she still sitting down?

2 A. Yeah.

3 Q. Okay. And where was -- where was Cornelius?

4 A. Cornelius was sitting at the bar, too. It was kind of
5 like, I would say, six to eight feet between Calvin and
6 Neil and Sherry.

7 Q. Okay. And at that point, what did you see next?

8 A. What did I see next? I got Calvin a drink and so
9 Calvin walked in the back, so I kind of take my eyes
10 off of him. And so the next time I saw Calvin -- see,
11 I didn't know Calvin had came back by the bar to start
12 back at Sherry a second time. I didn't saw that. I
13 didn't been in the bar. I didn't heard that. But that
14 didn't got out of control, nobody didn't say nothing to
15 me.

16 Q. Okay. Because if something's going on in the lounge,
17 they come and get you?

18 A. Yeah, normally. And at that point, a guy by the name
19 of Mike --

20 Q. Uh-huh.

21 A. I find this out the next day. I didn't know that then.

22 MR. MILLS: Objection, Your Honor.

23 BY MS. WALKER::

24 Q. Well, then don't tell me about it -- don't tell me
25 about it if you found it out the next day. Just tell

TONNEY LOWMAN DIRECT BY MS. WALKER

- 1 me about stuff you saw, okay?
- 2 A. Okay.
- 3 Q. So at that point, he goes back over to Sherry?
- 4 A. Yeah.
- 5 Q. So what happened then?
- 6 A. Well, see, I didn't saw that.
- 7 Q. You didn't see that?
- 8 A. I missed that.
- 9 Q. So what's the next thing that you saw?
- 10 A. The next point I saw Calvin, he was going over to Neil.
- 11 Q. Okay. And if I'm Neil, how close did he get to Neil?
- 12 A. Neil was, basically, sitting at the bar.
- 13 Q. He was sitting down, too?
- 14 A. Neil was sitting at the bar facing the -- kind of
- 15 like -- kind of like the side of Calvin.
- 16 Q. Kind of like this?
- 17 A. Yeah. So Calvin come up to him like on an angle like
- 18 she's sitting there (indicating).
- 19 Q. Okay.
- 20 A. So when Calvin started back again, I said, Calvin, me
- 21 and you got trouble. That's when I told my sister go
- 22 and call the police for Calvin.
- 23 Q. Okay.
- 24 A. At that point. So at that point, Neil got up, walked
- 25 out the door.

TONEY LOWMAN DIRECT BY MS. WALKER

1 Q. So at this point, Neil -- had Neil bothered anybody at
2 this point?

3 A. Nobody bothered nobody but Calvin at this point.

4 Q. Okay. Now, keep on going. Once Neil goes outside,
5 what happens?

6 A. So when Neil got up, goes outside, Calvin went behind
7 Neil. Calvin pulled his jacket off inside the place.
8 And so at that point, I went behind Calvin.

9 Q. So he's inside and he takes his jacket off?

10 A. Yes.

11 Q. And Neil was outside?

12 A. No, Neil was going outside.

13 Q. He's on the way outside.

14 A. Neil was going on the outside.

15 Q. Okay.

16 A. So Calvin pulled his -- so I went behind Calvin. And
17 when we got outside, me, Neil and Calvin --

18 Q. Uh-huh.

19 A. I would say we were standing in a five-foot area, it
20 wasn't no more.

21 Q. About like this?

22 A. Yeah, about like us talking. So I couldn't pick up
23 what Calvin was saying to Neil at that point, but Neil
24 told me at this point, Neil said, Toney, you know I
25 ain't never started no trouble at your place. I said,

TONEY LOWMAN DIRECT BY MS. WALKER

1 You sure ain't, but I got somebody on the way to take
2 care of Calvin.

3 Q. Okay.

4 A. At that time, Sherry came out there, somewhere in that
5 picture.

6 Q. Uh-huh.

7 A. So when Sherry came out, Sherry and Calvin started back
8 arguing. Me and Neil just standing there.

9 Q. Okay.

10 A. We standing there, nobody but the four of us standing
11 there. And so Sherry hit Calvin.

12 Q. She hit him?

13 A. Yeah, Sherry hit Calvin. Calvin turned around and hit
14 Sherry on the back. That's when Neil hit Calvin.

15 Q. Okay.

16 A. When Neil hit Calvin, Sherry and Neil walked off.

17 Q. They were going to go away?

18 A. They gone.

19 Q. Well, let me ask you this, once Cornelius hit Calvin --
20 his name is Calvert, but he goes by Calvin?

21 A. Calvin.

22 Q. Okay. Once he -- once she hit Calvin, was Calvin
23 bleeding?

24 A. No.

25 Q. Was he --

TONEY LOWMAN DIRECT BY MS..WALKER

- 1 A. I didn't see no blood.
- 2 Q. You didn't see blood?
- 3 A. No.
- 4 Q. And how close were you to him at that point?
- 5 A. At that point, Calvin was down there (indicating).
- 6 Q. Uh-huh.
- 7 A. And we was standing about -- I wasn't standing no more
- 8 that two foot from him at that point.
- 9 Q. So you could see him the same way you're seeing me
- 10 right now?
- 11 A. Right, uh-huh.
- 12 Q. Did you see any blood?
- 13 A. No, I didn't see no blood.
- 14 Q. Did you see any bruises?
- 15 A. No, I ain't seen no bruises.
- 16 Q. Did you see any scratches or scrapes or anything?
- 17 A. No, I didn't.
- 18 Q. Okay. And once he got on the ground and the other two
- 19 are walking off, what happened?
- 20 A. At that point, a lot of people started crowding around.
- 21 I couldn't see everything at that point.
- 22 Q. Okay.
- 23 A. So I was kind of like standing to the door and Calvin
- 24 was like, you know, kind of back over to the side on
- 25 the ground. And I seen a lot of people kind of like

TONEY LOWMAN DIRECT BY MS. WALKER

1 start backing up. And so at that time, there a guy
2 that was standing to my right, and that guy said, Yeah,
3 man, that nigga got a gun. And then everybody started
4 backing up. So when Calvin got up off the ground, I
5 still didn't see no gun. Calvin was walking away with
6 his back to me. I'm standing liking you and Calvin
7 walking off.

8 Q. Okay. And you didn't see the gun then?

9 A. I didn't see no gun, but I see him making a motion.

10 Q. You saw him --

11 A. Like in the front of him.

12 Q. Okay.

13 A. So about that time, Calvin walked to the back of an
14 automobile here.

15 Q. Okay. At this point, though, this is the car, where is
16 Neil?

17 A. Where was I then?

18 Q. No, where was Neil?

19 A. Calvin?

20 Q. Neil, Cornelius Green, where was he?

21 A. Cornelius, they was gone.

22 Q. So he's like this far away?

23 A. Yeah, they walk off to my left.

24 Q. So tell me when to stop walking. About how far away?

25 A. I don't know how far they been gone because once you

TONEY LOWMAN DIRECT BY MS. WALKER

1 get about six to eight feet from where I was standing,
2 they kind of -- the building blind me out.

3 Q. So they went around the corner?

4 A. Yeah.

5 Q. Okay.

6 A. They turn the corner.

7 Q. So once they get around the corner, tell me what you
8 see. Tell me what's going on.

9 A. Okay. Calvin got up and Calvin walk down between two
10 vehicles with my -- you know, I was looking at his
11 back, but I seen him -- I still didn't know what his
12 plan was.

13 Q. Right.

14 A. So when Calvin got to the back of the car, I seen him
15 back there messing around, you know, fumbling around.
16 I -- and so I still had no mind that he was going to go
17 behind Neil shooting.

18 Q. Right.

19 A. So somewhere after that point, I saw Calvin come out
20 from behind -- it was something like from the side of
21 the building to the front of the car. It was something
22 like eight feet span.

23 Q. Uh-huh.

24 A. And when I see Calvin pass that span, that's when I saw
25 the gun in his hand. As soon as I saw the gun, he

TONEY LOWMAN DIRECT BY MS. WALKER

1 shot. I know whether he shot at Neil, in the air --

2 Q. You just heard -- did you hear the bang?

3 A. I heard a gun. I didn't see what area the gun was

4 pointing in.

5 Q. Okay.

6 A. So I kind of like walked to the side of the building.

7 I still -- Neil might have been shot then, but I didn't

8 know because he wasn't on the ground. Everybody

9 scattered. At that point, I still don't think nobody's

10 shooting.

11 Q. Okay.

12 A. So at that point, everything was out of my vision.

13 Q. So you couldn't see anything?

14 A. I couldn't see anything else a short while, probably

15 10, 20 seconds.

16 Q. Okay.

17 A. Then Calvin -- when I walked over there, Calvin -- Neil

18 was on top of Calvin on the ground. And at that point,

19 look like I see a hole in his arm.

20 Q. You see a hole in whose arm?

21 A. Neil arm.

22 Q. Okay.

23 A. Basically, at that point, Neil said, Man, you Mother

24 Fucker done shoot me. I heard that. And everybody --

25 nobody hit Calvin, nobody hit Neil, everybody went over

TONY LOWMAN DIRECT BY MS. WALKER

1 there kind of trying to help somebody.

2 Q. Uh-huh.

3 A. So when Neil -- about a minute or so, Neil looked
4 down -- I said that to myself.

5 Q. Right.

6 A. So at that time, Calvin rollover on this side. And the
7 gun went under Calvin. I said, One of y'all kick that
8 gun out between Calvin --

9 Q. You didn't want him to get the gun back?

10 A. No. Only thing somebody did was kick that gun out from
11 between -- when Calvin rolled, the gun was right there
12 on his -- someone kicked the gun away, you know, kicked
13 it where he couldn't get a hand on it.

14 Q. And at that point, when you were seeing the Defendant
15 then, was he bloody then?

16 A. Yes, he was bloody then.

17 Q. Okay. So after the shot, that's when you saw him
18 bloody?

19 A. Yeah.

20 MR. MILLS: Objection, Your Honor, leading.

21 THE WITNESS: And when the police officer got
22 there, I told them to go over there and pick the gun up.

23 BY MS. WALKER::

24 Q. Okay. Now, you can go back up on the witness stand.

25 Thank you, sir.

TONEY LOWMAN DIRECT BY MS. WALKER

- 1 A. (Witness resumes the witness stand.)
- 2 Q. Approximately how many times did you have to walk the
- 3 Defendant out of Toney's Lounge that night?
- 4 A. How many times?
- 5 Q. Yeah, how many times did you have to take him out of
- 6 the bar?
- 7 A. Calvin?
- 8 Q. Yes.
- 9 A. When I took Calvin out the first time, that's when me
- 10 and Calvin talked.
- 11 Q. Right, so that was one time. Did you take him out
- 12 again?
- 13 A. I didn't take him out the second time. What happened,
- 14 when Calvin and Sherry was arguing the second time, I
- 15 kind of like missed some of it, but it didn't get out
- 16 of control at that point.
- 17 Q. Okay.
- 18 A. So when I saw him then, I saw the guy by the name of
- 19 Mike Simms going out there behind him.
- 20 Q. Okay. So you saw that with your own two eyes?
- 21 A. Yeah. But see, he wasn't -- at that point, he wasn't
- 22 like bothering nobody at that point.
- 23 Q. Okay.
- 24 A. So I had no reason to keep eyes on him.
- 25 Q. Okay. Then there was the last time that y'all went

TONEY LOWMAN DIRECT BY MS. WALKER

1 out?

2 A. Okay. The next time I saw him, that's when he went
3 back. And Neil -- he went back up in Neil's face.
4 Neil wasn't bothering nobody. He wasn't bothering
5 Calvin. He was sitting at the bar having him a good
6 time. So when Neil got up -- when Neil got up, I heard
7 one of them say, Well, let's go out --

8 MR. MILLS: Objection, Your Honor, this is also
9 asked and answered. We're repeating the same testimony.

10 THE COURT: Okay.

11 Response?

12 MS. WALKER: Your Honor, I think when I asked him
13 the questions previously, we didn't talk about what happened
14 in the bar, he just told me what happened once he got
15 outside the bar. Now, I think he's talking about outside
16 the bar.

17 THE COURT: I overrule the objection.

18 BY MS. WALKER::

19 Q. Then the third time was when you took him outside.
20 again?

21 A. The third time, he went out behind Neil, I walked
22 behind him.

23 Q. Okay. Now, your lounge, does it have video cameras?

24 A. Yes.

25 Q. And does it record what's going on inside and outside

TONEY LOWMAN DIRECT BY MS. WALKER

1 the lounge?

2 A. Yeah, well, I got three eyes on the outside, one eye on
3 the inside.

4 Q. Okay. And were you -- did you go and give some of the
5 video footage to law enforcement of what happened that
6 night?

7 A. No, after the investigator come, at that point, we got
8 the video the next day.

9 Q. Okay. The next day?

10 A. Uh-huh.

11 Q. Okay. Have you had a chance to look at the video?

12 A. No, not until today.

13 Q. You looked at the video today, though?

14 A. Right.

15 Q. And did it fairly and accurately depict what your
16 lounges looks like? Were those the videos from your
17 lounge?

18 A. That was it.

19 Q. Okay.

20 MS. WALKER: Your Honor, at this point, the State
21 seeks to admit Exhibit 4 into evidence.

22 THE COURT: Any objection?

23 THE DEFENSE: I have no objection.

24 THE COURT: It's admitted.

25 (State's Exhibit No. 4 was admitted into

TONEY LOWMAN CROSS BY MS. MILLS

1 evidence.)

2 BY MS. WALKER::

3 Q. Now, the person that you saw arguing with Sherry and
4 the person you saw pull a gun out and shoot that night,
5 do you see that person in courtroom?

6 A. The gun?

7 Q. Do you see the person who had the gun in the courtroom
8 today?

9 A. Yes.

10 Q. Point him out for me?

11 A. (Indicating).

12 Q. Is he sitting at the table right here with his
13 attorney?

14 A. Calvert Myers.

15 Q. Okay.

16 MS. WALKER: Your Honor, can the record reflect
17 that he's pointed out the defendant?

18 THE COURT: It does.

19 MS. WALKER: Thank you.

20 Thank you, sir. I don't have any further
21 questions.

22 MR. MILLS: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25

TONEY LOWMAN CROSS BY MS. MILLS

- 1 BY MR. MILLS::
- 2 Q. Good afternoon, Mr. Lowman. How are you?
- 3 A. How you doing?
- 4 Q. Good. I'm going to go back a little bit and take this
- 5 a little out of order. You gave a statement to the
- 6 police that morning?
- 7 A. I gave a statement to the police about four o'clock
- 8 that morning.
- 9 Q. Okay. Was it at your lounge or was it at the police
- 10 department?
- 11 A. I was at the lounge --
- 12 Q. Sheriff's department?
- 13 A. I was at the lounge.
- 14 Q. Okay. And did they have any kind of recording
- 15 equipment?
- 16 A. Sound of recording?
- 17 Q. No, did they have any kind of audio recording equipment
- 18 or video recording equipment?
- 19 A. No, they didn't have it at that point.
- 20 Q. When they -- when they interviewed, they did not?
- 21 A. No, they did not.
- 22 Q. Okay. Who, actually, wrote the statement for you?
- 23 A. The investigator.
- 24 Q. Okay. So you didn't, actually, do the writing?
- 25 A. Right.

TONEY LOWMAN CROSS BY MS. MILLS

1 Q. But you did sign it?

2 A. Beg your pardon?

3 Q. You signed it?

4 A. I signed it a couple days later because I -- I signed
5 the statement.

6 Q. You signed it a couple days later?

7 A. Yes.

8 Q. Why that was?

9 A. Why was that? Because I had to -- at that point, I had
10 made my statement and I had to -- I didn't sign it that
11 night, so after I talked with the investigator, I went
12 up there and signed the statement. I didn't know
13 whether it was legal to sign it -- I didn't know at
14 that point whether it was legal or illegal for me to
15 sign it or not, I didn't know.

16 Q. Okay. So you went to sheriff's department to sign it?

17 A. Yes, I did.

18 Q. That was on the 10th of January 2013?

19 A. I think it was. Not for sure when I went to sign it.
20 I don't remember the date.

21 Q. Okay. Let's go back to your testimony. Now, you're --
22 the State's just put into evidence the video from your
23 club, correct?

24 A. Right.

25 Q. And you said you looked at that today for the first

TONEY LOWMAN CROSS BY MS. MILLS

- 1 time?
- 2 A. Beg your pardon?
- 3 Q. You looked at this today for the first time?
- 4 A. Well, I looked at it today.
- 5 Q. Have you looked at it before today?
- 6 A. No, I didn't.
- 7 Q. Okay.
- 8 A. Because I can remember what happened.
- 9 Q. Okay.
- 10 A. I had no reason to look at.
- 11 Q. I understand. But this showed -- looked at it today,
- 12 you see what is shown on the video, correct?
- 13 A. Yes, I did.
- 14 Q. You saw all four of the cameras from beginning to the
- 15 end?
- 16 A. I wasn't interested in four cameras, I was interested
- 17 in the two where this motion was going on at.
- 18 Q. Okay. So all four cameras are shown on the video,
- 19 correct?
- 20 A. Right, four cameras on the video.
- 21 Q. And you looked at the two -- well, actually, it's three
- 22 that are important, correct?
- 23 A. Beg your pardon?
- 24 Q. Three that are important?
- 25 A. Yeah.

TONEY LOWMAN CROSS BY MS. MILLS

1 Q. Did you look at all three of them, from inside the
2 club, the front of the club and then on the side of the
3 club?

4 A. Right.

5 Q. Did you look at all three of those today?

6 A. I looked at all three of them.

7 Q. Okay. So you saw what -- to a certain extent, what you
8 just testified to on the video today, correct?

9 A. Right.

10 Q. Okay. Now, when you made your statement, you,
11 basically, said that there was arguments between Calvin
12 and Sherry, correct?

13 A. Right.

14 Q. And during these arguments, Calvin, you say, was
15 approaching Sherry, but he didn't hit Sherry, correct?

16 A. No, he didn't hit Sherry.

17 Q. Okay. In fact, the first person to, actually, do any
18 physical violence or hitting was Sherry hitting Calvin,
19 correct?

20 A. Well, she hit Calvin with a -- she kind of like swunged
21 over me and hit Calvin with a light punch. It wasn't
22 nothing -- you know, it was kind of like -- matter of
23 fact, I felt most of the lick, I would say, than Calvin
24 did in a way.

25 Q. Okay. But before that, there would have been no

TONEY LOWMAN CROSS BY MS. MILLS

- 1 physical hitting at all, correct?
- 2 A. Not that I seen.
- 3 Q. Okay. And then, at the point, Neil, who is the victim
- 4 in this case, hit Calvin, correct?
- 5 A. Neil didn't hit Calvin at that point.
- 6 Q. Okay.
- 7 A. We inside now.
- 8 Q. Okay.
- 9 A. Neil didn't touch Calvin on the inside.
- 10 Q. Okay. But later, Neil hit Calvin, correct, when you're
- 11 outside in the front?
- 12 A. When Neil hit Calvin, they was outside.
- 13 Q. Okay.
- 14 A. But Calvin -- Sherry hit Calvin.
- 15 Q. Sherry hit Calvin again?
- 16 A. No, not again.
- 17 Q. Okay, I'm sorry, I'm sorry.
- 18 A. One time.
- 19 Q. Right, okay.
- 20 A. There was three licks passed.
- 21 Q. Okay.
- 22 A. Through the whole motion --
- 23 Q. Right.
- 24 A. -- outside that I saw.
- 25 Q. Right. Okay. So outside then, Neil hit Calvin and

TONEY LOWMAN CROSS BY MS. MILLS

1 knocked him to the ground?

2 A. Neil hit Calvin after Calvin hit Sherry.

3 Q. Okay. And that was after Sherry hit --

4 A. Neil -- I mean, Calvin.

5 Q. Okay. So we've got sequence correct. So the last was
6 Neil, who was in his 30's, correct?

7 A. When Neil hit Calvin, Calvin hit the ground.

8 Q. So he hit him hard enough to knock him --

9 A. I didn't see how hard he hit him.

10 Q. Okay.

11 A. I didn't see how hard he hit him, but Calvin went down
12 to the ground. But when Calvin -- when Neil hit
13 Calvin, him and Sherry walked off. There wasn't no
14 other punches thrown. There wasn't nobody bleeding at
15 that point that I saw. And they was -- I didn't know
16 how further around the corner they had gotten because
17 the corner of the building was something like about six
18 to eight feet from me.

19 Q. Okay.

20 A. So Neil --

21 Q. Okay.

22 MS. WALKER: Your Honor, can he finish?

23 MR. MILLS: Yeah, I'm sorry, I thought he was
24 through.

25

TONEY LOWMAN CROSS BY MS. MILLS

1 BY MR. MILLS::

2 Q. Go ahead, I'm sorry.

3 A. So Neil and Sherry was gone around the building at that
4 point.

5 Q. Okay. But you saw Neil knock -- hit Mr. Myers, Calvin
6 Myers, and knock him to the ground. And then you
7 stated in you statement, Calvin (indicating), the
8 Defendant, started stumbling around after that,
9 correct, after -- when he was getting up?

10 A. When Calvin was getting up off the ground, I was kind
11 of like -- you know, a lot of people were standing
12 around, so I couldn't see everything at that point.
13 When Calvin turn over and was getting up, Calvin, you
14 know, he was kind of coming up off the ground.

15 Q. Correct.

16 A. And I seen a lot of people to motion. I didn't known
17 if somebody saw the gun and just getting back or what,
18 but when Calvin got up -- by the time Calvin got up, a
19 lot of people started spreading. That's when somebody
20 to my right said, Man, that nigga got a gun.

21 Q. Okay. But I'm going back to the point where you stated
22 in your statement that he got up and he was stumbling.

23 A. I ain't said -- no, he wasn't stumbling.

24 Q. You didn't say that in your statement?

25 A. But he come up -- when he come up off the ground, he

TONEY LOWMAN CROSS BY MS. MILLS

1 was kind of like stumbling. Once he got up, then he
2 started going. When he got up, he took his time, kind
3 of like roll over and got up off the ground.

4 MR. MILLS: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 BY MR. MILLS::

8 Q. Does this look like a copy of the statement you made
9 back on 12/29/12. It says Toney Lowman, that's your
10 signature?

11 A. Right.

12 Q. It was done on January 10th?

13 A. Right.

14 Q. Is this your -- did you tell the police that when
15 Calvin -- let's see, Calvin was knocked to the ground
16 and that's when Calvin was stumbling around?

17 A. Stumbling, let me that point straight. He wasn't
18 stumbling around. He was kind of like, you know, when
19 somebody getting up off the ground, they kind of like
20 stumbling or whatever, but Calvin got up on his own.
21 It wasn't like -- and he's stumbling all over the
22 place. It was kind of like in his motion of getting up
23 and kind of like, you know, stumbling around.

24 Q. So that is correct, you did tell the police he was
25 stumbling around?

TONEY LOWMAN CROSS BY MS. MILLS

1 A. It wasn't like he was stumbling around like he was
2 knocked unconscious or nothing like that.

3 Q. Okay. Then you stated that --

4 THE COURT: Excuse me a minute.

5 MR. MILLS: Thank you, Your Honor.

6 BY MR. MILLS::

7 Q. Then you said that you lost sight of Neil and Sherry,
8 correct, because they had gone around the corner?

9 A. Outside.

10 Q. To that -- to the side of your building, correct?

11 A. Right.

12 Q. Okay. Let me just show you the -- show me the front of
13 your building where Toney's Lounge is?

14 A. Okay.

15 Q. Do you see --

16 A. This is the -- let me see. Turn it around.

17 Q. This is Congaree Road right here.

18 A. Yes, the front is kind of like across here

19 (indicating).

20 Q. Okay, that's the front. And was it in the front area
21 where Neil hit Calvin and he went to the ground?

22 A. It was right in front of the door.

23 Q. Okay. Right in front of the building?

24 A. Uh-huh.

25 Q. And you're saying that then that's when Sherry -- after

TONEY LOWMAN CROSS BY MS. MILLS

1 Neil hit Calvin and knocked him to the ground, that's
2 when Sherry and Neil went around the corner where you
3 couldn't see them?

4 A. No, they went around this side.

5 Q. Okay:

6 A. See, at that point, when they got around the corner of
7 the building, I couldn't see them.

8 Q. You couldn't see, okay.

9 A. Right.

10 Q. And then, eventually, you came around and the next
11 thing you saw was what?

12 A. The next -- when I walked to the corner of the
13 building, you know, next thing I picked up -- let's --
14 see, everybody was running and scattering. I couldn't
15 pick up everything. What I picked up, really, was the
16 next motion or the -- because when the shooting
17 started, I didn't see nobody on the ground or nothing,
18 I didn't think nobody was shooting at that point. So
19 when I saw Neil and Calvin on the ground, the shooting
20 had done stopped.

21 Q. Okay, so --

22 A. So that's when everybody kind of like going over, like
23 helping out. Ain't nobody hit nobody at that point.

24 Q. Did you see Neil on top of Calvin beating him?

25 A. He was on top of Calvin at that point. I put it on 10

TONEY LOWMAN REDIRECT BY MS. WALKER

1 or 15 people heading in that direction because they was
2 on the ground. Then the shooting had done stopped at
3 that point.

4 Q. Okay. Did you see Neil beating the Defendant,
5 Mr. Myers (indicating)?

6 A. I didn't saw Neil bleeding -- I didn't saw Neil
7 bleeding, but by the time I got over to Neil, it
8 appeared that I see hole in -- it appear to be -- it
9 appeared to be a hold in his arm. It could have been
10 a -- it appeared to be me. I can't say --

11 Q. I'm sorry, that's not the question I ask you. Did you
12 see Neil beating Mr. Myers while Mr. Myers was on the
13 ground?

14 A. Yeah, Neil -- when I got over there, I put it on
15 Neil -- I put it on Neil two or three times and Neil
16 kind of like -- you could see he was going out of it.
17 And he was going -- his voice and everything, you could
18 was going away from him.

19 Q. But you did see Neil --

20 A. On top of Calvin.

21 Q. On top of Calvin hitting him in the face, correct?

22 A. (No response.)

23 Q. That's correct?

24 A. Beg your pardon? Ask that question.

25 Q. I'm sorry. You did see Neil hitting Calvin, the

TONEY LOWMAN RECROSS BY MR. MILLS

1 Defendant, (indicating) in the face?

2 A. At that time, I couldn't see whether he hit him in the
3 face or the chest before we got there.

4 Q. But you saw a fist coming down on --

5 A. Cause --

6 Q. -- the Defendant by Mr. Green, correct?

7 A. Right. Because just like I said, I wasn't standing
8 directly over them and see exactly where the punch was
9 contacted, but the punch was contacting at that time.

10 MR. MILLS: Beg the Court's indulgence.

11 (Pause.)

12 MR. MILLS: That's all the question I have at this
13 time, Your Honor.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MS. WALKER::

17 Q. He asked you and you said you saw Neil on top of Calvin
18 punching him? You saw Neil at one point on top of
19 Calvin punching him?

20 A. Well, Neil was on top of Calvin. I wouldn't say --
21 Neil was hitting him.

22 Q. You saw him hitting hem?

23 A. Right.

24 Q. Was that before or after he started shooting up the
25 place?

SHERRY MYERS DIRECT BY MS. WALKER

1 A. That was -- when I saw that, that was after all the
2 shooting over with.

3 Q. Okay. Thank you.

4 A. That was after all the shooting because when all the
5 shooting over with, that's when a lot of us started
6 going that way to see what really done happen.

7 Q. Okay.

8 A. And at that point, everybody went over there, they just
9 kind of like trying to help somebody, kind of -- nobody
10 was attacking nobody, nobody doing nothing to nobody
11 but trying to help the situation.

12 Q. Yes, sir. Thank you.

13 RECROSS-EXAMINATION

14 BY MR. MILLS::

15 Q. But that was also after Neil had hit Mr. Myers and
16 knocked him to the ground, correct?

17 A. All this happened after the hitting in front of --

18 Q. Correct.

19 A. When Neil hit Calvin, that was in the front of the
20 place. No gun was involved then.

21 Q. I understand.

22 A. When Neil was on top of Calvin, all the shooting
23 happened between that period.

24 Q. Right.

25 MR. MILLS: Okay. That's all the questions I

SHERRY MYERS DIRECT BY MS. WALKER

1 have.

2 THE COURT: You may step down.

3 MS. WALKER: Your Honor, may the witness be
4 excused?

5 THE COURT: Yes.

6 Next witness.

7 MS. WALKER: Your Honor, the State calls Sherry
8 Myers.

9 THEREUPON,

10 SHERRY MYERS,

11 after having been duly sworn, testified as follows:

12 THE CLERK: Thank you. Have a seat in the witness
13 stand, please. State your name for the record.

14 THE WITNESS: Sherry Myers.

15 DIRECT EXAMINATION

16 BY MS. WALKER::

17 Q. Good afternoon, Ms. Myers. Where do you live?

18 A. I live at [REDACTED] Congaree Church Road, and that's in
19 Gaston.

20 Q. In Gaston?

21 A. Yes.

22 Q. Do you know the Defendant in this case?

23 A. Yes.

24 Q. How do you know him?

25 A. That's my great uncle.

SHERRY MYERS DIRECT BY MS. WALKER

- 1 Q. Your?
- 2 A. My great uncle.
- 3 Q. Your great uncle?
- 4 A. That's my momma's daddy's brother.
- 5 Q. You say your grandfather's brother is the Defendant?
- 6 A. Yes.
- 7 Q. Okay. Have you known him all of your life just about?
- 8 A. Yes.
- 9 Q. What about Cornelius Green, did you know him?
- 10 A. I met Cornelius Green two years and a half before the
- 11 shooting.
- 12 Q. Were y'all dating at the time?
- 13 A. Yes.
- 14 Q. Did y'all have kind of an off again, on again
- 15 relationship?
- 16 A. No, it was --
- 17 Q. Straight to you at that point?
- 18 A. Yes.
- 19 Q. I want to talk to you about Toney's Lounge. Is that a
- 20 place that you would go frequently?
- 21 A. No, I didn't -- we didn't go to Toney's Lounge
- 22 frequently, it was just that day that he decided he
- 23 wanted to go out. We slept all that day and we woke up
- 24 that afternoon and decided we wanted to go out and have
- 25 a drink.

SHERRY MYERS DIRECT BY MS. WALKER

- 1 Q. Did y'all decide on Toney's Lounge?
- 2 A. Yes.
- 3 Q. Tell me, do you remember about what time y'all got
- 4 there?
- 5 A. Maybe about 11 o'clock.
- 6 Q. That night?
- 7 A. Yes.
- 8 Q. And did you know any of the people that were there when
- 9 you got there?
- 10 A. Yes.
- 11 Q. Okay. And did y'all, in fact, start having drinks?
- 12 A. Well, we got there and we went to the bar where Ms.
- 13 Annie was serving and we sit right in front of her and
- 14 we was sitting right there having a drink. We didn't
- 15 even drink the first drink.
- 16 Q. At some point, did your uncle -- your great uncle, did
- 17 he come to the bar that night?
- 18 A. Yes.
- 19 Q. Was he there before or after y'all got there?
- 20 A. Before.
- 21 Q. So he was already there when you got there?
- 22 A. Yes.
- 23 Q. And don't tell me why, but do you and your uncle kind
- 24 of have a bad relationship?
- 25 A. Yes.

SHERRY MYERS DIRECT BY MS. WALKER

1 Q. Or did y'all at that point?

2 A. Yes.

3 Q. And did he come -- did y'all kind of get into it that
4 night?

5 A. Yes.

6 MS. WALKER: Your Honor, at this point, we would
7 like to publish Exhibit No. 4 to the jury. It's already
8 been admitted.

9 THE COURT: Okay.

10 BY MS. WALKER::

11 Q. I'm going to ask you to step down from there. He'll
12 help you get out. The court reporter is going to ask
13 that you stand on this side and talk back towards her
14 and I'll stand where you are, okay?

15 A. Okay.

16 (DVD played for the jury.)

17 Q. Now, do you see yourself on there?

18 A. Yes.

19 Q. Where are you?

20 A. Right there (indicating).

21 Q. And is Cornelius on there?

22 A. Yes.

23 Q. Where is he?

24 A. Right there (indicating).

25 Q. And is your uncle in this one? Can you see him yet?

SHERRY MYERS DIRECT BY MS. WALKER

- 1 A. No, he's in that corner over there (indicating).
- 2 Q. Over here?
- 3 A. Uh-huh.
- 4 Q. Off the camera?
- 5 A. Uh-huh.
- 6 Q. Who are you talking to there, do you know?
- 7 A. That's my daughter's cousin on her daddy's side and I
- 8 think his girlfriend, just having a general
- 9 conversation.
- 10 Q. Okay. And Cornelius is sitting on the other side of
- 11 the young lady at that point?
- 12 A. Yes.
- 13 Q. And is that him right there?
- 14 A. Yes.
- 15 Q. Okay. And have y'all -- at this point, have y'all
- 16 spoken to one another yet?
- 17 A. No.
- 18 Q. Okay. So what's happening here?
- 19 A. That's when he walked up to me and he called me a no
- 20 good bitch.
- 21 Q. That's at 1:10:45?
- 22 A. Uh-huh.
- 23 Q. Okay. And your back is to him -- are you responding to
- 24 him at this point?
- 25 A. No, I was talking to Neil.

SHERRY MYERS DIRECT BY MS. WALKER

1 Q. Okay.

2 A. Then when I looked back, I realized he was still
3 standing there. You see, I was still sitting there.

4 Q. What are you trying to do at this point?

5 A. Ignore what he's saying.

6 Q. Okay. Is he still talking to you?

7 A. Yes.

8 Q. Do you remember what he's saying?

9 A. He's steady calling me out of my name, he's calling me
10 all kind of nasty names, whores and bitches, and I'm
11 telling me to go away and leave me along. That's when
12 I turned around and stand up.

13 Q. Okay. What are you telling him at that point?

14 A. Leave me alone, stay out of my life. I'm not bothering
15 you.

16 Q. Okay.

17 A. He steady calling me out of my name, telling me what he
18 was doing to do to me. And that's when -- put his
19 hands on me.

20 Q. And who's this walking over to you?

21 A. That's Toney Lowman talking to him.

22 Q. Okay.

23 A. I was telling him I was going to put a restraining
24 order against him.

25 Q. And you look pretty heated at that point?

SHERRY MYERS DIRECT BY MS. WALKER

1 A. Yes, because he kept addressing me out of my name
2 and --

3 Q. This is your great uncle that's doing that?

4 A. Yes.

5 Q. That's when you pushed him?

6 A. Yes.

7 Q. And who is this coming over to you?

8 A. That's Neil calming me down, telling me to sit down,
9 don't worry about it.

10 Q. So he was trying to get you to ignore him?

11 A. Yes.

12 BAILIFF: You need to speak up for the court
13 report. It's hard to hear.

14 THE WITNESS: Okay.

15 BY MS. WALKER::

16 Q. Okay. Where are you now, still at that same place?

17 A. Still sitting at the bar talking to Neil.

18 Q. Okay, at 1:16:08.

19 A. Now, he's talking to Toney, but he's still calling me
20 out my name --

21 BAILIFF: Speak up, please.

22 THE WITNESS: That's why I backed up from the bar
23 because he still was calling me out my name.

24 BY MS. WALKER::

25 Q. Who is that talking to you? Where is Neil at this

SHERRY MYERS DIRECT BY MS. WALKER

1 point?

2 A. Neil is still sitting right here (indicating).

3 Q. Okay.

4 A. Still sitting. I turned around and he called me a
5 bitch again, that's when I stand up.

6 Q. Okay. At this point, do you recall if Neil and the
7 Defendant ever exchanged words?

8 A. They never exchanged words. Neil didn't say anything
9 to him at all.

10 Q. Okay. Do you know where you are at this point?

11 A. Yeah, I went to the back of the club and talked to my
12 cousin and left Neil sitting at the bar still.

13 Q. Okay. Who is that?

14 A. That's Calvin right there. You passed it when Toney
15 had done put him out a second time and that tall guy
16 snuck him back in the club. You passed it.

17 Q. Okay. We'll go back and show that.

18 A. Now, he came back to the bar and now he had an
19 altercation with Neil. Neil didn't say anything to him
20 that whole night.

21 Q. You know what he said to Neil?

22 A. I don't know because I wasn't at the bar. I don't know
23 what he said to Neil.

24 Q. Is that Neil walking out?

25 A. Yes. That's Calvin following him.

SHERRY MYERS DIRECT BY MS. WALKER

1 Q. And who is that?

2 A. That's me getting my jacket. I went outside once I
3 noticed Neil had left the bar.

4 Q. All right. We're going to switch camera angles. We're
5 going to the outside of the bar. Do you remember where
6 y'all's car was parked at that point?

7 A. And his truck's right there. Oh, excuse me.

8 Q. That's okay. Okay. Now, where are you -- where did
9 you go right after we see you get off the camera inside
10 the club?

11 A. We was in front of the club.

12 Q. Standing outside talking to Neil?

13 A. Yes.

14 Q. Okay. What was going on during that period of time?

15 A. When I walked outside, Calvin -- when I came outside,
16 him and Neil was -- him and somebody was talking. They
17 was all standing in the front talking, but when I came
18 outside, Calvin switched everything over and it was
19 back on me. It was back addressing me out of my name,
20 out of my character, so he was back on me. And he
21 walked face to face to face to me and I swung and I hit
22 him.

23 Q. Okay.

24 A. So at that time, Neil had hit him.

25 Q. Okay. So where is Neil? Where is the car again?

SHERRY MYERS DIRECT BY MS. WALKER

- 1 A. That's the truck.
- 2 Q. Okay.
- 3 A. He was going to the truck.
- 4 Q. Right.
- 5 A. Once he got to the truck, he realized he didn't have
- 6 his keys, I had them.
- 7 Q. Okay. Is that him turning back to come get his keys?
- 8 A. Yes, that is me getting the keys. That's when somebody
- 9 must have yelled out about the gun and he ran behind
- 10 that truck right there (indicating). He's running?
- 11 Q. Uh-huh.
- 12 A. Calvin's over her (indicating). You separated him?
- 13 Q. Is that Neil hiding?
- 14 A. That's Neil hiding right here (indicating).
- 15 Q. Does Neil have his keys yet?
- 16 A. No. That's me coming right there (indicating) to bring
- 17 him his keys.
- 18 Q. Why is everybody running?
- 19 A. Because they saying he had a gun.
- 20 Q. Okay. We'll go back over that again. Okay. That's
- 21 Neil?
- 22 A. Uh-huh.
- 23 Q. Trying to get to his car?
- 24 A. Yes.
- 25 Q. Then he runs back?

SHERRY MYERS DIRECT BY MS. WALKER

- 1 A. Uh-huh.
- 2 Q. And where are you standing at this point?
- 3 A. On the steps (indicating).
- 4 Q. You're over here off the camera?
- 5 A. Yes.
- 6 Q. Can you see your uncle?
- 7 A. No, I didn't see him.
- 8 Q. Okay. And there you go (indicating). So this is still
- 9 Neil right here (indicating)?
- 10 A. Yes.
- 11 Q. Here we go.
- 12 A. That's Calvin Myers?
- 13 Q. Running?
- 14 A. Running.
- 15 Q. Is that the flash?
- 16 A. Yes.
- 17 Q. How many shots did you hear before Calvin circled up
- 18 here?
- 19 A. I don't remember how many shots, but I remember Neil
- 20 just saying, Baby, that Mother Fucker done shot me.
- 21 That was his last words. Somehow he got -- when Calvin
- 22 shot him, somehow Neil got behind Calvin and pushed
- 23 Calvin down, and that's when he got on top of him and
- 24 was beating him. And once he hit him about two, three,
- 25 times, he just dropped, layed flat on top of Calvin.

SHERRY MYERS DIRECT BY MS. WALKER

1 Q. All right. Thank you. You can walk around that way
2 and get back on the witness stand over here and we'll
3 move this out of the way.

4 THE COURT: If you can find a convenient place to
5 stop in the next two or three minutes.

6 MS. WALKER: I can do that right now, Your Honor.

7 THE COURT: Okay.

8 All right. Ladies and gentlemen, we're going to
9 break for today and start back at 9:30 tomorrow morning.
10 We'll see you back here at 9:30.

11 I know when you go home, folks are going to want
12 to know, tell me about jury duty and tell me about the case
13 you're on, but as I stated to you earlier, you're not to
14 discuss the case with anyone or allow anyone to discuss it
15 with you. The way the process works is that you're not to
16 be influenced by anyone who's not sitting there listening to
17 the testimony on the jury. So if you go home and start
18 deliberating with somebody else who -- and getting their two
19 cents and they have nothing to do with the case and they're
20 not here and not listening to the evidence that -- that
21 would be improper and in violation of your oath as a juror.

22 Our system has been tested throughout the ages and
23 our jury system is the best in the world for a good reason,
24 that is that jurors listen to the entire case. They keep an
25 open mind. They do not discuss it with each other. They

SHERRY MYERS DIRECT CONTINUED BY MS. WALKER

1 MS. WALKER: Your Honor, at some point, the
2 Defense attorney did approach the State about a plea
3 negotiation in this case. At that point in time, we had
4 conversations with the family to discuss possible ranges
5 with them. They talked about a range of 30 to 35 years that
6 was related to the defense in this case, negotiated 30.
7 Both of those pleas were rejected by the Defendant.

8 THE COURT: All right.

9 Is that right, Mr. Mills?

10 MR. MILLS: Yes, sir.

11 THE COURT: All right.

12 Is that right, Mr. Myers?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Very good.

15 All right. We're ready for the jury.

16 (Whereupon, the jury returned to the
17 courtroom at 9:46 a.m.)

18 BAILIFF: The jury panel is all here, Your Honor.

19 THE COURT: All right. Good morning.

20 THE JURY: Morning.

21 THE COURT: Thank you. Day number two. The
22 witness is on the stand.

23 You may proceed.

24 MS. WALKER: Thank you, Your Honor.

25 CONTINUED DIRECT EXAMINATION

SHERRY MYERS DIRECT CONTINUED BY MS. WALKER

1 BY MS. WALKER::

2 Q. When we stopped yesterday, we had just gone over the
3 video from the lounge that night?

4 A. (The witness nodded head.)

5 Q. I have just a few more questions for you about what
6 happened?

7 A. Okay.

8 Q. At any point -- at some point, did you see your uncle
9 with blood on him, with blood on his face?

10 A. After the shooting.

11 Q. It was after the shooting?

12 A. Yes.

13 Q. And did you call -- did you call 911?

14 A. Yes.

15 Q. After this?

16 A. Yes.

17 Q. I want to play a -- an audio from 911 and you tell me
18 if you recognize it, okay?

19 A. (The witness nodded head.)

20 MR. MILLS: Yes, Your Honor, just subject to my
21 previous objection.

22 THE COURT: Yes, sir.

23 MR. MILLS: Thank you.

24 (Whereupon, 911 audio played for the
25 jury.)

SHERRY MYERS CROSS BY MR. MILLS

1 BY MS. WALKER::

2 Q. You okay?

3 A. Yes.

4 Q. Is that the 911 call you made that night?

5 A. Yes.

6 Q. Is there a lot of chaos in the background at that
7 point?

8 A. Yes.

9 Q. About how many people were out there? Can you even
10 guess how many people were out there when you were out
11 there?

12 A. Maybe about 40, 50 people.

13 Q. Seemed like 40, 50 people to you?

14 A. (The witness nodded head.)

15 Q. And did you stay around that night and talk to law
16 enforcement?

17 A. Oh, yes.

18 Q. Did you tell them what you told us here today?

19 A. Yes.

20 Q. Did you ever see Neil initiate a conversation with the
21 Defendant at any time?

22 A. No.

23 Q. Who was initiating that conversation that night?

24 A. Calvin.

25 Q. And the person that you saw with the gun that night,

SHERRY MYERS CROSS BY MR. MILLS

1 the person who was doing the shooting, do you see that
2 person in the courtroom?

3 A. Yes.

4 Q. Can you point him out?

5 A. Yes.

6 Q. Go ahead.

7 A. (Indicating).

8 Q. Are you pointing at the Defendant?

9 A. Calvin, yes.

10 MS. WALKER: Your Honor, let the record reflect
11 that the witness has identified the Defendant.

12 THE COURT: It does.

13 MS. WALKER: I don't have any further questions.

14 MR. MILLS: May it please the Court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. MILLS::

18 Q. Good morning, Ms. Myers?

19 A. Morning.

20 Q. The last question the solicitor asked you about who
21 initiated the conversations that evening. And
22 yesterday, we did look at the video from the inside of
23 Toney's Lounge, do you remember that?

24 A. Yes.

25 Q. Okay. And it looks like there's a lot of different

SHERRY MYERS CROSS BY MR. MILLS

1 conversations that were going on, correct?

2 A. No.

3 Q. There was -- more than one conversation occurred,
4 though, correct?

5 A. No, just me and him. The same conversation.

6 Q. Okay. But I mean at different times?

7 A. Yes.

8 Q. Okay. All right. And we can look at that again in a
9 little bit.

10 A. (The witness nodded head.)

11 Q. But I just wanted to make sure we were on the same page
12 as far as the word multiple conversations between you
13 and Mr. Myers?

14 A. Yes.

15 Q. Okay. And at some point, in fact, you're in his face
16 and he's just standing there. You remember that from
17 looking at the video yesterday?

18 A. Uh-huh, yes.

19 Q. How many times have you looked at that video?

20 A. This would be my second time.

21 Q. Second time. When did you look at it for the first
22 time?

23 A. This would be my third time.

24 Q. Third time?

25 A. I looked at it right after the shooting. I had to go

SHERRY MYERS CROSS BY MR. MILLS

- 1 to the sheriff's department right after the shooting
2 and look at the video.
- 3 Q. Okay. And was that after you made the statement, the
4 written statement?
- 5 A. Yes, I made the statement that night of the shooting.
- 6 Q. Okay. And -- well, did -- who did you make the
7 statement to, do you remember?
- 8 A. The investigator.
- 9 Q. This investigator here?
- 10 A. Uh-huh.
- 11 Q. And did he have any kind of recording equipment or any
12 kind of video or audio equipment to record your
13 statement?
- 14 A. I don't know. I was -- I was out of it.
- 15 Q. Okay.
- 16 A. I don't know.
- 17 Q. Okay. You can't remember?
- 18 A. I don't remember.
- 19 Q. But it was a written statement?
- 20 A. Yes.
- 21 Q. Correct?
- 22 A. Yes.
- 23 Q. And did you write it or did he write it?
- 24 A. He wrote it.
- 25 Q. Okay. And did you tell him everything at that time

SHERRY MYERS CROSS BY MR. MILLS

- 1 that --
- 2 A. Yes, sir.
- 3 Q. That happened?
- 4 A. Yes, sir.
- 5 Q. Okay. Now, you testified yesterday that Neil had hit
- 6 Mr. Myers in front of Toney's Lounge, correct?
- 7 A. Yes.
- 8 Q. After, I believe, the second time you had hit him when
- 9 he was coming at you, you said?
- 10 A. Yes.
- 11 Q. So how big was Neil? What was his height,
- 12 approximately?
- 13 A. About six-three, six-two.
- 14 Q. Okay. How tall do you estimate Mr. Myers to be?
- 15 A. Five-nine.
- 16 Q. Five-nine. And you remember that Neil hit Mr. Myers
- 17 enough to knock him on the ground, correct?
- 18 A. Yes.
- 19 Q. Okay. Then what did Neil do, walk away from that at
- 20 that point?
- 21 A. Yes.
- 22 Q. Is that what you testified to?
- 23 A. Yes.
- 24 Q. Okay. I'm sorry, I just can't hear you. Do you
- 25 remember making the statement that night?

SHERRY MYERS CROSS BY MR. MILLS

1 A. Yes.

2 Q. Do you remember putting that in the statement at all?

3 A. Yes.

4 Q. About Neil hitting him in front of the club?

5 A. Yes.

6 Q. You did? Okay. If you could --

7 MR. MILLS: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes.

10 BY MR. MILLS::

11 Q. Does this look like a copy of your statement?

12 A. Yes.

13 Q. Okay. Let me get out of the way of the jury here. On
14 page two, you, basically, said Calvin was coming at me
15 like he was going to hit me and that is when I pushed
16 him back. When I pushed Calvin back, Neil was walking
17 in the parking lot going to his truck. When he got to
18 his truck, he realized I had the keys and he yelled to
19 me to give him his keys. I was standing on the porch
20 at the club and I could see Uncle Calvin with a pistol
21 standing in the parking lot --

22 MS. WALKER: Your Honor, if he's going to read the
23 statement, I ask that he read the whole thing.

24 MR. MILLS: Your Honor, I'm just asking her a
25 question from it.

SHERRY MYERS CROSS BY MR. MILLS

1 THE COURT: Well --

2 MR. MILLS: I'll do it a different way, Your
3 Honor.

4 THE COURT: All right.

5 BY MR. MILLS::

6 Q. Could you find on that page where you stated that Neil
7 had hit Mr. Myers, Mr. Calvin Myers, in the parking
8 lot -- in the front of the parking lot?

9 (Brief pause.)

10 A. No, it's not.

11 Q. It's not on there?

12 A. (The witness shakes head.)

13 Q. Okay. But you do remember that happening, correct?

14 A. Yes.

15 Q. And was Mr. Myers, Calvin Myers, did you notice him to
16 be angry or -- at that point, after that point?

17 A. He was angry and aggressive the whole night.

18 Q. Was he angry after the time Neil had hit him to knock
19 him to the ground?

20 A. I don't know about that.

21 Q. Okay.

22 MR. MILLS: Your Honor, I want to get the video,
23 if we could.

24 (The video was played for the jury.)

