

22088

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

 ORIGINAL

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM ANTHONY WALLACE,

APPELLANT

APPELLATE CASE NO. 2014-001786

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

CAROLINE M. SCRANTOM
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

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

Attorneys for Respondent

INDEX

INDEX.....	i
PRE- TRIAL TRANSCRIPT	1
SCOTT MCDONALD	
Direct Examination by Mr. Krzyston.....	13
RAYMOND HAYHURST	
Direct Examination by Mr. Krzyston.....	16
Cross Examination by Ms. Sampson	25
SAMUEL C. REIGHLEY	
Direct Examination by Mr. Krzyston.....	26
DIEGO NOVA	
Direct Examination by Mr. Krzyston.....	30
Cross Examination by Ms. Sampson	34
Redirect Examination by Mr. Krzyston	35
DON ROBINSON	
Direct Examination by Mr. Coble	47
Cross Examination by Ms. Krzyston.....	59
SCOTT MCDONALD	
Direct Examination by Mr. Eaton	63
Cross Examination by Mr. Krzyston.....	71
Redirect Examination by Mr. Eaton.....	78
Recross Examination by Mr. Krzyston	79
STAN SMITH	
Direct Examination by Mr. Eaton	80
Cross Examination by Mr. Krzyston.....	89
KEVIN ISENHOWARD	
Direct Examination by Mr. Sampson.....	93
Cross Examination by Mr. Krzyston.....	100
DAVID COLLINS	
Direct Examination by Ms. Hines	129
Cross Examination by Ms. Sampson	157
Redirect Examination by Ms. Hines	161

TRIAL TRANSCRIPT

TESTIMONY

AMBER NICOLE LAWSON

Direct Examination by Mr. Krzyston	200
Cross Examination by Ms. Sampson	208
Redirect Examination by Mr. Krzyston	210

SCOTT MCDONALD

Direct Examination by Mr. Krzyston	215
Cross Examination by Ms. Sampson	217
Redirect Examination by Mr. Krzyston	222

OPENING STATEMENT BY MR. EATON	238

OPENING STATEMENT BY MR. HAWKS	244

TESTIMONY

JAMES STURM

Direct Examination by Mr. Eaton	249
Cross Examination by Ms. Sampson	256

MATTHEW TAYLOR

Direct Examination by Mr. Coble	258
Cross Examination by Mr. Hawks	265

NANCY PEARSON

Direct Examination by Mr. Eaton	269
Cross Examination by Mr. Hawks	272
Redirect Examination by Mr. Eaton	274
Recross Examination by Mr. Hawks	275

ANDREW D'ANTONI

Direct Examination by Mr. Eaton	275
Cross Examination by Ms. Hines	281

MICHAEL LAURITA

Direct Examination by Mr. Eaton	285
Cross Examination by Mr. Hawks	296
Redirect Examination by Mr. Eaton	302
Recross Examination by Mr. Hawks	308

ROBERT MORELAND

Direct Examination by Ms. Sampson	315
Cross Examination by Ms. Hines	335
Redirect Examination by Ms. Sampson	341
Recross Examination by Ms. Hines	342

RAYMOND HAYHURST	
Direct Examination by Ms. Sampson.....	343
Cross Examination by Ms. Hines.....	351
Redirect Examination by Ms. Sampson.....	355
LATORA WILLINGHAM	
Direct Examination by Ms. Sampson.....	356
Cross Examination by Mr. Krzyston.....	360
BRIAN METZ	
Direct Examination by Mr. Coble.....	382
Cross Examination by Ms. Hines.....	390
JONATHAN KINZER	
Direct Examination by Ms. Sampson.....	404
Cross Examination by Ms. Hines.....	408
SHAWN SCHOEDER	
Direct Examination by Mr. Eaton.....	409
Cross Examination by Ms. Hines.....	433
Redirect Examination by Mr. Eaton.....	441
JAMES HAL BOLAND	
Direct Examination by Mr. Eaton.....	441
CLOSING ARGUMENT BY MS. SAMPSON.....	1119
CLOSING ARGUMENT BY MR. KRZYSTON.....	1135
CHARGE ON THE LAW.....	1145
VERDICT.....	1184
SENTENCING.....	1194
STATE'S EXHIBIT #86 (Exigency Request).....	1198
STATE'S EXHIBIT #87 (Phone Records).....	1200
INDICTMENTS AND SENTENCING SHEETS.....	1214
CERTIFICATE OF COUNSEL.....	1232

1 possession.

2 Q All right.

3 A So and then we maintained eye contact, visual
4 contact, and we could see him go towards the vehicle.

5 Q Let me stop you. When you say you maintained eye
6 contact, you were not looking at Mr. Wallace in the
7 eye were you?

8 A No, I was looking at Mr. Wallace. I could
9 recognize him.

10 Q You saw him get into the vehicle, I believe you
11 said?

12 A Yes.

13 Q Then what did you do?

14 A We continued to maintain visual contact, now with
15 the car. We could see that the car was going towards
16 Bush River Road and made a right turn. At this time,
17 we were maintaining radio contact with the units
18 nearby giving them information as to which direction
19 Mr. Wallace was going.

20 Q And are other units coming to follow you all?

21 A Yes, they were --- I'm not sure where every unit
22 was and I'm not sure about the amount of units that
23 participated, but they were all around the area and
24 they were able to, I believe, stop them down below.

25 Q Did you participate in that stop?

1 A No.

2 Q What did you do after telling everybody which way
3 he was going and maintaining visual contact?

4 A We went back to our office. We actually drove
5 past where the stop was made, and our office was right
6 down the street from there. We didn't participate in
7 the stop. We just kind of relayed the information.
8 We saw the stop was made and the arrest was being
9 made, and so we left.

10 MS. SAMPSON: Okay. Beg the Court's indulgence.

11 (Pause.)

12 Nothing further at this time, Your Honor.

13 THE COURT: Cross?

14 MR. KRZYSTON: Thank you, Judge. May it please
15 the Court.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION:

18 BY MR. KRZYSTON:

19 Q Hi, Nova. How are you doing today?

20 A I'm doing good; how about you?

21 Q I'd rather be in Richland than Kershaw.

22 A I understand.

23 Q Now, I believe the State just handed you a copy
24 of what was --- it's an exigency request is that what
25 it was?

1 A Yes.

2 Q In this request it has a little section --- has a
3 couple of different sections and the first one --- now
4 T-Mobile provides you this, correct?

5 A Yes.

6 Q In the top part here it says law enforcement
7 agency, right?

8 A Yes.

9 Q And you write SLED down right there. It also
10 asks for the requesting agent's name, and you wrote
11 your name?

12 A Yes.

13 Q It also says government email, correct?

14 A Correct.

15 Q And you wrote your email down, and that's
16 jnova@sled.sc.gov?

17 A It's dnova, not jnova.

18 Q I'm sorry. It looks like a lower case J and then
19 it has a little section which says the emergency which
20 exists is as follows?

21 A Yes.

22 Q Okay.

23 A I'm assuming. I don't have it in front of me, so
24 I'm assuming.

25 Q Would you like to see it?

1 A No.

2 Q Okay.

3 A All right.

4 Q And who gives you the information that you supply
5 in that section?

6 A The requesting agency in this case would have
7 been Richland County.

8 Q Okay. So Richland County provided you with this
9 information?

10 A Correct.

11 Q Did you question that information at all?

12 A I don't think I did.

13 Q Okay.

14 A I just ---

15 Q So you just get a call, write down what they tell
16 you to write down and send it off?

17 A We do vet the information. I don't just take
18 everything at face value.

19 Q Now, do you remember what officer, what deputy or
20 what captain or major?

21 A I really can't remember.

22 Q Okay. And you don't keep any notes on filling
23 these things out?

24 A We do have an internal case management system
25 that we use. It would be there.

1 Q Okay.

2 A They don't normally print it.

3 Q Okay. But this is the only thing that was turned
4 over to the solicitors, correct?

5 A Yes.

6 Q And were there any additional notes?

7 A No.

8 Q Okay. Now, I want to --- did you take a look at
9 the front of this page, or should it be the SLED cover
10 sheet?

11 A Yes.

12 Q And on that sheet, it basically says we're SLED,
13 we're sending a fax to T-Mobile, correct?

14 A Correct.

15 Q And in the little narrative part where it usually
16 says regarding, it says, "Please provide 48 hours
17 subscriber cell site historical information and GPS
18 locator every 15 minutes for target number
19 (803)404-8062?