25

SHERRY MYERS CROSS BY MR. MILLS

1 BY MR. MILLS::

2 Q. Could you step down, Ms. Myers?

3 A. (There was no response.)

4 Q. Can you see that, Ms. Myers? Can you see that number?

5 A. Yes.

6 Q. Okay, that's fine. And this is you in the video?

7 A. Yes.

8 Q. This video starts at 1:01, is that correct? Can you
9 see that number --

10 A. Yes.

11 Q. -- up there? And so it's various conversations going
12 on?

13 A. Yes.

14 Q. So let's move it up.

15 A. Yes.

16 Q. To your knowledge, all of these are at the same time?

17 A. (The witness nodded head.)

18 MS. WALKER: Objection, Your Honor, calls for
19 speculation. There's no way for her to know that.

20 MR. MILLS: Just asking whether she knew that?

21 THE COURT: What was the question again?

22 MR. MILLS: Whether she knew whether or not these
23 were all at the same time, each one of the videos?

24 THE COURT: All of the video were at the same
25 time?

SHERRY MYERS CROSS BY MR. MILLS

1 MR. MILLS: Same time, they're running at the same
2 time. There's one time at the bottom. I'm just asking if
3 she knew whether or not.

4 THE COURT: You can answer if you know.

5 THE WITNESS: No, I didn't know.

6 BY MR. MILLS::

7 Q. Okay. We're at 1:10 now. This is when you began your
8 testimony yesterday, I believe, approximately. That's
9 Mr. Myers, correct? Can you see that? Do you need to
10 come down?

11 A. Yes. Can I come down?

12 MR. MILLS: Yes, Your Honor, may she come down?

13 THE COURT: Yes, she can.

14 MR. MILLS: Okay. Thank you.

15 BY MR. MILLS::

16 Q. This is Mr. Myers, Calvin Myers?

17 A. Yes.

18 Q. And he's got a jacket on?

19 A. Yes.

20 Q. And that's you (indicating)?

21 A. Yes.

22 Q. So, basically, there are words being -- he's talking to
23 you?

24 A. Yes.

25 Q. Using the words that you testified to?

SHERRY MYERS CROSS BY MR. MILLS

- 1 A. Yes.
- 2 Q. But no physical aggression by him, correct?
- 3 A. No.
- 4 Q. Okay. And you're putting your hand up --
- 5 A. Because he's in my ear.
- 6 Q. I understand.
- 7 A. He's calling me names that is not my government name.
- 8 Q. Okay.
- 9 A. And he wouldn't move. He's just there.
- 10 Q. That's you (indicating) talking to him in --
- 11 A. Yes.
- 12 Q. -- and aggressive way? That's you still?
- 13 A. Yes.
- 14 Q. Up in his face?
- 15 A. (There was no response.)
- 16 Q. That's Toney, correct (indicating)?
- 17 A. Yes.
- 18 Q. Okay. That's you pointing in his face (indicating),
- 19 correct?
- 20 A. Correct.
- 21 Q. He is still just standing there? He hasn't done any
- 22 physical action, correct?
- 23 A. (There was no response.)
- 24 Q. Then you pushed him, correct?
- 25 A. Yes.

SHERRY MYERS CROSS BY MR. MILLS

1 Q. And you're still pointing at him and pushing at him
2 again, correct?

3 A. Yes. That's him pointing at me trying to get to me and
4 Toney's holding him back.

5 Q. Okay. But he's not close to you at that point,
6 correct?

7 A. Yes, because Toney's holding him back.

8 Q. Okay. All right. And he goes outside, correct, Toney
9 takes him out?

10 A. Yes.

11 Q. Okay. And this was the first time that y'all saw each
12 other that evening?

13 A. Yes.

14 Q. Early morning, actually, correct?

15 A. Yes.

16 Q. Okay. You're still angry, correct?

17 A. Correct.

18 Q. He's outside at that point. And we're still -- the
19 video's going normal speed, we're about 1:15 a.m. and
20 Mr. Myers is outside, correct, and you're still at the
21 bar?

22 A. Yes.

23 Q. You go back to your seat at that point?

24 A. Yes.

25 Q. Okay. Is that -- who just reentered?

SHERRY MYERS CROSS BY MR. MILLS

- 1 A. Calvin and Toney.
- 2 Q. That's when Calvin came to the bar, correct?
- 3 A. Yeah.
- 4 Q. And he's not looking at you and you're acting angry,
5 correct?
- 6 A. Yes.
- 7 Q. Do you agree with that?
- 8 A. Yes, I agree with that.
- 9 Q. You got a cigarette?
- 10 A. Did you see that?
- 11 Q. Now, he is -- you're following him out, correct?
- 12 A. Did you see -- could you rewind that back?
- 13 Q. Yeah, sure. Is that far enough?
- 14 A. Yes. My chair is pulled out and I'm still talking to
15 Neil and you watch when he leave from the bar and come
16 beside me.
- 17 Q. Okay.
- 18 A. I'm not talking to him. I'm still talking to Neil even
19 though my chair is pulled out.
- 20 Q. Okay.
- 21 A. Did you see, he said something.
- 22 Q. Okay. He said something. Okay. That's when you got
23 up?
- 24 A. I don't trust him. He's known for sneaking and hitting
25 you, so that's when I got up.

SHERRY MYERS CROSS BY MR. MILLS

- 1 Q. So then you followed him, you followed everyone out and
2 Neil is still sitting inside -- well, you came back?
- 3 A. When I went to the trash and came back to the bar and
4 sit down.
- 5 Q. Okay. All right. And you're still angry, correct?
- 6 A. Yes.
- 7 Q. That reasonable?
- 8 A. I ain't angry, I'm upset and talking.
- 9 Q. Okay. Now, we're at 1:18 at this point. Now, that was
10 Neil jumping up about something. Was that --
- 11 A. He was talking to someone.
- 12 Q. Okay.
- 13 A. He wasn't jumping up and down.
- 14 Q. I just saw him go up. He stood up.
- 15 A. (The witness nodded head.)
- 16 Q. That's Toney coming back?
- 17 A. Yes. Now, he's sneaking back in right here.
- 18 Q. Okay. That's him in the --
- 19 A. Yes.
- 20 Q. That's Mr. Myers, you mean?
- 21 A. Yes.
- 22 Q. Where are you?
- 23 A. Still in the back of the club.
- 24 Q. You're in the back, this way (indicating)?
- 25 A. Yes.

SHERRY MYERS CROSS BY MR. MILLS

- 1 Q. You're still at the back of the club?
- 2 A. Yes.
- 3 Q. How much room is back there?
- 4 A. There's a lot of room back there.
- 5 Q. Okay. That's Neil talking to somebody?
- 6 A. Yes.
- 7 Q. You know who that is?
- 8 A. No.
- 9 Q. Okay. Is that Mr. Myers?
- 10 A. Yes.
- 11 Q. At 1:27. You're not in that room at that point?
- 12 A. No. At that point -- came to the bar. He was
- 13 questioning Neil.
- 14 Q. But you didn't hear any of that?
- 15 A. No.
- 16 Q. So you didn't know what was said?
- 17 A. No, I didn't hear that, no.
- 18 Q. Okay. Calvin Myers takes his jacket off, correct?
- 19 A. Right.
- 20 Q. And leaves it at the bar, correct?
- 21 A. Yes.
- 22 Q. And he's wearing like a light colored --
- 23 A. I don't know what color it is.
- 24 Q. You can't tell what color it is, but it looks
- 25 light-colored on here?

SHERRY MYERS CROSS BY MR. MILLS

1 A. Yes.

2 Q. Sweatshirt or something like that. Okay. So Neil and
3 Calvin are out front, correct?

4 A. Yes.

5 Q. And you -- this is you, correct?

6 A. Yes.

7 Q. That's you grabbing your jacket and going out front?

8 A. Yes.

9 Q. Okay. And that's when you say -- now, we can't see
10 that in the front up here, but that's when you were --
11 you testified that Calvin -- I'm sorry, that Neil
12 eventually hit Calvin knocked him to the ground?

13 A. After he hit me.

14 Q. After he hit you?

15 A. Yes.

16 Q. But Neil did hit Calvin?

17 A. Yes.

18 Q. And knocks him to the ground?

19 A. Yes.

20 Q. And you went to the parking lot?

21 A. I was still standing on the porch, but out in the
22 front.

23 Q. Okay. But, eventually, you went in the parking lot?

24 A. Yes.

25 Q. Okay. And this is the parking lot, correct

SHERRY MYERS CROSS BY MR. MILLS

- 1 (indicating)?
- 2 A. Yes, that's me and Neil. After he hit me, we went
- 3 walking toward it.
- 4 Q. After --
- 5 A. After Neil.
- 6 Q. After Neil hit the Defendant, Mr. Myers, you went
- 7 walking to this parking lot, which is on -- on this
- 8 side of the club, correct, so you would have gone this
- 9 way, correct?
- 10 A. (There was no response.)
- 11 Q. Is this (indicating) -- who is that hiding?
- 12 A. Neil.
- 13 Q. Hiding?
- 14 A. Yes.
- 15 Q. Okay. That's someone coming out there. And where is
- 16 Neil's truck?
- 17 A. There (indicating).
- 18 Q. Right here?
- 19 A. Uh-huh.
- 20 Q. Okay. Is that Neil going to the truck? You recognize
- 21 him or not?
- 22 A. That's him right there (indicating).
- 23 Q. That's Neil right there. You said he went towards his
- 24 truck and you had the keys, correct?
- 25 A. Yes.

SHERRY MYERS CROSS BY MR. MILLS

1 Q. So he's going -- he was trying to get in his truck?

2 A. Yes.

3 Q. Okay. That's you leaving from the front, correct/

4 A. Yes. Running down and he got -- he was running to the
5 wrong truck.

6 Q. Okay.

7 A. He's hiding now because he had a gun.

8 Q. Okay. Now, that's someone -- that's Neil beating Mr.
9 Myers, the Defendant, correct?

10 A. Yes.

11 Q. You see the arms go up several times, correct?

12 A. Yes. All of this is after he got shot.

13 Q. That's all. You can return to your seat.

14 A. (The witness complies.)

15 Q. Ms. Myers, just a few more questions. So in your
16 statement, you said you heard how many shots, do you
17 remember?

18 A. Three.

19 Q. Three. Okay. And --

20 A. At that time, I didn't know he got shot in the back.

21 Q. Okay.

22 A. I thought it was more like I seen a hole in his arm.

23 Q. But you heard three shots?

24 A. Yes, I heard the shots.

25 Q. And you also said that you heard three shots, you heard

SHERRY MYERS REDIRECT BY MS. WALKER

1 Neil say he shot me and Neil hit Calvin in the face,
2 but he did not have any strength and fell to ground and
3 laid on his back?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. That's the statement you made to the police that night?

8 A. Yes.

9 Q. Did they -- the police investigators ask you to make
10 any kind of other statement later on?

11 A. No.

12 Q. Now, you said you went to the sheriff's department to
13 look at the -- later on. Do you know what day that
14 was?

15 A. No, probably a day or two after the shooting.

16 Q. Okay. And did they do any kind of -- it was at the
17 sheriff's department, correct?

18 A. Yes.

19 Q. Did they do kind of audio or video recording at that
20 time of your statement?

21 A. I didn't do a statement at the sheriff's department at
22 that time.

23 Q. Pardon me?

24 A. I didn't do a statement at the sheriff's department, I
25 just went and viewed the video.

SHERRY MYERS REDIRECT BY MS. WALKER

1 Q. Okay. So you saw this same video we just looked at?

2 A. Yes.

3 Q. Okay.

4 MR. MILLS: Beg the Court's indulgence. That's
5 all the questions I have for this witness, Your Honor.

6 THE COURT: Redirect?

7 MS. WALKER: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. WALKER::

10 Q. There's a part of your testimony on cross-examination
11 that Mr. Mills kind of glossed over. I want to ask you
12 a question about that. There's --

13 MR. MILLS: Your Honor, I object to her statement.

14 THE COURT: I sustain it.

15 BY MS. WALKER::

16 Q. There's a part of the video where you push back from
17 your chair and you stand up?

18 A. Uh-huh.

19 Q. Your uncle is walking behind you?

20 A. Yes.

21 Q. Did it make you nervous that he was behind you?

22 A. Oh, yes.

23 Q. Why were you nervous?

24 A. Because my uncle is very sneaky. He'll hit you. He'll
25 hit you from behind when you're not paying attention.

SHERRY MYERS REDIRECT BY MS. WALKER

1 MR. MILLS: Objection, Your Honor.

2 THE WITNESS: He have done that numerous times.

3 MR. MILLS: Objection.

4 THE COURT: Basis for the objection?

5 MR. MILLS: Bringing character into evidence, Your
6 Honor.

7 MS. WALKER: He opened the door for this on his
8 cross-examination, Judge.

9 MR. MILLS: It was -- nothing on my questioning.

10 THE COURT: All right.

11 Ladies and gentlemen, I will have you step to the
12 jury room just for a moment. Please do not discuss the
13 case.

14 (Whereupon, the jury left the courtroom
15 at 10:33 a.m.)

16 THE COURT: All right. Ms. Walker.

17 MS. WALKER: Your Honor, on part of the video -- I
18 know you haven't had a chance to video it yet. Part of the
19 video, this is after the first time the Defendant's been
20 kicked out of the club, he's standing on one side of this
21 witness and he starts walking behind her and she pushes back
22 and stands up (indicating).

23 At that point, when he was going through the video
24 on cross-examination, Mr. Mills asked and that's you being
25 aggressive? He's not doing anything? He hasn't said

AMY DURSO DIRECT BY MS. WALKER

1 MR. MILLS: With the jury?

2 THE COURT: Yes.

3 MR. MILLS: Yes, sir.

4 THE COURT: Or you can, if you want to.

5 MR. MILLS: Okay.

6 THE COURT: You want to withdraw on the record?

7 MR. MILLS: That's fine. Yes, sir.

8 THE COURT: Okay. All right. Let's bring them
9 out and see if they will come back.

10 (Whereupon, the jury returned to the
11 courtroom at 10:56 a.m.)

12 BAILIFF: The jury panel is all present, Your
13 Honor.

14 THE COURT: All right.

15 Mr. Mills:

16 MR. MILLS: Thank you, Your Honor. I will
17 withdraw the objection that was previously made.

18 THE COURT: All right. You may proceed.

19 MS. WALKER: Thank you, Your Honor.

20 BY MS. WALKER::

21 Q. And don't go into specifics but had you -- at that
22 point that night -- prior to that night, had you seen
23 your uncle sneak up behind people and hit them before?

24 A. Yes.

25 Q. Okay. Is that why you pushed your chair back and

AMY DURSO DIRECT BY MS. WALKER

1 turned around?

2 A. Yes.

3 MS. WALKER: I don't have any further questions.

4 THE COURT: All right.

5 MR. MILLS: No further questions based on that,

6 Your Honor.

7 THE COURT: All right. Thank you.

8 You may step down.

9 Next witness.

10 MS. WALKER: Your Honor, the State calls Dr. Amy

11 Durso.

12 THEREUPON,

13 AMY DURSO, M.D.,

14 after having been duly sworn, testified as follows:

15 THE CLERK: Have a seat in the witness stand,

16 please. Seat your name for the record.

17 THE WITNESS: Amy Durso, D-U-R-S-O.

18 DIRECT EXAMINATION

19 BY MS. WALKER::

20 Q. Good morning.

21 A. Good morning.

22 Q. Dr. Durso, where are you currently employed?

23 A. I'm currently by Professional Pathology Services. And

24 I routinely do autopsies. I'm a forensic pathologist

25 and I do a lot of work for the Richland County

AMY DURSO DIRECT BY MS. WALKER

1 Coroner's Office.

2 Q. When you say you're a forensic pathologist, what is
3 forensic pathology?

4 A. So a forensic pathologist is a medical doctor that has
5 extensive training. Mainly, what we do on a daily
6 basis is we do autopsies, which is examination of the
7 body after death, the outside and the inside of the
8 body, to determine the cause of death as well as just
9 to document anything from identifying marks as well as
10 injuries or any illnesses.

11 Q. And in terms of your training and background, can you
12 tell us little bit about how you -- the steps you took
13 the become a forensic pathologist?

14 A. So I received a Bachelor's Degree in psychology from
15 Emory University. After that, I went to medical school
16 at the University of North Carolina in Chapel Hill,
17 where I received my MD. I then -- so after medical
18 school, I went to Wake Forest University to do a
19 four-year residency program in anatomical and clinical
20 pathology, so that's in general pathology, to
21 include -- autopsies as well as doing other parts of
22 pathology, which includes looking under the microscope
23 at anything a surgeon might remove from the body, such
24 as things as the gallbladder or even a sample if you
25 had a weird spot on your skin to look at and give a

AMY DURSO DIRECT BY MS. WALKER

1 diagnosis and, also, learn how to run a blood bank and
2 any kind of sample that's sent to lab is run by a
3 pathologist. And then after those four years, I passed
4 the Boards of anatomic and clinical pathology. I then
5 did a one-year fellowship specifically in the field of
6 forensic pathology, which means you're doing autopsies.
7 And I took the Board examinations and passed those.

8 Q. And have you testified in court before as an expert in
9 clinical and forensic pathology?

10 A. Yes.

11 Q. Approximately how many times?

12 A. I think six or seven times now.

13 MS. WALKER: Your Honor, at this point, we would
14 offer Dr. Durso as an expert in the field of forensic
15 pathology.

16 MR. MILLS: No objection.

17 THE COURT: All right. She is admitted as an
18 expert in the field of forensic pathology.

19 Ladies and gentlemen, an expert witness can give
20 opinions in areas where lay witnesses cannot.

21 You may proceed.

22 MS. WALKER: Thank you, Your Honor.

23 BY MS. WALKER::

24 Q. Once an autopsy begins, when you begin an autopsy, will
25 you take the jury through the steps of how you prepare

AMY DURSO DIRECT BY MS. WALKER

1 to do an autopsy and then the steps you take while
2 doing an autopsy?

3 A. Sure. Well, the first we look at is the labeling of
4 the body bag to make sure we have the right person.
5 After we assure our labels match with the autopsy we've
6 been asked to do that day, we open up the body bag and
7 begin an external examination on the outside of the
8 body. So we start with height, weight, hair color, eye
9 color, tattoos, scars as well as any kind of -- injury,
10 gunshot wound, that sort of thing. We document all of
11 these on diagrams and it's also documented in my report
12 I prepare afterwards.

13 So after we're done with that external
14 examination, we begin an internal examination. And to
15 do that, we make a large Y-shaped incision over the
16 body. So we start with the shoulders and have incision
17 that goes down towards the chest (indicating) and
18 incision that goes all the way down to the pelvis.
19 You're then able to reflect back the skin and we,
20 actually, remove the front of the ribcage. And after
21 we remove that, we can, actually, see all of major
22 organs in the body for any abnormal collections of
23 fluid, including blood. And we can look for any
24 injuries we can see. After that, we, actually, remove
25 each organ, weigh it and dissect it and look for

AMY DURSO DIRECT BY MS. WALKER

1 anything normal or abnormal, documenting everything as
2 we go. And we also examine the brain. And to do that,
3 we make an incision on the back of the scalp. We -- it
4 forward to remove the top of the skull so that we can
5 remove the brain and examine that as well.

6 Q. And in terms of this specific autopsy, did you follow
7 those same steps?

8 A. I did.

9 Q. I want to take you back to this autopsy. Did you
10 perform the autopsy of Cornelius Green?

11 A. I did, yes.

12 Q. And how old was Mr. Green at the time of his death?

13 A. He was 37 years old.

14 Q. Do you have his weight and height?

15 A. I do. His weight was 210-pounds and his body length
16 was 70 inches, which is about five feet 10.

17 Q. What were your -- when you first, I guess, began the
18 autopsy, what, if anything, did you see?

19 A. We noticed several gunshot wounds.

20 Q. And did you make a diagram in order to depict where
21 those wounds were?

22 A. I did.

23 Q. And would that diagram aid you in your testimony here
24 today?

25 A. Yes, it would.

AMY DURSO DIRECT BY MS. WALKER

1 Q. Let me show what's been marked as State's No. 54 and
2 ask if you recognize this?

3 A. I do.

4 Q. Is this the diagram you made?

5 A. Yes.

6 MS. WALKER: Your Honor, at this point, the State
7 offers Exhibit 54 into evidence.

8 MR. MILLS: No objection, Your Honor.

9 THE COURT: It's admitted.

10 MS. WALKER: Your Honor, may the witness step
11 down?

12 THE COURT: Yes.

13 (State's Exhibit No. 54 was admitted
14 into evidence.)

15 BY MS. WALKER::

16 Q. Approximately how many -- or exactly how many gunshot
17 wounds did you find on this victim?

18 A. Well, there were a total of what we call six gunshot
19 wounds, so if you count all of the entrances and exits,
20 I guess, I went through letter I, so -- but one of
21 those exits was just a graze wound, it was not,
22 actually, perforated through the body.

23 Q. You said you noticed entrance and exit wounds. Could
24 you tell the jury the difference between an entrance
25 wound and an exit wound?

AMY DURSO DIRECT BY MS. WALKER

1 A. Right. So you can, actually, tell the difference
2 between entrance and exit wounds by looking at them.
3 There's a very distinct characteristic that an entrance
4 wound has. So when the bullet penetrates into the
5 body, it's spinning and it kind of drags a little bit
6 of the skin in with it, so it, actually, causes what is
7 called an abrasion collar around the wound, the
8 entrance wound, so there's a full ring of abrasions.
9 Sometimes it's not exactly symmetric. It might be
10 almost like any other. Exit wounds do not, typically,
11 have these, so that's an easy or common way to
12 distinguish between the two.

13 Q. Does every entrance wound necessarily have a
14 corresponding exit wound when you're doing the autopsy?

15 A. No, because some of the bullets or projectiles might
16 not, actually, exit the body, so you might not have the
17 same number of entrance wounds as you have exit wounds.

18 Q. And how many entrance wounds did you find on this
19 victim?

20 A. Five, not counting the graze?

21 Q. Not counting the graze, right. And those five entrance
22 wounds, where were they?

23 A. There's an entrance wound back here on the upper left
24 shoulder labeled G. There's an entrance wound just
25 below that labeled H. Let's see, there's an entrance

AMY DURSO DIRECT BY MS. WALKER

1 wound on the back of the left lower arm (indicating),
2 down here (indicating). There's an entrance kind of on
3 the side of the chest here, almost kind of like the
4 armpit kind of area (indicating). And then there's an
5 entrance wound here up --

6 Q. So he would -- how many times was he shot in the back?

7 A. One, two -- well, twice up here. I don't know if his
8 arm -- most people don't like our chart, so I don't
9 know where his arm was.

10 Q. But to the back of the arm?

11 A. But to the back of the arm.

12 Q. Did you photograph those wounds as well?

13 A. I did.

14 Q. Or someone in the coroner's office?

15 A. The sheriff's department does, yes.

16 Q. Okay. I want to show you what's been marked as State's
17 Exhibits 39, 42 and 41 and ask if you recognize those?

18 A. Yes, I do.

19 MS. WALKER: Your Honor, at this point, the State
20 seeks to admit Exhibit 39, 41 and 42 into evidence.

21 MR. MILLS: No objection to them.

22 THE COURT: It's admitted without objection.

23 (State's Exhibit Nos. 39, 41 and 42 were
24 admitted into evidence.)

25 BY MS. WALKER::

AMY DURSO DIRECT BY MS. WALKER

1 Q. And what are these wounds?

2 A. So this is his back. Here's his head up here. And
3 here is this exit wound right here that corresponds
4 with I. So you can see it doesn't have that nice ring
5 of abrasion that the entrance wound has.

6 Q. Okay. And that's going to be with I --

7 A. Uh-huh. And this is the left arm you can see hanging
8 down here. And this, I believe, is -- it's a little
9 bit of a dark picture, but this is I believe to be
10 gunshot wound F, the entrance wound on the left.

11 Q. That's an entrance wound?

12 A. Uh-huh.

13 Q. Does it have that --

14 A. Yeah, it has the abrasion ring. It's kind of a dark
15 picture, but you can see there is a little bit of a
16 ring around it.

17 Q. Let me show you, also, State's Exhibit No. 43. Do you
18 recognize this?

19 A. I do.

20 MS. WALKER: Your Honor, at this point, the State
21 seeks to admit Exhibit 43 into evidence.

22 MR. MILLS: No objection.

23 THE COURT: It's admitted.

24 (State's Exhibit No. 43 was admitted
25 into evidence.)

AMY DURSO DIRECT BY MS. WALKER

1 BY MS. WALKER::

2 Q. Can you tell the jury the characteristics you're
3 looking for?

4 A. So you can see there's a hole in the middle, the
5 perforation, and around it is this little red abrasion.
6 It's called the abrasion collar and that's what tells
7 us it's an entrance wound.

8 Q. That is going to be right here?

9 A. Yes.

10 Q. And that is?

11 A. F.

12 Q. And, I'm sorry, continue with State's Exhibit No. 44.

13 A. Yes, so this is a picture of the left upper back, kind
14 of over where the shoulder blade is. You can see there
15 are two wounds fairly close together. This is G and H
16 on my diagram. You can see more clearly on these.
17 These are entrance wounds. The dark red part is the
18 perforation of the skin and tissue and around it, you
19 have this little ring of abrasion. And that, again,
20 tells me that these are both entrance wounds.

21 Q. And those would cover the gunshot wounds to the back of
22 the victim?

23 A. Yes.

24 Q. Moving to the front of the victim, how many entrance
25 wounds did you observe there?

AMY DURSO DIRECT BY MS. WALKER

1 A. So on the side here, there's entrance wounds here
2 (indicating) --

3 Q. Like right here (indicating)?

4 A. Yeah. And right in here (indicating, there's an
5 entrance wound on the front of the left thigh.

6 Q. I want to show you what's been marked as State's 37 and
7 38 and ask if you recognize these?

8 A. Yes, I do.

9 MS. WALKER: Your Honor, at this point, the State
10 seeks to admit Exhibits 37 and 38 into evidence?

11 MR. MILLS: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Whereupon, a bench conference was held
14 off the record, in the presence of the
15 jury, but out of the hearing of the
16 jury.)

17 BY MS. WALKER::

18 Q. State's Exhibit No. 38, what are we looking at on this
19 one?

20 A. So, this kind of goes up here. This is -- he's kind of
21 rolled forward. You can see his chest is up here, his
22 left arm kind of going forward. And these -- this is
23 gunshot wound A and gunshot wound B, so A is, actually,
24 one of the exit wounds and B is, actually, an entrance
25 wound. Again, this is a side-by-side comparison. A is

AMY DURSO DIRECT BY MS. WALKER

1 slightly out of focus, but B, clearly, has the abrasion
2 ring around it on so that it's an entrance wound -- I'm
3 sorry, B, clearly, has the abrasion ring and A is the
4 exit wound and does not have the abrasion ring around
5 it.

6 MS. WALKER: Beg the Court's indulgence, Your
7 Honor.

8 BY MS. WALKER::

9 Q. State's number 37?

10 A. Yes, this is the left upper thigh. Again, another
11 entrance wound. You can see the little perforation
12 around it.

13 Q. And lastly, I want to show you what's been marked as
14 State's Exhibit No. 40.

15 MR. MILLS: No objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit No. 40 was admitted
18 into evidence.)

19 BY MS. WALKER::

20 Q. And ask you to discuss this with us.

21 A. Yes, this is the graze wound I referred to as C.

22 Q. Can I talk about how that goes up?

23 A. Yes. So, it, actually, appears that there was a graze
24 wound near the scrotum, in the genital area, and went
25 up and hit something, but did not, actually, perforate

AMY DURSO DIRECT BY MS. WALKER

1 into the body. It's clear it did not go into the body,
2 it kind of just grazed.

3 Q. Those, I think, are all of the wounds. You can get
4 back on the witness stand, Dr. Durso.

5 A. Okay.

6 Q. Thank you.

7 A. (The witness complies.)

8 Q. And during this particular autopsy, were you able to
9 retrieve projectiles from the victim's body?

10 A. Yes.

11 Q. Do you recall how many?

12 A. I believe we retrieved two fairly in tact projectiles
13 and also a small fragment.

14 Q. Okay. I want to show you what's been marked as State's
15 Exhibit 28 -- I'm sorry, 26, 27, and 28 and ask if you
16 recognize those?

17 MR. MILLS: No objection, Your Honor.

18 THE COURT: Admitted.

19 (State's Exhibit Nos. 26, 27 and 28 were
20 admitted into evidence.)

21 THE WITNESS: Yes. Those are the pictures of the
22 projectiles.

23 BY MS. WALKER::

24 Q. You said two complete projectiles, would those be
25 State's 26 and 28?

AMY DURSO DIRECT BY MS. WALKER

1 A. Yes.

2 Q. And then a fragment of a projectile, which is State's
3 Exhibit 27?

4 A. Yes.

5 Q. And those were removed from the victim's body during
6 autopsy?

7 A. Yes.

8 Q. Could you tell the path that any of those projectiles
9 took through the victim's body?

10 A. All of them, yes.

11 Q. What paths did those various projectiles take?

12 A. I'll just start with the first one that I want to
13 describe. This one, actually, starts with gunshot
14 wound G on the diagram, that's the entrance. So after
15 it goes through the skin there, it, actually, hits and
16 fractures the scapula, the shoulder blade, back there.
17 It then perforates and fractures to the left seventh
18 and eighth ribs on the back, so the ribs back here
19 (indicating). It then enters the left chest cavity and
20 perforates the left lower lobe of the lung, so it's
21 going to travel downwards. It then perforates through
22 the diaphragm and it perforates into the abdominal
23 cavity where it hits the small bowel three times. It
24 then perforates to the largest vessels in the body,
25 which is the aorta. The aorta is a major artery that

AMY DURSO DIRECT BY MS. WALKER

1 comes up off of the heart and it goes around, comes
2 down -- and lower body.

3 So down in the abdominal part of the aorta, that
4 was perforated. Then it also perforated the inferior
5 vena cava. So the vena cava is kind of the opposite of
6 the aorta, actually, bringing the blood back to the
7 heart. It's one of the largest veins in the body
8 because it brings the blood back -- of the body,
9 although you wouldn't have as much high pressure as
10 the -- so perforated those two major vessels. And I,
11 actually, retrieved one of the projectiles in those
12 pictures from the soft tissue of the -- on the right.

13 Q. And the next --

14 A. Okay.

15 Q. The next one?

16 A. So starts with gunshot wound B as the entrance, the one
17 on the side over here (indicating). It barely
18 perforates into the left chest cavity, not enough to
19 hit along or anything, just kind of grazed into it. It
20 then exited through what I labeled gunshot wound I on
21 the back there.

22 Q. So is this a picture that better displays all of those
23 wounds, State's 29?

24 A. Yes.

25 Q. Okay.

AMY DURSO DIRECT BY MS. WALKER

1 MS. WALKER: At this point, Your Honor, the State
2 seeks to admit State's Exhibit 29 into evidence.

3 MR. MILLS: No objection.

4 THE COURT: It's admitted.

5 (State's Exhibit No. 29 was admitted
6 into evidence.)

7 Q. That is gunshot wound B?

8 A. Yes.

9 Q. And the corresponding exit wound is?

10 A. Is I.

11 Q. So these two (indicating)?

12 A. I is, actually, I think this one back (indicating), and
13 then B is, yeah..

14 Q. Okay. And those are corresponding entrance and exit
15 wounds?

16 A. Yes.

17 Q. Which one is the entrance wound?

18 A. B, the one kind of more on the side of the body.

19 Q. Continue, Dr. Durso?

20 A. Let's see, and then the entrance wound I labeled H, up
21 on the back right there (indicating) comes out the exit
22 wound A, which is the one higher up in the left side,
23 kind of near the armpit area. And it, basically, just
24 perforated through soft tissue. It didn't perforate
25 lungs or the chest cavity or anything like that.

AMY DURSO DIRECT BY MS. WALKER

1 Q. Had that been the only -- let me ask you this, in terms
2 of these gunshot wounds, were any of them just
3 exclusively fatal? If any of these had existed alone,
4 would they have been fatal?

5 A. The first one I described, the one that enters G and I
6 said perforated the left lung as well as the small
7 bowel, those two very large vessels, really without the
8 most immediate medical intervention, that would be a
9 fatal wound by itself. The rest of the wound I've
10 described would have contributed to some of the
11 bleeding, but all by themselves with the proper medical
12 care in a reasonable amount of time would not have been
13 fatal.

14 Q. But this injury alone would have been enough to kill
15 the victim in this case?

16 A. Yes.

17 Q. And continue, Doctor. I didn't mean to interrupt,
18 sorry.

19 A. About then there's the one in the left lower arm, which
20 goes in the FTE. So F is the entrance wound on the
21 back of the arm (indicating) and then exits the front
22 (indicating).

23 Q. Okay.

24 A. That just means it went through soft tissue in the arm.
25 Then D is the entrance to the -- lower leg -- or left

AMY DURSO DIRECT BY MS. WALKER

1 upper leg in the thigh area. And that didn't go very
2 far, it just went through some of the muscle there and
3 stops. And that's where we retrieved one of those
4 projectiles that was in the picture.

5 Q. Okay. And at any point -- can you determine the order
6 in which the victim was shot?

7 A. No.

8 Q. And what about in terms of the gunshot wounds, did they
9 tell you anything about how close he would have been to
10 the Defendant while he was being shot?

11 A. So the things we look at to see how close the gun was
12 to the decedent when they were shot, we look for soot,
13 which is the black stuff coming from the end of the
14 gun. And for that, you really need to be within about
15 six inches or less, depending upon the kind of firearm.
16 And we also look for stippling, which is the little
17 pieces of gun powder that can cause these little dots
18 that, actually, break the skin. And that usually
19 happen within two feet. I did not see either soot or
20 stippling on any of these wounds -- unless somebody is
21 wearing really heavy clothing or had the projectile
22 passed through something else first. Typically, if I
23 don't see those, that means it was more than two feet
24 away.

25 Q. Okay.

AMY DURSO DIRECT BY MS. WALKER

1 upper leg in the thigh area. And that didn't go very
2 far, it just went through some of the muscle there and
3 stops. And that's where we retrieved one of those
4 projectiles that was in the picture.

5 Q. Okay. And at any point -- can you determine the order
6 in which the victim was shot?

7 A. No.

8 Q. And what about in terms of the gunshot wounds, did they
9 tell you anything about how close he would have been to
10 the Defendant while he was being shot?

11 A. So the things we look at to see how close the gun was
12 to the decedent when they were shot, we look for soot,
13 which is the black stuff coming from the end of the
14 gun. And for that, you really need to be within about
15 six inches or less, depending upon the kind of firearm.
16 And we also look for stippling, which is the little
17 pieces of gun powder that can cause these little dots
18 that, actually, break the skin. And that usually
19 happen within two feet. I did not see either soot or
20 stippling on any of these wounds -- unless somebody is
21 wearing really heavy clothing or had the projectile
22 passed through something else first. Typically, if I
23 don't see those, that means it was more than two feet
24 away.

25 Q. Okay.

AMY DURSO CROSS BY MR.MILLS

1 A. But past two feet, I can't tell. It could be 10 feet,
2 it could be two feet. I really can't tell.

3 Q. You said you didn't see soot or stippling on any of
4 these wounds?

5 A. No, I did not.

6 Q. And that -- that places the distance at two feet away
7 from one another?

8 A. Unless it went through something else first, yes.

9 Q. And did you have a chance to view the clothing that the
10 victim wore in this case?

11 A. I didn't, no.

12 Q. And have you gone over all the gunshot wounds? Did you
13 finish?

14 A. I believe I did, yeah, and we've already talked about
15 the graze wound.

16 Q. Right.

17 A. So I believe that's it.

18 Q. Dr. Durso, in your expert opinion, what was the cause
19 of death for Cornelius Green?

20 A. Multiple gunshot wounds.

21 MS. WALKER: Thank you, Dr. Durso.

22 MR. MILLS: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25

AMY DURSO CROSS BY MR.MILLS

1 BY MR. MILLS::

2 Q. Good morning, Dr. Durso. How are you?

3 A. Morning. I'm good.

4 Q. Couple of questions. First of all, there have been
5 exhibits that have been introduced that are
6 photographs. Did you take the photographs?

7 A. No.

8 Q. Who took the photographs?

9 A. Typically, there's both the sheriff's department if
10 it's one of their cases taking photographs.

11 Q. Okay.

12 A. And also a representative from the Richland County
13 Coroner's Office.

14 Q. Okay. Do you know who took these picture photographs?

15 A. I don't have my log as to who was in there that day. I
16 know that paper is -- I don't have it right here in
17 front of me.

18 Q. So the photographs that were introduced were taken
19 before you did any kind of dissection?

20 A. Yes.

21 Q. Okay. So that would have been taken before you,
22 actually, determined entrance and exit wounds?

23 A. I, typically -- so I look for those characteristics and
24 I usually know which are entrance and exit, but until I
25 get in and line them all up -- I like to have all the

AMY DURSO CROSS BY MR.MILLS

1 29th of December?

2 A. Yes.

3 Q. You were not privy to the clothing that was being worn
4 at the time?

5 A. No, I was believe he was taken to the emergency room
6 and they, typically, strip all of the clothing off of
7 them.

8 Q. Okay. Because you did mention there may be no soot or
9 stippling if there's heavy clothing?

10 A. Yes, multiple layers. It was winter. I really have no
11 idea what he was wearing.

12 Q. This was in December, correct?

13 A. Yeah.

14 Q. And let's go back to the -- to your diagram here. I'll
15 just hold it up. In the -- what you have number one
16 GSW, correct? I'm sorry, can you see that?

17 A. Yes.

18 Q. Okay. That is the wound that you stated was the one
19 that did the most --

20 A. Yes.

21 Q. -- damage to the internal organs --

22 A. Yes.

23 Q. -- and other vital parts of the body?

24 A. Yes.

25 Q. Can you tell what angle the projectile entered into the

AMY DURSO CROSS BY MR.MILLS

- 1 body?
- 2 A. Right. So we, typically, do -- not a specific angle,
3 but a general trajectory and it was going downwards.
4 It was going from left to right. It was going from
5 back to front.
- 6 Q. Okay. So downwards?
- 7 A. Right. So I came in here and I didn't find the
8 projectile. It was down in this lower pelvic tissue.
- 9 Q. So it, actually, entered in a downward --
- 10 A. Yes.
- 11 Q. -- in the upper shoulder (indicating)?
- 12 A. Yes.
- 13 Q. Correct?
- 14 A. The back of the shoulder here (indicating).
- 15 Q. In a downward direction?
- 16 A. Yes.
- 17 Q. Okay. And then continued downwards and --
- 18 A. Left to right.
- 19 Q. Left to right.
- 20 A. Because it went in the left shoulder and I found the
21 projectile in the right --
- 22 Q. In the right pelvic?
- 23 A. -- pelvis.
- 24 Q. So it, actually, went --
- 25 A. It was kind of going across the body.

AMY DURSO CROSS BY MR. MILLS

1 Q. Across the body?

2 A. Uh-huh.

3 Q. From a higher angle --

4 A. Yes.

5 Q. -- than this? So at an angle sort of like -- would

6 this be a --

7 A. Yeah, I would point a little bit more that way

8 (indicating).

9 Q. Like this way?

10 A. Yes.

11 Q. But as far as the direction?

12 A. Yes.

13 Q. So we're going back to front?

14 A. (The witness nodded head.)

15 Q. Left to right and from a downward direction?

16 A. Yes.

17 Q. Okay. All right. And that's the one that, actually,

18 perforated ribs, the lung, the diaphragm, the small

19 bowel and the aorta and inferior vena cava?

20 A. Yes.

21 Q. Okay. And then the other one in the upper left

22 shoulder you have down as number three, which is also

23 an entrance wound?

24 A. Yes.

25 Q. In the upper left shoulder?

AMY DURSO CROSS BY MR. MILLS

- 1 A. Uh-huh.
- 2 Q. And H is the letter you used for it?
- 3 A. Yes.
- 4 Q. And it was also -- I'm sorry, it was an exiting gunshot
5 wound?
- 6 A. Yes, it exited where I have labeled A there.
- 7 Q. And where did -- okay, the exit was A, so that was on
8 the same side, correct?
- 9 A. Right, but it's kind of going -- it's going downwards
10 as well, but it's going slightly from left to right.
- 11 Q. Okay. So more of -- still downwards?
- 12 A. Yeah.
- 13 Q. But like that (indicating)?
- 14 A. Yeah.
- 15 Q. More like that?
- 16 A. Yeah.
- 17 Q. Okay. So both --
- 18 A. Oh, sorry, I guess --
- 19 Q. Sorry.
- 20 A. Yes.
- 21 Q. Three to two?
- 22 A. Yeah. I'm going from H to A, yes.
- 23 Q. H to A?
- 24 A. Yes.
- 25 Q. Okay. All right. So it's also a downward angle?

AMY DURSO CROSS BY MR.MILLS

1 A. Yes.

2 Q. Okay. So both of the shots in the upper left shoulder
3 were downward angles?

4 A. Right.

5 Q. Okay. All right. And then you had some -- and in that
6 one, you just found the exit wound, correct?

7 A. Correct.

8 Q. But you could determine the pathway?

9 A. Yes, we can, actually, probe the pathway and kind of
10 follow it, so before we even take the organs out, we
11 kind of probe and make sure all of our wounds line up
12 so we know what's sitting what and where the -- which
13 entrance lines up with what exit because we can't tell
14 from the outside, the external exam. We really have to
15 go and do our complete dissection to determine what is
16 what.

17 Q. So it's after the dissection that you determine the
18 full pathway?

19 A. Yes.

20 Q. And do you use any kind of instrument to show the
21 pathway of the bullet or --

22 A. I usually use like a plastic probe, but the problem is
23 while you're laying on the table isn't the exact
24 position that the person was shot in, so sometimes we
25 have to kind of twist and somehow make that happen,

AMY DURSO CROSS BY MR.MILLS

- 1 yes.
- 2 Q. Okay. But you -- do you take photographs of that, of
- 3 the probe that you use? What is it, like a long --
- 4 A. Long plastic probe, sometimes, yes.
- 5 Q. Okay. Cylindrical probe?
- 6 A. Yes, uh-huh.
- 7 Q. And do you take photographs?
- 8 A. The sheriff's department or coroner's office.
- 9 Q. Okay. You don't do it?
- 10 A. I don't take the photographs.
- 11 Q. You don't do yourself, okay. So if the sheriff's
- 12 department or the coroner's office does it, that's the
- 13 only way it's done?
- 14 A. Yes.
- 15 Q. Okay. And then, also, let's see, the next gunshot
- 16 wound was entrance H -- I'm sorry, I think we already
- 17 --
- 18 A. Yeah, that was the one we just talked about.
- 19 Q. And none of these did you find any soot or stippling,
- 20 did you?
- 21 A. None.
- 22 Q. Okay. And they were all -- if you have a long sleeve
- 23 or coat on, all of them would have been wounds that
- 24 would have been through clothing if clothing was on?
- 25 A. Yes.

AMY DURSO CROSS BY MR.MILLS

- 1 Q. Would you agree?
- 2 A. Yes.
- 3 Q. Okay. So the next one we have is the entrance F, that
- 4 was in the arm?
- 5 A. Yes, that was in the arm.
- 6 Q. Okay. And that was -- the angle of that one was?
- 7 A. Well, we call it from posterior to anterior. Like I
- 8 said, we do our diagrams and trajectory in anatomic
- 9 position, but I very much doubt he was standing there
- 10 in anatomical position, so I don't know where his arm
- 11 was.
- 12 Q. You have it pretty much going directly through as if a
- 13 person was standing like this?
- 14 A. Right.
- 15 Q. Okay. So if they were like this (indicating), it
- 16 wouldn't be, or like this (indicating)?
- 17 A. I couldn't tell which position.
- 18 Q. Okay. The next was the entrance D?
- 19 A. Down the arm and the leg.
- 20 Q. Which was also a nonexiting gunshot wound?
- 21 A. Correct.
- 22 Q. Which went from -- went into the upper --
- 23 A. Yes, upper leg and --
- 24 Q. And that's another front entrance --
- 25 A. Yeah, goes front to back, then slightly -- it goes a

AMY DURSO REDIRECT BY MS. WALKER

1 little bit left to right and then slightly downwards is
2 where we found the projectile that we retrieved at
3 autopsy.

4 Q. Okay. So the exit is --

5 A. There is no exit.

6 Q. Oh, I'm sorry, that was no exit there. It was a graze
7 wound as well, correct?

8 A. Yes.

9 Q. Okay. And as you stated during direct examination, you
10 could not determine the order in which the gunshot
11 wounds occurred?

12 A. No, I cannot.

13 Q. Okay.

14 MR. MILLS: Beg the Court's indulgence.

15 (Brief pause.)

16 BY MR. MILLS::

17 Q. The wound that you have testified to that was the one
18 who -- the one which probably caused the death of
19 Mr. Green, in a normal situation of a gunshot wound of
20 that nature, how long would it take for death to occur?

21 A. Lot of people kind of get a shot of adrenaline and
22 known to run a mile or two, so the rate he was
23 bleeding, it could have been five minutes, just a rough
24 estimate, because your blood pressure is going to go
25 down as you're bleeding.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 Q. Okay. How long would you remain conscious in all
2 likelihood?

3 A. I say up to five minutes.

4 MR. MILLS: That's all the questions I have.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MS. WALKER::

8 Q. If the victim had on like a man's polo and an
9 undershirt, would that have changed your opinion about
10 the entrance or exit wounds in any way?

11 A. No, I mean, for it to -- are you talking about the soot
12 and stippling as far as that goes?

13 Q. Right.

14 A. No, it has to be multiple layers of clothing and that
15 would not be enough to stop the abrasions and stippling
16 and that sort of thing.

17 Q. I understand. And you said that it's a downward shot?

18 A. Yes.

19 Q. So let me ask you this, let's say someone is hiding
20 from a gunman (indicating) and they're crouched down
21 like this?

22 A. Yes.

23 Q. Would that be consistent with the path that you saw?

24 A. Right. So I can't tell if the person shooting was
25 above or the person being shot was bent over.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 (indicating). It's really hard for me to tell. You
2 know, all I can say is that in the body it was going
3 downwards. I don't know if the person was standing
4 straight up or bent over or laying back even. I really
5 can't tell.

6 Q. All you know is that it comes from a downward angle?

7 A. Yes.

8 MS. WALKER: Thank you, Doctor.

9 MR. MILLS: No further questions.

10 THE COURT: All right. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Next witness.

13 MR. STEADMAN: The State calls Kristen Polis.

14 THEREUPON,

15 KRISTEN POLIS,

16 after having been duly sworn, testified as follows:

17 THE CLERK: Thank you. Have a seat in the witness
18 stand, please. State your name for the record.

19 THE WITNESS: My name is Kristen Polis, P-O-L-I-S.

20 DIRECT EXAMINATION

21 BY MR. STEADMAN::

22 Q. Investigator Polis, where are you employed?

23 A. With the Richland County Sheriff's Department in the
24 crime scene unit.

25 Q. And how long have you been employed at the Richland

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 County Sheriff's Department?

2 A. I started working for the sheriff's department in 2002
3 and I've been in crime scene for almost eight years.

4 Q. Before you were in crime scene, what did you do with
5 the sheriff's department?

6 A. For a period of time, I worked the road -- I went to
7 the Academy, graduated from the Academy and worked the
8 road as a patrol officer. I spent a brief period of
9 time doing investigations on misdemeanor level offenses
10 and then joined the crime scene unit.

11 Q. And as a crime scene investigator, what kind of
12 training and background have you had at the sheriff's
13 department?

14 A. When you are -- when you join the crime scene unit,
15 there's an in-house training program that we call
16 complete. It's very sensitive. It covers all the
17 different areas of the processing that we're going to
18 be responsible for. We're reading all the forensic
19 literature that's available of what's current. We're
20 taking a written test and we are completing a
21 practical, activities as well, but it would be based
22 on what I have to do when I work. And all of those are
23 assessed so you're deemed competent to work in that
24 particular area. And that -- that training program
25 itself took me 20 months to complete beginning to end.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 During that time, we also attend a lot of external
2 training conferences. I can give you just an idea of a
3 few of the training programs that I had, fundamentals
4 of crime scene investigation, basic and advanced
5 photography techniques, basic and advanced blood
6 pattern analysis, DNA overview for pathology, palm
7 print comparisons -- and archeology. We really train
8 in a number of areas. Some of those classes are for a
9 day. Some of those classes are for a week on the topic
10 that's available, but I completed numerous hours of
11 training as well.

12 In 2008, I completed the crime scene certification
13 through the International Association for
14 Identification. That's, basically, the professional
15 body that governs the type of work that we do. They --
16 you have to be in a crime scene unit doing that type of
17 work for a certain number of years before you can even
18 sit to take this test. And so I have that
19 certification as well.

20 Q. Have you ever had the opportunity to be qualified as an
21 expert in crime scene investigation in court?

22 A. I have approximately 15 times.

23 MR. STEADMAN: Your Honor, at this point, the
24 State would offer Investigator Polis as an expert in the
25 field of crime scene investigation.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 THE COURT: Mr. Mills?

2 MR. MILLS: No objection, Your Honor.

3 THE COURT: All right. She is so admitted.

4 BY MR. STEADMAN::

5 Q. Investigator Polis, can you briefly describe for the
6 jury the duties that you have specifically as a crime
7 scene investigator?