20 A Yes.

21 Q And it says to dnova@SLED.SC.gov?

22 A Yes.

23 Q And the updates that you receive are furnished
24 from a website called Callia (phonetic) aren't they?

25 A No.

1 Q So they don't email you anything?

2 A It comes from T-Mobile.

3 Q So there is no liaison between the cellular
4 industry and law enforcement?

5 A No.

6 Q Okay. The court's indulgence, Your Honor.

7 (Pause.)

8 BY MR. KRZYSTON:

9 Q All right. Nova, what were the exigent
10 circumstances that led you to seek this warrant ---
11 excuse me, this request?

12 A In this case, it was a life and death situation.
13 If memory serves, there was a murder that took place
14 that evening, threats were being made and there was a
15 victim or living witness, I believe.

16 Q Okay. So Richland County calls you, and you
17 provide this information to T-Mobile?

18 A Yes.

19 Q And Richland County provided you the information
20 that threats were being made to somebody?

21 A Yes.

22 Q Did they tell you who that person was?

23 A I don't recall.

24 Q Okay. But since it's not included on here, you
25 probably didn't know it?

1 A No, just at one point previous to the fax being
2 sent, I do call T-Mobile to explain the situation.

3 Q Okay.

4 A This is just a very short narrative of that
5 conversation.

6 Q Okay. But if they had provided additional
7 information, you would have probably put it on there,
8 right?

9 A I'm sure.

10 Q You wouldn't put anything in this request that
11 states the emergency that Richland County didn't tell
12 you, correct?

13 A I'm not sure what you're asking.

14 Q Well, if Richland County called and told you the
15 circumstances consisted of X, Y and Z?

16 A Yes.

17 Q You wouldn't also throw a W in there?

18 A No, I wouldn't.

19 MR. KRZYSTON: Okay. No further questions, Your
20 Honor.

21 MS. SAMPSON: No questions, Your Honor.

22 THE COURT: Have a nice day.

23 All right, ladies and gentlemen. It's about
24 5:20. That's a good stopping point for the night.

25 You all have done good work today. We made it through

1 a number of witnesses. I appreciate your patience
2 with us throughout the day.

3 This is my evening reminder to you that number
4 one, you are not allowed to discuss this case with
5 anybody. Number two, you are not to do any research
6 on your own in any way, shape, or form. You are not
7 to watch the news, the newspaper, radio accounts,
8 internet accounts, no tweeting, Facebooking, anything
9 like that, no social media, no writing a blog about
10 it, anything like that. You base your decision in
11 this case off of what happens in this courtroom and
12 what happens in this courtroom alone. I appreciate
13 you're being willing to do that and your continuing to
14 do that in this matter.

15 At this point I'm going to dismiss you for the
16 evening. You will be back and ready to go at 9:30
17 tomorrow morning. Keep an open mind about the case.
18 We'll see you back here at 9:30 tomorrow. Thank you
19 very much.

20 (WHEREUPON, the jury left the courtroom at 5:21
21 P.M.)

22 THE COURT: All right. Anything before we break?

23 MS. SAMPSON: Nothing from the State, Your Honor.

24 THE COURT: Okay.

25 MR. KRZYSTON: Nothing, Judge.

Direct of Marcus by Sampson
(Proffered)

1 THE COURT: All right. See you tomorrow morning.

2 (WHEREUPON, Court was adjourned for the day.)

3 August 13, 2014

4 THE COURT: All right. Anything we need to take
5 up before we get started?

6 MS. SAMPSON: We've got a couple of matters.
7 Since we're missing a juror, we might as well do it
8 now. Our first witness is Dr. Sweet, who was the
9 neurosurgeon that dealt with all three victims, and
10 then our second witness is going to be Dr. Marcus, who
11 is the pathologist.

12 THE COURT: Okay.

13 MS. SAMPSON: I don't know if you wanted to deal
14 with the photos that he would be using and wanted to
15 do that now.