8 A. Our main job in crime scene is to handle the physical
9 evidence that will be related to a case. So we respond
10 to any area that we're called in Richland County.
11 Sometimes line deputies call us places, sometimes it's
12 the investigators, sometimes it's the coroner's
13 officer. But we go and we document and collect and
14 process the physical evidence in that case. So a lot
15 of what we do is photography. Some of the pictures
16 that you've already seen, I may have taken those at
17 autopsy. We search for and try to locate items of
18 physical evidence. We collect those in a way to
19 preserve the condition that they're in. And then,
20 depending on the type of case, we may look at the
21 fingerprints. We may be trying to identify somebody,
22 so we may process and try and develop fingerprints. We
23 may search to collect DNA to try to identify someone.
24 All of those duties fall into crime scene
25 investigation.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 Q. When did you have an occasion to become involved in
2 this case?

3 A. On December the 29th, 2012, I responded to Palmetto
4 Health Richland and attended the autopsy that was
5 performed by Dr. Durso.

6 Q. And what type of information did you have at that point
7 in order for you to perform your duties?

8 A. I knew that there had been a homicide the previous
9 evening -- I say the previous evening, the previous
10 night shift, so I would be coming in the following
11 morning. I knew that it was from gunshot wounds that
12 the victim had --

13 Q. And as the crime scene investigator, what is your role
14 at autopsy?

15 A. We take a lot of photographs. This is kind of our last
16 opportunity if there's going to be any evidence
17 collected from the body, this is the last chance that
18 we're going to have to get it. So we photograph
19 exactly as we see the body when it comes in. The
20 injuries are sometimes cleaned up by the pathologist or
21 her assistant. We'll take photographs of any of those
22 injuries as well to document them. There are certain
23 things that we take from the body that may be used as
24 physical evidence. One of those, and it was collected
25 in this case, was the gunshot residence kit. That's

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 pretty standard. Any time you have a death where a
2 shooting was -- we'll collect gunshot residue kit
3 whether we believe the decedent to be the suspect,
4 that's collected.

5 There are other times when the identity of the
6 deceased person may not be known, so this is an
7 opportunity for us to get some standards that we could
8 potentially use to identify them. So we collect
9 fingerprints, we collect hair samples. We also collect
10 buccal swab, which is a collection of -- you take a
11 swab and you place it in the mouth and you collection
12 some of the skin cells that may be there, which would
13 give us a DNA profile from someone. And then if
14 there's any clothing that may be there, we collect those
15 items. There may be things that the coroner's
16 office -- I'm sorry, the pathologist turns over to us
17 that we will collect as well.

18 Q. And did you do some of those things in this case?

19 A. Yes.

20 Q. I'm showing you what's been marked as State's Exhibits
21 48 and 49. Can you take a look at those and describe
22 what that is?

23 A. This is the packaging for postmortem prints, that's a
24 set of fingerprints that we, actually, collect there at
25 autopsy. We ink the skin and we place it onto a print

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 card and then we package those. This, 49, is the
2 buccal swab, which is the swab that I described. It's
3 a long Q-tip, which is packaged so that it remains
4 sterile. We package it when we're in the room. And we
5 collect that swab from usually inside the mouth, which
6 is why it's called a buccal swab, and we'll have that
7 for a DNA standard.

8 Q. So those -- are these both used to identify the
9 Defendant or what's the purpose of these?

10 A. They can be used if we don't have an identification or
11 it's not confirmed, they can be used in that way. The
12 fingerprints could also be used if, you know, we had a
13 situation where we had to go into a house or a business
14 and process something for fingerprints. We may get the
15 victim's fingerprints at that location in addition to a
16 suspect. So it's good to have a good set of
17 fingerprints on the victim that we can use to determine
18 what we're looking at as we're processing the scene.

19 Q. And once you recover these items, do you properly seal
20 them in an evidence bag?

21 A. They were sealed -- the swab were sealed put in a box.
22 The print cards are often packaged and then they're
23 sealed --

24 Q. And then you turn them into evidence?

25 A. That's correct.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 Q. Was those procedures followed in this case?

2 A. Yes.

3 MR. STEADMAN: Your Honor, at this point, the
4 State would move to introduce State's Exhibit 48 and 49 into
5 evidence.

6 THE COURT: Any objection?

7 MR. MILLS: Your Honor, I don't think there's been
8 a chain of custody made at this point.

9 THE COURT: All right.

10 Any response?

11 MR. STEADMAN: Your Honor, we had discussed this
12 beforehand.

13 MR. MILLS: May we approach, Your Honor?

14 THE COURT: Yes, sir.

15 (Whereupon, a bench conference was held
16 off the record, in the presence of the
17 jury, but out of the hearing of the
18 jury.)

19 THE COURT: All right, Mr. Mills.

20 MR. MILLS: Your Honor, I'm going to withdraw the
21 objection.

22 THE COURT: All right. Admitted without
23 objection.

24 (State's Exhibit Nos. 48 and 49 were
25 admitted into evidence.)

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 BY MR. STEADMAN::

2 Q. Investigator Polis, I'm going to show you what's been
3 marked as State's Exhibit 46 as well as 47. Can you
4 take a look at that and describe what that is?

5 A. These are the projectiles and the fragment that was
6 turned over to me by Dr. Durso that was collected at
7 autopsy, labeled as projectile from the left thigh and
8 projectile from the right pelvis and a fragment located
9 in the left pleural cavity. This package, No. 47, is
10 the gunshot residue kit that I collected from the
11 victim's hands that I briefly described.

12 Q. How exactly did you collect the gunshot residue kit?

13 A. The kits come packaged, again, so that everything
14 remains sterile until it's time to use it. So they,
15 actually, come in an envelope. And inside, at that
16 time, what we had were little vials that had an
17 adhesive tip on them and then they're covered with a
18 plastic cap. So we open it and take the cap off and
19 you have that adhesive part and you go to the surface
20 of the hand. And each vial is labeled for a different
21 part of the hand. So we collect from the back of the
22 left hand and the left palm, the back of the right hand
23 and the right palm. And each area, we only just take
24 a -- and we go over the entire portion of the hand and
25 we repeat that for all areas. I believe at that time,

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 the kits also had the swab in them and they were
2 moistened and we rub that a second way to try to
3 collect anything that may be left on the skin. Those
4 items are then placed into an envelope and they're
5 sealed and submitted to our evidence section.

6 Q. Were these projectiles given to you by the pathologist?

7 A. That's correct. They're packaged. They're done at
8 autopsy, so they come to me packaged. And then I just
9 take that and submit it to our evidence section.

10 Q. And you take them and put it in a sealed evidence bag
11 and submit it to the evidence room?

12 A. That's correct, the envelopes here.

13 MR. STEADMAN: Your Honor, at this time, the State
14 would move to introduce 46 and 47 into evidence.

15 THE DEFENSE: No objection.

16 THE COURT: Admitted without objection.

17 (State's Exhibit Nos. 46 and 47 were
18 admitted into evidence.)

19 BY MR. STEADMAN::

20 Q. Investigator Polis, now I'm going to show you what's
21 been marked as State's 51 and 50. Please take a look
22 at that and explain what that is.

23 A. Number 51 is -- those are samples of hair that were
24 pulled. And as I stated before, if we ever have a
25 situation where identity is not known, you can

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 sometimes get DNA from a hair sample. So we will
2 collect a sample of hair to have that available should
3 that be needed.

4 Number 50, these are swabs that were taken from
5 some cartridge casings that I processed at a later time
6 related to this case. The cartridge casings themselves
7 were something that was collected at autopsy. So this
8 is something that was done later, but they're swabs
9 that were collected from cartridge casings.

10 Q. Okay. We'll get to that in a bit. And were these
11 properly sealed in an evidence bag and submitted into
12 evidence?

13 A. That's correct, sealed in the envelope.

14 MR. STEADMAN: Your Honor, at this point, the
15 State would move to introduce State's Exhibit 51 into
16 evidence.

17 MR. MILLS: No objection, Your Honor.

18 THE COURT: Admitted without objection.

19 (State's Exhibit No. 51 was admitted
20 into evidence.)

21 BY MR. STEADMAN::

22 Q. Investigator Polis, I'm showing you what's been marked
23 as State's Exhibit 52. Please tell me what that is.

24 A. This is labeled as bags from the left and right hands.
25 What happens when we have a person who's deceased and

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 we have a crime scene investigator who will go to that
2 scene and if the person is still there, a lot of times
3 we will place bags on their hands in order to preserve
4 any trace evidence that may still be present on the
5 skin. And that's important when you're going to go
6 later and try to collect the gunshot wound residue kit.
7 So at some point in this case, there were bags that
8 were placed on his hands and those were removed at
9 autopsy and I collected them. And this also has a
10 white shirt and green shirt. Those shirts had been
11 cut. They were within the body bag. They were not
12 still on the body at the time. And, also, one boot
13 that remained in the body bag.

14 Q. And what is the significance of maintaining custody of
15 the clothing and collecting that?

16 A. Well, any time there's clothing, we're going to collect
17 it if it's something that could be related. And it's
18 there to be available to look at further if there are
19 any questions. If there's any analysis we discover
20 that needs to be done, those items are there and
21 available. We collect them. A lot of times, they're
22 wet because they have blood on them. There's also some
23 moisture that's created from the body being held
24 overnight. So those items often are dried and then
25 once they're dried, we'll package them and submit them

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 to have them available.

2 Q. Did you enter these into evidence yourself?

3 A. I did.

4 Q. That was after the autopsy, correct?

5 A. Correct.

6 MR. STEADMAN: Your Honor, at this time, the State
7 would move to introduce State's Exhibit 52 into evidence.

8 MR. MILLS: No objection.

9 THE COURT: Admitted.

10 (State's Exhibit No. 52 was admitted
11 into evidence.)

12 BY MR. STEADMAN::

13 Q. I'm also showing you what's been marked as State's
14 Exhibit 53. Please tell us what that is.

15 A. This is another evidence package. This one has been
16 collect by Investigator Woods. And it's labeled just
17 to contain various items that she would have collected.

18 Q. This was collected by Investigator Woods?

19 A. Yes, sir.

20 Q. Thank you. Now, after you collected all of that
21 evidence after autopsy, what's the next step in your
22 investigation at the crime scene?

23 A. Basically, just getting all of the items together and
24 creating a report. I submit the items of evidence. If
25 it's something I know needs to go for further

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 examination, I do that. In this case, the gunshot
2 residue kit was submitted to evidence. I did a request
3 form so that would be processed at SLED. That process
4 is not something that we do at the sheriff's
5 department, so we turn that over to SLED and there's a
6 procedure that has to be completed, so I do a request
7 for that. And I also submitted the projectiles and the
8 fragment to our firearms section so the firearms
9 section can take a look at it. That's additional work
10 that they will do. And the remaining items were
11 submitted to evidence to hold should there be any need
12 for them at a later time.

13 Q. And as far as the autopsy, was that the extent of your
14 involvement in this case?

15 A. Yes -- well, there was one additional thing that I did,
16 but that was at completion of the autopsy.

17 Q. All right. Tell us how you became involved in this
18 case after autopsy?

19 A. We have a process at the sheriff's department where
20 line deputies can go to a scene and collect something
21 and if they decide they want or need it processed for
22 fingerprints or DNA, they could submit that to our
23 evidence section and make a request that we process it.
24 So in this case, when those duties were my
25 responsibility, I received a sealed bag from the

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 evidence section that contained some fired cartridge
2 casings that had been collected by a line deputy. I
3 did not respond to the scene to collect those items, I
4 only went to evidence and retrieved them. And I
5 processed those items for fingerprints and DNA.

6 Q. I'm showing you what's been marked as State's Exhibit
7 50, can you tell me what that is?

8 A. Yes, these are the swabs that I collected from the
9 three fired cartridge casings hat I processed.

10 Q. I'm also showing you what's been marked as State's
11 Exhibit 7. Please tell me what that is.

12 A. This is the evidence bag that has the shell casings in
13 it. It's documented that these were collected by
14 Deputy Hazelbaker. And when I received it, it would
15 have been completely sealed. I cut open the bottom of
16 it, remove the items that I'm processing. When I
17 finish, I put it back in the original packaging and
18 then this is heat sealed and we put the evidence tape
19 over it so it can be initialed and labeled to maintain
20 the security of the items. So they have not been
21 reopened since the time that I processed them.

22 Q. So those items you received from Deputy Hazelbaker, who
23 responded to the scene approximately a week later?

24 A. He would have submitted those to the evidence section
25 and I received them from the evidence section.

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 Q. Okay. And briefly describe the process that you took
2 with regards to those shell casings?

3 A. The processing?

4 Q. Yes.

5 A. Okay. We have in our lab -- we have equipment that we
6 can use to try to develop a fingerprint. One of the
7 things that we will often do try to preserve
8 fingerprints on an item is called super glue fuming or
9 cyanoacrylate fuming. This is a process where we place
10 items of evidence in a sealed chamber. We can raise
11 the humidity level in that chamber and then we take
12 what is super glue which we buy and -- but it's placed
13 in a little container, which is placed on a warmer so
14 when you raise the humidity level and heat the super
15 glue, it will create fumes that are going to be sealed
16 into that chamber. Those fumes are going to settle
17 over any item that we've placed in there to try to get
18 fingerprints. It's going to settle on there and then
19 it will harden. And what that does it helps to
20 preserve anything that may be on the surface of that
21 item so that we can then try to get fingerprints from
22 it.

23 Fingerprints are very fragile evidence. A lot of
24 people think every time you touch something, you leave
25 a fingerprint behind and that's not always true. Even

KRISTEN POLIS DIRECT BY MR. STEADMAN

1 if a fingerprint is there, it could be damaged. If you
2 think about, you know, when kids touch the car windows,
3 you just can kind of go back and wipe them and then
4 they're gone. So you're talking about very fragile
5 evidence that's mostly moisture. So what we do when we
6 process with that super glue heating chamber, it just
7 helps to protect anything that may be on there that we
8 don't see.

9 After that process is complete, we use black
10 powder, which is a fingerprint powder that's designed
11 to adhere to the substances that we leave behind when
12 we touch and handle different items. So it will take
13 something that initially we may not be able to see and
14 it will make it visible. With that powder on there and
15 we see a fingerprint, we take the fingerprint tape and
16 we place the tape over the item and then we remove the
17 tape, which will lift that powder and we place that on
18 the card. Now we have a fingerprint that's a form that
19 we can use.

20 So that's what I attempted to do here. I
21 processed these items for fingerprints using super glue
22 fuming and black powder. I did not get any
23 fingerprints from it. After that, I collected a swab
24 from each item. To collect a swab, you use the same
25 sterile swab that's packaged until you're ready to use

KRISTEN POLIS CROSS BY MR. MILLS

1 it. You remove that -- and you rub it over the surface
2 of the item, so if there's anything that may be on
3 there to develop a DNA profile, we would then collect
4 it. And then that is submitted to our DNA section. So
5 when we're doing the work, we don't know if we have a
6 DNA profile or not. It's something that submitted to
7 our DNA section to look at it.

8 Q. So this item, State's Exhibit 50, was submitted into
9 evidence by you?

10 A. That's correct.

11 MR. STEADMAN: Your Honor, at this time, the State
12 would move to introduce State's Exhibit 50 into evidence.

13 MR. MILLS: No objection.

14 THE COURT: It's admitted.

15 (State's Exhibit No. 50 was admitted
16 into evidence.)

17 BY MR. STEADMAN::

18 Q. Investigator Polis, after you processed these shell
19 casings that were found from the crime scene
20 approximately a week later, did you have any further
21 involvement in this case?

22 A. No, sir.

23 MR. STEADMAN: Thank you. No further questions.

24 MR. MILLS: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

KRISTEN POLIS CROSS BY MR. MILLS

1 CROSS-EXAMINATION

2 BY MR. MILLS::

3 Q. Good afternoon, Investigator?

4 A. Good afternoon.

5 Q. So you were the -- were you the only crime scene
6 investigator at the autopsy?

7 A. Yes, sir, I believe so.

8 Q. So you were the one who took the photographs?

9 A. I took a set of photographs, yes, sir... Often, the
10 coroner's office also has someone there photographing
11 as well.

12 Q. Okay. Have you seen the photographs that have been put
13 into evidence here?

14 A. Not specifically, no.

15 Q. Okay. So you don't know if those were your photographs
16 or not?

17 A. No, sir.

18 Q. But you did take several photographs?

19 A. I took 77.

20 Q. Seventy-seven photographs, okay. Did you have any
21 contact with Mr. Myers, who was also in the hospital
22 that morning?

23 A. No, sir, I did not.

24 Q. Was there another investigator who was involved in
25 that?

KRISTEN POLIS CROSS BY MR. MILLS

1 A. I believe so, it was not me.

2 Q. Do you know who it was?

3 A. Investigator Woods also worked on the case.

4 Q. Okay. So Investigator Woods would have done
5 photographs and other things that's your normal
6 procedure --

7 A. I don't have the reports in front of me, so I don't
8 know what she did.

9 Q. But you know there was another investigator involved?

10 A. Yes, sir.

11 Q. That was not at the autopsy?

12 A. Correct.

13 Q. Okay. All right. You stated that you also took --
14 there were bags on the hands, correct?

15 A. Yes, sir.

16 Q. And you took the bags for the GSR, the gunshot residue
17 testing?

18 A. Yes, sir.

19 Q. You took a lot of photographs, you just testified you
20 took over 70 photographs?

21 A. Yes, sir.

22 Q. The swabs for DNA profile?

23 A. Yes, sir.

24 Q. You said, basically, that is mainly for identification
25 purposes of the -- of the victim in this case, the

KRISTEN POLIS CROSS BY MR. MILLS

1 deceased in this case?

2 A. Right, it gives us their -- we know what their DNA
3 profile looks like. And in some cases, that's
4 probative because we may have to go in somewhere and
5 process something for fingerprints and DNA. And you
6 don't know when you're looking at fingerprints and when
7 you're collecting swabs whose you are looking at until
8 those things are examined further. So that's the
9 purpose of obtaining a sample so that we would know
10 what the victim's fingerprints look like and we would
11 know what their DNA looks like.

12 Q. Okay. And you did collect the projectiles from Dr.
13 Durso?

14 A. That's correct.

15 Q. Okay. Did you take photographs of those as well?

16 A. Yes, sir.

17 Q. Okay. And did -- are you -- did you know whether or
18 not the photographs that have been put into evidence
19 are the same photographs or not?

20 A. I do not, sir.

21 Q. Okay. And then you submit the gunshot residue bags or
22 whatever is in the bags to SLED, correct?

23 A. It's the kit that is collected.

24 Q. The kit.

25 A. And it contains the vials that I was talking about and,

KRISTEN POLIS CROSS BY MR. MILLS

1 also, sometimes, it has swabs in it. I submit those to
2 evidence with a request that they are sent to SLED.

3 Q. Okay. All right.. And do know if there's been
4 submitted a report on that?

5 A. Yes, sir.

6 Q. And that was done by somebody at SLED?

7 A. That's correct.

8 Q. Okay. All right. And you did collect clothing from
9 the deceased in this case?

10 A. Yes, sir. It was in -- within the bag. It was no
11 longer on the body as was worn.

12 Q. Okay.

13 A. It appeared to have been cut, possibly for medical
14 reasons.

15 Q. Did you collect any blood samples from the clothing?

16 A. No, sir.

17 Q. For DNA analysis?

18 A. No, sir. I'm not aware that anything has been done to
19 the clothing. It's all still packaged.

20 Q. Okay. So you didn't -- you just looked at it and
21 didn't do any kind of processing of the clothing at
22 all?

23 A. No, sir, collected it, dried it, packaged it.

24 Q. So there was blood on the clothing?

25 A. I believe so, yes, sir.

YVONNE WOODS DIRECT BY MS. WALKER

1 Q. Did you take any photographs of it?

2 A. There would probably be photographs, you know, within
3 the photographs that I took at the autopsy, but
4 specific photographs with the items laid out, no, sir.
5 It's not truly necessary with the actual clothing
6 items.

7 Q. Okay. And, also, the clothing that was taken from
8 Mr. Myers, you did not do that?

9 A. No, sir.

10 Q. Okay. That was Investigator Woods as well on that one?

11 A. I don't have the report.

12 Q. You don't have a report on that one.

13 MR. MILLS: Beg the Court's indulgence one moment.

14 That's all the questions I have.

15 THE COURT: Redirect?

16 MR. STEADMAN: No, Your Honor.

17 THE COURT: All right.

18 Thank you. You may step down.

19 Next witness.

20 MS. WALKER: Your Honor, the State calls
21 Investigator Yvonne Woods.

22 Your Honor, there's no clerk.

23 THE COURT: All right.

24 Raise your right hand.

25 THEREUPON,

YVONNE WOODS DIRECT BY MS. WALKER

1 YVONNE WOODS,

2 after having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. WALKER::

5 Q. Good afternoon. Investigator Woods, where are you
6 currently employed?

7 A. Richland County Sheriff's Department.

8 Q. And how long have you been with the sheriff's
9 department?

10 A. Twelve years.

11 Q. And what is it that you do at the sheriff's department?

12 A. Crime scene investigator.

13 Q. How long you been a crime scene investigator?

14 A. Six years. Prior to that, when I graduated from the
15 Academy, then I went to work as road deputy. Left from
16 road deputy and went straight to investigations,
17 criminal investigations, then from there to crime
18 scene.

19 Q. And have you had training and education in becoming a
20 crime scene investigator?

21 A. Yes, ma'am, we did have a 24-month internal training
22 and testing for proficiency.

23 Q. Do you do continuing education classes?

24 A. Yes, ma'am.

25 Q. Can you tell me about those?

YVONNE WOODS DIRECT BY MS. WALKER

1 A. I'm going to give you some of the continuing -- basic
2 blood stain patter analysis, crime scene investigation
3 physical evidence, latent prints development
4 documentation, photograph and track evidence,
5 enhancement of footwear and track evidence, recovery of
6 track evidence by lifting, crime scene reconstruction,
7 basis crime scene photograph, blood stain pattern
8 analysis, crime scene reconstruction, and I could go
9 on.

10 Q. Okay. And have you been qualified as an expert in
11 court in crime scene investigation?

12 A. Yes, I have.

13 Q. Approximately --

14 A. Approximately 10 times.

15 MS. WALKER: Your Honor, at this point, the State
16 offers Investigator Yvonne Woods as an expert in crime scene
17 investigation.

18 MR. MILLS: No objection, Your Honor.

19 THE COURT: She is so admitted.

20 BY MS. WALKER::

21 Q. Once you -- well, let me start here. How do y'all
22 determine which crime scene investigator goes to a
23 certain crime scene?

24 A. At this particular time, it's at night and I'm from the
25 night shift, so I was the crime scene investigator to

YVONNE WOODS DIRECT BY MS. WALKER

1 respond.

2 Q. Okay. And do you remember what time you got to the
3 crime scene?

4 A. Yes, ma'am. I arrived at 0222.

5 Q. And once you get to a crime scene, in general, what are
6 the things that you're looking for, what are the
7 questions that you're asking in order to aide you in
8 your job?

9 A. First thing I do is I assess the scene itself. I speak
10 with the responding deputy on scene that maintains the
11 crime scene log and talk with her and find out exactly
12 what's going on.

13 Q. Is it important for you to have an understanding of
14 what happened in order for you collect -- evidence?

15 A. Yes, it is.

16 Q. Once you got on the scene, what was your understanding?

17 A. That two individuals had been shot and both of them had
18 been transported prior to my arrival.

19 Q. Okay. So the victims -- the victim and the Defendant
20 were both gone at that point?

21 A. Yes, ma'am.

22 Q. Once you got to -- and what was the address of the
23 crime scene?

24 A. [REDACTED] Congaree Road, Toney's Lounge.

25 Q. And that's here in Richland County?

YVONNE WOODS DIRECT BY MS. WALKER

1 A. Yes, ma'am, it is.

2 Q. Once you first arrived on the -- on the crime scene,
3 what, if anything, did you observe?

4 A. Like I said, I assessed the scene. It was raining that
5 particular morning. I signed in on the crime scene
6 log. There was a bunch of people standing around. It
7 was taped off, the area that was important to me. And
8 I went from there.

9 Q. And when you say you went from there, once you observed
10 the -- what was your next step?

11 A. My started photographing the scene.

12 Q. Why is it important for you to photograph the scene
13 before you do anything else?

14 A. That shows me what it was at that time. Nothing had
15 been moved, nothing had been tampered with that I'm
16 aware of.

17 Q. So you photograph the scene as you find it?

18 A. Yes, ma'am.

19 Q. I want to show you what's been marked as State's
20 Exhibits 8 through 25 and ask you if you recognize
21 these?

22 A. These are the photographs that I took that particular
23 morning.

24 Q. Will they aide you in your testimony here?

25 A. Yes.

YVONNE WOODS DIRECT BY MS. WALKER

1 MR. MILLS: No objection, Your Honor.

2 THE COURT: They're admitted.

3 (State's Exhibit Nos. 8 through 25 were
4 admitted into evidence.)

5 BY MS. WALKER::

6 Q. At that point when you first arrived, were you informed
7 as to where the victim's body had been at that point?

8 A. No, ma'am.

9 Q. How did you learn what the important areas of the scene
10 was?

11 A. Based on after talking to the deputies where EMS picked
12 them up at. At that time, I did not know until I spoke
13 to the deputies and they pointed out to me where they
14 were.

15 Q. And where exactly was that?

16 A. It was close to the vehicle. It's an Altima.

17 Q. This vehicle?

18 A. Yes, ma'am.

19 Q. Okay. Can you step down?

20 MS. WALKER: Your Honor, may the witness step
21 down?

22 THE COURT: Yes.

23 BY MS. WALKER::

24 Q. Okay. Investigator Woods, could you tell us what we're
25 looking at here?

YVONNE WOODS DIRECT BY MS. WALKER

- 1 A. This is clothing here where EMS -- I assume EMS took
2 care of him and that was laying here (indicating).
- 3 Q. Okay. That's State's Exhibit No. 25. And as we go
4 through, what are you looking for in that area?
- 5 A. Due to it's a shooting, I'm looking for projectiles,
6 cartridge casings, possible blood, clothing.
- 7 Q. And when you say projectiles, can you describe for the
8 jury what a projectile is?
- 9 A. That end of -- once you shoot a cartridge casing, the
10 tip of it, that comes out and if it impacts something,
11 it will open up.
- 12 Q. And did you find cartridge casings and projectiles
13 there?
- 14 A. Yes, I did.
- 15 Q. And were you able to document those?
- 16 A. Yes, I was.
- 17 Q. Let me start with State's Exhibits 8 and 9. Did you
18 place those markers down there?
- 19 A. Yes, I did.
- 20 Q. What do these markers indicate?
- 21 A. Evidence, which were cartridge casings and teeth.
- 22 Q. And teeth?
- 23 A. Yes, ma'am.
- 24 Q. And once you have an overview of the scene, you go back
25 and photograph each marker individually?

YVONNE WOODS DIRECT BY MS. WALKER

- 1 A. Correct.
- 2 Q. And you did that in this case?
- 3 A. Yes, ma'am.
- 4 Q. A grouping of markers as well?
- 5 A. Yes.
- 6 Q. And State's Exhibit No. 11, and what markers are these?
- 7 A. That's evidence one through four.
- 8 Q. Let me start with number one?
- 9 A. That's the fired cartridge casing.
- 10 Q. And that is same number one that's right here?
- 11 A. That is correct.
- 12 Q. Closer to -- that cartridge casing. And number two?
- 13 A. That's going to be a fired cartridge casing as well.
- 14 Q. And that responds with this number two?
- 15 A. Yes, ma'am.
- 16 Q. As well as three?
- 17 A. Number three will be the teeth.
- 18 Q. And at that point in time, did you whose teeth they
- 19 were or if they were relevant to that scene at all?
- 20 A. No, ma'am.
- 21 Q. And then number five?
- 22 A. Fired cartridge casing.
- 23 Q. And they were all right there grouped together?
- 24 A. Yes, ma'am, except for five.
- 25 Q. Well, let me ask you this, if -- is it uncommon to go

YVONNE WOODS DIRECT BY MS. WALKER

- 1 to a scene, collect evidence and then be called out to
2 the scene again for more evidence that's found in the
3 light of day?
- 4 A. That's possible that they can call me when it lights up
5 where I can, actually, see better and it's not raining.
- 6 Q. This is an extended view of that crime scene?
- 7 A. Yes, ma'am.
- 8 Q. Ant at this point, do know if any -- which cars here
9 are relevant to particular individuals in the case?
- 10 A. No, ma'am, I do not.
- 11 Q. And then marker number four?
- 12 A. That's a fired cartridge casing as well.
- 13 Q. And the ones before are right there together?
- 14 A. Yes, ma'am.
- 15 Q. And then number five?
- 16 A. Number five is at the corner of the building, the right
17 corner if you're looking at the building, closer on the
18 corner side.
- 19 Q. What was number five?
- 20 A. It was a fired cartridge casing as well.
- 21 Q. And this is from the porch?
- 22 A. That is correct. The front of the business, the club
23 itself.
- 24 Q. So there's -- I just want to make sure I have this
25 right. There's one cartridge casing near the porch,

YVONNE WOODS DIRECT BY MS. WALKER

1 then there's a cluster near the cars?

2 A. That is correct.

3 Q. Thank you. You can go back to your seat.

4 A. (The witness complies.)

5 Q. Once you've photographed the evidence, is it, actually,
6 important to collect the evidence?

7 A. Absolutely.

8 Q. But the photographs are taken before you collect
9 anything?

10 A. Absolutely.

11 Q. And did you, actually, collect a number of items in
12 this case from the crime scene?

13 A. Yes, ma'am, I did.

14 Q. I want to show you what's been marked as State's
15 Exhibit 55 and 56 and ask you if you recognize these.

16 A. Yes, ma'am, I do. These are sealed evidence bags.

17 Q. And are these items that you, actually, collected?

18 A. That is correct.

19 MS. WALKER: Your Honor, at this point, the State
20 seeks to admit Exhibit 55 and 56 into evidence?

21 MR. MILLS: No objection.

22 THE COURT: Admitted without objection.

23 (State's Exhibit Nos. 55 and 56 were
24 admitted into evidence.)

25

YVONNE WOODS DIRECT BY MS. WALKER

1 BY MS. WALKER::

2 Q. And in addition to the teeth and those fired cartridge
3 casings, did you also collect some clothing that night?

4 A. That is correct. I collected brown pants with belt,
5 two pairs of boxer shorts, one black boot, a black
6 toboggan, a green lighter, currency and a black credit
7 card holder with miscellaneous cards and I.D.

8 Q. I want to show you what's marked as State's exhibit 53
9 and ask you if you recognize that?

10 A. This is also a sealed package of items that I collected
11 at the scene.

12 MS. WALKER: Your Honor, at this point, the States
13 seeks to admit Exhibit 53 into evidence.

14 MR. MILLS: That's the clothing?

15 MS. WALKER: Yes.

16 MR. MILLS: No objection, Your Honor.

17 THE COURT: Admitted.

18 (State's Exhibit No. 53 was admitted
19 into evidence.)

20 BY MS. WALKER::

21 Q. And those were the items you collected from the scene
22 that night?

23 A. That the correct.

24 Q. The photographing and collecting of that evidence, was
25 that the extent of your involvement on the scene that

YVONNE WOODS DIRECT BY MS. WALKER

1 night?

2 A. After I spoke with the CID investigator, that was.

3 Q. And from there, where did you go?

4 A. To the hospital.

5 Q. Okay. What was your purpose for going to the hospital?

6 A. To collect GSR.

7 Q. From?

8 A. From the subject.

9 Q. Who was the subject?

10 A. I do apologize.

11 Q. That's fine, take your time.

12 A. Myers, Calvert Myers.

13 Q. Myers is the last name?

14 A. Yes.

15 Q. And which hospital did you go to?

16 A. Palmetto Richland.

17 Q. When you got to the hospital, did you observe

18 Mr. Myers?

19 A. I did.

20 Q. Where was he?

21 A. He was in a holding room hooked up to multiple

22 machines.

23 Q. Okay. And did you speak to him?

24 A. He was unable to speak.

25 Q. Okay. At that point in time, did you collect certain

YVONNE WOODS DIRECT BY MS. WALKER

1 items from him?

2 A. I collected only the GSR kit.

3 Q. The GSR kit. Did you get clothing as well?

4 A. Actually, I did from another deputy through chain of
5 custody.

6 Q. Okay. I want to show you what's been marked as State's
7 Exhibit No. 7 and ask if you recognize that?

8 A. Yes, this was a package that was once sealed.

9 Q. Okay. These are the clothes you collected?

10 A. Yes, ma'am.

11 MS. WALKER: Your Honor, at this point, the State
12 seeks to admit Exhibit No. 7 into evidence.

13 MR. MILLS: The clothing of Mr. Myers?

14 MS. WALKER: (Nods head.)

15 MR. MILLS: No objection.

16 THE COURT: Its's admitted.

17 (State's Exhibit No. 7 was admitted into
18 evidence.)

19 BY MS. WALKER::

20 Q. Let me go back to one thing, back on the scene, did you
21 receive a gun that night?

22 A. Yes, I did, but not at the scene.

23 Q. You received it?

24 A. At the hospital.

25 Q. At the hospital?

YVONNE WOODS DIRECT BY MS. WALKER

1 A. That is correct.

2 Q. Let me show you what's been marked as State's Exhibit
3 No. 6 and ask you if you recognize that?

4 A. Yes, ma'am, that is the sealed package of the gun and
5 the fired cartridge casings.

6 Q. So there is a gun and casings in there?

7 A. That is correct, to be submitted to evidence to be
8 forwarded to firearms.

9 Q. And there were, looks like, four fired cartridge
10 casings?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. WALKER: Your Honor, at this point, the State
14 seeks to admit Exhibit No. 6 into evidence?

15 MR. MILLS: Your Honor, I was believe that was
16 submitted to further investigators. I would think the chain
17 of custody hasn't been met at this point.

18 THE COURT: Any response?

19 MS. WALKER: Yes, Your Honor. She received it
20 from the deputy, got it from the scene. She submitted it
21 into evidence.

22 THE WITNESS: After it was --

23 MS. WALKER: After it was properly sealed and
24 packaged.

25 MR. MILLS: And no other officer has had that in

YVONNE WOODS DIRECT BY MS. WALKER

1 custody?

2 MS. WALKER: The only other person that got it at
3 that point would have been the ballistics expert. At that
4 point, it was sealed in the package and submitted into
5 evidence.

6 MR. MILLS: That's the basis of the objection.

7 THE COURT: We'll mark it for identification at
8 this time and discuss it later.

9 MR. MILLS: Thank you.

10 MS. WALKER: Thank you, Your Honor.

11 BY MS. WALKER::

12 Q. And did you also photograph the Defendant that night?

13 A. That is correct, I did.

14 Q. And did he have bruising and swelling?

15 A. Absolutely.

16 Q. And you said he was hooked up to several different
17 machines?

18 A. Yes, ma'am.

19 Q. What was next step in your investigation?

20 A. All the items that I collected were processed prior to
21 packaging.

22 Q. Okay. So did you process those items -- let me go
23 back, did you get a GSR kit from the Defendant in this
24 case?

25 A. Yes, I did.

YVONNE WOODS DIRECT BY MS. WALKER

1 Q. Can you tell the jury how you collect a GSR kit?

2 A. We have a package that comes from SLED because we don't
3 take care of that at the sheriff's department. And
4 it's a vial with sticky tabs. And I collected from the
5 palm and the back from both hands.

6 Q. Let me show you what's been marked as State's Exhibit
7 No. 58.

8 A. It's a sealed package with the GSR kit from the subject
9 Myers.

10 MS. WALKER: At this point, Your Honor, the State
11 seeks to move Exhibit 58 into evidence.

12 MR. MILLS: No objection.

13 THE COURT: It's admitted.

14 (State's Exhibit No. 58 was admitted
15 into evidence.)

16 BY MS. WALKER::

17 Q. And you said you processed some of the items?

18 A. Yes, ma'am, I did.

19 Q. Which items did you process?

20 A. The items that I collected at the scene.

21 Q. And what steps did you take in order to process those
22 items?

23 A. In our lab, we have a fuming chamber, a super glue
24 fuming chamber as well and that -- and I processed that
25 first, then the black powder and then I collected the

YVONNE WOODS CROSS BY MR. MILLS

1 DNA.

2 Q. Let me show you what's been marked as State's Exhibit
3 57 and ask you if you recognize that.

4 A. These are swabs that I collected.

5 MS. WALKER: Your Honor, at this time, the State
6 seeks to move State's Exhibit No. 57 into evidence.

7 MR. MILLS: No objection.

8 THE COURT: It's admitted.

9 (State's Exhibit No. 57 was admitted
10 into evidence.)

11 BY MS. WALKER::

12 Q. After processing those items, what do you do with the
13 swabs?

14 A. I package them and submit them into evidence.

15 Q. The items that you had, that you collected during this
16 crime scene investigation, were they properly sealed
17 and packaged?

18 A. Yes, they were.

19 Q. While they were with you, were they tampered with in
20 any way?

21 A. No, ma'am.

22 Q. And then you submitted those into evidence?

23 A. That is correct.

24 Q. Is it your job to, actually, do any further testing on
25 those items?

YVONNE WOODS CROSS BY MR. MILLS

1 A. Just to collect -- just to process them in the lab.

2 Any further testing is out -- out -- not with me.

3 Q. It's done by somebody else?

4 A. Somebody else.

5 MS. WALKER: Beg the Court's indulgence, Your
6 Honor.

7 BY MS. WALKER::

8 Q. In terms of this crime scene, did you have any further
9 involvement in this case other than going to the crime
10 scene, the hospital and the processing of those items?

11 A. No, ma'am, I do not.

12 MS. WALKER: Thank you, Investigator Woods. I
13 don't have any further questions.

14 MR. MILLS: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. MILLS::

18 Q. Investigator Woods, how are you this morning -- this
19 afternoon, I'm sorry?

20 A. Fine, sir.

21 Q. So when you arrived on the scene at Congaree Road, you
22 began taking photographs?

23 A. That is correct.

24 Q. Is that one of the first duties you had?

25 A. Well, I spoke to the deputies?

YVONNE WOODS CROSS BY MR. MILLS

- 1 Q. Spoke to the deputies, found out what the area was that
2 you were going to take and you took these photographs?
- 3 A. Absolutely?
- 4 Q. And that's part of your job is to take the photographs?
- 5 A. Yes, sir.
- 6 Q. You also took photographs of the Defendant, Mr. Myers,
7 at the hospital?
- 8 A. Yes, sir.
- 9 Q. That's correct. Those are not here in evidence?
- 10 A. I have not seen them.
- 11 Q. Okay. And looking through these, what processing did
12 you do -- did you send these for -- let's look at
13 number five, first, State's Exhibit No. 23, that was
14 the one you stated was found at the --
- 15 A. Scene itself.
- 16 Q. At the scene on the side of the building near the --
- 17 A. Right corner.
- 18 Q. Not close to other projectiles?
- 19 A. Right, that's correct.
- 20 Q. And what processing was done on those?
- 21 A. The cartridge casings were collected and processed in
22 our fuming chamber. They were dusted for fingerprints
23 with black powder and a DNA swab was collected.
- 24 Q. Okay. Are you a fingerprint analyst?
- 25 A. No, I'm not, sir.

YVONNE WOODS CROSS BY MR. MILLS

1 Q. Was that submitted to a fingerprint analyst?

2 A. It was submitted into evidence to the --

3 Q. Okay. Do you know --

4 A. If I collected the fingerprint.

5 Q. Okay. Did you collect the fingerprint?

6 A. No, sir, I didn't.

7 Q. Okay. No fingerprint was collected?

8 A. No.

9 Q. Okay. And I think 22 is just another shot of that same
10 area from a further distance, correct?

11 A. Yes, sir.

12 Q. And this is the clothing on number 16 that you
13 collected, correct?

14 A. Yes, sir.

15 Q. Okay. And number 18 I believe is -- tell me what
16 number 18 is?

17 A. It appears to be cigarette butts that were at the
18 scene, sir.

19 Q. Okay. How about number 19?

20 A. Fired cartridge casing.

21 Q. Was that one that before you took the photograph, you
22 put down little markers?

23 A. Right, put the marker down.

24 Q. Do you know which one that is?

25 A. By looking at my picture, sir, I cannot honestly say.

YVONNE WOODS CROSS BY MR. MILLS

- 1 I want to say it was closer to the building.
- 2 Q. Okay. And number three is a -- is what?
- 3 A. Teeth.
- 4 Q. One tooth or more than one?
- 5 A. No, it was two.
- 6 Q. It was two teeth?
- 7 A. Yes, sir.
- 8 Q. Who did you submit those to?
- 9 A. I, actually, took DNA from them, a swab from it and
10 then submitted it into evidence.
- 11 Q. Okay. And that would go to another agency?
- 12 A. That was stay within our department, but go to DNA.
- 13 Q. The DNA section of your department?
- 14 A. Yes, sir.
- 15 Q. Now, this shows from a distance both the clothing and
16 one through four, I believe, correct?
- 17 A. That is correct, sir.
- 18 Q. All right. Now, State's Exhibit No. 21 is what?
- 19 A. That's a fired cartridge casing, sir.
- 20 Q. It is a fired cartridge casing?
- 21 A. Yes, sir, it is.
- 22 Q. That was found?
- 23 A. Close to the vehicle.
- 24 Q. Close to vehicle. And I believe State's No. 11 would
25 show that all, one, two, three and four were all found

YVONNE WOODS CROSS BY MR. MILLS

1 close to the vehicle?

2 A. That is correct, sir.

3 Q. Did you take any photographs of the deceased in this
4 case?

5 A. No, sir, I did not.

6 Q. Did you take any evidence from the deceased?

7 A. No, sir, I did not.

8 Q. And when you received the clothing of the Defendant,
9 who gave that to you?

10 A. Also, Deputy Furgal through the chain of custody.

11 Q. Okay. And you said that your went to the room where
12 Mr. Myers was at the hospital?

13 A. Yes, sir, I did.

14 Q. And he had a very -- I believe you testified very
15 bloody and beat up face, is that correct?

16 A. That is correct.

17 Q. And you took several photographs of that?

18 A. Yes, sir, I did.

19 Q. Do you have any of those photographs with you here
20 today?

21 A. In my report, I do, sir.

22 Q. Okay. Are they -- can I see those? Do you have them?

23 A. Yes, sir.

24 Q. So you did take several photographs of his face and the

25 --

YVONNE WOODS CROSS BY MR. MILLS

1 A. His condition.

2 Q. His condition. Blood, tubes, swollen, unconscious at
3 the time?

4 A. At the time, yes, sir.

5 Q. Unable to talk?

6 A. And also his foot --

7 Q. Okay. His foot had a gunshot wound?

8 A. That is correct.

9 MR. MILLS: Beg the Court's indulgence. Your
10 Honor, I would like to mark these for identification
11 purposes at this point.

12 MS. WALKER: We don't have any objection.

13 (Defendant's Exhibit No. 1 was marked
14 for identification.)

15 BY MR. MILLS::

16 Q. Do you recognize this?

17 A. Yes, sir, I do.

18 Q. What is that?

19 A. That's the pictures that I took.

20 Q. That you took of the Defendant?

21 A. Yes, sir.

22 Q. Thank you.

23 MR. MILLS: That's all the questions I have at
24 this time.

25 THE COURT: Any redirect?

JAMES MYERS DIRECT BY MS. WALKER

1 BAILIFF: The jury panel is all present, Your
2 Honor.

3 THE COURT: All right. Welcome back.
4 Madam Forelady, how is the jury doing?

5 THE FOREPERSON: Fine, we're fine.

6 THE COURT: Very good.

7 You may continue with the next witness.

8 MS. WALKER: The State calls James Myers to the
9 stand.
10 THEREUPON,

11 JAMES MYERS,
12 after having been duly sworn, testified as follows:

13 THE CLERK: Thank you. Have a seat in the witness
14 stand, please. State your name for the record.

15 THE WITNESS: James Myers.

16 DIRECT EXAMINATION

17 BY MS. WALKER::

18 Q. Pull that mike closer to you. Try again.

19 A. James Myers.

20 Q. All right. Just keep your voice up, okay?

21 A. All right.

22 Q. Mr. Myers, where do you live?

23 A. [REDACTED] Valley Down Road, Gaston, South Carolina 29052.

24 Q. Okay. I want to ask you about some people and you tell
25 me if you know them or not, okay?

JAMES MYERS DIRECT BY MS. WALKER

- 1 A. All right.
- 2 Q. Keep your voice up, okay?
- 3 A. Okay.
- 4 Q. Do you know Calvert Myers?
- 5 A. Yes, ma'am.
- 6 Q. How do you know him?
- 7 A. He's my uncle.
- 8 Q. What do you call him?
- 9 A. Calvin.
- 10 Q. Calvin?
- 11 A. Uncle Calvin.
- 12 Q. Uncle Calvin?
- 13 A. Yeah.
- 14 Q. Did you know Neil Green?
- 15 A. Yes, ma'am.
- 16 Q. How did you know him?
- 17 A. From around the neighborhood.
- 18 Q. He was around the neighborhood?
- 19 A. Yeah.
- 20 Q. How old are you?
- 21 A. I'm 30.
- 22 Q. Okay. So he's a little bit older than you are?
- 23 A. Yes, ma'am.
- 24 Q. What about Sherry Myers, do you know her?
- 25 A. That's my cousin.

JAMES MYERS DIRECT BY MS. WALKER

1 Q. Did y'all grow up together?

2 A. Yes, ma'am.

3 Q. I want to take you back to December of 2012, okay?

4 A. All right.

5 Q. Do you remember that day -- the day that we're all here
6 about?

7 A. I can remember some of it.

8 Q. Who were you with that night?

9 A. My Uncle Calvin.

10 Q. Your Uncle Calvin?

11 A. Yes, ma'am.

12 Q. What were y'all doing? Where were you when you first
13 got with him?

14 A. We -- well, we was selling food and after we got
15 finished selling food, we went the Citgo. We left
16 Citgo and we went to Toney's Lounge.

17 Q. When you say you were selling food, what do you mean by
18 that? Who were you selling food to?

19 A. We go set out and we sell food.

20 Q. Kind of like a food truck?

21 A. Yeah.

22 Q. Okay. And who do you sell the food with?

23 A. With my Uncle Calvin.

24 Q. And after y'all got finished, you said y'all went to
25 the Citgo?

JAMES MYERS DIRECT BY MS. WALKER

- 1 A. Yes, ma'am.
- 2 Q. What did y'all do at Citgo?
- 3 A. We went and got a couple of beers and we left and went
4 to Toney.
- 5 Q. Okay. At that point in time, y'all started drinking?
- 6 A. Yes, ma'am.
- 7 Q. Do you remember what time this was?
- 8 A. I think around -- I think around 10 or 11.
- 9 Q. Ten or 11, so it was dark outside?
- 10 A. Yes, ma'am.
- 11 Q. And whose idea was it to go the Toney that night?
- 12 A. He said we was going to stop through and take a drink
13 before we go to the house.
- 14 Q. Okay. And that was something y'all did regularly?
- 15 A. No, ma'am.
- 16 Q. This was something that y'all just happened do that
17 night?
- 18 A. Yes, ma'am.
- 19 Q. And when you -- do you know what time you got to
20 Toney's?
- 21 A. I think about 11:30, something like that.
- 22 Q. Did you know Toney before this night?
- 23 A. Ma'am?
- 24 Q. Did you know Toney before this night?
- 25 A. Toney's, yeah.

JAMES MYERS DIRECT BY MS. WALKER

1 Q. Did you know Toney, though?

2 A. Yeah, I know Toney.

3 Q. How long you been knowing him?

4 A. For a long time.

5 Q. Long item. Tell me what happened when you got to
6 Toney's Lounge, what did you do?

7 A. We got out and we went inside the bar and we ordered a
8 drink and we sat down.

9 Q. Okay. At that point when you got there, was your
10 cousin, Sherry, there?

11 A. No, ma'am.

12 Q. Was Neil Green there?

13 A. No, ma'am.

14 Q. Did you see them -- well, when y'all got there, who
15 were you talking to?

16 A. Who was we walking to?

17 Q. Yeah.

18 A. We wasn't talking to nobody. We just went to the bar
19 and ordered something to drink and we sat down and just
20 chilling out.

21 Q. Just kind of hanging out?

22 A. Yes, ma'am.

23 Q. You and Uncle Calvin?

24 A. Yes, ma'am.

25 Q. And at some point, did Sherry come to the bar?

JAMES MYERS DIRECT BY MS. WALKER

- 1 A. She -- yeah, her and Neil came, but Neil walked in.
2 After Sherry seen Uncle Calvin, she turn around and she
3 sat at the door for a minute before she came in.
- 4 Q. Okay. And how long was she outside before she came
5 inside?
- 6 A. I say about 15, 15, 20 minutes.
- 7 Q. And did you talk to Neil that night?
- 8 A. Neil? Yeah, I speak to him, tell him what's up and all
9 that.
- 10 Q. Were y'all friends?
- 11 A. Yes, ma'am.
- 12 Q. What about your cousin, Sherry, when she came inside,
13 did you talk to her that night?
- 14 A. Yeah, I asked her what was wrong with her and she was
15 like -- she -- because her and my Uncle Calvin, they
16 got into it --
- 17 Q. Don't tell me why they got into it, but they hadn't
18 been getting along?
- 19 A. Yeah, they wasn't getting along.
- 20 Q. And where were you most of the night? Did you stay
21 inside or outside?
- 22 A. I was inside until -- when we took Calvin out, that was
23 -- I had went behind Calvin -- Calvin and Toney and I
24 stayed out for a minute because I went and ordered me
25 something to eat from the little restaurant they got in

JAMES MYERS DIRECT BY MS. WALKER

1 the back.