16 THE COURT: Yes, that's the way to do that. I
17 see him here.

18 MS. SAMPSON: That's why I have him here. I
19 didn't know how you wanted to do that.

20 Could you just take the stand, Dr. Marcus.

21 BRADLEY MARCUS,

22 after being duly sworn, testified as follows:

23 THE COURT: I don't need all his qualifications.

24 MS. SAMPSON: I'm just going to go straight
25 through it.

1 THE COURT: Just go through the pictures.

2 DIRECT EXAMINATION (Proffered):

3 (WHEREUPON, State's Exhibit Numbers 88 through 94
4 were marked for identification only.)

5 MS. HINES: My objections, Judge, are to 89
6 through 94.

7 THE COURT: So you don't have a problem with 88?

8 MS. SAMPSON: Eighty-eight is an x-ray or CT.
9 I'm sorry, I'm using the wrong terminology. It's a CT.

10 MS. HINES: No, I don't have a problem with 88.

11 THE COURT: Okay.

12 MS. SAMPSON: I'll need to get these marked.

13 (WHEREUPON, State's Exhibit Numbers 95 through 98
14 were marked for identification only.)

15 MS. SAMPSON: Your Honor, also with him, we will
16 be using 95 through 98.

17 THE COURT: All right. Do you have them all?

18 THE BAILIFF: Yes, sir.

19 THE COURT: All right. Thank you, Mr. Addison.

20 THE BAILIFF: Yes, sir.

21 MS. HINES: I don't have an objection to those.

22 MS. SAMPSON: No objection? Okay. So we don't
23 need to go over those.

24 THE COURT: Okay.

25 MS. SAMPSON: She --- we just --- I reviewed 95

Direct of Marcus by Sampson
(Proffered)

1 through 98. It's my understanding the defense has no
2 objections to those, so I'm not going to go over
3 those.

4 THE COURT: Okay. Let's just do the photos they
5 are objecting to.

6 MS. SAMPSON: Starting with ---

7 THE COURT: I assume you performed the autopsy,
8 Dr. Marcus?

9 THE WITNESS: I did both autopsies, yes, sir.

10 BY MS. SAMPSON:

11 Q I'm going to start with State's Exhibit 89. This
12 is a photograph of Athell Johnson.

13 A Okay.

14 Q Can you explain to me how this photograph would
15 help you explain or what it would help you explain to
16 the jury?

17 A Sure, this photograph here shows an entrance
18 gunshot wound and basically it's showing the stippling
19 which is --- gives you a good ---

20 THE COURT: Powder burn?

21 THE WITNESS: Powder burn, right. The powder
22 burn that comes out the end of the gun showing that
23 the gun was not held right to their head. It was kind
24 of away, maybe up to 18 inches. Again, that all
25 depends on the type of gun used and the ammunition

1 used. It's just hard if I tell the jury punk date
2 abrasions. You can see them here, put a picture in
3 the heads.

4 Q Okay. As for State's Exhibit 90?

5 A Okay. This here is --- this here is the
6 trajectory rods of the trajectory of the bullet
7 pathway in the head after I completed the autopsy. We
8 do that last.

9 Q And what does --- it shows --- I was thinking ---
10 it shows the bullet trajectory?

11 A It shows the trajectory, the pathway, the angles
12 of the bullet, the way they struck the body.

13 Q And this would help you demonstrate that to the
14 jury?

15 A Yes, this would help me demonstrate --- I would
16 just tell them and then point on my head.

17 THE COURT: And can you determine the entrance
18 wound and the exit wound by that?

19 THE WITNESS: You can, but in this case, there
20 were no --- there was no exit wound. These were only
21 entrances because we recovered the projectiles.

22 THE COURT: Okay. Thank you.

23 BY MS. SAMPSON:

24 Q And State's Exhibits 91 and 92 are the same. One
25 is a close-up and one is with the actual --- to scale.

Direct of Marcus by Sampson
(Proffered)

1 Can you explain how these would help?

2 A Yes; Mr. Johnson, he sustained two gunshots to
3 the head. One entered his cranial cavity. The other
4 one, actually was a graze wound where it just clipped
5 the superficial skin behind his head.

6 Q Would that help you explain to the jury the
7 difference between an entrance wound and a graze
8 wound?

9 A Yes, definitely that would explain the difference
10 there.

11 THE COURT: What's the one with the ruler on it?

12 THE WITNESS: One is far away that we take
13 overall and this one is the close-up just showing the
14 measurement of the wound.

15 MS. SAMPSON: Your Honor, I can just use one if
16 you feel like it's duplicative. I don't have a
17 problem with that. I just needed him to explain that
18 to you.

19 THE COURT: Okay. Continue.

20 BY MS. SAMPSON:

21 Q Now, we're moving to Mr. Pratt, State's
22 Exhibit 93. What is that?

23 A Okay. Again, this is another trajectory rod
24 showing the angle of the bullet after the bullet
25 entered into the skull. Basically, because it's not

1 three dimensional, all you can see is that it's going
2 to the left. I can't --- it can't --- I can tell them
3 it may be down. I'd have to look at my report, and
4 then I would be able to tell that. It's just showing
5 that it's going to the left.

6 THE COURT: Okay.

7 BY MS. SAMPSON:

8 Q Does that help you demonstrate to them how that
9 angles?

10 A Yes.

11 Q And then State's Exhibit Number 94 is also
12 Mr. Pratt?

13 A Oh, yeah. This photo --- this is also another
14 photo of his entrance wound to his head and again
15 demonstrating the stippling, powder burning, on the
16 skin on this case.

17 Q And would that the photo?

18 THE COURT: Is that entrance wound above his
19 right ear?

20 THE WITNESS: That's correct.

21 BY MS. SAMPSON:

22 Q Again, on that one there is no exit wound?

23 A There's no exit wound, just an entrance and it
24 just shows the powder burning.

25 Q Would that help you demonstrate to the jury the

Cross of Marcus by Hines
(Proffered)

1 powder burns or the stippling, as you call it?

2 THE WITNESS: Yes, it would.

3 MS. SAMPSON: Those are the only photos I would
4 be introducing with Dr. ---

5 THE COURT: Can I see those?

6 MS. SAMPSON: Yes.

7 (Pause.)

8 THE COURT: All right, Ms. Hines, what are your
9 positions on 89, 91, ---

10 MS. HINES: I would like to ask some questions of
11 the witness if I may.

12 THE COURT: Okay.

13 CROSS-EXAMINATION (Proffered):

14 BY MS. HINES:

15 Q Okay. Can you explain stippling?

16 A Yes. Stippling --- so when a weapon is fired out
17 of the barrel comes many things, the gases from the
18 rounds going off. Also, what comes out is the
19 projectile. Also, what comes out is gunpowder is what
20 propels the projectile out of the barrel. Some of
21 that gunpowder is unburned, so there are flakes,
22 little flakes. If they hit you at a high velocity,
23 they cause small little cuts and abrasions in the
24 skin. That depends on how far away the weapon is from
25 the body.

1 Q Okay. And depending on the type of gun, you
2 can't really say how far away the weapon is from the
3 body based on stippling?

4 A Well, in general --- handguns, they're generally
5 under 30 inches, that's with handguns. Again, I can't
6 tell you exactly, you know, how far it was unless you
7 test fired the weapon with the same type of ammo.
8 Then we can give you a good estimate.

9 Q Right.

10 A I can just say up to 30 inches or so.

11 Q Okay.

12 A I can't say exactly.

13 Q And can you explain the difference between a
14 graze wound and an entrance wound?

15 A Sure.

16 THE COURT: That's not relevant, Ms. Hines. We
17 need to move on as to the pictures.

18 MS. HINES: Well, he is saying that this is
19 necessary to explain the difference between a graze
20 would and an entrance wound.

21 THE COURT: Right and what I'm telling you is to
22 move on. I don't need that explained to me for the
23 purposes of the admissibility of the pictures.

24 MS. HINES: My point is --- what I'm getting at,
25 Judge, is that can be explained without the pictures,

Cross of Marcus by Hines
(Proffered)

1 explained sufficiently.