2 Q. Okay.

3 A. Yeah.

4 Q. So at some point, you said you went out with Calvin and
5 Toney?

6 A. Yeah, when we put him out the door, yes.

7 Q. Who put who out?

8 A. Me and Toney put Calvin out the door.

9 Q. Now, why did you do that?

10 A. Because he was -- he was trying to get my cousin,
11 Sherry.

12 Q. Uh-huh.

13 A. Yeah.

14 Q. What kind of things was he saying to Sherry?

15 A. Saying all kind of nasty words.

16 Q. Words? Do you feel comfortable repeating them right
17 now?

18 A. Huh?

19 Q. Do you feel comfortable enough to repeat them?

20 A. Huh-uh.

21 Q. Were you surprised by this, were you surprised by what
22 was going on?

23 A. Yes, ma'am.

24 Q. And once you walked out with your Uncle Calvin and
25 Toney, what happened outside?

JAMES MYERS DIRECT BY MS. WALKER

- 1 A. What happened?
- 2 Q. Yes, sir.
- 3 A. What happened outside, well, Toney and my Uncle Calvin
- 4 was talking. He wanted to go back inside and get a
- 5 drink.
- 6 Q. Okay.
- 7 A. Yeah.
- 8 Q. Did you want him to go inside or were you ready to go?
- 9 A. Huh?
- 10 Q. Did you want to go back inside or were you ready to
- 11 leave?
- 12 A. I was ready to go to keep from getting in trouble.
- 13 Q. You felt like trouble was going to happen?
- 14 A. Yes, ma'am.
- 15 Q. So did y'all leave right then?
- 16 A. No, ma'am.
- 17 Q. What happened? What did y'all do?
- 18 A. Huh?
- 19 Q. What did y'all do?
- 20 A. What did we do?
- 21 Q. Yes.
- 22 A. I was waiting on him because I was riding with him.
- 23 Q. He was your ride that night?
- 24 A. Yes, ma'am.
- 25 Q. And did you and your Uncle Calvin and Toney eventually

JAMES MYERS DIRECT BY MS. WALKER

1 go back inside?

2 A. No, Toney and my uncle went back inside, not me.

3 Q. You didn't go back inside?

4 A. No.

5 Q. How long did you stay outside?

6 A. I stayed outside for like a minute -- I stayed outside
7 for a minute because I went and ordered me something to
8 eat. Then when I came back from the back, Calvin and
9 this other guy, they was on the ground fighting.

10 Q. Okay. So let me get this straight. You did go back
11 inside to get your food?

12 A. Yeah -- not inside the bar, but you come out the bar
13 and --

14 Q. You went to the other entrance to get your food?

15 A. Yes, ma'am.

16 Q. Okay. Once you came back out -- did you hear anything?

17 A. Huh?

18 Q. Did you hear anything while you were inside?

19 A. No, ma'am.

20 Q. Okay. And when you came back outside again, what did
21 you see?

22 A. I seen Calvin on the ground and Neil was getting up off
23 the ground.

24 Q. Okay. Where were they standing?

25 A. Like right there in front of the bar.

JAMES MYERS DIRECT BY MS. WALKER

1 Q. Were they by the porch or by the cars at this point?

2 A. By the porch right there.

3 Q. They were by the porch?

4 A. Yeah.

5 Q. And Uncle Calvin, what did he look like at that point?

6 A. When he was fighting?

7 Q. Yeah, like, was he bleeding and stuff?

8 A. No. No, ma'am.

9 Q. No blood?

10 A. No, ma'am.

11 Q. Once they got up off the ground, tell me what you saw
12 next.

13 A. I saw Calvin trying to get up and he was pulling a gun
14 out.

15 Q. He was getting up and pulling a gun out?

16 A. Yeah.

17 Q. Where was Neil going?

18 A. Neil was like right beside him. And I was telling Neil
19 that Calvin was pulling a gun out. So Neil was like
20 get off me, man. I was like I'm telling you that man
21 got a gun. So when he looked and he seen Calvin
22 pulling the gun out, he run to his truck trying to get
23 in his truck.

24 Q. Okay. And let me ask you this, did you know before
25 that that your Uncle Calvin had a gun?

JAMES MYERS DIRECT BY MS. WALKER

- 1 A. No, ma'am.
- 2 Q. So as Neil is running away, what is Uncle Calvin doing?
- 3 A. He getting up off the ground and pulling his gun out.
- 4 Q. Where was he moving towards?
- 5 A. He was moving towards where Neil was going to the
- 6 truck.
- 7 Q. Then what happened?
- 8 A. Huh?
- 9 Q. Then what happened?
- 10 A. He started shooting and he shot Neil. He started
- 11 shooting and hit Neil and shot him in the back or
- 12 something, yeah.
- 13 Q. And where were you standing when all this was going on?
- 14 A. I was there still on the poach.
- 15 Q. Were there other people out there, too?
- 16 A. Yes, ma'am.
- 17 Q. As he was running towards -- as Uncle Calvin was
- 18 running towards Neil, what was Neil doing?
- 19 A. Neil was like running, like, hiding trying to dodge
- 20 bullets.
- 21 Q. And what happened next? What happened after the shots
- 22 were fired?
- 23 A. After the shots were fired, we went over there -- me
- 24 and Marvin went over there and took Neil from off the
- 25 top of Calvin and put him on his back.

JAMES MYERS DIRECT BY MS. WALKER

1 Q. Did you see him bleeding -- did you see Neil bleeding
2 at that point?

3 A. Yes, ma'am.

4 Q. What about Uncle Calvin, was he bleeding?

5 A. Yes, ma'am.

6 Q. Did you say anything to Neil?

7 A. I was asking him -- I mean, was he all right, but he
8 did not respond.

9 Q. Was he breathing?

10 A. No, he wasn't breathing. After we turned him on his
11 back, he wasn't breathing or nothing.

12 Q. Did you call 911 that night?

13 A. My cousin did.

14 Q. Sherry called 91?

15 A. My cousin, Mackie Spencer, he called that night.

16 Q. He called?

17 A. Yes, ma'am.

18 Q. Did you wait for the ambulance to arrive? Were you
19 there when the ambulance got there?

20 A. Yeah, I was there.

21 Q. Were you and Uncle Calvin pretty close?

22 A. Yes, ma'am.

23 Q. Did you see him drinking throughout that night?

24 A. Yeah, to the bar, that was it.

25 Q. And once the ambulance got there, what did you do after

JAMES MYERS DIRECT BY MS. WALKER

1 the ambulance --

2 A. I was -- I had done went inside.

3 Q. Okay. And did you talk to police officers about this?

4 A. That next day.

5 Q. Now, who -- between Sherry and Uncle Calvin, who kept
6 initiating the conversations between the two of them?

7 A. Both of them was going at it.

8 Q. They were both taking to each other?

9 A. Yes, ma'am.

10 Q. What was Neil doing?

11 A. What was Neil doing?

12 Q. When they were going at it?

13 A. Oh, Neil, was -- he was just sitting there looking at
14 them, didn't say anything.

15 Q. Kind of minding his own business?

16 A. Yes, ma'am.

17 Q. The man that you saw pull out a gun and shoot Neil that
18 night?

19 A. Yes, ma'am.

20 Q. Do you see him in the courtroom?

21 A. Yes, ma'am.

22 Q. Can you point him out for me?

23 A. (Indicating) right there.

24 Q. Uncle Calvin?

25 A. Yes, ma'am.

JAMES MYERS CROSS BY MR. MILLS

1 MS. WALKER: Your Honor, can the record reflect
2 that he's identified the Defendant?

3 THE COURT: It does.

4 BY MS. WALKER::

5 Q. Let me ask you this, how many times was Uncle Calvin
6 taken out of Toney's Lounge that night?

7 A. Three times.

8 Q. Were you trying to get him to stay out?

9 A. Yes, ma'am. I was trying to get to let's go home.

10 Q. Just to go home?

11 A. Yeah.

12 Q. What did he say to you -- do you remember what he said
13 to you when you were trying to get him to go home?

14 A. Yeah, I mean, we got in the van, but he got back out.

15 Q. What did he say?

16 A. He was like he getting back out, going back inside the
17 place, but they ain't let him back inside.

18 MS. WALKER: Thank you, sir. I don't have any
19 further questions.

20 MR. MILLS: May it please the Court.

21 COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MILLS::

24 Q. Good afternoon, Mr. Myers.

25 A. How you doing?

JAMES MYERS CROSS BY MR. MILLS

- 1 Q. So you worked with Calvin?
- 2 A. Yes, sir.
- 3 Q. And were y'all working that day, the 29th of December?
- 4 A. Yes, ma'am -- I mean, yes, sir.
- 5 Q. And what time did y'all get done to go to work?
- 6 A. It was like -- I think it was like about nine o'clock
- 7 that morning.
- 8 Q. Okay. And where did y'all go then?
- 9 A. We went to Columbia.
- 10 Q. Okay. To do what?
- 11 A. Huh?
- 12 Q. What did y'all do?
- 13 A. We had went out there to sell food.
- 14 Q. Sell food out of the truck?
- 15 A. Yes, ma'am -- yes, sir.
- 16 Q. Where did y'all go in Columbia?
- 17 A. Huh?
- 18 Q. Where did y'all go in Columbia?
- 19 A. We go all over Columbia.
- 20 Q. What kind of places do you go to?
- 21 A. Huh?
- 22 Q. What kind of places do you go to?
- 23 A. Like people got construction sites out there.
- 24 Q. Like what?
- 25 A. Like construction sites.

JAMES MYERS CROSS BY MR. MILLS

- 1 Q. Construction sites?
- 2 A. Yeah.
- 3 Q. Okay. And --
- 4 A. Businesses like that.
- 5 Q. And y'all would sell the food. Who had made the food?
- 6 A. Me and my Uncle Calvin.
- 7 Q. Where do y'all make it?
- 8 A. Huh?
- 9 Q. Where do y'all make it?
- 10 A. We make it to his house.
- 11 Q. Okay. So how long did y'all work that day selling
- 12 food?
- 13 A. We worked all that day. We worked all day.
- 14 Q. So how long -- when did y'all stop selling food?
- 15 A. I'd say about 10:00 that night.
- 16 Q. Ten o'clock that night. And where was the last place
- 17 y'all went, do you remember?
- 18 A. No, sir.
- 19 Q. Okay. And was Uncle Calvin drinking that night?
- 20 A. No, sir.
- 21 Q. I mean, drinking during that day?
- 22 A. No, sir.
- 23 Q. So he was sober when y'all were working?
- 24 A. Yes, sir.
- 25 Q. Okay. And then you said you got to the bar about 11 --

JAMES MYERS CROSS BY MR. MILLS

- 1 what time did you get to the bar?
- 2 A. About 11.
- 3 Q. About 11?
- 4 A. Eleven thirty, something like that.
- 5 Q. So how long were y'all there before the altercation
- 6 happened?
- 7 A. How long we was there, I'd say -- I'd say about 30, 45
- 8 minutes.
- 9 Q. Thirty, 45 minutes?
- 10 A. Yeah.
- 11 Q. Okay. And you said that Calvin Myers at that point had
- 12 only had how many drinks?
- 13 A. He had about -- I'd say about four drinks.
- 14 Q. About four drinks?
- 15 A. Yeah, four or five.
- 16 Q. Did you feel he was intoxicated?
- 17 A. No.
- 18 Q. Okay. All right. And you stated that Calvin
- 19 (indicating) was your ride that night. Was it a truck
- 20 that y'all were in?
- 21 A. Yeah, a van, yes, sir.
- 22 Q. A van?
- 23 A. Yes.
- 24 Q. And that's what you sell the food out of?
- 25 A. Yes, sir.

JAMES MYERS CROSS BY MR. MILLS

1 Q. Okay. Now, you said after you had been inside, Toney
2 had taken Calvin out --

3 A. Yeah, me and Toney did.

4 Q. -- and he came back in? And then at one point, you
5 came outside and saw Neil --

6 (Phone rings.)

7 Q. So at one point you came outside?

8 A. Yes, sir.

9 Q. And saw -- you remember about what time that was?

10 A. I --

11 Q. When you came outside and saw Neil?

12 A. I don't know what time.

13 Q. And Neil was on top of Calvin fighting?

14 A. Yes.

15 Q. Okay. You made a statement to the police about that?

16 A. Yes, sir.

17 Q. Okay. Actually, the statement you made was on
18 January 3rd, does that sound correct?

19 A. Yes.

20 Q. So it was a few days later?

21 A. Yes, sir.

22 Q. Okay. Why did you not make a statement that night?

23 A. Huh? Why didn't I make it? Because I was trying to
24 get home.

25 Q. Okay.

JAMES MYERS CROSS BY MR. MILLS

- 1 A. Yeah.
- 2 Q. So were you home before the police got there?
- 3 A. No. No.
- 4 Q. Okay.
- 5 A. I probably got home like -- I'd say about three o'clock
6 that night, three or four o'clock that night.
- 7 Q. Okay. And did the officer try to talk to you then?
- 8 A. No.
- 9 Q. Okay. They didn't try to talk to you?
- 10 A. No.
- 11 Q. Okay. So where did you make this statement?
- 12 A. He came to my house.
- 13 Q. He came to your house?
- 14 A. Yes, sir.
- 15 Q. Which officer came to your house?
- 16 A. Huh?
- 17 Q. Which officer came to your house?
- 18 A. That guy right there (indicating).
- 19 Q. Okay. Investigator Carwell. Okay. Did he have any
20 kind of recording equipment, audio recording, little
21 digital recorder, anything of that nature?
- 22 A. No.
- 23 Q. He didn't?
- 24 A. No.
- 25 Q. Okay. How long did y'all -- did you talk to him?

JAMES MYERS CROSS BY MR. MILLS

- 1 A. I'd say about 30, 45 minutes.
- 2 Q. Okay. And after the 30, 45 minutes, they -- he wrote
- 3 up a statement for you to sign? Do you remember that?
- 4 A. Yeah.
- 5 Q. And the statement was about four pages long?
- 6 A. Yes, sir.
- 7 Q. Does that sound right?
- 8 A. (The witness nodded head.)
- 9 Q. And when you came out of the door, you saw Neil and
- 10 Calvin?
- 11 A. Yeah.
- 12 Q. And Neil -- they were on the ground fighting?
- 13 A. Yes, sir.
- 14 Q. Neil was on top of Calvin at the time?
- 15 A. Yes, sir.
- 16 Q. So was he punching him at the time?
- 17 A. No, it was like -- it was all finished. When I came
- 18 around the corner, Neil was trying to get up and Calvin
- 19 was getting up.
- 20 Q. Okay. But Calvin was on the ground?
- 21 A. Yeah.
- 22 Q. Okay. And that's when Neil got up and walked away?
- 23 A. Yeah.
- 24 Q. Around the corner?
- 25 A. Like beside me, he was standing right beside me.

JAMES MYERS CROSS BY MR. MILLS

- 1 Q. Okay. Then you saw some shots being fired, correct?
- 2 A. Yes, sir.
- 3 Q. Then you saw Neil, actually, hitting Calvin for about
- 4 five minutes is what you stated?
- 5 A. Yeah.
- 6 Q. Does that sound right?
- 7 A. Uh-huh.
- 8 Q. Now, when -- did you see Calvin get up -- after Neil
- 9 got up from the front of the building, did you see
- 10 Calvin get up?
- 11 A. Yes.
- 12 Q. Was he staggering?
- 13 A. No, sir.
- 14 Q. He wasn't staggering?
- 15 A. No.
- 16 Q. Okay. And you said he wasn't bleeding at that point?
- 17 A. No, sir.
- 18 Q. Okay. Now, there was someone else you mentioned that
- 19 was a witness out there, Marvin Moore?
- 20 A. Yes, sir.
- 21 Q. Now, where was Marvin Moore when the fight -- when Neil
- 22 was on top of Calvin in front of the building?
- 23 A. I don't know where Marvin was. He probably was on the
- 24 side of the building. I don't know where he was.
- 25 Q. Okay.

JAMES MYERS CROSS BY MR. MILLS

- 1 A. He came out of nowhere.
- 2 Q. So you don't know where he was?
- 3 A. No.
- 4 Q. When did you see him? Did you see him on the side of
5 the building?
- 6 A. I seen him when we was taking Neil off the top of
7 Calvin.
- 8 Q. Okay. So you saw Marvin Moore take Neil off of Calvin?
- 9 A. Yeah, it was me and him.
- 10 Q. Okay. And then you saw the fight. They were both
11 bleeding heavily at that point, you said, correct?
- 12 A. Yes, sir.
- 13 Q. And you said someone called 911. Who did you know that
14 called --
- 15 A. My cousin.
- 16 Q. Which cousin?
- 17 A. He is name is Spencer.
- 18 Q. Spencer?
- 19 A. Yes, sir.
- 20 Q. Okay. So there was more than just a call from your
21 cousin, Sherry?
- 22 A. Yeah.
- 23 Q. There was another -- you saw him call --
- 24 A. Yeah.
- 25 Q. -- 911?

JAMES MYERS REDIRECT BY MS. WALKER

1 A. Yes, sir.

2 Q. And you stated that Calvin had around four drinks, is
3 that your testimony?

4 A. Yes, sir.

5 Q. Okay.

6 MR. MILLS: Beg the Court's indulgence.

7 BY MR. MILLS::

8 Q. I want to just go back to when the fight occurred in
9 front of the building. You walked out and saw them
10 fighting in front of the building, correct?

11 A. Yeah.

12 Q. Then you stated, I believe, that at that point Neil got
13 up to stop the fight, got up and Calvin was on the
14 ground, got up and went towards this lady, Sherry.
15 Neil was trying to get to his truck --

16 MS. WALKER: Your Honor, I would ask if he's going
17 to read the witness's statement into the record that he
18 would read the entire thing.

19 MR. MILLS: Okay. That's fine.

20 THE COURT: All right.

21 BY MR. MILLS::

22 Q. That's when my uncle went for his gun.

23 A. Yes.

24 Q. And Neil was trying to get to his truck?

25 A. Yes, sir.

JAMES MYERS REDIRECT BY MS. WALKER

1 Q. But Sherry had his keys?

2 A. Yes, sir.

3 Q. That's your understanding of what happened?

4 A. Yes, sir.

5 Q. So -- all right.

6 MS. WALKER: Your Honor?

7 THE COURT: Yes, ma'am?

8 MS. WALKER: May we approach?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held
11 off the record, in the presence of the
12 jury, but out of the hearing of the
13 jury.)

14 MS. WALKER: Thank you, Your Honor.

15 MR. MILLS: Thank you.

16 REDIRECT EXAMINATION

17 BY MS. WALKER::

18 Q. There was a -- do you remember giving this statement?

19 Let me show it to you. This statement to law
20 enforcement?

21 A. Oh, yeah.

22 Q. Okay. There was a portion -- there was a portion that
23 was read, I just want to read the entire thing, okay?

24 A. All right.

25 Q. The question was asked to you, Can you describe what

JAMES MYERS REDIRECT BY MS. WALKER

1 you saw.

2 You said, What I can remember is that my uncle was
3 getting loud with my cousin, Sherry. Me and Toney
4 tried to get my uncle to get outside. My uncle was
5 aggravating Toney about going back in for another shot.
6 At first, Toney did not want to let him go back in, but
7 he let him back in. My uncle went back in, got a beer.
8 That's when my uncle called Neil out. My uncle was
9 doing a lot of cussing, just cussing at Neil. After
10 that, someone took my uncle out of the club and took
11 him for a ride, but they came back. I was on the
12 inside of Toney's ordering food and I heard what was
13 going on -- and I went outside to smoke a cigarette.
14 When I got outside, I saw my uncle and Neil on the
15 ground fighting. Neil was on top of Calvin at the
16 time. Neil just stopped and got up and went towards
17 the lady, Sherry. That's when my uncle went for his
18 gun and Neil was trying to get to his truck, but Sherry
19 had his keys. That's when my uncle started shooting at
20 him. I heard Neil, oh, he done shot me, real loud.
21 Neil came up behind my uncle and got him to the ground
22 and they started fighting for about five minutes. Next
23 thing you know, Neil dropped down and Neil was laying
24 on top of Calvin. Me and Marvin and another guy got
25 Neil off of my uncle and laid him on his back. I went

AMANDA METZ DIRECT BY MS. WALKER

1 back inside to get some tissues to clean him up.

2 Then he says, How many times did your uncle get
3 taken out of the club?

4 He got taken out three times in between me and
5 Toney. The first time, they got -- he was made to
6 leave and they said, excuse me language, he said, Fuck
7 it, I'm going back inside and that's when it got bad.
8 He would not let it go.

9 A. Yeah.

10 Q. Was that what you told the police about that entire
11 evening?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. WALKER: I don't have any further questions.

15 MR. MILLS: Nothing further, Your Honor.

16 THE COURT: All right. Thank you. You may step
17 down.

18 Call your next witness.

19 MS. WALKER: Thank you, Your Honor. The State
20 calls Amanda Metz to the stand.

21 THEREUPON,

22 AMANDA METZ,

23 after having been duly sworn, testified as follows:

24 THE CLERK: Thank you. Have a seat in the witness
25 stand, please. State your name for the record.

AMANDA METZ DIRECT BY MS. WALKER

1 THE WITNESS: Amanda Metz, M-E-T-Z.

2 DIRECT EXAMINATION

3 BY MS. WALKER::

4 Q. Good afternoon.

5 A. Hello.

6 Q. Where are you currently employed?

7 A. I'm currently employed at the Richland County Sheriff's
8 Department forensic sciences laboratory.

9 Q. And what do you do at the sheriff's department?

10 A. My primary duties are to examine firearms and
11 ammunition components and other tools and their
12 markings and look for forensic evidence and report my
13 findings to the court.

14 Q. And how long have you been doing that?

15 A. Specifically, with the sciences laboratory, three
16 years.

17 Q. Before then, what were you doing?

18 A. For a year and half, I worked the road as a deputy
19 sheriff.

20 Q. Was that here in Richland County as well?

21 A. Yes, ma'am.

22 Q. And kind of tell the jury about some of your training
23 and your education in the department of what you're
24 working now?

25 A. I have a Bachelor of Arts in both anthropology and art

AMANDA METZ DIRECT BY MS. WALKER

1 history, a Master's of Science in forensic archeology
2 and international crime scene investigation. As I said
3 before, in July 2011, after a year and a half of being
4 a road deputy, I was moved up to the forensic sciences
5 laboratory. During that time, I went through a very
6 extensive three-year training program, primarily,
7 dealing with firearm and tool mark examination. Also,
8 during that time, I completed, successfully completed
9 the -- of alcohol -- firearms and explosives, their
10 National Firearms Examiner Academy. I am, also, up to
11 date -- I have completed over to 400 cases under the
12 direct supervision of a qualified firearms examiner.
13 I'm, also, competent in firearms and tool mark
14 examination, serial number restoration and distance
15 determination. I am a member of our professional
16 organization, the Association of Firearm and Tool Mark
17 Examiners.

18 Q. When you're working on these -- this firearm analysis,
19 are you working under the direction of another employee
20 of the sheriff's department?

21 A. At this time, I'm not. I'm on my own.

22 Q. Before then, you were?

23 A. Yes, ma'am.

24 Q. Who was that?

25 A. Her name is Terry Gleson, G-L-E-S-O-N.

AMANDA METZ DIRECT BY MS. WALKER

1 Q. Present in the courtroom (indicating)?

2 A. Yes, ma'am.

3 Q. And that is the -- background and training in firearm
4 analysis and tool mark?

5 A. Yes, ma'am.

6 Q. Is that oftentimes referred to as ballistics or is it
7 -- two different things?

8 A. It's two different things. Ballistics deals with the
9 actual bullet and how it travels in the gun, out of the
10 gun and, actually, hit its target. I deal with the
11 firearms identification side of it, which deals, again,
12 mainly, with firearms and ammunition components. I
13 also do other tools and their markings. And,
14 specifically, I look at bullets, cartridge cases and
15 other ammunition components and determine whether or
16 not those were fired by a particular firearm.

17 Q. And to date, how many cases did you say you had worked
18 on?

19 A. Over 400.

20 MS. WALKER: Your Honor, at this point, the State
21 offers this witness as an expert in firearm and tool mark
22 examination.

23 MR. MILLS: No objection, Your Honor.

24 THE COURT: All right. She's admitted.

25

AMANDA METZ DIRECT BY MS. WALKER

1 BY MS. WALKER::

2 Q. Once you -- I guess, I want to make this as simple as
3 possible so I can understand it. What are you looking
4 for when you're examining firearms and any other pieces
5 of evidence that you may get that go along with guns?

6 A. Okay. When I get a firearm, I initially check it to
7 make sure it's safe and that it operates properly. As
8 far as the other components, the cartridge cases, the
9 bullets, unfired cartridges, what we look for are --
10 when a firearm is made, it goes through machine
11 processes, which leave microscopic imperfections in the
12 form of nicks, burrs and cuts. During the firing
13 process, these microscopic imperfections are
14 transferred onto the bullets and cartridge cases. Sort
15 of like a fingerprint for that specific firearm. And I
16 looked at those to each other and then make my
17 conclusions.

18 Q. And when you -- what type of, I guess, items of
19 evidence are presented to you in order to help you make
20 your conclusions?

21 A. It's just a case-by-case basis. We can receive just
22 the firearm. We can receive just the bullets. We can
23 receive just the cartridge case. Or I could receive
24 all of the above. It's just a case-by-case basis.

25 Q. And can you tell the jury what's the difference -- or

AMANDA METZ DIRECT BY MS. WALKER

1 what the difference between a firearm -- a shell casing
2 and a bullet or projectile? Those are some of the
3 terms we've heard before.

4 A. Sure. There is a term called a cartridge, which is a
5 complete piece of unfired ammunition. That is
6 comprised of a bullet, a cartridge case, a primer and
7 gun powder. The cartridge case is what you will
8 normally find after you shoot it. It ends up on the
9 ground. It's about this big. And inside is the bullet
10 and inside the cartridge case underneath the bullet is
11 gun powder. At the tip of the cartridge case is the
12 primer. When the primer is struck, it ignites the gun
13 powder and the gun powder combust and turns from a
14 solid into a gas, which pushes the bullet down and out
15 the muzzle into a target. That's what hits a person.
16 The cartridge case is either extracted and ejected from
17 the firearm or remains on the firearm. It's just based
18 on firearm type.

19 Q. Okay, I want to turn your attention to this case
20 specifically.

21 A. Sure.

22 Q. Did you receive a number of items for your analysis?

23 A. I did, yes.

24 Q. Okay. And included in the items you received, I want
25 to show you what's marked as State's Exhibit No. 6 and

AMANDA METZ DIRECT BY MS. WALKER

1 ask you if you recognize that?

2 A. I'm sorry, is this item six?

3 Q. Yes, Exhibit 6 right here.

4 A. Yes, I recognize and identify State's Exhibit 6 as

5 being my items 20, 21, 22, 23 and 24, which is a

6 highpoint firearm nine pistol Luger caliber pistol and

7 four fired nine millimeter Luger caliber cartridges.

8 Q. Okay.

9 MS. WALKER: Your Honor, at this point, the State
10 seeks to admit Exhibit No. 6 into evidence.

11 THE COURT: Any objection?

12 MR. MILLS: No objection.

13 THE COURT: Admitted without objection.

14 (State's Exhibit No. 6 was admitted into
15 evidence.)

16 MS. WALKER: Your Honor, for the record, Exhibit
17 No. 6 is a firearm in this case and it has been locked with
18 a gun lock.

19 THE COURT: Very good. Thank you.

20 BY MS. WALKER::

21 Q. And let me show you as well what's been parked as
22 State's Exhibit No. 7 and ask you if you recognize
23 this?

24 A. Yes, I recognize and identify State's Exhibit 7 as my
25 items 43 through 45, which are three fired nine

AMANDA METZ DIRECT BY MS. WALKER

1 millimeter Luger caliber cartridge casings.

2 Q. Were you able to compare -- to come to a conclusion
3 regarding those times as well?

4 A. Yes.

5 MS. WALKER: Your Honor, the State seeks to move
6 State's Exhibit No. 7 into evidence.

7 THE COURT: What says the Defense?

8 MR. MILLS: Pardon me, I'm sorry. Which one is
9 this?

10 No objection, Your Honor.

11 THE COURT: Admitted.

12 (State's Exhibit No. 7 was admitted into
13 evidence.)

14 BY MS. WALKER::

15 Q. And item number 46, which has already been admitted
16 into evidence.

17 A. Yes, I recognize and identify State's Exhibit item 46
18 as my five, six, seven, which are two fired bullets and
19 one fired bullet fragment.

20 Q. Okay. Did you receive clothing as well in this case?

21 A. I did, yes.

22 Q. And you don't have to open this, it's already been
23 admitted into evidence, but you did receive a white
24 shirt and a green shirt?

25 A. Yes, I did.

AMANDA METZ DIRECT BY MS. WALKER

1 Q. Okay. As well as boxer shorts and pants?

2 A. Two pairs of pants. One pair of boxer, one pair of
3 pajama-type pants and one pair of brown pants.

4 Q. And let me try to locate one other, Exhibit No. 55?

5 A. Yes, I recognize and identify State's Exhibit No. 55 as
6 my items 13 and 14, one unfired nine millimeter Luger
7 caliber cartridge and one unknown metal object.

8 Q. When investigators asked you to perform analysis on an
9 item like this, do you know at that point in time what
10 exactly you're looking for?

11 A. What the investigator --

12 Q. What the purpose of your analysis is?

13 A. Well, the purpose of my analysis is the same every
14 time. It's to determine whether ammunition components,
15 bullets or cartridge cases can be identified as being
16 fired from a particular firearm.

17 Q. And once you are trying to determine -- what steps do
18 you take to determine whether or not a firearm -- in
19 this case, is the highpoint?

20 A. Yes, ma'am.

21 Q. Nine millimeter?

22 A. Yes, ma'am?

23 Q. What steps do you take to determine whether or not a
24 firearm has, actually -- is the actual firearm that
25 fired particular?

AMANDA METZ DIRECT BY MS. WALKER

1 A. So any firearm we receive, I, again, check to make sure
2 it's safe, make sure it operates and functions
3 properly. We then have a large water tank that I take
4 that firearm into, use our own lab ammunition and fire
5 the firearm into the water tank, at least, three times.
6 What this does is it allows me to produce known bullets
7 and cartridge cases that have been fired by that
8 particular firearm. I then take those bullets and
9 cartridge cases and put them under a comparison
10 microscope, which a comparison microscope is,
11 essentially, two microscopes that are combined by an
12 ocular bridge. It just allows me to see two separate
13 objects at the same time under the same lights and same
14 magnification.

15 So once I have my bullets and cartridge cases,
16 I'll put the bullets up there from the firearm and I'll
17 start looking for those tiny microscopic imperfections
18 that I spoke about earlier. What I'm looking for is
19 patterns. Essentially, it's just pattern, actually.
20 So once I determine that that firearm produces enough
21 of those microscopic imperfections, I then replace one
22 of the test fired bullets or cartridge cases with one
23 of the evidence. And it's look again for that pattern
24 of the same microscopic imperfections.

25 Q. And is that the process that you did in this case as

AMANDA METZ DIRECT BY MS. WALKER

1 well?

2 A. Yes, ma'am, that happens every single time.

3 Q. And with this particular firearm, what conclusions were
4 you able to come to regarding this firearm and items
5 you received in this case, starting with the cartridge
6 cases?

7 A. I received seven in total fired cartridge cases, which
8 I determined to have been fired from State's Exhibit 6,
9 firearm. I received two fired bullets, but I was not
10 able to make any conclusions. I couldn't tell whether
11 it had or had not been fired by this specific firearm.

12 To get into it a little bit more specifically,
13 when a firearm is made -- when a barrel is made, it
14 goes through a process called -- a machine process that
15 produces rifling in the barrel. And all that is is
16 land and grooves with a direction of twist. The
17 manufacturer decided how many grooves they're going to
18 put in and what direction they twist, right or left.
19 What that does is it imparts a spin on the bullet.
20 Much like when a quarterback throws a foot, he imparts
21 a spin so it's accurate and hits his target right. So
22 those are pretty specific to manufacturers. These
23 particular bullets have a three left, which is -- to my
24 knowledge, there's only one firearm manufacturer that
25 is produce a three left nine millimeter Luger caliber

AMANDA METZ DIRECT BY MS. WALKER.

1 firearm, and that is Highpoint.

2 Q. Same manufacturer of this gun?

3 A. Yes, ma'am.

4 Q. Okay. You said you got seven cartridge casings that
5 were able to identify as having been fired from this
6 gun?

7 A. Correct.

8 Q. How many, I guess cartridge is the right word?

9 A. Correct.

10 Q. How many can go into a gun like this?

11 A. So that's a pistol and a pistol has a magazine, which
12 is also in that box. That particular magazine holds
13 eight. And if you have the magazine full and one in
14 the chamber as well, that whole firearm will hold nine.

15 Q. But if you don't have one in the chamber?

16 A. Eight in the magazine.

17 Q. Eight in magazine?

18 A. Yes.

19 Q. So if I have -- let's say, in this case, seven fired
20 cartridge casings and one unfired, then that would be
21 eight -- that could count for the eight that go in
22 there?

23 A. It could count for eight, yes.

24 Q. And are you able to test what an unfired cartridge
25 case, what kind of gun it goes to or belongs to?

AMANDA METZ DIRECT BY MS. WALKER

1 A. You can -- not that the gun that it goes to, but a
2 particular magazine sometimes. Much like a firearm,
3 much like any tool will leave its markings on a
4 software object, that's the basis of the science. A
5 harder object will leave its marks on softer objects.
6 So the harder object in this sense would be on a
7 magazine, there's lips that hold all the cartridge in
8 so they just don't pop out. And sometimes if they're
9 fed through a magazine and then chambered into a
10 firearm, yes.

11 Q. Are these lips right here?

12 A. Correct. They can leave markings on the cartridge,
13 however, that doesn't mean it's been in a specific
14 firearm. We could get it into a specific magazine. On
15 this particular cartridge, I did not see any of those
16 markings.

17 Q. I want to move your attention to your items number five
18 and six?

19 A. Yes.

20 Q. Can you describe for me what exactly they are?

21 A. They are two fired nine millimeter Luger caliber
22 bullets.

23 Q. And what, if any, conclusions did you draw from those?

24 A. As I previously stated, I was not able to tell whether
25 or not they were either fired by this firearm or not.

AMANDA METZ DIRECT BY MS. WALKER

1 Essentially, I could not say anything about them. The
2 marks that I was talking about, the imperfections,
3 there were not enough due to damage having been in a
4 body and possibly having gone through intermittent
5 objects, like cars or something. There weren't enough
6 markings on these bullets for me to say anything
7 conclusive.

8 Q. The term reloaded or remanufactured cartridge casings,
9 what does that mean?

10 A. You can either purchase newly made ammunition from
11 ammunition manufacturers or reloaded, remanufactured
12 ammunition is previously fired cartridge cases that we
13 previously spoke about. And what they do is they throw
14 them in a tumbler, whether it's a person, just an
15 individual that wants to make their own ammunition, or
16 there are some companies that do this, also, and that's
17 remanufactured. Reloading is normally an individual
18 versus a company that remanufactures. So they take
19 those previously fired cartridge cases and remove the
20 used primer, replace it with new one, replace it with
21 an unused bullet and, obviously, the gunpowder and then
22 package it and sell it. For an individual, they just
23 use it for there own use.

24 Q. If you get remanufactured or refurbished items, does
25 that affect your testing in any way?

AMANDA METZ DIRECT BY MS. WALKER

1 A. It doesn't affect testing. It's definitely something
2 we notice. In this particular case, the cartridge
3 cases and the unfired cartridge has multiple extractor
4 and ejector marks. So those come from when they're
5 being pulled and shoved out of the firearm during
6 firing or racking of the slide. So there were multiple
7 of those extractors and ejector marks not specifically
8 to this firearm.

9 Q. And when you say it comes from being ejected from the
10 gun, how does it get ejected from the gun? Can you
11 describe that for the jury?

12 A. Sure. This particular firearm, actually, doesn't have
13 what -- what a normal one -- what a normal firearm has.
14 Their ejector is the actual firing pin. So as the
15 slide moves rearward, magazine protrudes and pushes the
16 cartridge case out of the firearm. But on this firearm
17 here, on the slide, it left a little hook and that's
18 the extractor. So once firing happened, the
19 cartridge --

20 Q. Let me stop you here.

21 MS. WALKER: Your Honor, can the witness step
22 down?

23 THE COURT: Yes.

24 BY MS. WALKER::

25 Q. If you can step down so the jury can see.

AMANDA METZ DIRECT BY MS. WALKER

1 A. So during the firing, the cartridge case will what's
2 called -- or swell because the gases need somewhere to
3 go and this is a closed-in space. So this extractor
4 right here is like a hook, and what it does is it pulls
5 it out of the chamber. And that little thing in there
6 is the pin, that's the firing pin. That's what pushes
7 the cartridge case, actually, out the gun and it will
8 bounce wherever.

9 Q. And is that different in different types of guns like,
10 let's say between that and a revolver, is that ejection
11 process same?

12 A. In a revolver, a revolver does not eject or extract the
13 cartridge cases without the shooter manually extracting
14 and ejecting the cartridge cases.

15 Q. Okay. So if you did a bunch of cartridge casings, you
16 don't know whether it's from a revolver or from a
17 pistol like that?

18 A. More than likely -- if you get a bunch of cartridge
19 cases, more than likely, you're dealing -- you're going
20 to be dealing with a pistol, unless a revolver was used
21 and the person stood there and manually opened up the
22 cylinder and extracted and ejected the fire cartridges
23 cases.

24 Q. Okay. And what have -- do you look at clothing in
25 every case?

AMANDA METZ DIRECT BY MS. WALKER

1 A. Not in every case.

2 Q. What was the purpose of looking at the clothing in this
3 case?

4 A. We were asked to.

5 Q. You were asked to, okay. What sort of testing, if any,
6 do you do on clothing to help you make determinations
7 about the firearm in the case?

8 A. Normally, when we get pieces of clothing, it's for
9 distance determination or muzzle to target
10 determination. And what that does is we can kind of
11 give a range to as far as a defect in their shirt
12 that's consistent with the passage of a bullet. We can
13 give a range as far as how far the shooter was standing
14 or how far the muzzle of the firearm was to the actual
15 garment.

16 Q. In this case, were you able to make any determinations
17 about the distance?

18 A. We were not. We were able to, essentially, say that
19 they were intermittent, varying distances from varying
20 angles. The problem is when we do distance
21 determination, we have to have like ammunition that was
22 used because what we're looking at are the gunshot
23 residue from the CSI.

24 And in this case, like I stated, we had only one
25 cartridge, unfired cartridge. And when you're dealing

AMANDA METZ CROSS BY MR. MILLS

1 with the reloaded remanufactured, they don't have any
2 quality control, so one cartridge could have a totally
3 different powder charge from the next. There's not
4 that consistency. So, essentially, all we did was a
5 visual examination of the clothing in which we found
6 some gun powder -- partially burned and unburned gun
7 powder particles on two defects that we located.

8 Q. And the fact that the gun powder was partially burned
9 and partially unburned, was that significant to you?

10 A. No, that's just what happens. When the firearm is
11 fired, a big cloud of vaporous leg and burned and
12 unburned and partially burned gun powder comes out of
13 the firearm.

14 Q. You said there was an intermittent range at varying
15 angles?

16 A. Yes, it was different distances at different angles.

17 Q. When you say intermittent, do you -- does intermittent
18 include somebody maybe sticking the gun into somebody
19 firing?

20 A. Intermittent is pretty much past near contact to what
21 we call the point of extinction. It's where that cloud
22 doesn't meet garment anymore. But, again, in this
23 case, we couldn't determine what point of extinction
24 was, which is why we can't say it's, you know, 18
25 inches to three feet. It's due to the reloaded

AMANDA METZ CROSS BY MR. MILLS

1 ammunition couldn't give you that. It's further than
2 near contact and it's closer than point of extinction
3 where it still deposits that unburned and partially
4 burned gun powder.

5 Q. And the point of extinction is unknown because of the
6 remanufactured or refurbished?

7 A. Correct.

8 Q. Okay. And the seven cartridge casings you received
9 were all fired from which weapon?

10 A. The State's Exhibit No. 6, Highpoint.

11 MS. WALKER: Beg the Court's indulgence.

12 Thank you. I don't have any further questions.

13 THE COURT: Cross-examination?

14 MR. MILLS: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. MILLS::

18 Q. Now, did you do a report on this case?

19 A. At this point in time during my training, I was in
20 phase two, which is where I was doing all the work
21 while my supervisor was pretty much looking over my
22 shoulder.

23 Q. Okay. So the report that I have, amended report from
24 June 3rd, 2014, signed Terry Gleson, that's your --

25 A. That's my direct supervisor, yes.

AMANDA METZ CROSS BY MR. MILLS

1 Q. But you did all of the testing?

2 A. I did all of the testing. I, yes, did all the
3 worksheets.

4 Q. Okay. And you said that seven cartridge casings you
5 linked to the nine millimeter Luger that is in
6 evidence, is that correct?

7 A. Yes. Yes, sir.

8 Q. You stated that two -- the two fired bullets, you could
9 not link to the Luger, nine millimeter Luger?

10 A. Correct, I could neither link it nor eliminate it from
11 that firearm.

12 Q. And because of the damage to it?

13 A. Due to the damage and lack of markings that I look at,
14 yes.

15 Q. Okay. So when you fire into the testing water, what do
16 y'all call that?

17 A. Our water tank.

18 Q. Water tank. The fired bullet would -- you could link
19 that to the weapon, correct, to the weapon fired?

20 A. So the reason we fire into a water tank is because
21 it's -- the water itself slows the bullet to a stop
22 without affecting the markings that are put on the
23 bullet by the barrel.

24 Q. Okay. So, therefore, you would be able to find the
25 marking that would link it to the gun that is fired

JOHN BARRON DIRECT BY MR. STEADMAN

1 into the water tank?

2 A. We should be able to, yes.

3 Q. Should be able to. Is it always that you do or not
4 always?

5 A. No, it's on a firearm-by-firearm basis. Again, it goes
6 back to -- that's why we first look at our test fires.
7 Every firearm may not produce those markings. They
8 might just not be reproducing.

9 Q. Okay. So when you linked these cartridges to the --
10 all seven cartridges to the Highpoint that you have
11 there, is that a general analysis to that particular
12 weapon? I know you said something to the effect that
13 only one firearm goes three left, I believe?

14 A. For the cartridge cases -- the three left refers to the
15 bullets.

16 Q. Okay. Okay. But you can link specifically those
17 cartridge cases to this particular weapon?

18 A. Yes, sir.

19 Q. Okay.

20 MR. MILLS: Beg the Court's indulgence. That's
21 all the questions I have, Your Honor.

22 THE COURT: Redirect?

23 MS. WALKER: None, Your Honor.

24 THE COURT: All right.

25 Thank you. You may step down.

JOHN BARRON DIRECT BY MR. STEADMAN

1 Next witness.

2 BAILIFF: Your Honor, I'm sorry to interrupt you,
3 but a juror would like a break for water.

4 THE COURT: Sure.

5 We'll take a break. Please go to the jury room.
6 Please do not discuss the case.

7 (Whereupon, the jury left the courtroom
8 at 3:09 p.m.)

9 THE COURT: We'll take about a 10-minute break.
10 (Whereupon, a short recess was held.)

11 THE COURT: Ready for the jury?

12 MS. WALKER: State's ready, Your Honor.

13 MR. MILLS: Defense is ready, Your Honor.

14 THE COURT: All right. Let's bring them on.

15 (Whereupon, the jury returned to the
16 courtroom at 3:30 p.m.)

17 BAILIFF: Jury panel is all here, Your Honor.

18 THE COURT: Thank you.

19 Your next witness.

20 MR. STEADMAN: The State calls John Barron.

21 THEREUPON,

22 JOHN BARRON,

23 after having been duly sworn, testified as follows:

24 THE CLERK: Thank you. Have a seat in the witness
25 stand, please. State your name for the record.

JOHN BARRON DIRECT BY MR. STEADMAN

1 THE WITNESS: My name is John Barron, B-A-R-R-O-N.

2 DIRECT EXAMINATION

3 BY MR. STEADMAN::

4 Q. Good afternoon, sir. Where are you employed?

5 A. Richland County Sheriff's Department.

6 Q. What do you do for the Richland County Sheriff's
7 Department?

8 A. I'm in the DNA laboratory as a DNA analysts.

9 Q. And as a DNA analyst, what are some of your duties and
10 responsibilities?

11 A. Well, the DNA laboratory is responsible for testing
12 evidence that is brought in from crime scene to
13 determine, first of all, if there is DNA present and if
14 it matches somebody, like comparing it to known
15 samples, and developing statistical weight to that
16 result and reporting it and testifying on it.

17 Q. Could you briefly describe for the jury the background
18 and training you've had as a DNA analyst?

19 A. Yes. My career in forensic science began at SLED, the
20 South Carolina Law Enforcement Division. That's where
21 the first DNA laboratory in the State of south Carolina
22 was developed. I, prior to that, was -- forensic
23 science relating to serology, which is identification
24 of blood and semen and developing like blood types out
25 of it. Then the DNA technology came along in about

JOHN BARRON DIRECT BY MR. STEADMAN

1 1999 and I became part of the first group of scientists
2 that were involved in developing the protocols and
3 techniques for doing DNA using the present technology
4 that is used throughout the United States and the
5 immediate world right now. In 2004, I came to Richland
6 County, myself and another individual, from SLED and
7 set up their DNA laboratory there.

8 Part of your training is taking what we call
9 proficiency test, which are samples that are unknown to
10 you that you test, send off the results and the results
11 then are compared to what the known answers are. And
12 we take proficiency tests twice a year to make sure
13 we're qualified to do DNA analysis. Of course, I've
14 done that.

15 Q. Have you ever been qualified as an expert in DNA and
16 serology testing?

17 A. Yes, I have.

18 Q. Approximately how many times?

19 A. Well, serology, several hundred, DNA about 65.

20 MR. STEADMAN: Your Honor, at this point in time,
21 the State would offer Mr. Barron as an expert in the fields
22 of DNA analysis as well as serology analysis.

23 MR. MILLS: No objection, Your Honor.

24 THE COURT: So admitted.

25 BY MR. STEADMAN::

JOHN BARRON DIRECT BY MR. STEADMAN

1 Q. Can you briefly describe what serology analysis
2 entails?

3 A. Yes. Serology is, basically, identification of a body
4 fluid, like blood in the case of a murder case -- or
5 semen in the case of sexual assault cases.

6 Q. Can you briefly describe what -- why don't we just
7 start with what is DNA?

8 A. Well, DNA is the molecule in the nuclear cells of your
9 nucleus of your -- every cell in your body that has one
10 and it defines you as to who you are.

11 First of all, as a human being, it's probably 98,
12 99% of that being a molecule tells us that we're going
13 to be human as opposed to plant or animal or some other
14 species. And then there's portions of that DNA
15 molecule that code for your characteristics, such as
16 hair color, eye color, your racial origin, how big
17 you're going to be, how tall you're going to be, et
18 cetera. And you can look around the room and see that
19 everybody's DNA is different unless you have an
20 identical twin. And everybody's DNA will be somewhat
21 different in those particular unique territories in the
22 DNA molecule.

23 While the DNA molecule was being mapped out by
24 scientists a number of years ago, there were portions
25 of it that weren't linked particularly to any

JOHN BARRON DIRECT BY MR. STEADMAN

1 particular traits or any -- linked to any type of
2 health issue or anything like that that could be used
3 for human identification. And forensic scientists then
4 have targeted that portion of the DNA molecule to use
5 for human identification. And that is what I am
6 involved in doing.

7 Q. Can you briefly describe for the jury the different
8 ways that someone leaves behind DNA?

9 A. Yes. Like I said, DNA is in every cell in your body
10 that has a nucleus. There are a few cells in your body
11 that don't, but the vast majority of them do. But in
12 your blood, for instance, you have red blood cells and
13 white blood cells. Well, your red blood cells don't
14 have a nucleus, so there's no DNA there. But you have
15 plenty of white blood cells, which do have a nucleus
16 and there's plenty of DNA there. So any time you
17 bleed, it doesn't take much at all, probably about the
18 dot of a pinpoint on a piece of paper will give you
19 enough blood to develop a DNA profile.

20 Then, of course, in the case of males, there would
21 be DNA in the sperm cell, so that's used to develop a
22 DNA profile in the case of sexual assault. And then in
23 other cells of your body that involve any of your
24 tissue. So like your hair roots where there's tissue
25 involved, or if you were to cut yourself and leave a

JOHN BARRON DIRECT BY MR. STEADMAN

1 piece of tissue behind, that would have DNA in it. If
2 you were to put your mouth on something, there's a lot
3 of cells from the inside of your mouth that will be
4 left behind. So DNA can be developed from things like
5 cigarette butts, drink cans or even a piece of food
6 that you partially eat. Anything that you put your
7 mouth on can be tested for DNA.

8 And then the technology has developed to such a
9 degree that we can pick up a few skin cells that you
10 may leave behind when you touch something or put
11 something on top of your head, like a ski mask or a hat
12 and you happen to leave it at a crime scene, then we
13 might be able to get a DNA profile from it. It doesn't
14 take but about six to 10 cells to get a DNA profile
15 these days, so, obviously, it isn't a whole lot.

16 So anything -- any cell that you leave behind, if
17 you leave enough of them, tissue, blood, semen, in the
18 case of females, your vaginal cells would have plenty
19 of DNA, any skin cell, any cells inside of your mouth,
20 hair roots, anything like that would have DNA. So,
21 obviously, the crime scene, especially if there was a
22 violent struggle, then there's likelihood that there
23 might be an exchange of DNA.

24 Q. Once you have those possible sources of DNA, how is a
25 profile extracted?

JOHN BARRON DIRECT BY MR. STEADMAN.

1 A. Well, the samples then -- the evidence is collected by
2 our crime scene personnel and brought to the
3 laboratory. Portions of the samples then are taken and
4 put into a test tube, a small test tube and the proper
5 reagents that would digest all the saline material and
6 all the debris that are present and leave the DNA would
7 be done. It doesn't take long, maybe a couple of
8 hours, but we usually do it overnight.

9 But once that digest and the DNA is freed up from
10 the nucleus of the cell, then it has to be purified.
11 And we have instruments -- type instruments that have a
12 way of stripping away all of the debris and everything
13 but the purified DNA and leave a little drop of water.
14 And from there, if we have DNA, sometimes we don't,
15 then we stop the analysis right there. But if we do,
16 we proceed to copy those portions of the DNA molecule
17 that I mentioned earlier that are specific for human
18 identification. And those -- those are copied and
19 because there's enough variability in that portion of
20 DNA molecule, then it can be uniquely associated with
21 an individual. Then that DNA profile that we develop
22 is compared to known individuals involved in the case
23 or any individual that might be in the database
24 somewhere where the DNA -- then it can be compared and
25 identified.

JOHN BARRON DIRECT BY MR. STEADMAN

1 Q. At what point in the investigation process do you
2 become involved in a case? Is this something that is
3 requested by an investigator?

4 A. Yes. The investigator who's got firsthand knowledge of
5 the case and the evidence would go over the evidence.
6 A lot of times, they will consult us and ask us what do
7 you think we can get DNA off of. But they know what's
8 important, what's probative, what's important to solve
9 the case. And those items, they focus in on them and
10 they fill out a request and send the items to me.

11 Q. And were you asked to do DNA testing in this case?

12 A. Yes.

13 Q. What items were tested in this case?

14 A. Well, there was a known sample of the victim, Neil
15 Green, and the alleged suspect, Calvert Myers, in this
16 case. Those are samples that we collect, like take
17 sterile swabs and swab the inside of their mouth,
18 leaves plenty of DNA that we can develop that
19 individual's known DNA profile. And that profile, as I
20 said earlier, is going to be same whether or not we
21 test their blood, whether we test tissue, whether we
22 test any part of their body is going to be the same.
23 So we just want a sample that we know is
24 noncontaminated and submitted to the laboratory. This
25 case, I was able to develop a profile from the two

JOHN BARRON DIRECT BY MR. STEADMAN

1 individuals, the victim, Neil Green, and the alleged
2 suspect, Calvert Myers.

3 Then in addition to that, we received samples from
4 a nine millimeter fired cartridge casings, swabs from a
5 Luger nine millimeter gun, a pair of black boots, a
6 pair of black pants with a belt and sweatshirt, a gray
7 tee shirt, a dark gray tee shirt, a light gray tee
8 shirt, some boxer shorts and some other fired cartridge
9 casings labeled number one, two and three. Now, those
10 numbers have to do with the crime scene people how they
11 label which of these cartridge casings were picked up
12 and what location, so they're associated with their
13 drawings of the crime scene, which I don't have -- to.

14 Q. Now, once you have these items in your possession, the
15 known DNA standards from Neil Green and Calvert Myers
16 and the clothing, what tests are performed on those
17 items?

18 A. Well, in this case, we were told to search for blood,
19 which in this case, it was obvious on several of these
20 items of clothing. Any type of red stain, that is
21 serologically tested to confirm that it is blood. Then
22 it is then a small portion, like I said, you don't need
23 very much, but a small portion is cut out and then
24 processed for the DNA profile.

25 Q. And did you confirm that there was blood?

JOHN BARRON DIRECT BY MR. STEADMAN

1 A. Oh, yes.

2 Q. And once you confirmed that there was blood, what kind
3 of testing did you perform?

4 A. As soon as we identify blood on any type of evidence,
5 then the next logical step is to do the process that I
6 mentioned earlier for developing a DNA profile.

7 Q. What conclusions were you able to reach with respect to
8 those items?

9 A. Well, there was some -- reach conclusion as to whose
10 blood was whose in those samples that we tested. And I
11 was able to identify all of the blood in this case.

12 Q. And on which items were you able to determine that
13 Calvert Myers's DNA was present?

14 A. Calvert Myers DNA was present on a pair of black pants
15 that had a belt, a sweatshirt, and a gray tee shirt and
16 a light -- well, there were two tee shirts, the light
17 gray and, let's see, I guess a different shade of gray
18 tee shirt. And that was it, I believe.

19 Q. Can you explain what a DNA mixture is?

20 A. A mixture is something we encounter quite often in the
21 laboratory. It's when two people's DNA is present on
22 the same item. In the case of an item with blood, you
23 might find the DNA of the bleeder and you might find
24 DNA of someone else in the background of the garment.
25 So DNA is left in skin cells, it might be left on a

JOHN BARRON DIRECT BY MR. STEADMAN:

1 garment if somebody touched it or wore it and the blood
2 might belong to someone else.

3 Q. Did you find a DNA mixture in this case?

4 A. Yes, I did. Some of the samples we cut out from the
5 black pans and the tee shirts that I mentioned were
6 mixtures. There was some other individual in the
7 background on those tee shirts. That DNA was
8 insufficient to positively identify -- so we were
9 recorded that as -- for matched purposes. In other
10 words, it's there, we know it's there, but we cannot
11 associate it with --

12 Q. And is there a such thing as a major and minor
13 contributor to a mixture?

14 A. Correct. In mixtures, we can determine whose DNA is
15 whose, particularly, if one of the contributors of the
16 DNA on the item is a majority, one who is contributing
17 the most, that would be the major contributor. A minor
18 contributor would be the individual in the background
19 that we can't identify.

20 Q. And were you able to reach a conclusion as to a major
21 contributor in this mixture?

22 A. Yes, the samples that we tested that were mixtures, the
23 major contributor also matched Calvert Myers.

24 Q. And were you able to reach a conclusion as to the minor
25 contributor?

JOHN BARRON CROSS BY MR. MILLS

1 A. No.

2 Q. All right. Were there any other items that were tested
3 that also matched the suspect, Calvert Myers?

4 A. Well, there were just so many cuttings from these
5 sweatshirt, pants and these gray tee shirts that they
6 all matched Calvert Myers --

7 Q. And what was that one?

8 A. That was a cutting of a separate stain. And what we
9 try to do in a case where there's a lot of bleeding, we
10 try to isolate what could be someone else's blood based
11 upon the pattern that's on the clothing. And if we
12 have a stain that's obviously separated and not mixed
13 with another one, we try to cut that separately. In
14 this case, there was a stain on the sweatshirt that
15 didn't belong to Calvert Myers, but, actually, belonged
16 to the victim, Neil Green.

17 Q. And on that same sweatshirt, there was also a stain
18 belonging to Calvert Myers?

19 A. Yes. The sweatshirt had stains that belonged to
20 Calvert Myers and one stain belonging to the victim.

21 MR. STEADMAN: Thank you. No further questions.

22 CROSS-EXAMINATION

23 BY MR. MILLS::

24 Q. Good afternoon, how are you?

25 A. Good afternoon.

JOHN CARWELL DIRECT MS. WALKER

1 Q. Just a few questions about this. So you had samples of
2 both known samples from Neil Green and Calvert Myers,
3 correct?

4 A. Correct.

5 Q. And you found on your findings of DNA of the black
6 pants, the sweatshirt, the gray tee shirt and the light
7 tee shirt all had Calvert Myers's DNA?

8 A. Yes.

9 Q. Now, could you determine where that DNA came from, what
10 sort of fluid or bodily tissue that came from?

11 A. It would have come from blood.

12 Q. Blood. So you had blood from Calvert Myers on black
13 pants, the sweatshirt, the gray tee shirt and the light
14 tee shirt, correct?

15 A. Correct.

16 Q. And on the mixture, you found both Calvert Myers -- I'm
17 sorry, one item, you found Calvert Myers and Neil
18 Green, I believe that was the --

19 A. Sweatshirt.

20 Q. The sweatshirt?

21 A. Correct.

22 Q. And all the other findings you had that were positive
23 for a match of DNA were from Calvin Myers?

24 A. Correct.

25 Q. And all that was blood?

JOHN CARWELL DIRECT MS. WALKER

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. Okay. And you found no match as far as the -- or no
5 DNA or no match, I was a little confused about your
6 answer on the fired cartridge casings one, two and
7 three?

8 A. Fired cartridge casing, that would be item -- in my
9 report 46, 47 and 48.

10 Q. Yes, 46, 37 and 48?

11 A. No DNA was extracted from those items, which is not
12 unusual for fired cartridge casings?

13 Q. Okay.

14 MR. MILLS: That's all the questions I have.

15 THE COURT: Anything further?

16 MR. STEADMAN: No, Your Honor.

17 THE COURT: All right. Thank you, sir.

18 Next witness.

19 MS. WALKER: The State calls Investigator Carwell
20 to the stand.

21 THEREUPON,

22 JOHN CARWELL,

23 after having been duly sworn, testified as follows:

24 THE CLERK: Thank you. Have a seat in the witness
25 stand, please. State your name for the record.

JOHN CARWELL DIRECT MS. WALKER

1 THE WITNESS: John Carwell, C-A-R-W-E-L-L.

2 DIRECT EXAMINATION

3 BY MS. WALKER::

4 Q. Is it Investigator Carwell?

5 A. Yes, it is.

6 Q. Sir, where are you currently employed?

7 A. Richland County Sheriff's Department.

8 Q. How long have you been at the sheriff's department?

9 A. This October will be 11 years.

10 Q. What do you do at the sheriff's department?

11 A. Currently, I'm assigned to the major crimes division.

12 On a daily basis, I work robberies. Every eight weeks,
13 I'm on call for a seven-day period to work as a primary
14 investigator if a homicide were to occur within that
15 seven days.

16 Q. And did you become the primary investigator in the case
17 involving this Defendant?

18 A. I did.

19 Q. Tell me how you became involved in this case?

20 A. It was early one morning, December 29th, I was called
21 by line units, stated that they responded to a shooting
22 and two people had been shot and on the way to the
23 hospital. It was at Toney's Lounge in Gaston, South
24 Carolina.

25 Q. And what did do once you received that phone call?

JOHN CARWELL DIRECT MS. WALKER

- 1 A. I responded to the scene.
- 2 Q. What's the address of that scene again?
- 3 A. [REDACTED] Congaree Road.
- 4 Q. And that's here in Richland County?
- 5 A. Yes, it is.
- 6 Q. And once you responded to that scene, can you please
- 7 tell the jury what, if anything, you observed?
- 8 A. When I got there, it was a light rain. I could observe
- 9 crime scene tape to the right side of the building if
- 10 you're looking from Congaree Road at the business.
- 11 There was crime scene tape around the right side of the
- 12 building, which was also the parking lot where this
- 13 took place. The lab was there processing. There were
- 14 several supervisors there that approached me and
- 15 advised me what they had at that point.
- 16 Q. At that point, what was your understanding of what had
- 17 occurred?
- 18 A. Well, at that point, I realized there was a female
- 19 involved, Sherry Myers. There was a victim. At the
- 20 time, the name was given Neil Cornelius Green, which
- 21 we've all heard at this trial. It's two different
- 22 names. It's Neil -- it's, actually, Cornelius Green
- 23 and the first name given was Neil. Then the suspect at
- 24 the time they provided me with Calvin Myers.
- 25 Q. Were either Mr. Green or the Defendant on the scene

JOHN CARWELL DIRECT MS. WALKER

1 once you arrived?

2 A. They were -- they were not there.

3 Q. Okay. I'm sorry, I didn't mean to interrupt you.

4 A. And, again, Calvin and Calvert are the same people as
5 you've through this trial.

6 Q. Okay. And upon learning that information, what was the
7 next step in your investigation?

8 A. I wanted to talk to anyone that was there that
9 witnessed anything. And my first person that I went to
10 was Sherry Myers. I asked her to come to my truck due
11 to the rain and get away from others that may have been
12 out there, just to get her -- she was kind of upset at
13 the time, too, and I just wanted to give her a place
14 that she could talk to me and provide me with as much
15 information as possible as to what she observed.

16 Q. And over the course of that conversation -- of course,
17 you can't tell me what she said, but were you able to
18 discern what, if any, relationship she had with the
19 Defendant in this case?

20 A. Yes.

21 Q. And the victim?

22 A. That's correct.

23 Q. Were there other witnesses on scene at that point in
24 time?

25 A. At that time, it was Sherry Myers and Toney Lowman, the

JOHN CARWELL DIRECT MS. WALKER

1 owner of Toney's Lounge, who I also spoke to that
2 night.

3 Q. And did they both give you written statements in this
4 case?

5 A. They did.

6 Q. At that point, did you know that Toney's Lounge was
7 equipped with video surveillance?

8 A. I did.

9 Q. And did you at that point know that the gun that was
10 used in this case had been recovered?

11 A. I did.

12 Q. And is it uncommon to recover a gun in a murder or do
13 you usually get the guns?

14 A. Most of the time, it is uncommon, but sometimes we do.

15 Q. And in this case, you were able to --

16 A. Yes.

17 Q. -- recover the firearm?

18 A. I was told that the responding deputies took custody of
19 the gun and was on the way to the hospital.

20 Q. And how many guns were involved in the incident that
21 happened at Toney's Lounge that night?

22 A. One.

23 Q. (Indicating).

24 A. That one.

25 Q. You said you spoke with both Sherry Myers and the owner

JOHN CARWELL DIRECT MS. WALKER

1 of Toney's Lounge that night?

2 A. That's correct.

3 Q. And that's Toney Lowman?

4 A. Yes.

5 Q. And at that point in time, did your conversations with
6 them aid you in figuring out who was the victim and who
7 was the suspect at that point?

8 A. Yes, it did.

9 Q. And the things that you learned that night, were you
10 later able to corroborate through the video footage?

11 A. Yeah, some, understanding it was a very chaotic
12 situation, but both provided statements where I could
13 go back in the video and match up everything. There
14 may be little inconsistencies, but the majority of both
15 statements matched to what the video shows.

16 Q. In what -- what else, if anything, did you do on the
17 scene that night?

18 A. I interviewed those two individuals, witnesses, spoke
19 with the lab. I asked Investigator Woods to go to the
20 hospital and collect the gun. I asked her to collect
21 the clothing that was taken, the GSR, the gunshot
22 residue on Mr. Calvert Myers. I, also, wanted her to
23 photograph him as well. And I would go back to my
24 office and start gathering information on the names
25 that I had.

JOHN CARWELL DIRECT MS. WALKER

1 Q. And were you able to get more information on both
2 Mr. Myers and Mr. Green?

3 A. I was. I was able to confirm their identity and who
4 they were.

5 Q. Did you get dates of births on both of those?

6 A. Yes, I did.

7 Q. And what's the date of birth for Mr. Calvert Myers?

8 A. Calvert Myers is [REDACTED] 1961, and Cornelius Green
9 is [REDACTED] 1975.

10 Q. At what point -- at that point, did you already have an
11 arrest warrant out for Mr. Myers?

12 A. That's the next step I did, I did the arrest warrant
13 and charging document and took it to the hospital as
14 well.

15 Q. What information did you rely upon in charging Calvert
16 Myers with murder in this case?

17 A. I used the statements of Sherry Myers, who was the
18 niece of Calvert Myers and the boyfriend [sic] of the
19 victim. I used Toney Lowman, who knew both parties,
20 provided a detailed statement. And I, also, used the
21 video because I watched the video that night at Toney's
22 Lounge.

23 Q. Is it rare for you to have as witnesses the friends and
24 family of the Defendant in your -- making --
25 determining whether or not to charge?

JOHN CARWELL DIRECT MS. WALKER

1 A. I'm sorry?

2 Q. Do you always have friends and family members giving
3 statements when determining whether or not to charge a
4 suspect with a crime?

5 A. Not regularly.

6 Q. Okay. Was that unique in this case?

7 A. Yes.

8 Q. And at any point after -- I guess, you got those
9 warrants, what was your next step?

10 A. I took them to the hospital. We started a hospital
11 rotation so deputies would be sitting with Calvert
12 Myers at all times.

13 Q. What's the purpose of having a hospital rotation?

14 A. To keep me informed as well if anything changes as far
15 as being discharged, moved in a room, his quality of
16 life, his injuries are going to be okay. Just to keep
17 me informed and to keep an eye on him so he can't leave
18 the hospital.

19 Q. Did you go to the hospital yourself and meet with
20 Mr. Myers?

21 A. I did that night, I did go to the hospital that night.

22 Q. Were you able to talk to him at that point?

23 A. I was not.

24 Q. Why not?

25 A. He was in the trauma bay room where they come in from

JOHN CARWELL DIRECT MS. WALKER

1 the ambulance. His injuries and the tubes, I just
2 wasn't able to talk to him.

3 Q. Did he have severe injuries at that point?

4 A. Yeah, he did.

5 Q. What was your next step, Investigator?

6 A. The next day was to try to find out if I could find
7 anybody else that witnessed this because nobody was
8 really hanging around waiting for me at Toney's Lounge
9 to talk to me.

10 Q. Is that uncommon?

11 A. That's not uncommon at all.

12 Q. And did you meet with Sherry Myers the next day as
13 well?

14 A. It was a couple of day, I believe. I met with Sherry
15 Myers again to go through the video so she could point
16 out people that I may need to interview and people that
17 I watched in the video and wanted to identify so I
18 could go out and talk to them.

19 Q. And when you were watching that video, were there
20 things that on video that were significant to you?

21 A. Very significant.

22 MS. WALKER: Your Honor, may the witness step
23 down?

24 THE COURT: Yes.

25 BY MS. WALKER::

JOHN CARWELL DIRECT MS. WALKER.

1 Q. Speak loud enough so the court reporter can hear you,
2 Investigator.

3 A. This is one o'clock in the morning and 30 seconds. You
4 can see this is Sherry Myers here. This is the victim,
5 Cornelius Green. They're having a fine time.
6 Everybody is fine at this point --

7 MR. MILLS: Your Honor, I would object to his
8 opinion about what's going on. It can speak for itself.
9 He's giving an opinion testimony.

10 THE COURT: All right.

11 What says the State?

12 MS. WALKER: Your Honor, I think he just -- I
13 asked him what parts were significant to him in terms of
14 making a charge in this case and he's saying at the point
15 before Calvert Myers interjects himself their evening, it
16 was significant to them that they were fine, having a good
17 time.

18 THE COURT: Yes, sir.

19 MR. MILLS: Your Honor, that's opinion. I mean, I
20 think the jury -- this is in evidence. They can look at it.
21 There's no need narrating an opinion as to what's going on.

22 THE COURT: Restate the question to the witness
23 and let me hear it.

24 And answer if there's no objection.

25

JOHN CARWELL DIRECT MS. WALKER

1 BY MS. WALKER::

2 Q. Were the interactions at this point on the video
3 between and among the people in Toney's Lounge
4 significant to you?

5 A. Yes.

6 Q. Why were they significant to you?

7 A. This describes Sherry Myers wanting to go to Toney's
8 Lounge to have a couple of drinks with her boyfriend
9 and they were at the bar.

10 Q. And their demeanor was significant to you?

11 A. Yes, it was fine. Everything was calm at this time.

12 MR. MILLS: Your Honor, that's the same. I
13 objected. Same objection, Your Honor. It, also, would be
14 hearsay as far as what other people -- what people said at
15 the --

16 THE COURT: Overrule the objection.

17 MR. MILLS: Thank you.

18 THE WITNESS: This is the first time you see Toney
19 Lowman -- walking to the front door. And you see six
20 minutes later, things have changed. At this time, Toney
21 Lowman, the owner, comes in. This is him right here
22 (indicating). Two minutes later, 1:08, is the first time
23 Calvert Myers comes into the screen. You can see Calvert
24 Myers, obviously, watching Sherry.

25 BY MS. WALKER::

JOHN CARWELL DIRECT MS. WALKER

1 Q. And at that point in your observation of this video,
2 Sherry moves from that seat?

3 A. She has not. 1:10, this is James Myers you heard
4 testify earlier. It stays like this until 1:10:45.
5 1:10, you see Calvert Myers approaching Sherry. He's
6 obviously saying something.

7 Q. And when you're watching this video or determining if
8 you're going to charge someone with a crime and what
9 you would charge them with if you do decide to charge,
10 does who approaches -- which party approaches the other
11 party matter to you?

12 A. Yes.

13 Q. Why does that matter to you?

14 A. I want to find the aggressor.

15 Q. -- away (indicating).

16 A. Right.

17 Q. You can't tell me what she said, but were you able to
18 learn from Sherry if something was said that provoked
19 her by her uncle?

20 A. Yes. At 1:12:31, Toney Lowman steps in to try to
21 separate the two.

22 Q. As you observed this video, were you able to determine
23 how many people tried to deescalate the situation?

24 A. I was.

25 Q. And how many times Mr. Myers was taken out?

JOHN CARWELL DIRECT MS. WALKER

- 1 A. I was.
- 2 Q. And where is the victim?
- 3 A. Still sitting here. That's when Toney takes him out
4 and Mr. Myers is sitting there, James Myers?
- 5 Q. That's when she hits him.
- 6 A. You see the victim come onto the scene to try to calm
7 Sherry Myers down.
- 8 Q. From that point on, the victim --
- 9 A. This is James Myers and Toney Lowman.
- 10 Q. Was it significant to you that Cornelius Green never
11 engaged at that point?
- 12 A. Very significant. So he's out. Go to 1:16. He's been
13 outside this whole time. Calvert Myers reenters with
14 Toney Lowman. This is Toney Lowman buying a drink.
- 15 Q. Where does Calvert go?
- 16 A. Right next to Sherry.
- 17 Q. Has she acknowledged him at this point?
- 18 A. She has not. He's taken back out by Toney Lowman.
- 19 Q. And that's the victim still seated there. Has he moved
20 yet?
- 21 A. The victim is still seated at the same --
- 22 Q. All right.
- 23 A. Go to 1:20. And this is -- you'll see Calvert Myers
24 comes in with a tall gentleman, stays close to him.
25 You see Toney Lowman just walked by. And this is

JOHN CARWELL DIRECT MS. WALKER

1 Calvert Myers again sneaking in.

2 Q. Were you able to identify who the tall gentleman was
3 that helped him get in?

4 A. I have not.

5 Go to 1:27. There's Toney Lowman again. Calvert
6 just walked back up from the back of the bar and has
7 again gone to the bar counter. So this is the victim
8 again speaking to Marvin Moore. This is when Toney
9 Lowman comes in and tells his to call 911.

10 MR. MILLS: Objection, Your Honor.

11 THE COURT: Objection sustained.

12 BY MS. WALKER::

13 Q. At this point here where the victim walks out and the
14 Defendant throws his jacket down and follows him, is
15 that significant to you?

16 A. It was. They're both standing outside --

17 Q. Can you pause this really quick.

18 Okay. There are four -- here, can you tell us
19 which areas of the club we're looking at at this point?

20 A. This is the front of the store looking out -- or the
21 business looking out Congaree Road. That's Calvert
22 Myers parked right in the front door underneath this
23 overhang. This is the side (indicating) that nobody's
24 on.

25 This is the right side of the building

JOHN CARWELL DIRECT MS. WALKER

1 (indicating). This is where the crime scene is going
2 to be (indicating). The tape is going to be put up
3 when I arrive. And this is the inside of Toney's
4 Lounge.

5 Q. Now, are there blind spots at this location where the
6 cameras don't pick up what's going on?

7 A. Yes. It's going to be underneath this overhang at the
8 front porch area. At 1:29, that's Sherry Myers coming
9 from the back of Toney's Lounge again. She going to
10 leave at the front door. And you see movement here
11 (indicating).

12 This is probably the most important part of the
13 video to me.

14 Q. When you were making your determination about the
15 appropriate charges?

16 A. Yes. This is the argument (indicating).

17 Q. So we're looking at -- for the record purposes, we're
18 looking at camera one of the video cameras at Toney's
19 Lounge. This is the area that you were focused on at
20 that point?

21 A. Yeah, this is the area (indicating). This is Calvert
22 Myers right here. He leans on the back of that car.
23 This is Mr. Green, the victim, as he's walking to his
24 car, right here (indicating), between these two cars
25 right here. Calvert Myers is still here leaning up

JOHN CARWELL DIRECT MS. WALKER

1 against this car (indicating).

2 Q. This is the victim?

3 A. The victim comes to hide behind here, Calvert Myers is
4 right here (indicating). He goes in between that
5 truck, that's Toney Lowman's truck. Cornelius Green is
6 hiding behind this Explore here.

7 MR. MILLS: Your Honor, I object to the
8 characterization. He can explain what's going on, but not
9 --

10 THE COURT: The objection is sustained.

11 MS. WALKER: Is it sustained to the word hiding,
12 Your Honor?

13 MR. MILLS: Yeah, he can say who it is, but not
14 what they're doing and what their mental state is.

15 BY MS. WALKER::

16 Q. Couching on the side, who are you referring to?

17 A. The victim.

18 Q. Okay. Go ahead.

19 A. The victim is walking back to his vehicle. Calvert is
20 coming in between these two cars. He's going to come
21 back up here and you're going to see him kneeling down.

22 Q. And is that part significant to you?

23 A. Yes, it is. It's my understanding that's when Calvert
24 was going for his gun.

25 MR. MILLS: Objection to hearsay, Your Honor.

JOHN CARWELL DIRECT MS. WALKER

1 MS. WALKER: Hold on to answer.

2 THE COURT: Would you restate the question,
3 please?

4 MS. WALKER: I asked him if the part of the video
5 when he's doing his investigation in determining who to
6 charge and what to charge if that part of the video was
7 significant to him. He said yes, because he understood at
8 that point in time that's when the Defendant was going for
9 his gun and it's on the video.

10 MR. MILLS: It was based on a hearsay statement,
11 Your Honor. It wasn't really responsive to the question,
12 but it was, actually, based on hearsay.

13 THE COURT: It wasn't responsive to the question.
14 You can answer the question.

15 BY MS. WALKER::

16 Q. Once you saw -- use the word crouching, the Defendant
17 crouching behind the vehicle and doing this motion, was
18 that significant to you?

19 MR. MILLS: Objection, Your Honor, that has not
20 been testified to, what she just --

21 THE COURT: The objection is sustained.

22 MR. MILLS: Thank you, Your Honor. Your Honor, I
23 may have a motion at this time, Your Honor.

24 THE COURT: All right.

25 Ladies and gentlemen, I'm going to have you go to

JOHN CARWELL DIRECT MS. WALKER

1 the jury room for a moment.

2 (Whereupon, the jury left the courtroom
3 at 4:20 p.m.)

4 THE COURT: Yes, sir.

5 MR. MILLS: Your Honor, there's been no testimony
6 about anybody doing like this and pointing (indicating). I
7 think the characterization by the solicitor of that is a --
8 is a comment that is, basically, leading the witness and,
9 also, commenting on what could be seen on the video.
10 There's been no testimony of that.

11 THE COURT: Well, you objected and I sustained it.

12 MR. MILLS: And I would move for a mistrial. It
13 is prejudicial for her to be showing actions that are --
14 that would be up to the jury to determine whether that's
15 occurred. There's been no testimony to that effect at this
16 point.

17 THE COURT: All right.

18 Ms. Walker, you want to respond to his motion?

19 MS. WALKER: Your Honor, at this point,
20 eliciting -- the previous answer was yes, that's when he was
21 going for his gun. And he said he objected at that point.
22 I try to rephrase the question. As opposed to saying going
23 for his gun, on the video, he's down crouching and he makes
24 a movement down and a movement up. At that point, I think
25 it's appropriate, Your Honor, to ask him over the course of

JOHN CARWELL DIRECT MS. WALKER

1 his investigation what parts are significant to him and what
2 parts helps him in determining what to charge and who to
3 charge. I don't think it's anywhere close to being a
4 mistrial. There's no -- I mean, I -- it's on the video. I
5 can't help if that's prejudicial to his client. But I think
6 if I ask him a question about what was significant in terms
7 of the lead investigator's charging in this case is
8 appropriate.

9 THE COURT: What's the -- what's the time mark on
10 the video that you're referring to at this point?

11 MS. WALKER: Your Honor, we are at 1:32:44. It's
12 camera one.

13 THE COURT: You gave me a copy of camera three, so
14 I guess I'm not looking at it.

15 MS. WALKER: I'm sorry, Your Honor, I thought you
16 had the whole thing. And he's saying, Your Honor, what he
17 saw on the video that was significant to him in determining
18 what, if anything, to charge. Your Honor, this is the
19 video, which is State's Exhibit No --

20 THE COURT: You're showing the jury which I cannot
21 see and asking me to rule on an objection based on evidence
22 that I have nothing to rule on without seeing what's being
23 presented.

24 MS. WALKER: Your Honor, the witness was
25 describing -- this is the Defendant. The witness was

JOHN CARWELL DIRECT MS. WALKER

1 describing him walking around. He leans on the car at this
2 point in time. And, Your Honor, it's going to cut to a
3 different camera angle. And he's still leaning on the car.
4 It cuts to this camera angle. And he's saying this is all
5 significant to him because he has a situation in which he's
6 determining what to charge and who to charge. He has the
7 victim here, I guess, crouching behind the vehicle at this
8 point figuring out which way the Defendant is going. And
9 the Defendant comes up around here, goes back behind the car
10 at this point, which he was leaning. Toney Lowman testified
11 he saw him go out and get the gun. He goes down and does
12 that and comes back up, Your Honor. That is what the --

13 THE COURT: Where?

14 MS. WALKER: On camera one, Your Honor.

15 Go back.

16 This individual right here, Judge, (indicating)
17 they're watching him. He's already come around the corner
18 one time. There he is, Your Honor. And the witness is --

19 THE COURT: Where I see people?

20 MS. WALKER: That's him right there leaning on the
21 car.

22 THE COURT: So the jacket is back on at this
23 point?

24 MS. WALKER: Right.

25 THE COURT: He had the jacket off when he left out

JOHN CARWELL DIRECT MS. WALKER

1 of the club, did he put it back on?

2 MR. MILLS: It's a different color jacket, I'm not
3 sure if that's the same person, Your Honor.

4 MS. WALKER: Well, you see the gun come out and
5 then he goes back around.

6 MR. MILLS: I can't tell. That's why I objected
7 to this action like this by the solicitor.

8 MS. WALKER: And if you would like to ask
9 questions and go to the weight of the evidence and argue
10 that that's a different person, an unknown gunman who was
11 out there that night, then he's --

12 MR. MILLS: I was --

13 MS. WALKER: He's free to do that.

14 THE COURT: But whatever you said the Defendant
15 did in your question, I cannot see him doing that. I don't
16 see where he did that from my vantage point here on that
17 video.

18 MS. WALKER: Do you --

19 THE COURT: And if there's some uncertainty, it's
20 not clearly demonstrated, then it's an improper question.
21 Improper in the sense that you would be testifying about the
22 witness, number one. And as relates to the witness's
23 ability to say what occurred, it has to be clearly
24 demonstrated on the video.

25 MR. MILLS: That's right. And my argument is that

JOHN CARWELL DIRECT MS. WALKER

1 the solicitor's demonstration was improper and prejudice and
2 has prejudiced the jury at this point as to what happened
3 because, obviously, it's not that clear and she's putting --
4 she has put in an argument, potentially, that I think is
5 prejudicial at this point --

6 THE COURT: Well, it's going to be argued to the
7 jury anyway. At this point, it's just a question.

8 MR. MILLS: That's correct.

9 THE COURT: And that's her inference from the
10 evidence. That's something she can argue to the jury during
11 closing.

12 MR. MILLS: That's --

13 THE COURT: But it cannot be included in the
14 questioning.

15 MR. MILLS: That's correct.

16 THE COURT: I have sustained the objection and I
17 think that's sufficient. I deny the motion for a mistrial.

18 MR. MILLS: Thank you, Your Honor.

19 MS. WALKER: Thank you, Your Honor.

20 THE COURT: All right. And we'll take about two
21 or three minutes.

22 MR. MILLS: Yes, sir.

23 MS. WALKER: Yes, sir.

24 THE COURT: Then we'll press on.

25 (Whereupon, a short recess was held.)

JOHN CARWELL DIRECT MS. WALKER

1 THE COURT: All right. Anybody else before the
2 jury comes back?

3 MS. WALKER: Nothing from the State.

4 MR. MILLS: None from the Defense, Your Honor.

5 MS. WALKER: Can I hand you a copy of the video to
6 be marked as a Court's Exhibit?

7 THE COURT: Yes, ma'am.

8 MS. WALKER: You should have all four camera
9 angles on it.

10 THE COURT: Let's bring in the jury.

11 (Whereupon, the jury returned to the
12 courtroom at 4:40 p.m.)

13 BAILIFF: The jury is present, Your Honor.

14 THE COURT: All right. Thank you. The objection
15 is sustained. The jury is to disregard the last question.
16 Ladies and gentlemen, questions asked by counsel --
17 questions are not evidence. You are not to consider any
18 questions asked as being evidence.

19 You may proceed.

20 MS. WALKER: Thank you, Your Honor.

21 BY MS. WALKER::

22 Q. Investigator, don't describe for me what's going on,
23 but were the movements of different parties relevant to
24 you?

25 A. Yes, they were very relevant.

JOHN CARWELL DIRECT MS. WALKER

1 Q. And you took that into consideration when determining
2 what to charge?

3 A. I did.

4 Q. Okay.

5 A. This is the front of Calvert Myers. Calvert there.
6 That's the victim on top of Calvert. You see him
7 punching him.

8 Q. And don't say what was told to you, but at the point in
9 which you were determining whether or not to charge,
10 did you know whether or not those punches happened
11 before or after the shooting?

12 A. After.

13 Q. And was that important in determining what to charge
14 and who to charge in this case?

15 A. Very important.

16 Q. Are there more parts to the video?

17 A. That should have been it.

18 Q. You can return to the witness stand.

19 A. (Witness complies.)

20 Q. I want to turn your attention to December -- or, I
21 guess, December 31st as investigation was processing.
22 Did you -- what did you do then?

23 A. I got a call from a Charles Howard stating that he had
24 additional information and his sister was, actually,
25 the common law wife of the victim --

JOHN CARWELL DIRECT MS. WALKER

1 MR. MILLS: Your Honor, I'm going to object to
2 hearsay.

3 THE COURT: The objection is sustained.

4 BY MS. WALKER::

5 Q. Don't tell me what he said, but you got a call from a
6 Charles Howard?

7 A. I was provided with a name and phone number.

8 Q. And did you follow up with information?

9 A. I did.

10 Q. Turning your attention to January 3rd, did you have a
11 series of meetings that day?

12 A. I did.

13 Q. And you can't tell me what was said, but tell me who
14 you met with that day in regards to this case?

15 A. I met with the victim's common law wife and his family.
16 I met with James Myers. I met with Marvin Moore that
17 day.

18 Q. And James Myers, what relationship did he have to the
19 Defendant?

20 A. The nephew.

21 Q. James Myers is his nephew?

22 A. Yes.

23 Q. Did you get information from him that was significant
24 to you?

25 A. I did.

JOHN CARWELL DIRECT MS. WALKER

1 Q. And continuing on that same day, on January 3rd, who
2 else did you meet with?

3 A. Marvin Moore.

4 Q. You can't tell me what he said, but did he also provide
5 additional information?

6 A. Yes, I did.

7 Q. Is it -- is it uncommon when you're investigating a
8 case to have witness testimony that contradicts one
9 another?

10 A. Yes.

11 MR. MILLS: Your Honor, this is leading testimony.
12 It's not relevant, also, Your Honor. I object.

13 THE COURT: Your objection is based on relevance.
14 Your question again?

15 MS. WALKER: Your Honor, my question was whether
16 or not it's uncommon in his role as an investigator to have
17 contradicting information over the course of an
18 investigation.

19 THE COURT: I sustain the objection.

20 BY MS. WALKER::

21 Q. Who else did you meet with that day?

22 A. Marvin Moore.

23 Q. Okay. And at some point, were you able to, in fact,
24 meet with the Defendant in this case?

25 A. I did, on January 8th.

JOHN CARWELL DIRECT MS. WALKER

1 Q. Go ahead.

2 A. On January 8th.

3 Q. And where was he when you first made contact with him?

4 A. He was being released from Richland Memorial Hospital.

5 Q. And how did you come to learn that he was going to be
6 released that day?

7 A. The deputy, again, that was sitting on him providing
8 security contacted me and said he was ready to be
9 released from the hospital.

10 Q. And what did you do once you learned he was going to be
11 released?

12 A. I went straight to the hospital. I was told him that
13 he wanted to speak to me and I wanted to speak to him
14 as well.

15 Q. And when you first got to the hospital, what did you
16 do?

17 A. I went to his room. I spoke to the deputy that was in
18 there. Basically, gathered his belongings, made sure I
19 had the discharge paperwork so I could get him into the
20 jail showing that he had just been released from the
21 hospital and everything was okay and come to the jail.

22 Q. And did he drive himself away from the hospital at that
23 point?

24 A. No, I had my truck pulled to the front door and he rode
25 in my truck with me to my office back at headquarters

JOHN CARWELL DIRECT MS. WALKER

1 on Two Notch Road.

2 Q. Once he got out to the truck, what was the first thing
3 that you did?

4 A. Advised him of his rights.

5 Q. Would you have advised him orally or in written form?

6 A. In written form. I had a form in my truck.

7 Q. I want to show you what's been marked as State's
8 Exhibit No. 1 and ask you if you recognize this?

9 A. I do.

10 Q. And how do you recognize that?

11 A. It's a Richland County Sheriff's Department
12 interrogation advice of rights form.

13 MS. WALKER: Your Honor, at this point, the State
14 seeks to move Exhibit No. 1 into evidence.

15 THE COURT: Any objection?

16 MR. MILLS: Previous objection, Your Honor.

17 THE COURT: All right. Admitted over objection.

18 (State's Exhibit No. 1 was admitted into
19 evidence.)

20 BY MS. WALKER::

21 Q. Can you please read that advice of rights form that you
22 read to Calvert Myers to the jury?

23 A. I can. The top part has his name on it, Calvert Myers.
24 The place was Richland Memorial Hospital. The officer
25 was my name, Investigator Carwell. The date and time.

JOHN CARWELL DIRECT MS. WALKER

1 The date was January 8th, 2013. The time was 1739,
2 which is 5:39 p.m. The first part is your rights.
3 Each line I read before we ask you any questions, you
4 must understand your rights. Then I would ask
5 Mr. Myers if he understood. And after each line, I
6 would check the box beside each line. I would go to
7 the second line, you have a right remain silent. Make
8 sure he understood that as well. I would check the
9 box.

10 The third line, anything you say can be used
11 against you in court. I checked that box once he said
12 he understood. You have the right to talk to a lawyer
13 for advice before we ask you any questions and have the
14 lawyer with during any questioning. Again, I made sure
15 he understood and I checked the box beside that
16 sentence as well. If you cannot afford a lawyer, one
17 will be appointed for you before any questions if you
18 wish. Again, I made sure he understood that and
19 checked the box.

20 Next line is if you decide to answer questions now
21 without a lawyer present, you still have the right to
22 stop answering at any time until you talk to a lawyer.
23 Made sure he understood that and checked the box. He
24 signed that stating that he understood those lines.

25 I go down to the waiver of rights. I read the

JOHN CARWELL DIRECT MS. WALKER . .

1 statement of my rights. I understand what my rights
2 are. I am willing to talk and answer questions. I
3 understand and no what I am doing. No promises have
4 been made to me, no pressure or coercion of any kind
5 has been used against me. Again, he stated that he
6 understood that. I checked the box and he signed that
7 as well.

8 Q. And while you were going over this advice of rights
9 with the Defendant, did he appear to understand what
10 you were saying?

11 A. He did.

12 Q. Did he appear coherent?

13 A. Very much.

14 Q. When you were advising him of his advice of rights, if
15 he had chosen not to speak to you, would you have
16 stopped the interview?

17 A. Yes.

18 Q. Did you pressure him to speak with you?

19 A. I did not.

20 Q. Did you coerce him into speaking with you?

21 A. I did not.

22 Q. Did you make any promises to get him to speak with you?

23 A. I did not.

24 Q. Did you threaten him in any way?

25 A. I did not.

JOHN CARWELL DIRECT MS. WALKER

1 Q. And did y'all have a conversation about what happened
2 at Toney's Lounge?

3 A. Yeah. It didn't start off that way. We kind of just
4 started a conversation, what he did as far as work and
5 what he did for a living.

6 Q. And did you learn what he did for a living?

7 A. Yeah.

8 Q. What was that?

9 A. He told me he cooked and sold food around town out of
10 his van. He went to different job sites and would sell
11 food out of his van.

12 Q. And where were y'all when y'all were having this
13 portion of the conversation?

14 A. In my truck from the time we left Richland Memorial
15 Hospital to Two Notch Road, 5623, which is
16 headquarters.

17 Q. About how far of a drive was that?

18 A. If you take, I guess, it's Bull Street, 277 right there
19 and you get off on Pontine Road, our office is right
20 there, so it's five to seven minutes.

21 Q. Once y'all got to headquarters on Two Notch Road, what
22 did y'all do?

23 A. We went to my office, which is a cubicle in the
24 investigations division on the second floor.

25 Q. And did y'all continue the conversation there?

JOHN CARWELL DIRECT MS. WALKER

1 A. We did, at my desk.

2 Q. Tell me how that interview and process worked?

3 A. I had my desk set up with a computer and, obviously, a
4 printer. There's a chair that is to the left of my
5 desk where the person being interviewed sits. And we
6 talked back and forth there face to face.

7 Q. And is that conversation reduced to writing?

8 A. It is.

9 Q. And who was -- I guess, typing, actually?

10 A. Correct.

11 Q. Who was doing the typing at that point?

12 A. I'm typing the statement.

13 Q. And what are you typing?

14 A. His words -- whoever's being interviewed's words. In
15 this case, Mr. Myers.

16 Q. I want to show you what's been marked as State's
17 Exhibit 2A and ask you if you recognize this?

18 A. I do.

19 Q. And what is that?

20 A. It's the statement of Calvert Myers that I typed.

21 MS. WALKER: At this point, Your Honor, the State
22 seeks to move Exhibit 2A into evidence.

23 MR. MILLS: Previous objection.

24 THE COURT: Which exhibit?

25 MS. WALKER: 2A, the statement.

JOHN CARWELL DIRECT MS. WALKER

1 THE COURT: It's admitted over objection.

2 (State's Exhibit No. 2A was admitted
3 into evidence.)

4 BY MS. WALKER::

5 Q. Can you publish this statement to the jury, please?

6 A. Yes, I can. This is a statement form from Richland
7 County. Again, it shows Calvert Myers's address, where
8 he's from, his date of birth. Again, it shows the
9 advice of rights. Then I start with questions and my
10 name, Investigator Carwell, answers, Calvert Myers.

11 Q. What are the advice of rights that he was given at that
12 point?

13 A. Again, I, Calvert Myers, understand that I have the
14 right to remain silent. Anything I say can be used
15 against can be used against me in court. I have the
16 right to talk to a lawyer for advice before we ask you
17 any questions and have a lawyer with you during any
18 questions. If you cannot afford a lawyer, one would be
19 appointed for you before any questions if you wish. If
20 I decide to answer questions now without a lawyer
21 present, I still have the right to stop answering at
22 any time. I, also, have the right to stop answering
23 until I talk to a lawyer. Then questions and answers,
24 I put my name and, obviously, the answers are coming
25 from Calvert Myers.

JOHN CARWELL DIRECT MS. WALKER

1 My first question to him, Did you understand the
2 rights that I read to you at the hospital?

3 And he commented, he answered, Yes, sir.

4 The second question, What can you tell me about a
5 shooting incident that occurred at Toney's Lounge on
6 December 29th, 2012?

7 I can tell you how my day went that day. My day
8 started at 5:30 in the morning. Me and my wife got up.
9 At that time, I put the pots of water on to get them
10 hot. The other one, I'm frying bacon in. I go out,
11 light the charcoals in the grill. While my grill is
12 heating up, I go back inside and put my beans in a pot.
13 I then seasoned my chicken and pulled out my fish. I
14 go back and put my meat on the grill. I'm, basically,
15 cooking the meat on the grill and my wife and daughter
16 are helping me inside the house. That was Friday, so I
17 was doing barbecue, hash and rice. The hash was
18 already made, so I just have to heat it up. I made
19 sure my van was set up with everything I needed for
20 that day. About 9:30 to 10:00 a.m., I loaded the food
21 in the van and that's when I go make my rounds.

22 At the end of the afternoon, I get back to
23 Garner's Ferry Road and that's when I go to Schneider
24 Electric and I'm there until 8:00 at night. It's
25 Friday, so the ladies at Citgo on Garner's Ferry are

JOHN CARWELL DIRECT MS. WALKER

1 waiting on their food. So that's about the time my
2 buddy, I have him in my cell phone as Cornball, and I
3 had a drank at Citgo. He had a mini bottle in his
4 trunk. I know it was gin. He had one for me and one
5 for him. My nephew, James Myers, was with me, too, at
6 the Citgo. I cannot recall if I stopped at the Food
7 Lion or not on Friday.

8 On my way home, for some reason, I stopped at
9 Toney's with my nephew, James. And that's when it goes
10 blank.

11 The next question, Do you recall where you parked
12 your white van?

13 Calvert's answer was, No, all I remember is that I
14 parked in the parking lot.

15 The next question was, Do you recall if you were
16 intoxicated at this point?

17 No, I could not be intoxicated after working like
18 that. I do not drink during the day when I'm working.

19 The next question was, Do you remember having a
20 conversation with Sherry Myers?

21 No, not until you showed me that we had one.

22 Next question was, Can you explain to me the
23 relationship you and Sherry Myers had?

24 She is my niece. She is my brother's daughter's
25 daughter, so that makes her my great niece. It's on

JOHN CARWELL DIRECT MS. WALKER

1 and off again. One day, she's nice and one day she may
2 not speak. We may go a couple weeks without talking.

3 I asked him, Why is there a strain on your
4 relationship with Sherry Myers?

5 And Mr. Calvert Myers said, I have to be mad at a
6 family member for there to be a strain. I'm not mad at
7 her. It's her. You never know what mood she's going
8 to be in.

9 Page three. Can you tell me about --

10 MR. MILLS: Your Honor --

11 MS. WALKER: Hold on one second. He's -- I don't
12 know what he's doing.

13 MR. MILLS: No objection.

14 BY MS. WALKER::

15 Q. You can continue. You were at the top of page three.

16 A. Okay. Can you tell me about any statements that Sherry
17 Myers may have written against you in a separate case?

18 She made a statement in court. You told me about
19 the case. It's the one with James Goodwin. I can tell
20 you one thing, we aren't still arguing about that.
21 That has been over a year ago.

22 How do you know Cornelius Lamont Green?

23 My brother is married to Cornelius's aunt. I've
24 known him since he was a little boy. Me and Cornelius
25 don't have problems.

JOHN CARWELL DIRECT MS. WALKER

1 Have you ever had any problems with Cornelius
2 Green?

3 No, sir, I've never had any problems with
4 Cornelius Green. I told you that's what makes it so
5 hard. I just had a drink with him around Thanksgiving
6 in front of my niece's house before I went to Florence.

7 My next question was, Do you recall having to be
8 taken out the club by Toney?

9 No, I don't remember going to Toney's or coming
10 out of Toney's. I do remember going to the parking
11 lot.

12 My next question was, Where did you get the nine
13 millimeter that you had on you?

14 My wife bought me a house gun. So many people
15 getting robbed around the holidays, so I put it in my
16 car. I just leave it in the car because so many people
17 see me taking money for the food.

18 Do you recall getting the gun out of your van at
19 Toney's or did you have it on your person?

20 I do not recall how I got the gun on me.
21 Normally, it's in my car -- or in the car.

22 Who's name is the gun in?

23 My wife, Lorraine Myers.

24 Do you recall what kind of gun you had?

25 It's a Highpoint nine millimeter.

JOHN CARWELL DIRECT MS. WALKER

1 Do you have any paperwork on the handgun?

2 Yeah, she has it at the house.

3 Do you recall shooting the handgun in the parking
4 lot?

5 No, sir.

6 Do you recall getting assaulted at any point?

7 No, sir.

8 After showing you the video, do you recall
9 anything you were doing in the video?

10 It shows me arguing with somebody. Who knows if
11 it is from that night. I have been to Toney's so many
12 times.

13 What's the last thing you recall from that day?

14 I told you the last thing I remember is coming to
15 Toney's Lounge. I don't even remember where I parked
16 my car, but I know I stopped.

17 Were you taking any kind of medication before this
18 incident occurred?

19 I don't remember taking medication that day. I am
20 prescribed pain medication, but I do not remember
21 having pain that day. I just remember my nephew,
22 James, being with me that day and he wouldn't have put
23 anything in my drink.

24 Tell me what injuries you received?

25 Yes, right now I have an opened-face crown knocked

JOHN CARWELL DIRECT MS. WALKER

1 out, a pearl knocked out, two more teeth besides them
2 and at the bottom, I have two teeth knocked out. I
3 received a fractured jaw, fractured skull all the way
4 around. My mouth was tied up with wires for a week.
5 They had to cut a trachea in my throat. I got a bullet
6 hole in my right foot. There aren't any visible scars,
7 just sore all over. Somebody did their job and I don't
8 think it was a dead man.

9 Do you remember who assaulted you? I asked him
10 that again.

11 He said, No, sir, I don't.

12 Can you tell me about any incident that may have
13 occurred prior to this that may have caused this
14 incident?

15 There isn't anything going on. That's just it,
16 there isn't anything.

17 Do you recall anything else having -- do you
18 recall anyone else having a gun at Toney's Lounge other
19 than yours?