2 THE COURT: You can make that argument, but he is
3 not necessary for you to make that legal argument.

4 MS. HINES: I would like to proffer that.

5 THE COURT: Okay.

6 BY MS. HINES:

7 Q Can you explain the difference between the graze
8 wounds and an entrance wound?

9 A Sure. An entrance wound, the bullet actually
10 enters the body. You know, the body cavity, okay.
11 For instance you can have a gunshot to the chest. The
12 bullet will actually enter into the chest. A graze
13 wound the bullet doesn't actually enter the body
14 cavity. It just kind of skims off the body. The
15 bullet actually strikes the body at a tangential angle
16 and just makes more of a cut laceration type injury.
17 The bullet actually does not enter the body.

18 That's the difference.

19 Q Okay.

20 MS. HINES: I'd like to let the record reflect
21 that Dr. Marcus was demonstrating on his own body the
22 way that a bullet would skim off of a body.

23 THE COURT: Okay.

24 BY MS. HINES:

25 Q Are you able to explain the trajectory rod ---

1 THE COURT: The trajectory rod pictures are out.
2 You don't have to worry about that.

3 MS. HINES: Just these three?

4 THE COURT: Yes, ma'am.

5 MS. HINES: Okay. So my position on these three
6 as far as legal argument, with respect to 89 and 94,
7 Dr. Marcus testified that he needs these to help show
8 stippling. I believe that he can explain stippling
9 sufficiently to the jury to understand that. If Your
10 Honor disagrees with that, my position would be that
11 these need to be redacted to just show the area of the
12 stippling and not the blood up in here, which is on
13 picture 89. There's blood up in here. There is the
14 entrance wound, which he testified he needed it to
15 show stippling.

16 He didn't testify that he needed it to show the
17 entrance wound. Is it stippling would be here around
18 the entrance wound. The stippling would be here
19 around the hair area and my position would be that it
20 could be redacted to only show that year where the
21 stippling is. That would be less prejudicial to the
22 jury.

23 As far as photo number 91, Dr. Marcus testified
24 that he needed that to show --- to explain the
25 difference between an entrance wound and a graze

1 wound. I believe that he can sufficiently do that
2 without the photograph, and I believe that the
3 probative value of the photographs then is not
4 substantially --- does not substantially outweigh the
5 prejudicial effect.

6 THE COURT: Okay. All right. So 89, 91, and 94
7 are admitted over --- or will be admitted pursuant to
8 the proper foundation being laid, over defense
9 objection. Of these --- now, here is what I'm keeping
10 out for the record, so that the record is very clear.

11 Let me see those one more time.

12 So, the other State's Exhibit Number 90 that they
13 offered and State's Exhibit Number 93 that they
14 offered were pictures --- let's start with State's
15 Exhibit Number 92 is essentially, for lack of a better
16 term, the same picture as State's Exhibit Number 91.

17 It's of the same exact area except State's
18 Exhibit Number 92 has a ruler in it, and that is of
19 the graze wounds. State's Exhibit Numbers 93 and 90
20 --- no, no, no. That's incorrect. State's Exhibit
21 Number 93 --- there they are. State's Numbers 93 and
22 90 are of the trajectory rods inside the head, and I
23 understand why the State needs to prove --- or why the
24 State has the right to prove the way that the wounds
25 occurred and the direction for their presentation of

1 the case and to go to the element of malice, and I
2 understand that.

3 I believe that we accomplished that or that
4 Dr. Marcus can accomplish that in State's Exhibit
5 Number 89, which is a picture of the entrance wound
6 and State's Exhibit Number 94 which is a picture of
7 the entrance wound.

8 These pictures are very easy to see which side of
9 the head they went into, so I think he can accomplish
10 the trajectory wound testimony through those pictures
11 and being able to explain that. The stippling that is
12 shown, which Dr. Marcus testified goes directly to the
13 element of malice and is a probative --- of extreme
14 probative value in this case as to the facts of the
15 case and the circumstances surrounding it.

16 The other reasons that I'm excluding 90 and 93 is
17 because these gentlemen have been --- and I don't know
18 the word, but they have been cut open essentially ---

19 THE WITNESS: Yes.

20 THE COURT: As part of the autopsy, and that is
21 visible from those pictures. Even I myself find that,
22 in the thousands of crime scene and autopsy photos
23 that I've seen in my life, to be shocking and highly
24 prejudicial and that the evidence that is looking to
25 be sought from Dr. Marcus in those can be obtained

1 from the other pictures that are admitted.