20 I didn't even recall my gun.

21 Is there a possibility that you did shoot
22 Cornelius Green?

23 What reason would I have to shoot him? I have
24 known this kid all my life. I don't just -- I just
25 don't know.

JOHN CARWELL DIRECT MS. WALKER

1 Would you like to add anything to your statement?

2 No, not at this time. I'm not through cooperating
3 with you.

4 Is this statement the truth to your knowledge?

5 To the best that I know, he responded.

6 And each page, he signed twice stating that was
7 his statement. He was able to read it as well.

8 Q. And after taking this statement -- after taking this
9 statement from the Defendant, did you guys continue to
10 discuss this case orally?

11 A. Yes, we did.

12 Q. And what, if anything, did he say to you at that point?

13 A. Calvert Myers said verbally, I know my nephew would
14 never lie on me.

15 Q. What nephew was he referring to?

16 A. James Myers.

17 Q. And at that point, did you make an additional request
18 from the Defendant in this case?

19 A. I'm sorry?

20 Q. Did you make an additional request from the Defendant
21 in this case?

22 A. Yes. I asked for his consent for a DNA sample, which
23 he consented and signed the forms as well and signed.

24 Q. And did you collect that sample?

25 A. I did.

JOHN CARWELL DIRECT MS. WALKER

1 Q. I want to show you what's been marked as State's
2 Exhibit No. 60 and ask you if you recognize that?

3 A. I do.

4 Q. And how do you recognize this?

5 A. It's a buccal swab that I took from Calvert Myers and I
6 placed it in that bag and turned it into evidence.

7 MS. WALKER: Your Honor, at this point, the State
8 seeks to move Exhibit 60 into evidence.

9 MR. MILLS: No objection.

10 THE COURT: It's admitted.

11 (State's Exhibit No. 60 was admitted
12 into evidence.)

13 BY MS. WALKER::

14 Q. And tell me what your next step in the investigation
15 was?

16 A. I just wanted to make sure the forensic requests were
17 completed as far as pictures from autopsies and the
18 crime scene were downloaded to CD's, attached it to the
19 file. I, also, wanted to find out more on the
20 Highpoint that was collected from the scene and see if
21 there was any truth in who it belonged to. I did do a
22 firearm's trace through Investigator Rast, who was the
23 liaison between the sheriff's department and -- and it
24 did come back registered to Lorraine Myers. I, also,
25 would get the coroner's report, the final report from

JOHN CARWELL CROSS BY MR. MILLS

1 the coroner's office and SLED for toxicology reports.

2 Q. And did that conclude your investigation in this case
3 at that point?

4 A. Yes, it did.

5 Q. And what was the Defendant charged with in this case?

6 A. He was charged with murder.

7 Q. The person that you spoke to who told you that -- gave
8 you that statement and said that he had no problems
9 with Cornelius Green prior to the shooting at Toney's
10 Lounge, do you see him here in the courtroom?

11 A. Yes, he's here in the courtroom.

12 Q. Can you point him out for me?

13 A. (Indicating) sitting at the table in a black pinstripe
14 suit.

15 MS. WALKER: Your Honor, can the record reflect
16 that the witness has identified the Defendant?

17 THE COURT: It does.

18 MS. WALKER: I don't have anymore questions.

19 MR. MILLS: Yes, Your Honor, ready for
20 cross-examination?

21 THE COURT: Yes, sir.

22 MR. MILLS: Thank you. May it please the Court.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25

JOHN CARWELL CROSS BY MR. MILLS

1 BY MR. MILLS::

2 Q. Good afternoon, Investigator Carwell?

3 A. Good afternoon.

4 Q. Okay. When you arrived on scene, you said that you --

5 there were several witnesses that you talked to? At

6 least, two, correct?

7 A. There was two.

8 Q. Two. There was Sherry Myers and Toney Lowman, is this

9 correct?

10 A. That's correct.

11 Q. Okay. And did you have any kind of recording devices

12 to record statements that they made?

13 A. No, I did not.

14 Q. Why do you not have any recording devices to record

15 statements made by people?

16 A. It is not the Richland County Sheriff Department's

17 policy to have recording devices. We don't have

18 recording devices at headquarters, interview rooms. We

19 do handwritten statements. And whoever is providing

20 that statement is asked if they want to read it or

21 asked if they want a copy. If they can't read, we will

22 read it back to them. That's our policy that we do the

23 statements ourselves and let whoever is giving the

24 statement read them or we will read it back to them and

25 they sign it as a signed sworn statement.

JOHN CARWELL CROSS BY MR. MILLS

1 Q. Okay. So it is a policy of Richland County Sheriff's
2 Department to not have any kind of recording device
3 when you are interviewing both witnesses and suspects,
4 is that correct?

5 A. That's correct.

6 Q. And so there is usually, tell me if I'm right about
7 this, but there's usually more said than is put into
8 the actual written statement during your interview of a
9 witness or a suspect?

10 A. Yes.

11 Q. Okay. So would that not help your investigation and
12 potential presentation of a case to have recorded --
13 recording devices, either audio, video or both, for the
14 statements of either the witnesses or the suspect?

15 A. It may not always help us.

16 Q. Why would that be?

17 A. Like I said, each person that provides a statement is
18 provided an opportunity to read the statement and add
19 or take out anything in their statement they wish. So
20 it's not like we're trying to hide anything.

21 Q. But wouldn't a contemporaneous recording --

22 MS. WALKER: Objection, Your Honor, asked an
23 answered.

24 THE COURT: I heard three words, I didn't hear a
25 question.

JOHN CARWELL CROSS BY MR. MILLS

1 BY MR. MILLS::

2 Q. My question was wouldn't a contemporaneous recording
3 have a full statement on it as opposed to a narrowed
4 down written statement?

5 A. I think that's a full statement.

6 Q. Okay. So that's the policy of the Richland County
7 Sheriff's Department?

8 (There was no response.)

9 Q. So were you involved in any of the CSI at the point
10 when you arrived on scene?

11 A. Like I said, I just asked Yvonne Woods to go to the
12 hospital to take pictures of Calvert, collect the gun
13 and the clothing..

14 Q. Okay. So that's Investigator Woods, who's testified
15 here earlier today, and she was asked to get the
16 clothing of Mr. Myers (indicating), to, also, get the
17 gun that was where, where was the gun?

18 A. In the deputy's car at the hospital.

19 Q. Okay. And to take photographs of Mr. Myers, correct?

20 A. That's correct.

21 Q. And you have seen those photographs?

22 A. I have.

23 Q. You have a copy on disk or some type of digital copy of
24 those photographs?

25 A. They're attached to the file.

JOHN CARWELL CROSS BY MR. MILLS

1 Q. Okay. So that was sent to you at some point in time
2 after they were taken?

3 A. Yes.

4 Q. By Investigator Woods?

5 A. Yes.

6 Q. Okay. And you have reviewed those photographs?

7 A. I have.

8 Q. And would you say that Mr. Myers suffered great injury
9 to his head and face?

10 A. Yes, he did.

11 Q. Okay. And was he -- in the photographs, he has tubes
12 in him or, at least, one tube in him for breathing
13 purposes?

14 A. Yes.

15 Q. Okay. And very swollen?

16 A. Yes, he was.

17 Q. And unconscious?

18 A. Yes.

19 Q. Appears unconscious?

20 A. Uh-huh.

21 Q. Okay. And the solicitor's office has copies of those
22 photographs?

23 A. Yes.

24 Q. You, actually, provided your entire file to the
25 solicitor's office?

JOHN CARWELL CROSS BY MR. MILLS

1 A. Yes.

2 Q. All right. Now, you said -- you stated you talked to
3 Sherry Myers and got a written settlement that evening
4 or that early morning, correct?

5 A. That's correct.

6 Q. And you got -- you got a statement from Toney Lowman
7 that morning on the scene. And those are the only two
8 witnesses that you got statements from at the scene?

9 A. That's correct.

10 Q. You later got statements, written statements, from
11 James Myers, that was on January 3rd, 2013, is this
12 correct?

13 A. Let me check here. Yes, January 3rd, 2013.

14 Q. That was from James Meyer. Also, on January 3rd, 2013,
15 you got a statement from Marvin Moore, correct?

16 A. That's correct.

17 Q. That was reduced to writing, correct?

18 A. That's correct.

19 Q. That was provided to the solicitor's office, correct?

20 A. Yes.

21 Q. Okay. As well as the other statements?

22 A. Yes.

23 Q. Okay. So all of the four written statements from the
24 witnesses that made statements were provided to the
25 solicitor's office?

JOHN CARWELL CROSS BY MR. MILLS

1 A. That's correct.

2 Q. Okay. And were there other people there that did not
3 make statements that were at the scene at the time of
4 the incident?

5 A. Nobody that I spoke to that night. I didn't speak to
6 anybody additionally that didn't provide a statement.

7 Q. Okay. So you spoke to only two of the people that were
8 there on that night and the other two on January 3rd,
9 2013?

10 A. That's correct.

11 Q. Okay. And no other witnesses did you speak to that
12 were at the scene at the Toney's Lounge on 12/29/2013?

13 A. Again, I brought in Sherry Myers again to look at the
14 video. I spoke to her, but she didn't provide another
15 statement.

16 Q. Okay. But no other witnesses that were at the scene?

17 A. No.

18 Q. You've seen the video several times?

19 A. That's correct.

20 Q. Do you see there's lots of people out there, correct?
21 What kind of investigation have you done to track down
22 some of the people that were out there?

23 A. Like I said, I brought Sherry Myers in to view the
24 video because I had individuals that I wanted to
25 identify that I felt were important, which were James

JOHN CARWELL CROSS BY MR. MILLS

1 Myers, who was, obviously, with Calvert Myers, who
2 ended up riding there with him, being a family member
3 to both parties. I spoke to Toney Lowman, the owner.
4 Obviously, because he's the owner of the business, he
5 was trying to diffuse the situation, so he probably
6 knew the most about it. Sherry Myers, because she was,
7 obviously, involved with this whole incident. And
8 Marvin Moore, because he was there when the victim fell
9 to the ground and he waited there with the victim until
10 the ambulance arrived.

11 Q. But no other witnesses have you talked to?

12 A. No.

13 Q. And we've seen the video, there were several other
14 people there at Toney's Lounge that night or that early
15 morning, correct?

16 A. Yes.

17 Q. And Marvin Moore, you've been here the entire time for
18 the trial?

19 A. (Witness nods.)

20 Q. Marvin Moore has not testified, correct?

21 A. He has not.

22 Q. Okay. All right. So my understanding is the next
23 thing that you did besides take the statements and
24 direct Investigator Woods -- did you direct
25 Investigator Police to go, also, to the -- the other

JOHN CARWELL CROSS BY MR. MILLS

1 CSI investigator to go to the hospital?

2 A. No, they did that on their own.

3 Q. So they a call separately from you?

4 A. Yes, sir.

5 Q. But Investigator Woods, you did?

6 A. Yes.

7 Q. Did you ask her to also take the photographs?

8 A. She's got a call at the same time I am. There's
9 normally an investigator and then we work closely
10 together. That's why I let her know in case she didn't
11 have the information about the hospital about taking
12 photos of the Defendant.

13 Q. How about photos of the scene?

14 A. She does that --

15 Q. She did that and you were provided copies of the
16 photos?

17 A. Yes, sir.

18 Q. And as far as the physical evidence, you did not
19 collect those from the scene?

20 A. No.

21 Q. Okay. That was done by the CSI?

22 A. That's correct.

23 Q. Now, you went to hospital that evening or that early
24 morning?

25 A. I did.

JOHN CARWELL CROSS BY MR. MILLS

1 Q. Okay. And you said that Mr. Myers was in the trauma
2 room?

3 A. He was.

4 Q. And had injuries that we talked about, very severe
5 injuries. And he also had a gun wound to his foot,
6 correct?

7 A. I didn't see that part.

8 Q. You didn't see that. Did he have the bags over his
9 hands when you were there?

10 A. I remember seeing sheets over him and just his face and
11 he had, I think, a neck brace on.

12 Q. So I believe you testified that the next day, you did
13 go looking for witnesses, was that just Marvin Moore
14 and James Myers or were you looking for anyone else?

15 A. I was looking for those.

16 Q. Just those two?

17 A. Yes.

18 Q. You stated you met with Sherry Myers and went through
19 the video. And we have seen what you said about the
20 video, what the video claimed. At one point -- well,
21 we can show the video later to the jury. You were
22 aware from the statements that there were other
23 physical assaults besides the shooting and the beating
24 at the end of the incident, correct?

25 A. Yes.

JOHN CARWELL CROSS BY MR. MILLS

1 Q. Okay. So you were aware of the other assaults?

2 A. Yes.

3 Q. Assault by the victim on the Defendant earlier?

4 A. Yes.

5 Q. In front of the club, you were aware of that, of the
6 statements?

7 A. Yeah, because after Sherry Myers got hit.

8 Q. Okay. And you knew that the Defendant was at the
9 hospital for over a week, correct, about 11 days?

10 A. Yes, sir.

11 Q. Okay. Did you keep up with his medical condition
12 during that time through the deputies you said were at
13 the scene -- at the hospital?

14 A. I received calls that he wanted to talk to me.

15 Q. Okay.

16 A. But as far as exactly what was going on, no, I did not.

17 Q. Okay. So you weren't aware of his full medical
18 condition, even when he was released from the hospital?

19 A. I knew he was cleared to leave the hospital and.

20 Q. Right. He was clear to leave the hospital?

21 A. Right.

22 Q. He had just been in very severe injuries during the
23 11-day stay, correct?

24 A. Correct.

25 Q. You're aware of that? You're aware of the trauma that

JOHN CARWELL..CROSS BY MR. MILLS

- 1 he had gone through during his stay at the hospital? I
2 mean, that caused him to be in the hospital for that
3 long of a period of time?
- 4 A. I mean, I was -- I didn't have full knowledge of
5 everything that happened to him.
- 6 Q. Okay. But you're aware there was severe trauma and
7 that's why he was in the hospital?
- 8 A. Yes.
- 9 Q. Okay. And so you went to the hospital the day he was
10 released?
- 11 A. Yes.
- 12 Q. And, basically, took custody of him at that point?
- 13 A. That's correct.
- 14 Q. And you said you got the -- you did the advice of
15 rights form at the hospital in your van?
- 16 A. In my truck.
- 17 Q. In your truck.
- 18 A. Yeah.
- 19 Q. I'm sorry, in your truck. Okay. And then you drove
20 from that point, you had a short conversation --
- 21 A. No.
- 22 Q. Okay. And you drove to the headquarters out on Two
23 Notch Road?
- 24 A. That's correct.
- 25 Q. And that's when you took him to your cubicle on the

JOHN CARWELL CROSS BY MR. MILLS

1 second floor, I believe you said?

2 A. That's correct.

3 Q. And is there an interview room at the sheriff's
4 department?

5 A. No.

6 Q. There's not a room specifically done for interviews?

7 A. Huh-uh.

8 Q. And you've already stated there's not a room or any
9 kind of recording device, so there's not an interview
10 room --

11 MS. WALKER: Objection, Your Honor. We've asked
12 about the recording devices I think for the 73rd time,
13 through all the witnesses. I object that it's asked and
14 answered.

15 THE COURT: All right. Don't ask the same
16 questions over and over.

17 MR. MILLS: Yes, sir.

18 THE COURT: Okay. Go ahead.

19 BY MR. MILLS::

20 Q. So you were in the cubicle and you were -- were you
21 facing Mr. Myers or were y'all side by side? Could he
22 see what you were typing is the reason why I'm asking
23 that question?

24 A. He's facing me. We're face to face.

25 Q. Okay.

JOHN CARWELL CROSS BY MR. MILLS

1 A. The computer is in front of me. It's kind of turned
2 where he can see.

3 Q. So he could see what you were typing?

4 A. Yes, turned a little.

5 Q. Kind of angled?

6 A. Yes.

7 Q. Okay. And -- okay. This was the same day he was
8 released from the hospital that you did the written
9 statement, correct?

10 A. Yes.

11 Q. And you stated that he did consent to give a DNA
12 sample, correct?

13 A. He did.

14 Q. Okay. And that's when you did the buccal swab?

15 A. Yes.

16 Q. And you did some forensic requests after that, correct?

17 A. Correct.

18 Q. Because that's important for this kind of case?

19 A. Yes, it is.

20 Q. So which forensic requests were done at that point,
21 after you talked to Mr. Myers?

22 A. I kind of wait until the end to kind of get everything
23 in, so I was waiting on his buccal swab. I don't have
24 the reports right in front of me, but just to compare
25 the clothing and the gun to the shell cases that were

JOHN CARWELL CROSS BY MR. MILLS

1 collected at the scene to see if there was any of
2 Calvert Myers's DNA on the victim's clothing as well as
3 the victim having any DNA of Calvert, and, obviously,
4 processing the gun.

5 Q. And you've been in the courtroom when the DNA expert
6 testified that there was a lot of Calvert Myers's blood
7 on several clothing items --

8 A. Yes.

9 Q. -- that was positive for his DNA? Okay. And you found
10 out what the source -- the owner of the weapon was,
11 correct?

12 A. Yes.

13 Q. Okay.

14 MR. MILLS: Beg the Court's indulgence.

15 (Brief pause.)

16 BY MR. MILLS::

17 Q. When did you collect the video?

18 A. That night.

19 Q. That night? Or that early morning, you mean?

20 A. Yes.

21 Q. Okay. And you viewed it when?

22 A. I watched it there at the scene and I had it on a thumb
23 drive from that night.

24 Q. Okay.

25 MR. MILLS: That's all the questions I have, Your

JOHN CARWELL CROSS BY MR. MILLS

1 Honor.

2 THE COURT: Any redirect?

3 MS. WALKER: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. WALKER::

6 Q. The severe beating that Mr. Mills asked you about, were
7 you able to determine over the course of your interview
8 whether that happened before or after the shooting?

9 A. It happened after the shooting.

10 MR. MILLS: Your Honor, I object to hearsay.

11 THE COURT: The objection is sustained.

12 MS. WALKER: Your Honor, may I make a legal
13 argument on that?

14 THE COURT: All right.

15 Ladies and gentlemen, I'm going to have you go to
16 the jury room.

17 (Whereupon, the jury left the courtroom
18 at 5:24 p.m.)

19 THE COURT: Yes, ma'am.

20 MS. WALKER: Your Honor, I am not eliciting
21 specific out-of-court statements from him to offer in court.
22 I'm asking him what he learned over the course of the
23 interview in terms of viewing the video, in terms of looking
24 at the entire course of his investigation. I'm not asking
25 to elicit a specific out-of-court statement from him.

JOHN CARWELL CROSS BY MR. MILLS

1 THE COURT: Yes, sir.

2 MR. MILLS: I thought I heard that she was
3 couching it in terms of from the interviews, what was the
4 result of him -- or which led to the severe injuries.
5 That's the basis of my objection is hearsay.

6 MS. WALKER: My question, Your Honor, was over the
7 course of your investigation, were you able to make this
8 determination.

9 MR. MILLS: Which I think it still goes into
10 hearsay statement, Your Honor.

11 THE COURT: This witness is not an expert witness,
12 is he?

13 MS. WALKER: No, Your Honor, he's not an expert
14 witness. I'm not asking him to give an opinion in which I'm
15 asking him to rely on hearsay. I'm just asking him if over
16 the course of his investigation, was he able to determine
17 certain things.

18 THE COURT: I sustain the objection. That's my
19 ruling.

20 MS. WALKER: Thank you, Your Honor.

21 MR. MILLS: Thank you, Your Honor.

22 THE COURT: Anything else before the jury comes
23 out?

24 MS. WALKER: Can I ask him if he was able to view
25 the video and make that determination?

JOHN CARWELL CROSS BY MR. MILLS

1 MR. MILLS: I will object because I don't see how
2 you can make that determination from the video. We know
3 part of it is blind. You can't see some of the things that
4 happened. I mean, witness testimony --

5 MS. WALKER: Yes, Your Honor he asked the question
6 of one of the witnesses, isn't this where you see him on top
7 of him beating him, that was his question. He pointed that
8 out.

9 MR. MILLS: But that doesn't go to the severity of
10 the injuries that he saw on the Defendant.

11 THE COURT: This is redirect examination and I
12 sustain the objection.

13 MR. MILLS: Thank you.

14 THE COURT: You had an opportunity to question him
15 on direct, this is redirect. I sustain the objection.

16 MR. MILLS: Thank you, Judge.

17 THE COURT: Bring the jury back.

18 (Whereupon, the jury returned to the
19 courtroom at 5:27 p.m.)

20 BAILIFF: Jury's present, Your Honor.

21 THE COURT: Thank you.

22 You may proceed.

23 BY MS. WALKER::

24 Q. At the end of your investigation, did you make a
25 determination about who to charge in this case?

JOHN CARWELL CROSS BY MR. MILLS

1 A. Yes.

2 Q. Who did you charge?

3 A. Calvert Myers.

4 Q. And what did you charge him with?

5 A. With murder.

6 MS. WALKER: Thank you, sir. I don't have any
7 further questions.

8 MR. MILLS: Nothing further, Your Honor.

9 THE COURT: All right.

10 Thank you, sir. You may step down.

11 Who's your next witness?

12 MS. WALKER: Your Honor, our next witness had a
13 medical emergency and she won't be available until in the
14 morning.

15 THE COURT: What time will her emergency be over
16 tomorrow?

17 MS. WALKER: She said that she -- we have an
18 e-mail here, I want to e-mail you about the case. I've got
19 an urgent medical procedure tomorrow afternoon, but I will
20 be available on Thursday. So sorry about the inconvenience.

21 THE COURT: All right.

22 Ladies and gentlemen, we'll break until 9:30
23 tomorrow morning. Please do not discuss the case.

24 (Whereupon, the jury left the courtroom
25 at 5:29 p.m.)

MEGAN FLETCHER DIRECT BY MS. WALKER

1 9:37 a.m.)

2 BAILIFF: The jury is present, Your Honor.

3 THE COURT: Thank you very much.

4 Day number three.

5 Your next witness. You may proceed.

6 MS. WALKER: Your Honor, the State calls Megan

7 Fletcher.

8 THEREUPON,

9 MEGAN FLETCHER,

10 after having been duly sworn, testified as follows:

11 THE COURT: Tell us your full name, spelling your

12 last name.

13 THE WITNESS: My name is Megan Fletcher,

14 F-L-E-T-C-H-E-R.

15 DIRECT EXAMINATION

16 BY MS. WALKER::

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you tell us where you're currently employed?

20 A. I'm employed with the South Carolina Law Enforcement

21 Division in the forensic services trace laboratory.

22 Q. What do you do in the forensic services trace

23 laboratory?

24 A. I'm a forensic scientist in the trace department, so I

25 analyze evidence, such as GSR, fire debris, glass,

MEGAN FLETCHER DIRECT BY MS. WALKER

1 fiber, paint, explosives, duct tape and any other trace
2 materials.

3 Q. Can you tell me any education or training that you've
4 had in order to help you in your analysis?

5 A. I have my Bachelor's Degree from Chatham College in
6 biochemistry and english and I have my Master's in
7 forensic science from Marshal University with emphasis
8 in forensic chemistry and computer forensics.

9 Q. And have you testified to findings that you discovered
10 in that laboratory before?

11 A. Yes, ma'am.

12 Q. And have you been qualified as an expert?

13 A. Yes, ma'am.

14 Q. In what field?

15 A. I have been qualified in gunshot residence, fire debris
16 and paint analysis.

17 Q. How many times have you been qualified as an expert in
18 gunshot residue analysis?

19 A. Twice.

20 MS. WALKER: Your Honor, at this point, we'd offer
21 Ms. Fletcher as an expert in gunshot residue analysis.

22 MR. MILLS: No objection.

23 THE COURT: All right. She is so qualified.

24 BY MS. WALKER::

25 Q. Can you tell me what gunshot residue is?

MEGAN FLETCHER DIRECT BY MS. WALKER

1 A. It's a residue and it's, basically, everything that
2 come out of a gun when it's fired. That can include
3 lead from the bullet, smoke, powder and firearm
4 residue. What we're looking for when we look for
5 gunshot residue is characteristic components of primer
6 residue. So that's lead styphnate, antimonious sulfide
7 and barium nitrate. So we look for characteristic
8 particles of those which would contain lead, barium and
9 antimony.

10 Q. And when you say this -- it comes out of a gun when
11 it's fired, I want to show you what's marked as State's
12 Exhibit No. 6. Where are these items coming out of the
13 weapon?

14 A. In a semiautomatic, it can come out of the muzzle and
15 it can come out of the ejector, those are the main
16 parts.

17 Q. And what causes these things to come out of the gun?

18 A. It's the discharge of the firearm, so the firing pin
19 striking the primer.

20 Q. And when you're testing, what, specifically, are you
21 testifying for?

22 A. I am testing particle lifts taken from the hands of a
23 person suspected to be involved or clothing or a
24 vehicle, et cetera, and I'm looking for particles that
25 are characteristic, consistent or associated with

MEGAN FLETCHER DIRECT BY MS. WALKER

1 particles of primer residue or gunshot residue.

2 Q. Let me ask you this, if I fire a weapon and I'm
3 standing right here next to you, is the gunshot residue
4 only going to be on me?

5 A. No, ma'am. The gunshot residue is going to go forward
6 and backwards to an extent outwards of six feet or so.

7 Q. So gunshot residue, actually, on an individual or on an
8 item, what does that mean to you?

9 A. It means that somebody could have been in the vicinity
10 of a gun when it's fired, could have discharged a
11 firearm or could have touched something that had
12 gunshot residue already on it.

13 Q. So if I have gunshot residue on me, does that
14 necessarily mean I'm the one who fired a weapon?

15 A. No, ma'am, it does not.

16 Q. If someone is close to me and fires a weapon, can I get
17 gunshot residue on me that way?

18 A. Yes, ma'am.

19 Q. When you start your analysis, can you walk me through
20 the steps that you take in order to determine whether
21 or not gunshot residue is present on an item that you
22 are examining?

23 A. We receive particle lifts out of a GSR kit and those
24 particle lifts are like little stamps that usually are
25 taken from the right palm, the right back of the hand,

MEGAN FLETCHER DIRECT BY MS. WALKER

1 the left palm and the left back of the hand. And those
2 particle lifts are placed on a scanning electronic
3 microscope and that instrument allows me to see
4 individual particles as well as determine what composes
5 those individual particles. So I'm looking for
6 particles that are molten in nature, which means that
7 they will -- been subjected to high heat and pressure,
8 will contain lead, barium and/or antimony.
9 Characteristic particles of gunshot residue contain all
10 three of those.

11 Q. And I want to take your attention to this case
12 specifically. Were there a number of items received by
13 SLED that were examined?

14 A. Yes, ma'am, there were.

15 Q. Can you tell me what those were?

16 A. Can I refer to my --

17 Q. Oh, yeah, definitely refer to your report.

18 A. In this case, SLED received two GSR kits, one from
19 Cornelius Lamont Green and the second one is from
20 Calvert Myers?

21 Q. And let's start with the kit received from Cornelius
22 Lamont Green. What were the findings on that?

23 A. On the right palm of his hand, particles of gunshot
24 residue were found. A single nonround particle
25 containing lead, barium and antimony was found. And a

MEGAN FLETCHER DIRECT BY MS. WALKER

1 single round particle containing barium and antimony
2 was found. On the right back of his hand, a single
3 particle of gunshot residue, a single particle -- a
4 nonround particle containing lead, barium and antimony
5 were found, and round particle containing lead and
6 antimony were found. On the left palm of his hand,
7 nonround particles containing lead barium and antimony
8 were found. On the left back of his hand, particle of
9 gunshot residue were found as well as nonround particle
10 containing lead, barium and antimony.

11 Q. So there was -- would it be safe to say there was
12 gunshot residue on both sides of both of his hands?

13 A. Yes, ma'am, it is.

14 Q. Okay. Thank you. And taking you to the kit from
15 Calvin Myers, can you tell me what you saw -- what the
16 findings were on that kit?

17 A. On the right palm, a single particle, nonround particle
18 containing lead, barium and antimony was found as well
19 as a single round particle containing lead and antimony
20 and round particle containing lead. On the right back
21 of his hand, particles of gunshot residue were found as
22 well as a single nonround particle containing lead,
23 barium and antimony. On the left palm, nonround
24 particles containing lead, barium and antimony were
25 found. And the left back of his hand was negative for

MEGAN FLETCHER DIRECT BY MS. WALKER

1 the presence of gunshot residue.

2 Q. The left back of his hand was negative?

3 A. Yes, ma'am.

4 Q. In terms of testing -- in terms of testing, when you
5 get the left -- the left swab -- is it a swab or --

6 A. It's like a particle lift. It looks like a stamp that
7 has a sticky surface on it.

8 Q. Okay. When you get those, can you analyze the amounts
9 of gunshot residue?

10 A. We don't determine the amounts of gunshot residue.

11 Q. Is there is certain protocol for if you will even test
12 a kit? If I -- let's say law enforcement arrest
13 someone 12 hours after the incident happened, would you
14 test that kit?

15 A. I would not test the hands of that person, no.

16 Q. Why not?

17 A. Gunshot residue really only stays on a person's hands
18 who is living from four to six hours. That's because a
19 person is active and gunshot residue is easily removed.
20 They might be wiping their hands, sweating or actively
21 removing the hands, such as washing them.

22 Q. Things that -- one of the types of things that wash
23 away gunshot residue on a living person, would that be
24 just simply going like this (indicating) on their
25 clothing?

MEGAN FLETCHER CROSS BY MR. MILLS

1 A. Yes.

2 Q. What about if they get water or blood or anything like
3 that?

4 A. Washing their hands of any kind will remove gunshot
5 residue.

6 Q. On a nonliving person, the deceased, what parameters do
7 you have for the amount of time that passes?

8 A. We do not have a time limit and that's because the
9 deceased is not undergoing any activity and, therefore,
10 the gunshot residue would only be removed if somebody
11 was actively removing it from them.

12 Q. Okay. And, again, in this case, there was gunshot
13 residue found on both kits that you tested?

14 A. Yes, ma'am.

15 MS. WALKER: Thank you. I don't have any further
16 questions.

17 MR. MILLS: May it please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MILLS::

21 Q. Good morning, Ms. Fletcher?

22 A. Good morning.

23 Q. Did you do a report in this case?

24 A. No, sir, I did not. I did the technical review of this
25 case.

MEGAN FLETCHER CROSS BY MR. MILLS

- 1 Q. Okay. Did you, actually, do the testing of these
2 gunshot residue kits?
- 3 A. No, sir. I reviewed the entire case, including the
4 data and all case notes.
- 5 Q. Okay. Who, actually, did the actual testing of the
6 gunshot residue kits?
- 7 A. Ila Simmons.
- 8 Q. Is Ila Simmons still with SLED?
- 9 A. No, she is retired.
- 10 Q. Okay. And so you just reviewed this? You haven't,
11 actually, done any of the testing?
- 12 A. I never handled any of the evidence, but a technical
13 review is a complete review of all the data that she
14 collected and any of her notes. So I look at that data
15 and make sure it follows all of our protocols and that
16 I agree with her findings.
- 17 Q. Okay. So you don't look at any of the actual particles
18 or anything of that nature through the microscope that
19 were found on the -- in the kits?
- 20 A. I do not look at the microscope, however, in our data,
21 there are images of the particles found, images and
22 spectra of the composition.
- 23 Q. Okay. In this case, were you provided anything other
24 than the two kits, which were, basically, the two hands
25 of each person?

MEGAN FLETCHER CROSS BY MR. MILLS

- 1 A. I do not believe so.
- 2 Q. Okay. Can you do -- well, your department, can they do
3 testing for gunshot residue on clothing?
- 4 A. We can perform gunshot residue testing on the clothing
5 of subjects, not of victims.
- 6 Q. Okay. But you stated that -- I believe on direct
7 examination that you can be within six feet of a fired
8 weapon and still get gunshot residue?
- 9 A. Yes, sir.
- 10 Q. So you, potentially, could then get gunshot residue off
11 the clothing of an alleged victim?
- 12 A. We could, but because they have been shot, we presume
13 that there's gunshot residue already on it, so it would
14 not add any additional value to the evidence.
- 15 Q. Okay. Would it depend on where the -- the entrance
16 wound was relative to the clothing?
- 17 A. It depends -- there's a whole variable of scenarios,
18 whether the entrance wound was through the clothing,
19 the distance away from the shooting, et cetera.
- 20 Q. Right. So -- well, let me get to the point of -- were
21 you provided any clothing of either the victim or the
22 Defendant in this case?
- 23 A. No clothing was submitted.
- 24 Q. That would have been provided by the Richland County
25 Sheriff's Office if it was to be provided?

MEGAN FLETCHER REDIRECT BY MS. WALKER

- 1 A. Yes, sir.
- 2 Q. Is there another test for touching a weapon?
- 3 A. No, sir.
- 4 Q. So there's no kind of particle that you can -- metal
5 particles, fragments that you can get off of handling a
6 weapon?
- 7 A. Gunshot residue is gunshot residue, so if you're in
8 the vicinity, if you discharge it or if you just handle
9 something that had gunshot residue on it, it's all
10 going to look the same to us.
- 11 Q. Okay. So you're saying that if I handled a weapon
12 without firing it, that there's no metal particles that
13 can come off on my hands?
- 14 A. There's potential to have gunshot residue particles on
15 a weapon that's recently been fired and you can pick
16 those up, yes.
- 17 Q. Okay. How about any particles from the metal that,
18 actually, rub into the skin off of the gun?
- 19 A. The metal from the gun?
- 20 Q. Yes.
- 21 A. I'm not aware of any such testing done.
- 22 Q. Okay. And you said that in this case, this was a
23 semiautomatic weapon?
- 24 A. That is what was shown to me, yes.
- 25 Q. Okay.

MEGAN FLETCHER REDIRECT BY MS. WALKER

1 MR. MILLS: Beg the Court's indulgence. That's
2 all the questions I have of the witness.

3 THE COURT: Anything further?

4 REDIRECT EXAMINATION

5 BY MS. WALKER::

6 Q. You said a technical review, is that what you said?

7 A. Yes, ma'am.

8 Q. Are technical reviews done in every case?

9 A. Yes, ma'am.

10 Q. Did you review this case?

11 A. Yes, ma'am.

12 Q. And your findings after the technical review were what?

13 A. My findings agreed with the analyst, Ila Simmons.

14 MS. WALKER: Thank you. I don't have any further
15 questions.

16 THE COURT: Anything further?

17 MR. MILLS: Nothing further, Your Honor.

18 THE COURT: All right. Thank you.

19 THE WITNESS: Thank you.

20 MS. WALKER: Your Honor, may we approach for a
21 scheduling matter?

22 THE COURT: Ladies and gentlemen, we'll have you
23 go to the jury room. Please do not discuss the case.

24 (Whereupon, the jury left the courtroom
25 at 9:52 a.m.)

MARVIN MOORE DIRECT BY MR. STEADMAN

1 THE COURT: Yes, ma'am.

2 MS. WALKER: Your Honor, our last witness today is
3 Marvin Moore. He had to go -- I guess be apprehended by our
4 investigator. My understanding is he was under subpoena and
5 was not planning to come to court. They're on the way back
6 with him right now. He should be here in a few minutes.
7 And my understanding about five minutes ago was they were
8 about five minutes away.

9 THE COURT: All right. If they're five minutes
10 away, we'll take a five-minute break.

11 MS. WALKER: Thank you, Judge.

12 MR. MILLS: Thank you, Your Honor.

13 (Whereupon, a short recess was held.)

14 THE COURT: All right. Let's see, what's next.
15 Mr. Mills, where is he?

16 (There was no response.)

17 THE COURT: And you have your next witness ready?

18 MS. WALKER: He's right here and Mr. Mills is
19 coming in right now.

20 THE COURT: Ready to proceed, Mr. Mills?

21 MR. MILLS: Yes, sir.

22 THE COURT: All right. You may bring the jury in.
23 (Whereupon, the jury entered the
24 courtroom at approximately 10:00 a.m.)

25 BAILIFF: Jury's all present, Your Honor.

MARVIN MOORE DIRECT BY MR. STEADMAN

1 THE COURT: All right.

2 Your next witness.

3 MR. STEADMAN: The State calls Marvin Moore.

4 THEREUPON,

5 MARVIN MOORE,

6 after having been duly sworn, testified as follows:

7 THE CLERK: Have a seat in the witness stand,

8 please. State your name for the record.

9 THE WITNESS: My name is Marvin E. Moore.

10 DIRECT EXAMINATION

11 BY MR. STEADMAN::

12 Q. Mr. Moore, make sure you speak up so everybody can hear

13 you, okay?

14 A. Okay.

15 Q. Where are you from?

16 A. Gaston, South Carolina.

17 Q. How long are you?

18 A. Forty.

19 Q. Forty?

20 A. Forty.

21 Q. You have a job?

22 A. Part time, I paint.

23 Q. Do you know -- did you know Neil Green?

24 A. Yes, I did.

25 Q. How did you know Neil Green?

MARVIN MOORE DIRECT BY MR. STEADMAN

1 A. A friend, we grew up together, went to school together.

2 Q. Did you hang out -- how would you describe your
3 friendship with Neil Green?

4 A. Basically, we had done started hanging every Friday,
5 you know, just kicking around, you know.

6 Q. Do you know the Defendant in this case (indicating),
7 Calvert Myers?

8 A. Yes, I do.

9 Q. How do you know Mr. Myers?

10 A. I know him from in the country, too. I know him, too.

11 THE COURT: Mr. Moore, would you talk into the
12 microphone. Lift the mike up a little bit, not too close.

13 THE WITNESS: Okay.

14 BY MR. STEADMAN::

15 Q. Do you remember -- do you know why we're here today?

16 A. Yes, sir.

17 Q. Do you remember the night of December 29th, 2012?

18 A. Yes, sir.

19 Q. Were you at Toney's Lounge that night?

20 A. Yes, sir.

21 Q. Okay. When did you get to Toney's Lounge that night?

22 A. About 10, I believe. It -- I'm not quite sure.

23 Q. Who were you there with?

24 A. I came by myself.

25 Q. Did you have a couple of drinks at Toney's Lounge?

MARVIN MOORE DIRECT BY MR. STEADMAN

1 A. Probably about one.

2 Q. About one?

3 A. About one or two by the time I got there.

4 Q. Okay. And do you remember if the Defendant was there
5 when you got there (indicating)?

6 A. Yes.

7 Q. So you saw him there when you got there?

8 A. Yes.

9 Q. So when you got there, the Defendant was there. Was
10 Neil there?

11 A. Yes.

12 Q. Who was Neil with?

13 A. He was with Sherry Myers.

14 Q. And did you know Sherry Myers?

15 A. Yes, sir.

16 Q. How did you know her?

17 A. Basically, from, you know, the neighborhood, you know.

18 Q. And did you observe the Defendant approach Neil and
19 Sherry sometime that night?

20 A. Well, what I seen was them two arguing, Sherry and
21 Calvin was arguing at the bar.

22 Q. And did he approach her or did she approach him?

23 A. Well, I -- I can't really say how it kicked out. I
24 just heard the cursing and when I seen them, they was
25 engaged in an argument.

MARVIN MOORE DIRECT BY MR. STEADMAN

1 Q. What was Neil doing when all this was going on?

2 A. At the bar.

3 Q. Was he just keeping to himself?

4 A. Yes, sir.

5 Q. And after Sherry and the Defendant got into an
6 argument, what did you observe next?

7 A. Well, Toney took Calvin outside, him and some other
8 people. I don't know exactly who took him outside, but
9 and then Neil was left in there, you know.

10 Q. So Neil stayed inside the bar?

11 A. Yes, sir.

12 Q. Did you stay inside the bar?

13 A. Yes, sir.

14 Q. And did -- did Mr. Myers come back in the bar
15 eventually?

16 A. Yes.

17 Q. And did you at some point see Mr. Myers go up to Neil
18 and say something?

19 A. No, I never seen him engage in no argument with Neil.
20 When he went outside, Neil was like, you know, we ain't
21 came out here for that and just leave that alone. And
22 that was it.

23 Q. Were you near Neil when that all happened?

24 A. Where they was standing, I was in between, like when
25 you walk through, probably no more than probably about

MARVIN MOORE DIRECT BY MR. STEADMAN

1 six, seven feet.

2 Q. And after that point, did Neil at some point leave the
3 bar?

4 A. Yes, I -- I thought they had done left.

5 Q. And -- so you thought Neil had left and you were still
6 inside the bar?

7 A. Yeah.

8 Q. Then what happened next?

9 A. Toney came back and said Calvin done shot the guy --

10 MR. MILLS: Objection, hearsay.

11 MR. STEADMAN: Your Honor, this was --

12 THE COURT: The objection is hearsay. Give me a
13 legal response.

14 MR. STEADMAN: Your Honor, I argue this was an
15 excited utterance. Tony had come back inside, a person had
16 just been shot as well as the -- describing what had just
17 happened, I feel that would be under the exception of
18 hearsay.

19 Mr. Mills.

20 MR. MILLS: Your Honor, it's hearsay. We don't
21 know if it was an excited utterance --

22 THE COURT: What's the question again?

23 MR. STEADMAN: Your Honor, I had asked what do you
24 remember next.

25 THE COURT: Ask him the question and then I'll

MARVIN MOORE DIRECT BY MR. STEADMAN

1 rule on whether it was an objection or not.

2 BY MR. STEADMAN::

3 Q. When did you find out that something had happened
4 outside in the parking lot?

5 A. When Toney came back inside.

6 Q. What did he say?

7 A. That Calvin --

8 MR. MILLS: Objection.

9 THE COURT: And you said who came back in?

10 THE WITNESS: Toney Lowman.

11 THE COURT: Toney Lowman came back in the club. I
12 overrule the objection.

13 BY MR. STEADMAN::

14 Q. What did Toney say when he came back in the bar?

15 A. He said Calvin had done shot that boy.

16 Q. And what did -- what did you do next?

17 A. I sit for a few seconds, then I went outside and it was
18 my friend on the ground, Neil.

19 Q. And when you saw your friend, Neil, on the ground, what
20 did you observe?

21 A. That he was on the ground and Calvin was next to him
22 crawling. And I came over there and try to hold him
23 and talk to him, you know, try to keep him with me
24 until, you know, paramedics got there.

25 Q. Was he breathing?

MARVIN MOORE CROSS BY MR. MILLS

- 1 A. Yes, he was taking short breaths.
- 2 Q. Was he saying anything?
- 3 A. No.
- 4 Q. Was he conscious?
- 5 A. Not -- not to where, you know --
- 6 Q. What did you observe Mr. Myers doing?
- 7 A. He was just on the ground crawling.
- 8 Q. Did you see a pistol?
- 9 A. No.
- 10 Q. And you waited with him until the ambulance came?
- 11 A. And the police. Until the --
- 12 Q. Did you provide a statement that night?
- 13 A. Huh?
- 14 Q. Did you talk with officers that night?
- 15 A. Well, you know, at -- at first, you know, asking me
- 16 what was going on, but I was kind of like cursing, you
- 17 know, like they say the ambulance couldn't do nothing
- 18 until Richland County got there, so, you know.
- 19 Q. Well, were you there when EMS arrived?
- 20 A. Yes.
- 21 Q. And what did you do after EMS arrived and took Neil
- 22 away?
- 23 A. Nothing, just watched them put him on the gurney and
- 24 put him in the ambulance.
- 25 MR. STEADMAN: Thank you, Mr. Moore. No further

MARVIN MOORE CROSS BY MR. MILLS

1 questions.

2 THE WITNESS: All right.

3 THE COURT: Mr. Mills.

4 MR. MILLS: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. MILLS::

8 Q. Good morning, Mr. Moore.

9 A. Good morning.

10 Q. So you say you got to the club or Toney's Lounge about
11 10 o'clock, is this correct?

12 A. Yeah, I guess. I don't know. I wasn't really watching
13 the time.

14 Q. Okay. Did you get there before midnight? This
15 happened after midnight about 1:30 or so. Were you
16 there for more than an hour, you think?

17 A. Probably so.

18 Q. Okay. And how many drinks do you think you had?

19 A. About one or two.

20 Q. About one or two?

21 A. Uh-huh.

22 Q. Okay. And has anyone showed you the video from the
23 security system in this case?

24 A. No, huh-uh.

25 Q. They haven't? The investigator didn't show you the

MARVIN MOORE CROSS BY MR. MILLS

1 video?

2 A. No.

3 Q. Okay. In fact, you made a statement to the
4 investigators a few days after this incident, correct?

5 A. Uh-huh.

6 Q. January 3rd, 2013?

7 A. Uh-huh.

8 Q. Does that sound right?

9 A. I talked to an investigator, yeah. I don't exactly
10 what date it was.

11 Q. Where did you talk to him?

12 A. At my house, at my mother's house.

13 Q. Oh, they came to your house?

14 A. Uh-huh.

15 Q. Did they have any kind of recording device to record --
16 did the sheriff's investigator have any kind of
17 recording device?

18 A. No.

19 Q. Okay. And so you saw Sherry getting loud with
20 Mr. Myers, Calvin Myers?

21 A. No, I saw them engaged in an argument.

22 Q. Okay. Was Sherry getting loud, too?

23 A. Yeah.

24 Q. Okay. And you said you were in the back when -- you
25 were still in the club when Calvin left the building?

MARVIN MOORE CROSS BY MR. MILLS

1 A. I was in the club when they took him out and when he
2 came back in.

3 Q. Okay. And did -- so did you see Neil hit Calvin and
4 knock him to the ground in front of Toney's Lounge?

5 A. I was never outside.

6 Q. You were never outside. And so when you came back, the
7 next thing you heard was what Toney said, correct?

8 A. Uh-huh.

9 Q. So you didn't see any kind of shooting, you didn't see
10 any kind of fight before any kind of shooting, you
11 didn't see any of that?

12 A. No.

13 Q. Okay. But when you came outside, you saw Neil -- both
14 Neil and Calvin on the ground?

15 A. Uh-huh.

16 Q. Okay. And Calvin was beat up?

17 A. Yes, sir.

18 Q. Did you notice his face being --

19 A. Uh-huh.

20 Q. -- beat up, bleeding, did you notice that?

21 A. Yes, sir.

22 Q. And you did not talk to the officers that night,
23 correct?

24 A. No.

25 Q. Were you still there when the investigators arrived or

MARVIN MOORE CROSS BY MR. MILLS

1 when the deputies arrived?

2 A. Yes, the deputies came first and they wouldn't let --
3 the ambulance would come around until Richland County
4 came.

5 Q. Okay. And did you tell them that you had seen
6 anything?

7 A. No.

8 Q. At that point?

9 A. Huh-uh.

10 Q. Okay. Mr. Moore, you have a 2007 possession of intent
11 to distribute marijuana conviction, is that correct?

12 A. What that have to do with me?

13 Q. Is that correct?

14 A. What that -- what's relevance to --

15 Q. I'm asking you a question. Do you have --

16 THE COURT: All right. The objection is sustained
17 to -- his objection to answering the question.

18 MR. MILLS: Thank you, Your Honor.

19 THE WITNESS: Say it again.

20 BY MR. MILLS::

21 Q. Do have a possession with intent to distribute
22 marijuana --

23 THE COURT: He doesn't have to answer the
24 question.

25 MR. MILLS: Oh, I'm sorry, Your Honor. That's all

1 the questions I have at this time, Your Honor.

2 MR. STEADMAN: No further questions, Your Honor.

3 THE COURT: All right. You may step down.

4 Next witness.

5 MS. WALKER: Your Honor, at this time, the State
6 rest.

7 THE COURT: Ladies and gentlemen, you have heard
8 the State's case. And we'll take another break to discuss
9 some matters. We will have you come back as soon as we can.
10 So, please, go to the jury room. Please do not discuss the
11 case.

12 (Whereupon, the jury left the courtroom
13 at 10:20 a.m.)

14 THE COURT: Any matters of law at this time?

15 MR. MILLS: Your Honor, the Defense would move for
16 a directed verdict of not guilty on the grounds that the
17 State has not made its burden of production of evidence at
18 this point on the charge of murder. I think at this point,
19 they may have met the burden for the charge of voluntary
20 manslaughter, sudden heat of passion -- in the fight and the
21 knocking out -- knocking down of Mr. Myers. We would move
22 for a directed verdict.

23 THE COURT: Okay.

24 What says the State?

25 MR. STEADMAN: Your Honor, in the State v. Prince,

1 the Court.

2 THE COURT: Yes.

3 MS. WALKER: The first thing I want to do before I
4 start to talk to you about this case is to thank you for
5 your time, for your attention and for your patience. I know
6 that on Monday when you guys were all driving to the
7 courthouse, you may have been anticipating the type of case
8 that you would be sitting on this week. Maybe it was going
9 to be wreck case or maybe a contract dispute. At that point
10 in time, there was no way for you to know that you were
11 going to have to sit here and hear facts about a 37-year-old
12 man losing his life in the most senseless way. You've seen
13 pictures that people shouldn't be subjected to, you've heard
14 testimony that people shouldn't be subjected to, and for
15 those things, I apologize on behalf of my office. But your
16 service here this week is so crucial to the judicial system.
17 It would not survive without you. It would go on without
18 me, it would be on without Mr. Mills, it would even go on
19 without Judge Newman, but it would not go on without each
20 and every single one of you. And I thank you for your
21 service.

22 But as you guys were driving to the courthouse
23 anticipating what type of trial you may be exposed this
24 week, Mr. Steadman and I were anticipating what type of
25 defense may be utilized in this case because this is a --

1 it's a unique case. What type of defense are you going to
2 use when your own family members and lifelong friends get on
3 the stand and talk about you shooting a man in the back?
4 What type of defense are you going to use when it's on
5 camera (indicating)? How do you defend those actions? How
6 do you defend walking up to your own grand-niece and calling
7 her a no good bitch and a whore? How do you defend the
8 indefensible?

9 And it didn't occur to me until last night when I
10 was I preparing to speak with y'all today that the defense
11 in this case is some sort of Gedi mind trick where Mr. Mills
12 (indicating) makes him the victim in the case. He got
13 pushed down. He got punched. He's the victim in this case
14 (indicating). Poor, poor, Calvin. I guess Neil had it
15 coming. He deserved it. That's the defense in this case.
16 It would be laughable if it were not so offensive.

17 And there are different things that the judge is
18 going to charge you on in terms of the laws of this case.
19 You've heard this week and you heard in opening statements
20 by both Mr. Steadman and Mr. Mills that in criminal cases,
21 unlike in civil cases, the law is that we prove our case
22 beyond a reasonable doubt. It's a phrase that commonly
23 used, but not often explained. Proof beyond a reasonable
24 doubt is proof that leaves you convinced of the Defendant's
25 guilt. There are very few things in this world that we know

1 with absolute certainty. And in criminal cases, the law
2 does not require proof that overcomes every possible doubt.
3 If based on your consideration of the evidence you are
4 firmly convinced that the Defendant is guilty of the crime
5 charged, you must find him guilty. If on the other hand,
6 you think there's a real possibility that he's not guilty,
7 you must give him the benefit of the doubt and find him not
8 guilty.

9 Reasonably convinced. Are you reasonably
10 convinced that after antagonizing Sherry Myers all night,
11 this Defendant (indicating) follows Neil Green outside of
12 the bar where Neil's trying to leave at that point. Are you
13 reasonably convinced that there is another altercation in
14 which Sherry admittedly pushed -- or punched her uncle and
15 he hit her back (indicating), and only at that point, when
16 this grown man had assaulted a woman he had been harassing
17 all night, did Neil green step in and defended the woman he
18 was with. Are you reasonably convinced that after that
19 point in time -- you see Neil Green on this video with your
20 own eyes walk away -- and I'm going to go through the video
21 one more time, walk away when this Defendant, as Toney
22 Lowman, his lifelong friend testified, goes behind the car
23 and saw him doing a motion. He sees him with a gun and
24 somebody says that N word has a gun. And he looked over and
25 he saw it. And then he came around the corner blasting.

1 Are you reasonably convinced of those facts? Because
2 they're contradicted. No one's saying it didn't happen.
3 All of the testimony is consistent with one another. Are
4 you reasonably convinced of those actions and are you
5 reasonably convinced that as this young man was walking to
6 his car, this Defendant shot him in the back? And after
7 that fight -- I'm sorry, after that shooting, that's when
8 the fighting ensued, after he had already been shot in the
9 back. Are you reasonably convinced? Are you firmly
10 convinced of those things?

11 The Defendant's been charged with murder. Murder
12 is the killing of any person with malice aforethought,
13 either expressed or implied. That's how this state defines
14 murder. This State goes further, though, and also defines
15 malice. Malice is hatred, ill will or hostility towards
16 another person.. Did you see ill will and hostility coming
17 from the Defendant that night? Did you hear about the
18 things that he did? Did you hear that on three separate
19 occasions he had to be escorted out of Toney's Lounge, his
20 best -- his lifelong friend owns Toney's Lounge and had to
21 escort him out because of the commotion that he was causing
22 that night? Ill will, hostility towards another person?
23 James Myers didn't even feel comfortable enough repeating
24 the things that this Defendant was saying that night
25 (indicating). Toney Lowman said that there were things that

1 no one should ever call a lady, much less your own great
2 niece. Malice is the intentional doing of a wrongful act
3 without just cause or excuse and with an intent to inflict
4 injury or under circumstances that the law will infer an
5 evil intent. When he gets in the car, remember, and James
6 is telling him, Let's just go, let's just go. What did
7 James tell you he said? He said, Fuck it, I'm not going
8 back inside. Hostility, anger, ill will? And James told
9 you his uncle just wouldn't let it go.

10 In the popular sense, the term malice conveys the
11 meaning of hatred, ill will or hostility towards another.
12 In its legal sense, however, malice does not necessarily
13 mean ill will towards the individual injured, but signifies
14 a general malignant recklessness of the lives and safety of
15 others or a condition of the mind which shows a heart
16 regardless of social duty and fatally bent on mischief. The
17 ill will does not have to be towards the person injured,
18 although in this case, we have that. The ill will was
19 towards both of them. And watch that video, you see Neil --
20 because sometimes family members get in disagreements and
21 outside people are hesitant to step into that. And you see
22 Neil sit at that counter and he observes those things. He
23 watches what was going on. He even walks over and tries to
24 calm Sherry down. He (indicating) kept coming back inside.
25 He kept going toward Sherry Myers. He (indicating) was the

1 one calling her a no good bitch and a whore. That's ill
2 will. And once a person takes out a gun and fires into
3 crowds of people running away, recklessness of the lives and
4 safety of others or a condition of the mind which shows the
5 heart regardless of social duty and fatally bent on
6 mischief. Malice may be inferred from conduct showing a
7 total disregard for human life. Being drunk and angry and
8 taking out a gun and firing at people, a total disregard for
9 human life.

10 Malice aforethought does not require that malice
11 exist for any particular time before the act is committed,
12 but malice must exist in the mind of the Defendant just
13 before and at the time the act is committed. Therefore,
14 there must be a combination of the previous evil intent and
15 the act. This isn't premeditation. Malice doesn't mean
16 that you've gone out and you've planned to go kill somebody,
17 although in this case, I think we have that and I will get
18 to that point in a moment. Malice means that at the point
19 at which time you pulled the trigger, that first shot, you
20 were acting with ill will and hostility, that you were
21 fatally bent on mischief and you were regardless of the
22 welfare and safety of those around you.

23 You're also going to be charged on two more
24 things. This is what I like to call the Hail Mary defense.
25 Let's try to sell them a couple of things, let's try to sell

1 the jury a couple of different things and see if they're
2 willing to bite or buy one of them. You're going to be
3 charged on voluntary manslaughter and self-defense. Because
4 either he was acting in fear or he was acting because he was
5 really, really mad. That is what the Defense is going to
6 come up here and argue to you. They're going to want to
7 have it both ways.

8 The first thing that they're going to argue is
9 that this was voluntary manslaughter. It wasn't murder.
10 Let's not really hold him accountable for what he did.
11 Let's cut old Calvert a break and find him only guilty of
12 voluntary manslaughter. It's the easy thing to do, but that
13 doesn't make it the right thing to do. The State must prove
14 that the Defendant took the life of another in the sudden
15 heat of passion based on sufficient legal provocation. Both
16 heat of passion and sufficient legal provocation must be
17 present at the time of the killing to constitute voluntary
18 manslaughter. He has to be so enraged at the time that he
19 could not control his emotions.

20 Now, I agree with one thing. He was mad all
21 night. He was a mean old drunk. That wasn't the sudden
22 heat of passion. The heat of passion and sufficient legal
23 provocation must be present at the time of the killing to
24 constitute voluntary manslaughter. Legal provocation,
25 sudden heat of passion, you see something you are so

1 enraged, you are overcome by emotion. You walk into your
2 home after a day of work and the babysitter is molesting
3 your child, you take out a gun and you kill the babysitter.
4 That's the sudden heat of passion, that is legal
5 provocation. Being mean and angry and drunk and harassing
6 somebody and when somebody finally stands up for the person
7 you're harassing, you get mad and go behind a car and pull
8 out a gun and chase after them and shoot them in the back is
9 not voluntary manslaughter. It is not the sudden heat of
10 passion and there is no legal provocation.

11 Sherry pushes him, he punches Sherry, Neil punches
12 him. He gets down, goes behind the car. He's there -- and
13 I'll show you the video. He's there for seconds. He's
14 leaning on the car, just breathing. And his friend, Toney
15 Lowman, told you about it. He was leaning on the car and
16 he's sitting there, one would hope sobering up, cooling off.
17 And you'll see him vaguely, see him go like this
18 (indicating). When he comes around the corner, you will see
19 him start shooting. It doesn't get more malicious than
20 that. You get pushed down, you get punched down after
21 harassing people all night, so you shoot the place up? And
22 that's somehow makes it okay, it's not murder then?

23 The sudden heat of passion must be the type that
24 would make an ordinary person unable to coolly reflect on his
25 actions and would produce an uncontrollable impulse to do

1 violence. An ordinary person has to be so enraged by
2 whatever happened that they cannot control their emotions.
3 If a punch that knocks someone to the ground is what we want
4 to say is legal provocation, then good luck to everyone.
5 It's like that old saying bringing a gun to the fistfight.
6 And he didn't even bring a gun to the fistfight, he went
7 around the corner to make sure it was loaded because, I
8 guarantee you, it jammed on him. And I'll get back to the
9 point in a second.

10 So sufficient legal provocation must be the type
11 that will make a person of ordinary reason and caution
12 become enraged and lose control temporarily. The
13 provocation must come from act of or related to the victim.
14 He had punched the man's girlfriend and he defended him and
15 you say after you chase him down and shoot him in the back
16 three times that would be voluntary manslaughter, that's not
17 murder. By every account of every witness that testified,
18 this Defendant (indicating) was the provoker this night. He
19 was the one who was insulting people and who wouldn't let it
20 go and he kept coming in the club over and over and over
21 again.

22 Voluntary manslaughter would probably -- not
23 probably, voluntary manslaughter is definitely one of those
24 situations where you walk in and someone is attacking or
25 molesting or harassing your child and there's nothing you

1 can do about loose rage. It's not once you've been
2 harassing, antagonizing and provoking people all night that
3 you can just say I just lost it and got upset. Being mad
4 doesn't negate murder. It doesn't make murder voluntary
5 manslaughter. Being mad just means you had malice, which
6 makes his actions that night murder.

7 When we talk about legal provocation, when Neil
8 punched Cornelius to the ground -- I'm sorry, when Neil
9 punched Calvin to the ground, the exercise of a legal right,
10 no matter how offensive it is to another, it's never
11 sufficient legal provocation for voluntary manslaughter.
12 Once he punches his grand niece and Neil defends her, steps
13 into her shoes and defends her, at that point, that's never
14 legal provocation. The exercise of a legal right, the
15 defense of others, especially when you have a difference in
16 gender and difference in size, the exercise of that legal
17 right is never sufficient legal provocation for voluntary
18 manslaughter. If the heat of passion had cooled or there
19 was enough time between the provocation, if any, and I don't
20 think we have provocation here, and the killing of the
21 passion of a reasonable person had cooled, the killing would
22 not be voluntary manslaughter. When he's behind that car,
23 as Toney Lowman testified, that's the cooling off period,
24 sober up, calm your nerves, don't turn the corner and shoot.

25 And what is most offensive in this case is that no

1 matter how many times Mr. Mills asked the question, one
2 thing is consistent, that first punch that Cornelius Green
3 threw caused no damage to Mr. Myers. That wasn't when he
4 got bloody, that wasn't when his orbital bone was broken or
5 his nose was broken. The testimony is that that happened
6 after the shots were fired. After this Defendant
7 (indicating) starts shooting into a crowd and hits him in
8 the back, he -- Mr. Mills want to make the victim in this
9 case the villain. There was an armed man shooting into a
10 crowd, who had already been hit and he's the villain for
11 defending himself, for defending the other people out there
12 and for getting the gun away from him? If he's a villain,
13 then I promise they're are people all over this country who
14 want more villains like Cornelius Green. Let's put those
15 villains in elementary schools. Let's put those villains in
16 movie theaters. Let's put those villains in shopping malls.
17 The villain who goes and gets the gun from the man shooting
18 into the crowd. Like I said, this defense would be
19 laughable if it were not so offensive.

20 There's one person charged with a crime here,
21 crime of murder and that's the Defendant. But if won't buy
22 voluntary manslaughter, if you don't buy that there was
23 legal provocation or if he couldn't cool off or no ordinary
24 person would have been able to calm themselves after being
25 hit, if you don't guy, the Defense is going to try to sell

1 you this, self-defense. In this state, in order for
2 self-defense to come into play, a defendant has to meet all
3 four of those prongs here that I'm going to discuss. The
4 defendant was without fault in bringing on the difficulty.
5 And I don't think that anyone can stand in this courtroom
6 with a straight face and tell you that Calvin Myers was
7 without fault in bringing on the difficulty that night. He
8 got kicked out three times. This -- I mean, this doesn't
9 even apply. And, remember, he has to meet all four of them
10 to be found not guilty because it was self-defense. He was
11 the one that was going up to people. He was the one that
12 was starting it. He was one that followed Neil Green out of
13 the lounge when Neil Green had finally had enough. And you
14 will see that on the video. Without fault in bringing on
15 the difficulty. Remember, when he gets mad, he throws his
16 jacket off right before he goes outside. And they want to
17 say he was without fault in bringing on the difficulty.
18 That's ridiculous.

19 Number two, the Defendant, actually, believed he
20 was imminent danger of losing life or sustaining serious
21 bodily injury or he, actually, was in danger of losing life
22 or sustaining serious bodily injury. Now, he was seriously
23 injured, that's not something that anyone in this courtroom
24 is trying to hide from you, but he got his behind kicked
25 that night after he started shooting up the parking lot at

1 Toney's Lounge. The fear has to be there before he starts
2 firing his weapon, not after he turns the corner and fires
3 it while hitting Neil Green. This one doesn't apply either.
4 If his defense is based upon the actual belief of imminent
5 danger that a reasonable prudent man of ordinary firmness
6 and courage would have entertained the same belief, if his
7 defense is based on his being in actual or imminent danger,
8 then the circumstances were such as would warrant a man of
9 ordinary prudence, firmness and courage to strike the fatal
10 blow in order to save himself from serious bodily harm or
11 losing his own life.

12 There is nothing that you've heard about what his
13 actual belief was. He give a statement to the police
14 officers and in that statement, he conveniently blacks out
15 once he gets to Toney's Lounge because it's not really
16 helpful for him to remember the events of that night.
17 There's nothing that says he feared that he was in imminent
18 danger. And he wasn't. He turned the corner and chases
19 after the victim. He shoots the man in the back. The only
20 thing worse than shooting an unarmed man is shooting an
21 unarmed man in the back. It's like we're getting to a point
22 where anything is considered self-defense or justifiable,
23 anything should make someone so enraged that it's now
24 voluntary manslaughter. You're walking in the wrong
25 neighborhood, self-defense. You won't turn your music down,

1 self-defense. You're running away from me and so I chase
2 you down and shoot you in the back and now they're trying to
3 sell that as self-defense, too?

4 There was no imminent danger. The Defendant --
5 the victim was trying to get away. He's hiding behind
6 cards, dodging -- sorry, he's crouching behind cars dodging.
7 And remember, for this to work, he has to meet all four.
8 Missing one of them is fatal to his self-defense claim.

9 Lastly, that he had no other probable means of
10 avoiding the danger of losing his own life or sustaining
11 serious bodily injury than to act as he did on this
12 particular instance. He was standing beside his car when he
13 turned the corner.

14 Will you turn on the video?

15 Can y'all see?

16 (The jurors nodded.)

17 MS. WALKER: Now, remember the testimony, this is
18 Mr. Myers's car. This is the Defendant's car (indicating).
19 Toney Lowman testified he was standing behind the other car.
20 Cornelius Green -- we're going to play all four camera
21 angles at one time. You'll see coming this way. This is
22 his car (indicating). If he wanted to retreat, all he had
23 to do was get it in and drive off. Remember, he wasn't
24 going to do that. They had already tried to that once, but
25 no, fuck that, I'm going back inside. He wouldn't let it

1 go.

2 (Video being played.)

3 MS. WALKER: See them, they're all watching. The
4 people are walking away. Watch here (indicating).

5 And you'll have a copy of this back there with you
6 in the jury room so you can see it. You see them walk up
7 (indicating)? He goes back. And this is -- Toney Lowman
8 testified, you see Toney. And remember, there are lights
9 here. Everything appears lighter in this picture than it
10 does in this picture. And Toney is back there talking to
11 him.

12 At that point, according to Toney's testimony and
13 everyone else's testimony, that scuffle outside, the initial
14 scuffle was over. And you will see him come around the
15 corner. You'll see him turn this corner right here. Toney
16 walks off. He's sitting there. Cooling off period. He's
17 got the gun out already. Watch it when you get back there.
18 You separated people start running. He's coming around the
19 corner. There's Neil Green trying to get away from him,
20 trying to get something between him and Calvin Myers. You
21 see, (indicating), he starts to walk away. At that point,
22 you see him come back. He comes back around the car. And
23 that's important because he could have cooled off then, too,
24 right? And you see him, he's got something in his hand.

25 Remember the testimony of Yvonne Woods and combine

1 that with the testimony of Amanda Metz, the firearms
2 examiner that testified. She talked about this clip. He
3 put eight in here. Yvonne Woods, remember she said there
4 was one unfired cartridge casing that she found in the
5 Defendant's clothing at the hospital. The first time he
6 went around the corner, the gun jammed. That's why you see
7 Cornelius Green looking around to see what's happening. And
8 he leaves and thinks it's safe. The gun's jammed, he's
9 racking it, trying to figure out what happened. Unfired
10 cartridge case is in his pocket when Yvonne Woods gets his
11 clothing from the hospital. He clears it and goes around
12 this way. You see him over there messing with it. He's got
13 his hands down by his side, then he jaws around again.
14 People start running. You see these people running
15 (indicating), you see them coming running, boom, shot fired.
16 He walks around, you see him back here (indicating). He was
17 caught up in the heat of passion? He does it the first time
18 and it doesn't work. He runs back around and everything is
19 calmed down. You see him with the gun (indicating) and then
20 he runs back around.

21 Let's be very clear, there's was no second -- I
22 don't know what the Defense at this point is going to say to
23 you, but there was no second gunman there that night. There
24 was really only one. There was one gun. Everybody
25 testified there was only one gun and the gun (indicating)

1 was the Defendant's. It was his house gun, which is a new
2 term for me. It was his house gun that he had in the car
3 that night. Remember? He had it in the car. He would have
4 never taken it out of the car. He kept it in the car
5 because people see him getting money from the food he sells
6 around town.

7 How did that house/car gun get on him that night?
8 That's an important question, right? Once he saw Sherry
9 Myers and got kicked out the first time, did he go to his
10 car and his house gun out of the car? What about the second
11 time he got kicked out. Did he get it then? Because
12 according to his own statement, this is a unique case
13 because you get to hear exactly what the Defendant said
14 happened that night. According to his statement, he
15 wouldn't have taken that gun out.

16 I submit to you, ladies and gentlemen, that
17 exactly what he did. He was mad. He was drunk and he
18 wasn't going to let it go. The thing about this, though,
19 remember, this is car (indicating), where he could have
20 retreated had he wanted to if this was self-defense, if he
21 was so scared that he had to get out of there. His car
22 (indicating). He goes around the corner.

23 At this point, where the car is, you can't see
24 those front doors. You can't see them opening and closing
25 because James testified that they went and got in the car

1 for a little while. When did he go get that gun? Why did
2 he go get that gun? If he was so concerned for his own
3 safety, when he went out and got the gun, why not just get
4 in and drive away? Because his heart was fatally bent on
5 mischief, because he had enough of that no good bitch whore
6 of a grand niece of his, because he wasn't going to let it
7 go. And then at this point, the fight ensued. And he is
8 whaling on him. There are several punches shown. He still
9 hitting him (indicating).

10 You remember Dr. Durso's testimony? She was
11 pathologist that did the autopsy. That was kind of one of
12 those ah-oh moments of the trial. Mr. Mills got up and he
13 said how long would he have been able to sustain that shot
14 to the back? Because it would be good for him if the answer
15 was he dropped immediately. That's not what Dr. Durso said.
16 Remember what she said? People can get a rush of adrenaline
17 and they can lost running for five minutes. Doesn't that
18 look like a rush of adrenaline to you? Because he kicked
19 the Defendant's behind that night. His face was swollen, it
20 was bloody, it was bruised. But no matter how much the
21 Defendant and Mr. Mills want to wish it away, that happened
22 after he shot the victim three times in the back.

23 Remember she talked -- Dr. Durso talked to you
24 about entrance wounds and exit wounds and about the way
25 those entrance wounds drill in. She said she could tell

1 that he was shot in the back because of the way those wounds
2 looked. She said you're going to have that dark ring around
3 them, it will be circular. These are the ones on the side
4 (indicating). You'll have pictures of the other wounds as
5 well. The wound to the back here (indicating), two entrance
6 wounds to the back. He shot an unarmed man in the back.
7 And then there's that one to the arm. Remember, she said he
8 probably wasn't just standing there like this when he got
9 shot (indicating), but that's the entrance wound to the arm.
10 And I agree with her, he wasn't standing like this
11 (indicating), he was standing like this in a defensive
12 posture. And then you have on the front of the victim in
13 this case those graze wounds. There were several shots
14 fired, five of which we can account for. God only knows
15 where the other three went, but, luckily, no one else was
16 hit. That's the graze wound because he's on top of him and
17 he's wailing on him. He's got that graze wound where he
18 couldn't really get the gun in a good position and it kind
19 of goes up and the bullet grazes him and it goes up his
20 stomach.

21 She said it's hard -- both experts testified that
22 it was hard to determine how far away they were from one
23 another when those shots were fired, hard to determine from
24 the clothing, from the victim's body, from the bullets from
25 the gun. But you know what helps us to determine how far

1 away they were from one another? The shell casings. You
2 remember she said that in a gun like this, the shell casing
3 is going to eject to the right, within a few feet was her
4 testimony. The first shell casing is right here
5 (indicating), right around this corner (indicating) when he
6 turned the corner and started shooting, that's where the
7 first shell casing is. And you see everybody started
8 running. He got on top of him and fired, right close to
9 him -- on top of him right up close to him and fired several
10 more times and then he got beat up.

11 In addition to that, the pictures and the firearm,
12 all the clothing that we showed you, we introduced you to
13 witnesses who were there at the time, the witnesses who have
14 specific direct knowledge of what happened. And it's rare
15 to have the witnesses who are testifying and implicating the
16 Defendant in the murder to be his own friends and family
17 members. His nephew, the one he said would never tell a lie
18 on him, Uncle wouldn't let it go. I don't feel comfortable
19 repeating what he said to my cousin, Sherry. Uncle shot
20 him. His niece, they'd been having difficulties. She was
21 going to say something about him in court that he didn't
22 want her to, so he walks up to her and he calls her a no
23 good bitch and a whore. Neil was minding his own business.
24 He wasn't getting involved in it.

25 Toney Lowman, he got out and he got down off the

1 stand and remember, he explained where people were and how
2 close they were, what happened. That this was his friend,
3 they've known each other for decades, but the truth is the
4 truth. And then you heard this morning from Marvin Moore.
5 And the things that they all said were that he was the
6 antagonist that night. He was the one starting the trouble.
7 He wouldn't let it go. He kept walking up to her that
8 night. And yeah, she got loud with him once he called her
9 names that you should never call a woman. She said he kept
10 calling her outside of her government name. Then she
11 said -- on cross-examination, Mr. Mills made a point of
12 talking about when she pushed back from the bar. She said
13 yeah, because he's known to sneak up on people and sneak
14 them from behind. He did it that night. The victim got
15 shot three times in the back. Perhaps, had he known what
16 Sherry knew, he would have never let the Defendant get
17 behind him. These were his friends. These are his family
18 members that are giving this testimony (indicating). What
19 do they have to gain from making this up?

20 You heard from deputies that arrived that night,
21 the responding deputies, Deputy Ellis and Deputy Frugal.
22 They talked to you about coming to the crime scene, clearing
23 it, getting the people who were there recovering the gun,
24 the only gun that fired all of the shell casings, the gun
25 that is registered to this Defendant's wife, talked about

1 recovering those items. And Hazelbaker went back later and
2 got more shell casings that were fired from this same gun,
3 that Highpoint nine millimeter that belonged to the
4 Defendant, his house gun.

5 You heard from Deputy Woods, she was the CSI
6 investigator. She went to the scene, collected things that
7 night, photographed the evidence. And she found that
8 unfired cartridge casing in the Defendant's clothing. And
9 Deputy Polis, who attended the autopsy, what she saw, the
10 gunshot wounds to the back. You heard from her as well.

11 You heard from several witnesses who were deemed
12 as experts by Judge Newman and he will advise you on expert
13 testimony. Amanda Metz, she's the ballistics examiner.
14 That can hold eight. That doesn't hold eight, there isn't
15 one in the chamber. He's got seven fired cartridge casings
16 and the one from when the gun jammed when he comes back
17 behind his car to clear it. When John Barron, the DNA
18 expert, the blood on the Defendant's clothing was his blood,
19 after he been beaten up after shooting into that crowd. You
20 heard from Amy Durso, the pathologist, talk about those
21 entrance wounds to the back.

22 You heard from the lead investigator on this case.
23 He talked to you about reviewing the video, reviewing it
24 with people so he could identify who's who. And the people
25 who he could identify, he talked to and he got written

1 statements from them, including Calvin Myers. He was
2 advised of his rights. Remember, he said they were in the
3 -- in his truck when he picked him up from the hospital.
4 Before we asked you questions -- before we ask you any
5 questions, you must understand your rights. You have the
6 right to remain silent, check. Anything you say can be used
7 against you in a court, check. You have the right to talk
8 to a lawyer for advice before we ask you any questions and
9 have that lawyer with you during any questioning, that's
10 checked as well. If you cannot afford a lawyer, one will be
11 appointed for you before any questioning if you wish. If
12 you decide to answer questions now without a lawyer present,
13 you still have the right to stop answering at any time. You
14 also have the right to stop answering at any time until you
15 talk to a lawyer. It's signed by Calvert Myers and
16 witnessed by the investigator.

17 The waiver of rights: I have read this statement
18 of my rights and I understand what my rights are. I'm
19 willing to talk and answer questions. I understand and know
20 what I am doing. No promises have been made to me and no
21 pressure or coercion of any kind has been used against me.
22 Calvert Myers signed that and waived his rights to remain
23 silent.

24 So we get to hear from him. We get to hear his
25 side of the story. Because, remember, the investigator said

1 Calvert was calling for him, hey, I want talk to you. I
2 want to tell you what happened. But in his opportunity to
3 talk to the investigator, in his opportunity to tell the
4 investigator what happened, it's not I was so enraged and
5 overcome with anger, I couldn't control myself. He provoked
6 me, so I shot him. He doesn't say that. He doesn't say
7 voluntary manslaughter. He doesn't say I was in fear for my
8 life. I couldn't get away. I had to shoot him in the back
9 as he ran away. He doesn't say that.

10 So what does he say? And the thing that's so
11 interesting about this statement is he remembers every
12 detail of that day up until things go bad because he's been
13 arrested for murder. It's not helpful to remember that
14 part, that part doesn't help his defense.

15 What can you tell me about the shooting incident
16 that occurred at Toney's Lounge on December 29th, 2012?

17 I can tell you how my day went that day. It
18 started at 5:30 in the morning. Me and my wife got up at
19 the time and I put the pots of water on to get one of them
20 hot. The other one, I --

21 He remembers what's going in the pots.

22 I go out and light the charcoals on the grill and
23 while my grill is heating up, I go back inside and put my
24 beans in the pot. He remembers the order in which he
25 started cooking that day. He doesn't remember this

1 shooting.

2 I then seasoned my chicken and pulled out my fish.
3 I go back and put my meat on the grill and I am, basically,
4 cooking the meat on the grill and my wife and daughter are
5 helping me inside the house. That was Friday, so I was
6 doing barbecue, hash and rice. The hash was already made,
7 so I had to heat it up. I made sure my van was set up with
8 everything I needed for the day. About 9:30 to 10 a.m., I
9 load all the food in the van and then I left to go make my
10 rounds.

11 He remembers the exact moment he left the house
12 that day, but doesn't remember shooting someone three times
13 in the back or why he did it.

14 At the end of the afternoon, I'd go back to
15 Garner's Ferry Road and that's when I go to Schneider
16 Electric and I am there until eight o'clock at night.

17 He has that day down.

18 It's Friday, so the ladies at Citgo on Garner's
19 Ferry are waiting on their food, so that is about the time
20 my buddy, I have him in my phone as Corn Ball, and I had a
21 drink at Citgo. He had a mini bottle in his trunk. I know
22 it was gin.

23 This is probably where Calvin's night went back.
24 He started drinking gin at the Citgo, but as you will hear
25 from Judge Newman, voluntary intoxication is not an excuse

1 for a defense to a crime, regardless of whether the crime
2 was one involving general or specific intent. A person who
3 voluntarily ingest alcohol and thereby becomes intoxicated
4 is no less responsible for his acts while in such condition.
5 If one voluntarily drinks intoxicating liquors, wine or beer
6 and becomes intoxicated to whatever degree and if while in
7 that condition commits an act which would be a crime if it
8 had been committed by a sober person. The fact of
9 intoxication would not relieve the intoxicated person from
10 responsibility. Being drunk is not an excuse to murder.

11 And in -- a lot of cases that are tried here in
12 the Richland County courthouse, we have to take jurors away
13 from their everyday lives, away from their ordinary
14 experiences and put them in a world in which they are not
15 used to. We talk to them about gang violence, why this gang
16 member was shooting that gang member. About bookies, why a
17 bookie would kill his wife and friend and why do these
18 things happen. And we take jurors and put them in
19 experience in which they're not usually used to, but in this
20 case, we don't have to do that. Because most people have
21 run into the mean, angry, old drunk man who want let it go,
22 who is out of control. That is not a defense in the State
23 of South Carolina to any crime.

24 Me and Corn Ball, were drinking at the Citgo.
25 They drank gin. He had one for me and one for him. My

1 nephew, James Myers, was with me, too, at the Citgo. I
2 cannot recall if I stopped at Food Lion or not that Friday.
3 On the way home, from some reason, I stopped a Toney's with
4 my nephew, James, and that's is when it goes blank. How
5 convenient.

6 Do you recall where you parked your white van?

7 No, all I remember is that I parked in the parking
8 lot.

9 And once he goes in and once he's on the video
10 doing all the things that make him guilty of this murder, he
11 just can't remember that, doesn't know about it.

12 Do you recall if you were intoxicated at this
13 point?

14 Nope. I could not have been intoxicated after
15 working like that. I do not drink during the day when I am
16 working.

17 Do you remember having a conversation with Sherry
18 Myers?

19 No, not until you showed me that we had one.

20 And -- don't let anyone come up here and tell you
21 that he couldn't remember because he had gotten beaten up.
22 If he couldn't remember because he got beaten up, he
23 wouldn't remember more than just what happened at Toney's.
24 He would forget about all the other things that happened
25 that day, too. This is convenient amnesia.

1 Can you explain to me the relationship that you
2 and Sherry Myers had?

3 She is my niece. She is my brother's daughter's
4 daughter, so that makes her my great niece. It is on and
5 off again. One day, she's nice and one day, she may not
6 speak. We may go a couple of weeks without talking.

7 If anyone who had an uncle that walked up to them
8 and called them a no good bitch and a whore, yes, that would
9 cause the conversation and relationship to be on and off
10 again.

11 Why is there a strain on your relationship with
12 Sherry Myers?

13 I have to mad at a family member for there to be a
14 strain. I'm not mad at her. It's her. You never know what
15 mood she's going to be in.

16 He's not mad at her? He calls her a no good bitch
17 and a whore because he's not upset about anything? Does
18 that make sense? Does that ring true? Does that sound
19 credible to anyone in this courtroom other than those two
20 (indicating)?

21 Can you tell me about any statements that Sherry
22 Myers may have written against you?

23 She made a statement in court. You told me about
24 the case. It's the one with James Goodwin. I can tell you
25 one thing, we aren't still arguing about that, that's been

1 over a year ago.

2 How do you know Cornelius Lamont Green?

3 My brother is married to Cornelius's aunt. I have
4 known him since he was a little boy. Me and Cornelius
5 didn't have a problem.

6 They didn't have a problem. He wasn't fearful of
7 Cornelius. He didn't do it in self-defense. He wasn't
8 enraged by Cornelius because, according to him, they didn't
9 have a problem. Those are his words.

10 Have you ever had problems with Cornelius Green?

11 No, sir, I've never had any problems with
12 Cornelius Green. I told you that is what makes it hard,
13 too. I just had a drink with him around Thanksgiving in
14 front of my niece's house before I went to Florence. I
15 never had any problems with Cornelius Green.

16 Do you recall having been taken out of the club by
17 Toney?

18 No. I don't remember going into Toney's or coming
19 out of Toney's. I do remember going into the parking lot.

20 Where did you get that nine millimeter that you
21 had on you?

22 My wife bought me a house gun. So many people
23 getting robbed around the holidays, so I put it in the
24 car. I just leave it in the car because so many people
25 see me taking in the money from the food. I just leave

1 it in the car, until this night when he was kicked out
2 of the club three times and that gun ends up on his
3 person and he ends up behind that car clearing the
4 chamber and turning the corner and shooting into the
5 crowd at Toney's Lounge.

6 Do you recall getting the gun out of your van at
7 Toney's or did you have it on your person?

8 I do not recall how I got the gun on me.
9 Normally, it is in the car.

10 He recalls when he put the beans on and the bacon
11 on and when he put the pots on, but he doesn't recall
12 when he got out the gun that he used to shoot and kill
13 a man he's known since he was a little boy. He doesn't
14 remember that part.

15 Whose name is the gun in?

16 My wife, Lorraine Myers.

17 Do you recall what kind of gun you had?

18 Highpoint nine millimeter.

19 Do you have any paperwork on the handgun?

20 Yes, she has it at the house.

21 Do you recall shooting the handgun in the parking
22 lot?

23 No, sir.

24 Do you recall getting assaulted at any point?

25 No, sir.

1 After showing you the video, do you recall
2 anything that you were doing in the video?

3 It shows me arguing with somebody, who knows if
4 it's from that night. I have been in Toney's so many
5 times.

6 He doesn't know when he was acting the way he was
7 acting that night. It could have been any time. He
8 goes there and causes trouble all the time. It could
9 have been any night.

10 What's the last thing you recall from that day?

11 I told you, the last thing I remember is coming to
12 Toney's Lounge. I don't even remember where I parked
13 my car, but I know I stopped.

14 Were you taking any type of medication before the
15 incident occurred?

16 Investigator Carwell is trying to help him, trying
17 to figure out why he acted this way. Is there any
18 medication involved?

19 I don't remember taking any medication that day.
20 I am prescribed pain medication, but I do not remember
21 having any pain that day. I just remember my nephew,
22 James, being with me that day and he wouldn't have put
23 anything in my drink.

24 Can you tell me what injuries you received?

25 Yes. Right now, I have an opened-face crown

1 knocked out, a pearl knocked out, two more teeth
2 besides them knocked out, fractured jaw, fractured
3 skull all the way around and my mouth was tied up with
4 wires for a week. They had to put a trachea in my
5 throat. I got a bullet hole in my right foot --
6 because he shot himself -- there aren't any visible
7 scars, just sort of all over. Somebody did their job,
8 I don't think it was a dead man.

9 Like I said, no one is hiding the fact that he got
10 his behind kicked that night after he started shooting.
11 After he started shooting. That does not make it
12 self-defense. That does not make it voluntarily
13 manslaughter. The only person acting in self-defense
14 that night was Cornelius Green. He just didn't live to
15 tell the story. He got all of those injuries after he
16 started firing shots. Remember, we asked every witness
17 that. When he got off the ground that first time, was
18 he bleeding? No. And then Mr. Mills got up and he
19 talked to Toney Lowman and he said, Was he stumbling
20 around? And he said, Yes, he was stumbling when he got
21 up, but it was not like he was unconscious or anything.
22 That was the testimony Mr. Mills elicited. He did get
23 beaten after he fired the shot. The only person that
24 acted in self-defense was Cornelius Green. He was
25 fighting for his life and to get that gun away from

1 Calvert Myers before he shot other people in the
2 parking lot that night.

3 He said no, sir, he doesn't remember getting
4 assaulted.

5 Can you tell me about incident that may have
6 occurred prior to this that may have caused this
7 incident?

8 There isn't anything going on, that is just it.
9 There isn't anything.

10 This is the appropriate time to talk about your
11 sudden action, your rage, how you were provoked or how
12 you were scared and in fear and it was in self-defense
13 because you didn't know what was going on. This is the
14 time to talk about that. There's nothing going on,
15 that's just it. There isn't anything.

16 Do you recall anyone else having a gun at Toney's
17 Lounge other than you -- than yours?

18 I don't even recall my gun.

19 Is there a possibility that you did shoot
20 Cornelius Green?

21 What reason would I have to shoot him, I have
22 known this kid my whole life? I just don't know.

23 Well, now, they're going to come up here and give
24 you a bunch of reasons he had to shoot him. What
25 reason would I have to shoot him?

1 Would you like to add anything to this statement?

2 No, not at this time. I am not through
3 cooperating with you.

4 Is this statement the truth to your knowledge?

5 To the best that I know.

6 Ladies and gentlemen, this trial, like all other
7 trials, come down to two things, common sense and
8 credibility. You didn't leave your common sense at the
9 time, that's what Mr. Mills told you. Your common
10 sense, your personal experiences. Watch him on that
11 video. He's there. He's walking up -- she told you
12 what he was saying to her at the times he was saying
13 it. Use your common sense.

14 After he does this, after he and Sherry get into
15 that shoving match where Neil steps in and punches him,
16 does that negate the rest of it? Does that make this
17 murder where he chased this young man down and shot him
18 three times in the back a voluntarily manslaughter?
19 Does that mean he acted in self-defense?

20 And, ladies and gentlemen, you are either going to
21 believe that his actions that night that provoked
22 everyone, that got him punched after he punched Sherry
23 means he was acting in self-defense and voluntary
24 manslaughter or you're going to believe that he's
25 acting in murder. And if you believe that he, as the

1 video shows and as the witnesses testified, chased him
2 down -- chased Neil Green down, turned that corner and
3 started firing, first around that corner where shell
4 casing number five is found, then he gets closer up to
5 him and shoots some more, if you believe that, then
6 hold him accountable for his actions. Find him guilty
7 of murder. If you don't believe that, if you believe
8 he was in fear for his life, so he skipped by his own
9 car and chased down the victim to shoot him and kill
10 him, to shoot him in the back, then find him not
11 guilty. Let him go get his things back and walk him
12 out the front door of this courthouse.

13 Ladies and gentlemen, I submit to you that the
14 evidence shows that on that night, after provoking and
15 antagonizing both Sherry Myers and Cornelius Green,
16 after Cornelius Green, Neil, walked out of that club
17 and this Defendant threw off his jacket and followed
18 him, he was looking for a fight. He wasn't going to
19 let it go. Fuck that, I'm going back inside. I
20 believe that the evidence shows that this was nothing
21 less than a malicious murder of a young man he's known
22 his whole life. For those reasons, ladies and
23 gentlemen, I'm going to ask you to hold this Defendant
24 (indicating) accountable for his actions and find him
25 guilty of murder. Thank you.

1 THE COURT: Mr. Mills.

2 MR. MILLS: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. MILLS: Good afternoon, ladies and gentlemen.

5 I want to thank y'all on behalf of Mr. Myers and his family
6 that's sitting back here, his wife and cousin with his four
7 kids (indicating), for your close attention to the evidence
8 that's been presented in this case as well as the lack of
9 evidence that's been presented -- not presented in this
10 case.

11 Now, the solicitor was stating that it would be
12 laughable if not so offensive for us to argue what the Judge
13 is going to charge you as to the law as what the law is.
14 Now, they decided to charge Mr. Myers with murder. You will
15 hear from the Judge what the elements of murder are. You
16 will also hear from the Judge based on the evidence
17 presented to you, the jury, you will hear what other charges
18 and defenses are available based on the evidence and lack of
19 evidence. You will hear that based on the evidence, you
20 could find that he's guilty of a lesser offense, which is
21 still a major crime, called voluntary manslaughter.

22 Now, the solicitor is telling you that all the
23 blame goes on Mr. Myers for what happened that evening, that
24 early morning, that he was totally at fault for all the
25 incidents that occurred at the bar. Now, you have seen what

1 was on the video. This is an unusual case because we do
2 have modern technology, which can tell us and show us, at
3 least, subjectively what is visually seen at the incident
4 location. Now, the solicitor also speculates quite a bit
5 about what is on those videos. I want to show you some at
6 first in just a minute.

7 Now, as I stated during my opening statement, the
8 Defense never has any burden of proof. Mr. Myers, when he
9 was charged with murder, he's presumed innocent. Mr. Myers,
10 when he was brought into this courthouse this week is
11 presumed innocent. Right now, he is presumed innocent of
12 all charges whether it's murder, voluntary manslaughter or
13 whether he's not guilty due to self-defense. And these are
14 things that you will hear the elements of from His Honor and
15 he will tell you these are applicable to this case. So you
16 have to determine whether or not they are applicable and
17 whether or not the facts fit the element of either murder,
18 voluntary manslaughter or self-defense.

19 Now, there has been, as you heard and the
20 investigator testified to, there's a lot of inconsistencies
21 in this case, a lot of inconsistencies between the witnesses
22 who were at the scene. The one thing that was not done
23 was -- and you heard what Sherry Myers stated. She said
24 there were about 40 to 50 people out there. And you can see
25 from the video of the scene outside Toney's Lounge that

1 there are a lot of people out there. So I'm going to ask
2 you to look at what has been brought to you as far as the
3 evidence and what has not been brought to you as far as the
4 evidence. Now, the investigators have a certain duty to
5 investigate cases. That's what they're hired to do. They
6 have lots of resources that taxpayers pay for in order to
7 investigate cases.

8 Now, on that evening, Investigator Carwell talked
9 to two people, got two statements. None of -- neither one
10 of those statements were recorded, which is a relatively
11 low-cost way of doing an investigation, to have an audio
12 recorder, some sort of -- in fact, I carry one with me
13 almost everyday for purposes such as hearings where there's
14 no court reporter and things of that nature so that we can
15 have a recording if the judge let's us do it. It's a little
16 recorder like this. You can put hours and hours and hours
17 of audio recordings on little recorders like this, but the
18 sheriff's department has decided to not give -- it's not
19 Investigator Carwell's fault. It's the sheriff's
20 department's fault. Why don't they have little recorders so
21 they can record things? We've got this modern technology,
22 we've got this smart board here, which is showing this
23 video, we've got the video from the scene and the sheriff's
24 department can't have an audio recording device such as this
25 (indicating). And they can have an audio recording device

1 at the office, too, and that's where they talked to Mr.
2 Myers. He said he talked to them quite a bit of time before
3 he put down a statement. Is it reasonable to believe that
4 any -- that all things that were said are on that statement
5 --

6 MS. WALKER: Objection, Your Honor, arguing facts
7 not in evidence.

8 THE COURT: I overrule the objection.

9 MR. MILLS: Thank you.

10 Is it reasonable to believe that all things that
11 are made on that statement or any statement are on the
12 written statement? You can use your common sense, it's not.
13 It's not reasonable to believe that.

14 And as I stated, there has been a lot of
15 inconsistent testimony. There was a different number of
16 shots heard, fired that they heard. James Myers said he got
17 to Toney's around 11, that didn't -- that's not consistent
18 with what's on the video. Sherry says she heard -- Sherry
19 Myers said she heard three shots. Sherry Myers left out of
20 her initial statement that she testified to, but she left
21 out the fact, very important fact in this case, the fact
22 that Neil Green, the victim, hit and knocked down, beat,
23 basically, in front of the club Mr. Myers when they went out
24 that last time.

25 Now, that's a very important fact in this case.

1 That was left out initially, but she did testify that that
2 did occur. And every one else testified that this occurred.
3 Not only was he -- James Myers testified that, actually, Mr.
4 Green was beating -- was on the ground beating Mr. Myers.
5 Toney's Lowman testified that Mr. Green had hit and knocked
6 down Mr. Myers, and then Mr. Myers got up stumbling. So you
7 can take into consideration as far as legal provocation the
8 fact that someone is being physically assaulted. And what
9 is the normal result from that? Fear and anger. Suddenly,
10 you're going to be fearful and angry if you've got someone
11 physically attacking you out in front of the club. And that
12 is the result in most people's minds. You have a sudden
13 anger and fear of what's going to happen next. You heard
14 testimony that Mr. Green was younger, was larger than
15 Mr. Myers.

16 This is not to put blame on Mr. Green. We're not
17 trying to put the blame on Mr. Green. This is case where
18 this is a tragic incident, but there are legal things that
19 you must determine to determine whether or not -- which
20 elements fit this incident.

21 Now, the State has the burden of proof as we've
22 stated. They decide what evidence they're going to bring to
23 you and what evidence they're not going to bring to you.
24 Several witnesses they didn't bring to you they knew about
25 that were in the club that evening. Several witness they

1 did not try to bring to you because they didn't investigate
2 it. One witness, Annie Lowman, who was, actually, mentioned
3 on their witness list was not brought to you. She was at
4 the club. Spencer Wright, one who called 911, was not
5 brought to you, was not here to testify, was in the club
6 that evening, in fact, called 911. In fact, they have --
7 and you heard the custodian of records from the 911 service,
8 she stated that there were six calls, I believe, to 911.
9 And only one was brought in. And the State has the burden
10 of proof. They could have brought you all six calls to hear
11 different versions of what happened. Obviously, there are
12 different versions of what happened that evening. You can
13 see from the video what is objectively being done, but you
14 can't view subjectively what is being said and what is being
15 thought. So why did the State not you bring you that
16 evidence? You have to ask that because they have the burden
17 of proof.

18 The State also admits and has had testimony to you
19 that Mr. Myers was severely beaten, severely beaten. He was
20 in the hospital for 11 days, face bloodied, had tubes going
21 in him, had -- swollen, had loss -- had broken bones in the
22 face and in his head. And the investigator from CSI, Ms.
23 Woods, was told to take photographs of the scene, which she
24 did, which includes some of these photographs here which
25 shows some of those spent casings from the weapon, but also

1 to go take photographs of Mr. Myers. Several photographs
2 were taken, none brought to you. Not one photograph to show
3 you what Mr. Myers looked like. They have the burden of
4 proof. They have to show you what their case is about.
5 What are they trying to hide from you? You have to ask that
6 question because they have the burden of proof. They have
7 the resources. They had the investigation. They had
8 testimony that that was done and they did not bring that to
9 you. All they had to do was bring a picture and put it into
10 evidence. What are they trying to hide? Why are they
11 trying to hide?

12 Then we -- then the solicitor talked about the
13 statement that Mr. Myers made to the officer. This
14 statement -- this is the actual copy that you will see.
15 It's in evidence -- was made the day he was released from
16 the hospital. In fact, the officer -- the investigator
17 picked him up at the hospital as he's being released. Read
18 him the rights in the car, in the vehicle. Then took him to
19 the sheriff's department where the statement was done. As I
20 stated earlier, there's, obviously, extraneous conversations
21 that aren't in this written statement, but there's no
22 recording of that. He had just had severe trauma in the
23 hospital, major hospital, severely assaulted and was in the
24 hospital for 11 days and this is what he did. He was trying
25 to be cooperative. If you read the warnings here and the

1 warnings on the other exhibit, he does not have to make a
2 statement. That's part of our constitution. He had the
3 right to remain silent. He wanted to make a statement, but
4 he had just been released from the hospital. Could he
5 remember everything? Is it reasonable that he couldn't
6 remember everything? Yes, it is.

7 Okay. Now, I would like to show you some of the
8 video that the State did not show you during their closing
9 argument.

10 Again, this is the four video cameras. These
11 three are the main ones. Okay. 1:10 -- all of these are
12 concurrent as far as the time is concerned. So this is just
13 1:10 over here and 1:10 over here and 1:10 over here. And
14 from the testimony, this is Sherry Myers. And there's quite
15 a bit -- number of people in there who were not called as
16 witnesses. This is Calvin Myers (indicating). He is
17 talking to her. She does have her back to him, remains with
18 her back to him. And it looks like there's a lot being said
19 back and forth. Then, of course, she then turns around and
20 is gesturing at him. He seems to be remaining relatively
21 still. She points at him in the face.

22 That's the first assault of the -- is when Sherry
23 Myers hits Mr. Myers. She -- there's another assault there
24 (indicating). There's a lot of upset. There's a lot of
25 anger going on throughout this, as you can see.

1 Ms. Myers still appears to be angry as she -- and
2 Mr. Myers was just standing there. And then Toney does take
3 him out, but he hadn't physically assaulted anyone or tried
4 to do anything illegal. The argument and assault. There's
5 Mr. Myers is back at the bar right there (indicating). We
6 don't know what's being said. What kind of provocation, we
7 don't know because we don't have audio, but there's,
8 obviously, some sort of provocation going on there verbally.

9 Okay. Now, this is important. Mr. Myers takes
10 off his jacket and leaves it at the bar. He had a
11 light-colored, solid-colored, light -- we don't know what
12 color it is, a light-colored sweatshirt, takes it off as he
13 goes outside. This is when he gets assault -- or somewhere
14 around this time outside where Mr. Myers is assaulted by
15 Mr. Green. There's Sherry going out. She takes her jacket,
16 but Mr. Myers's is still on the floor. Okay. They just
17 picked up the same jacket. The jacket is still on the
18 chair. Somebody's going by. There's somebody watching. I
19 can't identify -- no one ever identified who these two
20 people are. They watch -- I believe that's when Mr. Myers
21 was hit and beat to the ground by Mr. Green.