2 So as to the graze wound in picture number 91,
3 the probative value of that also goes directly to the
4 element of malice and to --- directly to an element of
5 the crime that the State is allowed to prove.

6 It is a picture of this gentleman's head,
7 essentially, with what looks like to the untrained eye
8 looks like a very large --- a cut on the head or some
9 type of lesion, so I'm going to admit State's Exhibit
10 Numbers 91, 89 and 94 subject to the proper foundation
11 by Dr. Marcus as to his expert testimony and the fact
12 that he actually conducted these autopsies and things
13 like that, which I'm sure will come out in the course
14 of the trial over defense objection.

15 MS. SAMPSON: And, Your Honor, as to the ones you
16 are not allowing in, the ones that you said were
17 prejudicial due to the body being shown ---

18 THE COURT: Right.

19 MS. SAMPSON: If we could crop them so that the
20 head is shown, would they still be prejudicial --- and
21 I'm asking you ---

22 THE COURT: I don't think they're necessary.

23 MS. SAMPSON: Okay.

24 THE COURT: It's going to be --- it's not a weird
25 angle. It's not something that Dr. Marcus is going to

1 have to do something strange with his body to be able
2 to demonstrate to the jury or with his hands or
3 anything else. He could actually use the pointer if
4 he needed to, which is next to him on the right, to
5 show the trajectory on his head and in the approximate
6 area.

7 MS. SAMPSON: So he is allowed to speak about it,
8 just not use the pictures?

9 THE COURT: He is allowed to speak about the
10 trajectory all he needs to. He's allowed to
11 demonstrate it to say this is where it happened on my
12 head. He is allowed to take the wooden dowel rod and
13 put it on the back. Whatever he needs to do to
14 explain, you know, this is my expert opinion on the
15 angle of where the bullet came in. He is allowed to
16 testify to all of that. Those pictures do cause me
17 some concern greater than normal autopsy photos.

18 Now, for the family members that are in here ---

19 MS. SAMPSON: I told them.

20 THE COURT: What I don't want is --- these
21 pictures are more than likely going to be shown today,
22 okay, and I understand that viewing these pictures can
23 be very traumatic. I don't fault anybody for their
24 reaction, but since we know that's going to happen
25 through these witnesses, if you would go ahead and

1 excuse yourselves prior to that happening if you do
2 not wish to view them because I would like to minimize
3 the disruption in front of the jury. I'm just asking
4 now to both side's families with all due respect to
5 you and your right to be in here. Those photos are
6 more than likely going to come out today, and they're
7 more than likely going to come out through Dr. Marcus,
8 so when he gets called to the witness stand, if you
9 want to excuse yourself, you may.

10 MS. SAMPSON: The only other thing the ones
11 you're not letting in, do you want them as court's
12 exhibits or do you want me to return them to my --- I
13 just don't want them to get --- I was going to put
14 them away.

15 THE COURT: No, I'm going to keep them right here
16 so we don't get confused at the end.

17 MS. SAMPSON: Thank you, Your Honor.

18 You're done, Dr. Marcus.

19 THE COURT: Thank you, Dr. Marcus. All right.

20 Let's bring them in.

21 He can stay in if he wants.

22 MS. SAMPSON: He can stay in?

23 THE COURT: Yes, he is an expert witness.

24 MS. HINES: Judge, can we approach?

25 THE COURT: Sure.

1 (WHEREUPON, a bench conference was held in the
2 presence, but not within the hearing of the
3 jury.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Thank you very much. Good morning,
6 ladies and gentlemen. I hope you had a nice and
7 restful evening. We will continue now with the trial.

8 You may call your next witness.

9 MS. SAMPSON: The State calls Dr. Sweet to the
10 stand.

11 THE COURT: All right. Dr. Sweet, come forward
12 and be sworn.

13 DR. RAYMOND CHARLES SWEET,
14 after being duly sworn, testified as follows:

15 THE CLERK: Please have a seat. State your full
16 name for the record.

17 THE WITNESS: Raymond Charles Sweet.

18 DIRECT EXAMINATION:

19 BY MS. SAMPSON:

20 Q Good morning, Dr. Sweet.

21 A Good morning.

22 Q Let's start with your education. Where did you
23 go for undergraduate?

24 A I went to the University of Virginia.

25 Q And what did you major in?

1 A I had a BA in biology.

2 Q And what was your next step?

3 A I went to the Medical College of Virginia, now
4 known as Virginia Commonwealth University for my
5 medical decree.

6 Q Did you receive that?

7 A Yes, I did.

8 Q When, what year?

9 A 1973.

10 Q Okay. Sorry about that. What was your next step
11 in your education?

12 A I was a surgical intern at the Medical College of
13 Virginia from '73 to '74 and then a neurosurgical
14 resident from '74 through January of '79.

15 Q And as a resident, what do you do?

16 A In neurosurgery, you learn diagnosis and
17 treatment of neurosurgical problems, including trauma,
18 tumors, infections, pediatrics with gradually
19 increasing experience until you finish your residency.

20 Q And upon completing your residency, what did you
21 do then?

22 A I went into the private practice of neurosurgery.

23 Q And how long were you in private practice?

24 A Until 2006, and then I decided to retire, but
25 after a month, I got tired and went back to work

1 coming to Richland in April of 2006.

2 Q Richland Memorial here in Columbia?

3 A Richland Memorial in Columbia, yes.

4 Q And are you board certified?

5 A Yes, I am.

6 Q What are you board certified in?

7 A I'm board certified in neurosurgery.

8 Q Have you ever been qualified as an expert in
9 neurosurgery?

10 A Yes, I have.

11 Q Have you ever testified then?

12 A Yes.

13 Q And that would be in the field of neurosurgery?

14 A Right.

15 Q Have you ever wrote any publications?

16 A When I was a resident, I wrote three or four
17 publications, but not since.

18 MS. SAMPSON: At this time Your Honor, I'd ask to
19 qualify Dr. Sweet in the field of neurosurgery.

20 THE COURT: Would you like to voir dire?

21 MS. HINES: Yes, please.

22 And Dr. Sweet, when you were in private practice,
23 it was in neurosurgery?

24 THE WITNESS: Yes.

25 MS. HINES: Where did you practice?

1 THE WITNESS: Initially I practiced in the
2 Richmond Petersburg area. Later I moved to the
3 Charlotte, North Carolina area, and then I temporarily
4 retired, and then I came to Columbia, as I said, in
5 April of 2006.

6 MS. HINES: When did --- you're no longer working
7 now?

8 THE WITNESS: No. I retired in May of this year.

9 MS. HINES: How many times have you been
10 qualified as an expert?

11 THE WITNESS: Probably over 50 times.

12 THE COURT: Is there a objection?

13 MS. HINES: No. No objection.

14 THE COURT: All right. Ladies and gentlemen,
15 normally a person during a trial is not allowed to
16 give opinion testimony. Normally when a person
17 testifies, they must testify to what they either saw,
18 hear, sensed by smell or something of that nature.
19 However, there is an exception under the Rules of
20 Evidence that when someone is qualified because of
21 experience or experience they are permitted to give
22 their opinion in certain areas if I qualified them in
23 that way.

24 This witness will be qualified as an expert in
25 the area of neurosurgery, and he will be allowed to

1 give opinion testimony in that area.

2 Now, that does not mean that you have to accept
3 his opinion, but it is evidence for you to consider in
4 any way that you see fit and give it the weight and
5 the credibility that you deem appropriate as you are
6 required to do with every witness.

7 Ms. Sampson.

8 MS. SAMPSON: Thank you, Your Honor.

9 BY MS. SAMPSON:

10 Q All right. Dr. Sweet, you've already testified
11 that you worked back in 2012. You were working at
12 Richland?

13 A Yes.

14 Q And you were working then as a neurosurgeon?

15 A Yes.

16 Q Can you just tell the jury a little about what is
17 neurosurgery or as a neurosurgeon what you do?

18 A Neurosurgery is the medical and surgery treatment
19 of all parts of the central and peripheral nervous
20 system involving the bones, including the skull, the
21 neck, the back and the lower back, as well as the
22 supporting covers, including the scalp, membranes
23 around these structures, the treatment of