22 Now, the solicitor wants you to think that this is
23 Mr. Myers, but he's got a jacket on, so whoever that is has
24 a jacket on, and the jacket is still here. When Mr. Myers
25 left Toney's, he had a light-colored shirt on, so I'm not

1 sure who that is (indicating) and I don't know that's
2 relevant to this case. So that raises some issues about
3 what they say they think is on the video. There's an
4 inconsistency there because no one said the jacket was on
5 Mr. Myers. He had a light-colored sweatshirt or something
6 of that nature on at the time. And we have no testimony to
7 say that that was him --

8 MS. WALKER: Objection, Your Honor, that's simply
9 untrue. May we approach?

10 THE COURT: No, and the objection is overruled.

11 MR. MILLS: But there is consistent testimony that
12 Mr. Green did beat Mr. Myers at the front of the club.
13 Okay. We're not trying to blame this on Mr. Green, but we
14 are saying that this was a situation that got out of hand
15 and not just the fault of Mr. Myers.

16 You can look at the testimony of all the witnesses
17 who said that the beating did occur to determine whether or
18 not there is sufficient legal provocation and then determine
19 whether or there not there is a sudden heat of passion by
20 looking at the results of that. Most people when they're
21 hit or either fearful or angry. That's what happened in
22 this the case.

23 Now, furthermore, you can -- as the Judge will
24 charge you about self-defense. Is it reasonable that
25 Mr. Myers having been hit, knocked to the ground, knowing

1 that Mr. Green had a vehicle close by, not knowing what was
2 in that vehicle as far as could have been a weapon, could
3 have been anything to use to assault him again? Is it
4 reasonable that he defended himself? You'll have to make
5 that determination. And the Judge will charge you what the
6 elements of self-defense are.

7 Now, what Dr. Durso testified to -- and the
8 solicitor keeps repeating that it was a shot in the back.
9 Well, depends on how you define back, but there were shots
10 in the upper left shoulder. Now, the gunshot wound that
11 eventually was, unfortunately, the one that killed
12 Mr. Green, was at an unusual angle. It was at a downward
13 angle and it ended up in the pelvis on the other side. So
14 from back to front, down like that (indicating).

15 Now, Dr. Durso stated that she could not testify
16 as to what order the bullets entered Mr. Green, so we don't
17 know when that happened, but I think if you look at the
18 evidence, it must have happened during the struggle near the
19 red vehicle. And you have the photos of that. And most of
20 the shell casings were found near the red vehicle. There's
21 about -- picture of the red vehicle with most of the shell
22 casings -- I believe, all three or four of them are at the
23 red vehicle. Also, the teeth of Mr. Myers were found near
24 the red vehicle. You will be able to look at those in your
25 jury room as well.

1 She also stated that you could not get any -- if
2 it was a close shot and someone had clothes on, such as
3 winter-type clothes on that could stop some of the soot or
4 stippling that would normally be on the skin if it was a
5 relatively close shot. She didn't find any of that, but if
6 there's clothing on, that could be blocked by the -- she did
7 testify that that could be blocked by the clothing.

8 Another issue is that you heard that Mr. Myers's
9 blood was on four different items of clothing, so there was
10 a lot of blood that was found. The DNA expert testified
11 that Calvin's blood was on lots of the clothes. So that
12 means he was severely beaten. There was lots of blood on
13 his clothes from the scene.

14 This case has lots of unusual reasonable doubt.
15 The unusual part is that this is a case where we have
16 objective evidence that shows -- that shows us how the
17 people acted, but not what they were saying, number one.
18 The Judge will tell you that you have the final say as to
19 what the State has proven, as to whether or not they have
20 proved beyond a reasonable doubt for murder. The Judge will
21 tell you what murder is, it's the killing of another person
22 with malice aforethought. The next crime that he will tell
23 you about is voluntary manslaughter. He will tell you that
24 in voluntary manslaughter, the State must prove beyond a
25 reasonable doubt the Defendant took the life of another in

1 sudden heat of passion with sufficient provocation, so both
2 the heat of passion and sufficiently with provocation must
3 be present at the time of the killing to constitute
4 voluntary manslaughter.

5 Is it reasonable that Mr. Myers -- first of all,
6 he was legally provoked. The Judge will tell you, I
7 believe, that -- if I say anything different from what the
8 Judge tells you, listen to what the Judge says, but that
9 someone being assaulted is legal provocation. Then -- it is
10 reasonable that he would be -- you would raise into a sudden
11 heat of passion. As you can see from the video, the
12 shooting occurred within seconds, minute at the most, of the
13 beating in front of the club. And you'll have that video to
14 look at when you go back to your jury room.

15 So what we're asking, ladies and gentlemen, is
16 that you consider all of the evidence, the lack of evidence
17 as well and, first, determine whether or not the elements of
18 self-defense have been met. If you found the elements of
19 self-defense have been met, then you should find Mr. Myers
20 not guilty. If you find that the elements of voluntary
21 manslaughter have been met, I would ask you that you find
22 him guilty of that charge. It's our position that the State
23 has not proven beyond a reasonable doubt the charge of
24 murder and we ask you to find him not guilty of that. Thank
25 you.

1 THE COURT: Take your board down, please, Mr.
2 Mills.

3 MR. MILLS: Oh, I'm sorry.

4 THE COURT: Ladies and gentlemen, we're going to
5 break for lunch now. We're going to break until 2:15 for
6 lunch. I think it should be in the jury room. Please do
7 not discuss the case. We'll break until 2:15.

8 (Whereupon, the jury left the courtroom
9 at 1:31 p.m.)

10 THE COURT: And we'll break until 2:15.

11 (Whereupon, a short recess was held.)

12 THE COURT: All right. You may bring the jury in.

13 (Whereupon, the jury returned to the
14 courtroom at 2:23 p.m.)

15 BAILIFF: The jury is all present, Your Honor.

16 THE COURT: All right. Thank you.

17 Madam Forelady and members of the jury, you've
18 heard the testimony, received the evidence and heard the
19 arguments by the State and the Defendant. I will now
20 explain to you the law that applies to this case.

21 Under the constitution and laws of South Carolina,
22 you are the finders of the facts in this case. I do not
23 have the right to pass upon the facts or even to express any
24 opinion that I might have as to them because this is a
25 matter solely for you, the jury, to determine. As jurors,

1 then, it is your duty to determine the effect, the value,
2 the weight and the truth of the evidence presented during
3 this trial. You are also the judges, the sole judges of the
4 credibility, that is the believability of the witnesses who
5 have testified and of the evidence which has been presented
6 during this trial.

7 In evaluating the credibility, you may take into
8 consideration many things, such as the demeanor or manner of
9 testifying, whether the witness had reason to be biased or
10 prejudiced or whether the testimony of a witness was
11 contradicted on the one hand or supported and corroborated
12 on the other hand. All of these things you will consider
13 bearing in mind that you should give the Defendant the
14 benefit of any reasonable doubt. It becomes your duty as
15 jurors to analyze and to evaluate the evidence and determine
16 that evidence which convinces you of its truth.

17 Now, a person who has a past criminal record is
18 competent to testify during a trial. A past record does not
19 affect the ability of that witness to testify. A past
20 record may be considered by you, if at all, in determining
21 the believability of the witness. Remember, you are the
22 sole judges of the facts in the case and of the
23 believability of any and all of the witnesses.

24 The rules of evidence ordinarily do not permit the
25 witnesses to testify to opinions or conclusions. An

1 exception to this rule exist for witnesses we call expert
2 witnesses. A witness, who by training, education or
3 experience has become an expert in some art, science,
4 profession or calling may state an opinion as to relevant
5 and material matters in which the witness claims to be an
6 expert. An expert may also state the reasons for the
7 opinion. You should consider any expert opinion received in
8 evidence in this case and, like the other evidence, give it
9 the weight you think it deserves. If you decide the opinion
10 of an expert is not based on sufficient training, education
11 or experience or if you conclude reasons given in support of
12 the opinion are not sound or that the opinion is outweighed
13 by other evidence, you may disregard the opinion entirely.
14 The testimony of an expert is to be given no greater weight
15 than that of other witnesses simply because a witness is an
16 expert. Further, you are not required to accept the opinion
17 of an expert even though it is not contradicted.

18 Now, while the arguments of counsel are a
19 beneficial part of every trial, you should remember that the
20 statements made by counsel are not evidence. In presenting
21 arguments, counsel often refers to the evidence, however,
22 you should base your verdict on the evidence as you remember
23 it. Therefore, if there are any conflicts between the
24 recollection of counsel about the evidence and your own
25 recollection, you should rely on your own understanding of

1 the evidence.

2 Now, as the trial judge, it is my responsibility
3 to preside over the trial of this case and to rule upon the
4 admissibility of the evidence offered during the trial. You
5 are to consider only the testimony that has been presented
6 from this witness stand together with any exhibits which
7 have been made a part of the record. Additionally, I have
8 the duty to charge you law applicable to this case. As the
9 presiding judge, I am the sole judge of the law of this
10 case. It is your duty as jurors to accept as correct and
11 apply the law as I now state it to you and then reach your
12 verdict. And, finally, I charge you in this regard that you
13 should not be concerned with what you think the law ought to
14 be, but rather what I charge you that the law is.

15 Now, the fact that the Defendant was arrested,
16 charged and indicted is not evidence and cannot be
17 considered by you as evidence of guilt in this case, nor
18 does it create any presumption or inference of guilt. An
19 indictment is simply the formal written instrument which
20 contains the charge made against the Defendant. An
21 indictment is a formal document by which a case is brought
22 into court.

23 The Defendant has plead not guilty to the charge
24 in the indictment and that plea places the burden on the
25 State to prove the Defendant guilty. A person charged with

1 committing a criminal offense in South Carolina is never
2 required to prove himself innocent. I charge you that it is
3 an important rule of the law that the defendant in a
4 criminal trial, no matter what the seriousness of the charge
5 may be will always be presumed to be not guilty of the
6 crimes for which the indictment was issued unless guilt has
7 been proven by evidence satisfying you of that guilt beyond
8 a reasonable doubt.

9 The presumption of innocence does not end when you
10 begin your deliberations, but it accompanies the Defendant
11 throughout the trial until you reach a verdict of guilt
12 based on evidence satisfying you of that guilt beyond a
13 reasonable doubt. The presumption of innocence is like a
14 robe of righteousness placed about the shoulders of the
15 Defendant, which remains with the Defendant until it has
16 been stripped from the Defendant by evidence satisfying you
17 of the Defendant's guilt beyond a reasonable doubt.

18 Now, the presumption of innocence is not a mere
19 legal theory. It's not just a legal phrase. It is a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence
22 presented -- unless you, the jury, are satisfied based on
23 the evidence presented of the guilt of the Defendant beyond
24 a reasonable doubt. The State must prove the Defendant
25 guilty beyond a reasonable doubt.

1 So what is a reasonable doubt in the law? A
2 reasonable doubt is a doubt which makes an honest, sincere,
3 conscientious juror in search of the truth to hesitate to
4 act. Proof beyond a reasonable doubt must therefore be
5 proof of such a convincing character that a reasonable
6 person would not hesitate to rely and act upon it in the
7 most important of his or her own affairs. Proof beyond a
8 reasonable doubt can also be described as proof that leaves
9 you firmly convinced of the Defendant's guilt.

10 Now, there are very few things in this world that
11 we know with absolute certainty. And in criminal cases, the
12 law does not require proof that overcomes every possible
13 doubt. If based on your consideration of the evidence, you
14 are firmly convinced that the Defendant is guilty, then you
15 must find him guilty. If on the other hand, you think
16 there's a real possibility that he is not guilty, you must
17 then give him the benefit of the doubt and find him not
18 guilty.

19 The Defendant is charged with murder. The State
20 must prove beyond a reasonable doubt that the Defendant,
21 Calvert Myers, killed Cornelius Green with malice
22 aforethought. Malice is hatred, ill will or hostility
23 toward another person. It is the intentional doing of a
24 wrongful act without just cause or excuse and with intent to
25 inflict an injury. Malice aforethought does not require

1 that malice exist for any particular period of time before
2 the act is committed, but malice must exist in the mind of
3 the Defendant just before and at the time the act is
4 committed. Therefore, there must be a combination of the
5 evil intent and the act.

6 Malice aforethought may be expressed or inferred.
7 These terms, expressed and inferred, do not mean different
8 kinds of malice, but, merely, the manner in which malice may
9 be shown to exist. That is, either by direct evidence or by
10 inference from the facts and circumstances which are proven.
11 Expressed malice is shown when a person speaks words which
12 express hatred or ill will for another or when the person
13 appeared beforehand to do the act which was later
14 accomplished. For example, lying in wait for a person or
15 any other act of preparation showing that the deed was
16 within the mind of the Defendant would be expressed malice.
17 Malice may be inferred from conduct showing a total
18 disregard for human life.

19 If you find that the State has failed to prove
20 beyond a reasonable doubt that the Defendant is guilty -- if
21 you find that the State has failed to prove beyond a
22 reasonable doubt that the Defendant committed murder, you
23 may consider whether the State has proved beyond a
24 reasonable doubt that the Defendant committed voluntary
25 manslaughter and whether the Defendant is guilty of

1 manslaughter. Of course, you can't find the Defendant
2 guilty of any offense unless the State has proven guilt
3 beyond a reasonable doubt.

4 To prove voluntary manslaughter, the State must
5 prove beyond a reasonable doubt that the Defendant took the
6 life of another in a sudden heat of passion based on
7 sufficient and legal provocation. Both heat of passion and
8 sufficient legal provocation must be present at the time of
9 the killing to constitute voluntary manslaughter. Sudden
10 heat of passion may for a time affect a person's
11 self-control and temporarily disturb a person's reason.
12 Sudden heat of passion must be the type that would make an
13 ordinary person unable to coolly reflect on his actions and
14 would produce that uncontrollable impulse to do violence.
15 Sufficient legal provocation must be the type that would
16 make a person of ordinary reason and caution become enraged
17 and to lose control temporarily. The provocation needed for
18 voluntary manslaughter must come from some act of or related
19 to the victim. If the heat of passion had cooled or there
20 was enough time between the provocation, if any, and the
21 killing for the passion of a reasonable person to cool, the
22 killing would not be voluntary manslaughter. In deciding
23 whether a reasonable person would have had enough time to
24 cool off, you should consider all the circumstances
25 surrounding the killing. You may consider nature of the

1 provocation, if any, the Defendant's mental and physical
2 state and the circumstances and relationships between the
3 parties.

4 The Defendant has raised the defense of
5 self-defense. Self-defense is a complete defense and if it
6 is established, you must find the Defendant not guilty. The
7 State has the burden of disproving self-defense by proof
8 beyond a reasonable doubt. If you have a reasonable doubt
9 of the Defendant's guilt after considering all of the
10 evidence, including the evidence of self-defense, then you
11 must find the Defendant not guilty. On the other hand, if
12 you have no reasonable doubt of the Defendant's guilt after
13 considering all of the evidence, including the evidence of
14 self-defense, then you must find the Defendant guilty.

15 The following elements are required to establish
16 self-defense: First, the Defendant must be without fault in
17 bringing on the difficulty. If the Defendant's conduct was
18 the type which was reasonably calculated to and did provoke
19 a deadly assault, the Defendant would be at fault in
20 bringing on the difficulty and would not be entitled to an
21 acquittal based on self-defense. The second element of
22 self-defense is that the Defendant was, actually, in
23 imminent danger of death or serious bodily injury; or that
24 the Defendant, actually, believed he was imminent danger of
25 death or serious bodily injury. If the Defendant was

1 actually in imminent danger; it must be shown that the
2 circumstances would have warranted a person of ordinary
3 firmness and courage to strike the fatal blow to prevent
4 death or serious bodily injury. If the Defendant believed
5 he was in imminent danger of death or serious bodily injury,
6 it must be shown that a reasonable prudent person or
7 ordinary firmness and courage would have had the same
8 belief. In deciding whether the Defendant, actually, was or
9 believed he was in imminent danger of death or serious
10 bodily injury, you should consider all the facts and
11 circumstances surrounding the time, including the physical
12 condition and characteristics of the Defendant and the
13 victim. The Defendant does not have to show that he was,
14 actually, in danger. It is enough if the Defendant believed
15 he was in imminent danger and a reasonable prudent person of
16 ordinary firmness and courage would have had the same
17 belief. The Defendant has the right to act on appearances
18 even though the Defendant's beliefs may have been mistaken.
19 It is for you to decide whether the Defendant's fear of
20 immediate danger of death or serious bodily injury was
21 reasonable and would have been felt by an ordinary person in
22 the same situation. The relative sizes, ages and weights of
23 the Defendant and the victim may be considered in deciding
24 the apparent or actual need of force in self-defense and the
25 amount of force needed.

1 The final element of self-defense is that the
2 Defendant had no other probable way to avoid the danger of
3 death or serious bodily injury than to act as the Defendant
4 did in this particular instance. A person cannot be
5 required to make an exact calculation as to the degree or
6 amount of force which may be needed to avoid death or
7 serious bodily harm, therefore, in self-defense, the
8 Defendant has the right to use the force needed to avoid
9 death or serious bodily harm. The force used in
10 self-defense does not have to be limited to the degree or
11 amount of force used by the victim. The Defendant has the
12 right to use as much force as appeared to be necessary for
13 complete self-protection and that which a person of ordinary
14 reason and firmness would have believed to be needed to
15 prevent death or serious bodily harm.

16 I charge you that voluntary intoxication is never
17 an excuse or a defense to a crime. A person who voluntarily
18 renders himself intoxicated is no less responsible for his
19 acts while in such condition. If a person voluntarily
20 become intoxicated and if while in that condition commits an
21 act which would be a crime if it had been committed by a
22 sober person, the fact of intoxication would not relieve the
23 intoxicated person from responsibility. Voluntary
24 intoxication is not an excuse for or a defense to a crime.

25 Now, a statement allegedly made by the Defendant

1 has been admitted into evidence in this case. While the
2 Court has determined that the statement is admissible, I
3 instruct you that you make the ultimate decision of whether
4 or not the Defendant made the statement. If the Defendant
5 did make the statement, you must determine whether the
6 statement was made by the Defendant voluntarily and of his
7 own free will. This means that the statement was not caused
8 by pressure, force, fear, threats, coercion or intimidation
9 or by hope or a promise of leniency or a reward of any kind.
10 In determining whether the statement was voluntary, you
11 should consider both the characteristics of the Defendant
12 and the details of the questioning.

13 Some of the factors that you must consider are age
14 of the Defendant, the education or lack of education of the
15 Defendant, the mental ability or capacity of the Defendant,
16 the IQ or intelligence of the Defendant, the background and
17 environment of the Defendant, the place and length of
18 detention, the nature of the questioning and the advice or
19 lack thereof to the Defendant of his constitutional rights,
20 including, but not limited to the right to remain silent,
21 that any statement could be used against him in a court of
22 law, the right to have a lawyer present, that if he could
23 not afford a lawyer, a lawyer would be appointed to
24 represent him without any cost and that he could stop making
25 a statement at any time.

1 You must carefully consider all the surrounding
2 circumstances before you give any weight to an alleged
3 statement. The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was voluntary.
5 If you determine that it was, you may give the statement any
6 further consideration that you may deem proper. You must
7 decide what weight, if any, should be given to the alleged
8 statement. If you determine the alleged statement was not
9 the free and voluntary statement of the Defendant, you
10 should not consider the statement at all.

11 Now, I instruct you and emphasize that the fact
12 that the Defendant did not testify is not a factor to be
13 considered by you in any way in your deliberation and in
14 your consideration on the question of the guilt or the
15 innocence of the Defendant. It must not be considered by
16 you in any manner whatsoever. A Defendant has a
17 constitutional right to remain silent. And the assertion of
18 this right must not be considered by you in your
19 deliberations.

20 I repeat, under your oath, you are to draw no
21 conclusion whatsoever from the fact that the Defendant in
22 this case did not testify. The fact that the Defendant did
23 not testify should not even be discussed in the jury room.
24 The burden of proof, as I have stated to you, is on the
25 State. The Defendant is not required to prove his

1 innocence. The burden of proof remains on the State to
2 prove guilt beyond a reasonable doubt.

3 Now, Madam Forelady and members of the jury, I am
4 required to charge you the law as I have done through these
5 instructions now being given to help guide you to a just and
6 lawful verdict. Whether some of these instructions will
7 apply will depend upon what you find to be the facts. The
8 fact that I have instructed you on this case must not be
9 taken as indicating an opinion of this Court as to what you
10 should find to be the facts or what your verdict should be.

11 Now, you've been chosen and sworn to give the
12 parties in this case a fair and impartial trial. When you
13 have done so, you will have complied with your oath and no
14 one will have a right to criticize your verdict. You must
15 not be influenced by opinions or expressions of opinion you
16 may have heard outside of the courtroom, but rather, should
17 base your verdict solely on the testimony of the sworn
18 witnesses who took the witness stand, the exhibits received
19 into evidence and the law which I have stated to you. You
20 should not be swayed by caprice, passion, prejudice, or
21 improper sympathy for or against anyone in this case.
22 Remember, you have no friends to reward or enemies to punish
23 and all parties are entitled to a fair and impartial trial.

24 It is your duty as jurors to consult with one
25 another and to deliberate in an effort to reach an

1 agreement. Each of you must decide this case for yourself,
2 but only after impartial consideration of all of the
3 evidence with your fellow jurors. In the course of your
4 deliberations, do not hesitate to reexamine your own views
5 and change your opinion if you become convinced it is
6 erroneous. However, do not surrender your honest conviction
7 as to the weight or effect of the evidence solely because of
8 the opinion of your fellow jurors or for the mere purpose of
9 returning a verdict. As I stated earlier, you are the
10 judges, judges of the facts. Your sole interest is to seek
11 the truth from the evidence in this case. Your verdict must
12 represent the considered judgment of each juror. In other
13 words, your verdict must be unanimous.

14 You may have noticed that I have read these
15 instructions. I do so to give you the law as accurately as
16 possible. I will give you a copy of these instructions to
17 have in the jury room. You may refer to these instructions
18 to assist you in your deliberations. You must consider the
19 instructions as a whole and not follow some and ignore
20 others.

21 And, Madam Forelady, it will be your duty to
22 preside over the deliberations of the jury.

23 If during your deliberations, you should desire to
24 communicate with the Court, please, reduce your message or
25 question to writing signed by your foreperson and pass the

1 note to the bailiff who will bring it to my attention. I
2 will then respond as promptly as possible either in writing
3 or by having you return to the courtroom. I caution you,
4 however, with regard to any message or question you might
5 send that you should never state or specify your numerical
6 division at the time.

7 You have heard the evidence and now you have heard
8 the law.

9 Whatever your verdict, Madame Forelady -- and you
10 have three choices of the verdict in this case. Whatever
11 your verdict, guilty of murder, guilty of voluntary
12 manslaughter or not guilty, you will indicate on the verdict
13 form, this verdict form by checking the appropriate box.
14 You will then sign and date the verdict.

15 Remember that although the foreperson is the only
16 person who writes the verdict, it is not hers alone. The
17 verdict has to be unanimous.

18 And, Madam Forelady, you are not authorized to
19 write the verdict until all of you have agreed on a verdict.

20 Now, ladies and gentlemen, I'm going to send you
21 back to the jury room, all of you, except the last juror
22 selected, but do not begin deliberations until you have
23 received a copy of this jury charge, the indictment, the
24 verdict form and the exhibits. Once you receive these
25 things, that will be your signal to begin your

1 deliberations. Once you begin deliberations, you will
2 deliberate until you have reached a verdict. After you have
3 reached a verdict, you will knock on the door, advise the
4 bailiff and we will bring you out to receive your verdict.
5 Please go the jury room at this time.

6 (Whereupon, the jury left the courtroom
7 at 2:54 p.m.)

8 THE COURT: If y'all will approach for a moment.
9 (Whereupon, a bench conference was held
10 off the record, in the presence of the
11 jury, but out of the hearing of the
12 jury.)

13 THE COURT: Any exceptions or additions to the
14 charge by the State?

15 MS. WALKER: Your Honor, I would inquire as to
16 whether or not you read the last element of self-defense in
17 your jury charge --

18 THE COURT: The final element of self-defense is
19 that the Defendant had no other probable way to avoid the
20 danger of death or serious bodily injury than to act as the
21 Defendant did in this particular instance.

22 MS. WALKER: As long as that was read to the jury,
23 I have no exception.

24 THE COURT: Yes, it was given to them.

25 MR. MILLS: No exceptions or additions, Your

1 Honor.

2 THE COURT: All right.

3 Well, we'll let the jury get at it then.

4 Now, the alternate, sir, we picked 13, but we can
5 only use 12, so we won't need you anymore. You won't have
6 to deliberate. You won't have to decide. We've got enough.
7 We have 12. So we want to thank you for your effort. And
8 Ms. Becky will give you further instructions on where you
9 need to go, et cetera. I want to thank you.

10 (Whereupon, a recess was held awaiting a
11 verdict.)

12 MS. WALKER: -- laptop that we have being used
13 downstairs, we can bring them back out and let them watch it
14 on this screen.

15 THE COURT: Okay. They're in deliberations. They
16 want to deliberate over it. They want to discuss it.

17 MS. WALKER: I understand it's being used in the
18 trial downstairs.

19 THE COURT: Well, they asked for that, the same
20 thing that you all were -- the same thing Mr. Mills was
21 fumbling around with.

22 MS. WALKER: Your Honor, I don't think the
23 solicitor will let me send that particular piece of
24 equipment back to the jury room.

25 THE COURT: The solicitor is not in this --

1 (Whereupon, a short recess was held.)

2 THE COURT: All right. So y'all have a machine
3 ready for them. Also, we need to respond to their request
4 for a transcript.

5 Have the jury come in.

6 (Whereupon, the jury returned to the
7 courtroom at 4:26 p.m.)

8 BAILIFF: The jury is all present, Your Honor.

9 THE COURT: All right. Thank you.

10 Madam Forelady, members of the jury, you sent out
11 a note saying can we have the video/player to watch the
12 scene again. And we have a laptop and what you can have in
13 the jury room to deal with that to view the video, to watch
14 the scene again as you requested.

15 Also, you have can we get Durso's transcripts.
16 The way the court operates is we have the court reporter,
17 Ms. Crystal Holmes. She transcribes and you may see her
18 doing this and that, but it doesn't spit out the transcript.
19 The transcript are, typically, reserved for later on in
20 history, not contemporaneous with the testimony, so we do
21 not have the transcripts available. There is also a
22 recording system, so if you want to hear testimony in open
23 court, you can listen to something again if you want to, but
24 we do not have transcripts to submit to the jury.

25 So with that, I ask that you go back to the jury

1 room and continue deliberating. If you want to hear any of
2 the testimony again, we will be happy to play it again.

3 MADAM FORELADY: May I?

4 THE COURT: Yes.

5 MADAM FORELADY: The reason why we wanted to see
6 Durso's transcripts is because we were having questions
7 about the after -- after he got shot, the adrenaline rush.
8 We wanted to hear that again.

9 THE COURT: Yes. Well, you want that portion of
10 the transcript?

11 MADAM FORELADY: Yes.

12 THE COURT: Well, if she can cue that up, we will
13 bring you out again and play that portion of it -- well,
14 we'll see if there's such a thing on the testimony. I guess
15 it's there if you say that's what you want to hear. I'll
16 discuss it with the lawyers -- it's a portion of the
17 transcript you would like to hear replayed again?

18 MADAM FORELADY: Correct.

19 THE COURT: So you go back to the jury room and
20 write down a note of what portion of Durso's testimony you
21 would like to listen to. And, of course, you have the
22 direct examination by the State, cross-examination by the
23 Defense. Specify what portion of it you want to listen to.

24 MADAM FORELADY: Thank you.

25 THE COURT: All right.

1 (Whereupon, the jury left the courtroom
2 at 4:31 p.m.)

3 THE COURT: Okay. Here is this CD, take that into
4 them. The disk is in the jury room or -- they already have
5 it in the jury room?

6 MS. WALKER: Yes, Your Honor.

7 THE COURT: All right. Now, adrenaline rush,
8 where is that on the --

9 MR. MILLS: I believe that was on
10 cross-examination.

11 THE COURT: What did you ask her, about how can
12 someone fight after they've been shot?

13 MR. MILLS: How long after being shot that they
14 could still be active. I think it's something to that
15 effect.

16 THE COURT: What did she say?

17 MS. WALKER: Five minutes.

18 MR. MILLS: I think five minutes, up to five
19 minutes or something like that.

20 THE COURT: Okay. We'll linger around and be at
21 ease and see what's coming next.

22 (Whereupon, a short recess was held.)

23 THE COURT: We have another note beginning with,
24 we would like the testimony beginning with how Neil would
25 have the energy to beat Calvert after he was shot. We want

1 to be 100 percent that the fight that made Calvert severely
2 beaten occurred after he was shot. Thanks, No. 229.

3 Energy, is that a key word?

4 MR. MILLS: I'm not sure, Your Honor. I know she
5 found the part where I asked about that. I don't know if
6 there's anything from any other part in my cross-examination
7 or the solicitor's direct examination would be.

8 THE COURT: Okay. All right.

9 Where do y'all want to start?

10 MS. WALKER: Your Honor, the Foreperson said that
11 they were asking about that adrenaline rush, she used that
12 word. That's the part that we found.

13 THE COURT: All right. Start there or some place
14 else?

15 MR. MILLS: There may be more, but that's the
16 place to start, I guess.

17 THE COURT: All right.

18 Bring them in, Mr. Bowen.

19 (Whereupon, the jury returned to the
20 courtroom at 4:47 p.m.)

21 BAILIFF: The jury is all present, Your Honor.

22 THE COURT: All right.

23 Ladies and gentlemen, you requested to hear a
24 portion of the transcript. We would like to hear testimony
25 beginning with how Neil would have the energy to beat

1 Calvert after he was shot. We want to be 100 percent that
2 the fight that made Calvert severely beaten occurred after
3 he was shot. Thanks, Juror 229.

4 Proceed.

5 (Portion of Dr. Durso's testimony was played for
6 the jury.)

7 THE COURT: Could you hear?

8 MADAM FORELADY: No, sir.

9 THE COURT: Could you replay it?

10 (Portion of testimony replayed for the jury of Dr.
11 Durso.)

12 THE COURT: All right.

13 MADAM FORELADY: Thank you.

14 THE COURT: Thank you all.

15 (Whereupon, the jury left the courtroom
16 at 4:51 p.m.)

17 THE COURT: Any additions or exceptions to what
18 they heard?

19 MS. WALKER: Beg the Court's indulgence, Your
20 Honor. None from the State, Your Honor.

21 MR. MILLS: None from the Defense, Your Honor.

22 THE COURT: All right. Well, we're back
23 deliberating. We'll be back at ease waiting for the jury.

24 (Whereupon, a recess was taken awaiting
25 a verdict.)

1 THE COURT: Jury is -- waiting on the Defendant.
2 Can you give us a difference between murder as presented to
3 us in the packet we received versus premeditated murder is
4 the question. Can you give us a difference -- give us a
5 difference between murder as presented to us in the packet
6 we received versus premeditated murder? That's what they
7 want to know.

8 Secondly, I, also, need another legal pad.

9 MS. WALKER: The jurors need another legal pad?

10 THE COURT: Yes.

11 All right. We have a question from the jury. We
12 would -- it says, Can you give us the difference between
13 murder as presented to us in the packet we received, that is
14 the jury instructions, versus premeditated murder?

15 What says the State?

16 MS. WALKER: Your Honor, in South Carolina
17 premeditation is not a -- is not an element of murder. I
18 think we can just charge the jury that there is no
19 difference because premeditation is not an element to a
20 crime.

21 THE COURT: All right.

22 Mr. Mills?

23 MR. MILLS: I would ask that Your Honor just
24 charge -- or tell them that what they have is the law, that
25 that's all that you can give them at this time.

1 THE COURT: All right. Do you want me to tell
2 them that there's no such crime as premeditated murder in
3 South Carolina?

4 MR. MILLS: I would rather just have the same
5 charge -- tell them that the charge they have is the law in
6 the State of South Carolina.

7 THE COURT: All right.

8 MS. WALKER: I think that's why they're confused.
9 I think just telling them that would not do anything to
10 alleviate their confusion, but if we can clarify that for
11 them -- they seem to be confused by the packet that was sent
12 back with them. We could just clarify that for them
13 informing them that premeditation is not an element to
14 murder and I think that may alleviate their confusion.

15 MR. MILLS: Again, I would just ask that you state
16 that the law is as you gave it to them and is the law in the
17 state. I don't want to -- if you start adding new things to
18 it, you may end up with more confusion as far as any further
19 charge on the law. That's why I would ask Your Honor just
20 to consider presenting to them that the law you charged is
21 the law in this state.

22 THE COURT: Okay. Well, premeditation goes to the
23 element of malice, expressed malice, that's in the jury
24 charge. It says that if a person -- an example of expressed
25 malice is where a person planned in advance what they were

1 going to do, which is what premeditation is. You want me to
2 tell them that?

3 MR. MILLS: Well, in that case, Your Honor, you
4 can just give the whole charge of murder and malice, that
5 way that would cover that as well as the basic elements of
6 murder. I'm not sure -- that is in the packet that they
7 received as well I believe.

8 MS. WALKER: I think that --

9 THE COURT: You want me to recharge them on murder
10 and malice?

11 MR. MILLS: Same charge that you've already
12 charged them, yes, sir.

13 THE COURT: Okay. Anything further?

14 MS. WALKER: What is the -- I'm confused -- is Mr.
15 Mills' question in terms of only charging murder and malice
16 that you -- just recharging them on the one that you've
17 already given them and they're confused about?

18 THE COURT: Ask the question again.

19 MS. WALKER: Is Mr. Mills's position that we
20 should just recharge them, basically, giving them the same
21 instructions that they have back there with them and that
22 they have indicated they're confused about?

23 THE COURT: That's a question to you, Mr. Mills.

24 MR. MILLS: Oh, I'm sorry. Yes. I would say if
25 you could recharge them, that may help them with their

1 confusion. They may not be looking at the part of the
2 packet that has the malice, expressed malice. So if you
3 recharge them with murder and malice, then, hopefully, that
4 will allay their confusion.

5 MS. WALKER: Do you have another copy of your
6 charge, Your Honor?

7 THE COURT: No.

8 MS. WALKER: I don't -- I just -- I don't
9 understand how that would alleviate -- just recharging them
10 on what they already have would alleviate the confusion they
11 have on premeditation at this point.

12 THE COURT: Well, I'm not assuming they're having
13 confusion, they just asked the question can I give them the
14 difference between murder as presented and premeditated
15 murder. Explain the difference, basically, between murder
16 as defined in the instruction and premeditated murder.
17 Either I answer the question or I don't answer the question.
18 And you want me to answer the question and Mr. Mills doesn't
19 want me to answer the question.

20 MS. WALKER: Yes, Your Honor, the State's position
21 is the question should be answered.

22 THE COURT: And Mr. Mills's position is it should
23 not be answered because it goes outside the law that is
24 applicable to the charge.

25 MR. MILLS: That's correct.

1 THE COURT: So bring the jury in, Mr. Bowen.

2 (Whereupon, the jury returned to the
3 courtroom at 6:14 p.m.)

4 BAILIFF: The jury's all present, Your Honor.

5 THE COURT: All right. Madam Forelady, members of
6 the jury, you sent a note saying can you give us the
7 difference between murder as presented to us in the packet
8 we received versus premeditated murder.

9 The Defendant is charged with the crime of murder.
10 And the jury charge that you have defined what murder is and
11 what the State must prove beyond a reasonable doubt. The
12 State must prove beyond a reasonable doubt that he -- that
13 the Defendant killed the victim, Mr. Green, with malice
14 aforethought. Malice is hatred, ill will or hostility
15 towards another person. It's the intentional doing of a
16 wrongful act without just cause or excuse and with the
17 intent to inflict an injury. Malice aforethought does not
18 require that malice exist for any particular period of time
19 before the act is committed, but malice must exist in the
20 mind of the Defendant just before and at the time the act is
21 committed. Therefore, there must be a combination of evil
22 intent and the act.

23 Malice aforethought may be expressed or inferred.
24 These terms, express and inferred, do not mean different
25 kinds of malice, but, merely, the manner in which malice may

1 be shown to exist, that is, either by direct evidence or by
2 inference from the facts and circumstances which are proved.
3 Expressed malice is shown when a person speaks words which
4 express hatred or ill will for another or when the person
5 prepared beforehand to do the act which was later
6 accomplished. For example, lying in wait for a person or
7 any other act of preparation showing that deed was within
8 the mind of the Defendant would be expressed malice. Malice
9 may be inferred from conduct showing a total disregard for
10 human life.

11 That is the definition of murder in the State of
12 South Carolina and that's what the State must show, must
13 prove beyond a reasonable doubt for the Defendant to be
14 guilty of murder. I ask that you return to the jury room.

15 MADAM FORELADY: Thank you.

16 THE COURT: Thank you.

17 (Whereupon, the jury left the courtroom
18 at 6:19 p.m.)

19 THE COURT: Any additions or exceptions?

20 MR. MILLS: None from the Defense, Your Honor.

21 MS. WALKER: Nothing than what I've previously put
22 on the record.

23 THE COURT: All right. We're back at ease.

24 MS. WALKER: Thank you.

25 (Whereupon, a short recess was held.)

1 THE COURT: All right. Come to order. All right.
2 We understand that there is a verdict so everyone can be
3 seated.

4 You can bring the jury in.

5 (Whereupon, the jury returned to the
6 courtroom at 7:10 p.m.)

7 BAILIFF: The jury is all present, Your Honor.

8 THE COURT: Thank you.

9 If the Defendant will rise.

10 And Madame Forelady, if you will stand for me.
11 Have you reached a verdict?

12 MADAM FORELADY: Yes, sir, we have.

13 THE COURT: Is it a unanimous verdict?

14 MADAM FORELADY: It is.

15 THE COURT: If you will pass it up and you may be
16 seated.

17 And you may publish the verdict.

18 THE CLERK: Yes, sir, Your Honor.

19 The Court of General Sessions for the Fifth
20 Judicial Circuit, State of South Carolina. Indictment
21 number 2013-GS-40-1493, the matter of the State of South
22 Carolina v. Calvert Myers. We, the jury, unanimously find
23 the Defendant, Calvert Myers, guilty of murder, dated
24 August 14, 2014, signed by the Foreperson.

25 Madame Forelady, is this your verdict and the

1 verdict of the entire jury?

2 MADAM FORELADY: It is.

3 THE CLERK: Thank you.

4 THE COURT: Any polling requested by the Defense?

5 MR. MILLS: Yes, sir, Your Honor, we request
6 polling.

7 THE COURT: Madame Clerk, if you will poll the
8 jurors individually.

9 THE CLERK: Madame Forelady and ladies and
10 gentlemen of the jury, I'm going to call out each of your
11 numbers and I'm going to ask you two questions and I need
12 you to answer those question.

13 No. 229, was this your verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: No. 111, was this your verdict?

18 JUROR: Yes.

19 THE COURT: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: No. 217, was this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: No. 132, was this your verdict?

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: No. 270, was this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: No. 280, was this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: The jury is polled, Your Honor.

12 THE COURT: All right. The verdict is the
13 unanimous verdict of the jury.

14 Any post-trial motions?

15 MR. MILLS: Yes, Your Honor. We would move at
16 this time to set the verdict aside. The evidence does not
17 support the verdict and we can just -- and motion for a new
18 trial.

19 THE COURT: All right.

20 Response by the State?

21 MS. WALKER: Your Honor, the evidence speaks for
22 itself. The jury has spoken. We ask that the verdict
23 remain.

24 THE COURT: All right. The jury has deliberated
25 for how many hours, four? What time did they start

1 deliberating?

2 THE CLERK: 3:10, Your Honor.

3 THE COURT: 3:10, over four hours. And viewed the
4 evidence, raised any questions they had concerning the law,
5 the instructions. They reached a unanimous verdict. The
6 jury was given a full range of options and evaluating the
7 charge, the jury found that the State disproved self-defense
8 beyond a reasonable doubt and there's no self-defense. The
9 jury found that the Defendant murdered Mr. Green and he's
10 guilty and I have no basis whatsoever to reverse or change
11 the jury's verdict in any way, so I'm going to respectfully
12 deny the motion.

13 Ladies and gentlemen, I want to thank you for your
14 service. I know you didn't volunteer, you didn't know what
15 you were getting into when you came down here to this
16 courthouse. But you responded to the jury duty and you have
17 accepted the civic responsibility for jury service. It's an
18 awesome task to ask of anyone, but it is a civic
19 responsibility that we all have. We are privileged to live
20 in this country where the law rules and where the rule of
21 law is an important part of our civilized society. And,
22 certainly, if anyone might find themselves in court because
23 of any kind of tragedy, be it victim or on the side of the
24 defense, they would want to have a jury listen to the
25 evidence and listen to the whole case and to deliberate

1 fairly and to reach a verdict. And you all have done that
2 in this case and I want to thank you on behalf of your
3 fellow citizens and parties in this case for listening and
4 deciding the case according to your oath of office.

5 Now, once you have found a person guilty, then it
6 becomes my responsibility to impose a sentence. You have on
7 role in that, but I, certainly, invite you to stay as we
8 proceed to sentence him. We will do that at this time.

9 MR. MILLS: Yes, sir, Your Honor.

10 THE COURT: If the Defendant will come forward.

11 And we will hear from the State.

12 MS. WALKER: Thank you, Your Honor. Present in
13 the courtroom, as they have been throughout this trial, Your
14 Honor, are several of the family members of Mr. Green. His
15 mother is present. His wife is present. His brothers are
16 here, Your Honor, as well as a host of other family members.
17 They have been very patient as this case came to trial and
18 we thank them for that. There are some letters that I would
19 like to read on their behalf.

20 THE COURT: All right.

21 MS. WALKER: Dear Judge, I am Shirley Green. I am
22 the mom of Cornelius Green. I am the age of 66. My son's
23 life was taken away from his child, my grand, at age 15 and
24 age seven and he needs to feel the pain that I feel with my
25 grands growing up without their father. It hurts me very

1 He does what he's supposed to do to support his family.
2 This seems like something that's out of the ordinary for
3 him.

4 We understand the jury's verdict. We just ask you
5 to consider he is 52 years of age. We ask you to consider a
6 30-year sentence for Mr. Myers. And beg the Court's
7 indulgence one moment. Of course, Your Honor, whatever
8 sentence you give him is day for day, we would ask you to
9 consider a 30-year sentence in this case, Your Honor.

10 THE COURT: All right.

11 Mr. Myers, what would you like to say?

12 THE DEFENDANT: Sir, I'm just truly sorry that
13 something like this had to happen. I was -- I was out of
14 control. I was beaten beyond capacity and just nothing I
15 intended to do. Me and him was very good friends and
16 respected me very well as everybody else. I mean, he was
17 like a little brother and I -- you know, I'm hurting just
18 like anybody else is hurting in this case. And I'm very
19 sorry and I apologize to the family -- also close, so I
20 apologize to the whole family again. I'm truly sorry about
21 the incident.

22 THE COURT: Any response by the State?

23 MS. WALKER: No, Your Honor.

24 THE COURT: Mr. Myers, what kind of rage were you
25 in that night?

1 THE DEFENDANT: Sir, I just stated, I was beaten
2 before and --

3 THE COURT: I looked at the video. You were in
4 some kind of rage. You just -- from the time you came in
5 the place there, you were bothering the lady at the bar.

6 THE DEFENDANT: I don't -- I can't say because I
7 don't remember that night that much.

8 THE COURT: Don't remember that night.

9 THE DEFENDANT: I was told what happened, you
10 know. I can't -- that's why I just really said -- because I
11 don't remember. I mean, I still don't know a whole lot
12 about what happened when I first got there. I remember
13 afterwards, but like I remember that, you know, coming in
14 and starting with Sherry Myers or whatnot.. What was said at
15 the bar, I still don't remember it.

16 THE COURT: Well, you know I had a trial in
17 Lexington County and the -- the guy attempted a robbery and
18 killed a security guard and after the crime, he attempted to
19 hang himself -- he did hang himself. He was unconscious for
20 a couple of weeks and he came back to, to the point where he
21 could be tried. He came to trial and his story was sort of
22 like yours, he couldn't remember. He couldn't remember
23 because he had attempted to commit suicide when he went to
24 jail. But, nevertheless, he had a trial and he's now on
25 death row. Whether he remembered anything or not, he's on

1 death row waiting to be put to death right now.

2 Yes, ma'am.

3 MS. WALKER: Your Honor, just for some
4 clarification, at that point -- to that point, what didn't
5 come into the record because we didn't call the toxicologist
6 to the stand, but at the hospital, his blood alcohol level
7 was a point 292, which could have some indication as to why
8 his memory --

9 THE COURT: Point 292. So is that a point 29?

10 MS. WALKER: Yes, Your Honor. It was a little
11 over three times the legal limit.

12 THE COURT: So point 10 is too much -- were you
13 driving that night?

14 THE DEFENDANT: (The defendant shakes head.)

15 THE COURT: Point 292. Well, you know, I had a
16 pathologist testify once that a certain limit, you know,
17 you're walking death. You were point 292 or point 29 with a
18 gun in your hand, you know, I think the solicitor hit it on
19 the head when she said you just wouldn't let it go. You
20 were hell bent on causing some damage to someone that night
21 and, unfortunately, it was Mr. Green. If it wasn't Mr.
22 Green, it would have been somebody else. And the video
23 clearly shows that Mr. Green just tried to stay out of the
24 whole thing. You were harassing and bothering your niece
25 and he didn't intervene. He wasn't bothering you or anyone

1 else, but you wouldn't let it go. You -- you were adamant.
2 You just wanted to raise some hell that night. And now
3 you're here today saying you can't remember anything. You
4 could have opted to just destroy you own life. Why didn't
5 you just put the bullet in your own head? You shot yourself
6 in the foot, maybe you should have just shot yourself in the
7 head and killed yourself and let everybody else move on.
8 You decided to take it out on Mr. Green.

9 Now, I see through the years, 1990, '91, '94,
10 2003, 2004, 2008, then other crimes she didn't read. Have
11 you been to prison before?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: For how long and how many times?

14 THE DEFENDANT: One time and '94 to '97.

15 THE COURT: Say it again.

16 THE DEFENDANT: From 1994 to '97.

17 THE COURT: For doing what?

18 THE DEFENDANT: Auto theft.

19 THE COURT: Stealing cars?

20 THE DEFENDANT: Yes, it was a car.

21 THE COURT: Well, I'm sure that your apology is
22 running pretty hollow with the family. They've all over the
23 mourning, the funeral, people offering their condolences of
24 the death of their loved one. I don't think that coming
25 from you is very much a benefit to them, not today anyway

1 because now they're seeking justice. When a person is
2 convicted of murder, the law says that must be punished to
3 death or by a mandatory minimum term of imprisonment of 30
4 years to life. Which in order to be sentenced to death, the
5 murder must be accompanied by some other crime that the law
6 defines as being an aggravating circumstance such as rape
7 robbery, et cetera. So you're facing anywhere from 30 years
8 to life imprisonment and you're now 52 years old. Whatever
9 sentence you receive will likely be a life be a life
10 sentence. I think Mr. Green was 37 when you killed him?

11 Is this right?

12 MS. WALKER: Yes, Your Honor.

13 THE COURT: I think that's the sentence I'm going
14 to give you, Mr. Myers. The sentence of the Court is that
15 you be committed to the State Department of Corrections for
16 a period of 37 years.

17 MS. WALKER: Thank you. Thank you, Your Honor.

18 MR. MILLS: Thank you.

19 THE COURT: Ladies and gentlemen, once again,
20 thank you for jury service. It's not easy for you and it's
21 not easy for me, but there's a job that has to be done. So
22 thank you very much.

23 I would like to speak with the Forelady to sign
24 the original indictment.

25 Anything further for the jury, Madam Clerk.

1 THE CLERK: Nothing. I have their work excuses
2 whenever they're ready.

3 THE COURT: She will have work excuses for you.
4 Thank you very much for your service.

5 Thank you to the family for all of your good
6 conduct during the trial. I was truly impressed by all of
7 the letters and I'm sure Mr. Green was a good man.

8 My condolences to the Myers family as well.

9 We will be adjourned.

10 (End of proceedings.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

417

WITNESSES

(S) John Carwell – Richland County
Sheriff

ARREST WARRANT NUMBER

2013A4010200104

ACTION OF GRAND JURY

THE BILL

Foreperson of Grand Jury

Date:

DEC 18 2013

VERDICT

Guilty of Murder

Foreperson of Petit Jury

Date:

8/14/2014

AMENDED

DOCKET NO. 2013GS4001493

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2013

42

**THE STATE
vs.**

Calvert Myers

**Indictment for
MURDER**

**SC Code: 16-03-0010
CDR Code: 0116**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

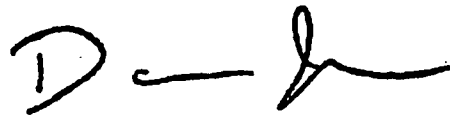
INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Calvert Myers did in Richland County, on or about December 29,
2012, kill the victim, CORNELIUS GREEN, with malice aforethought, either
express or implied, by means of gun shot wound(s), and the victim did die
as a proximate result thereof, 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.

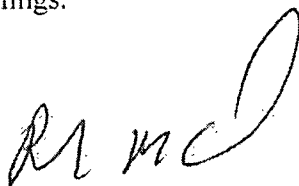


DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 28th, 2016



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

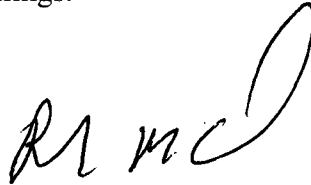
JAN 28 2016

419

~~SC Court of Appeals~~
CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 28th, 2016



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT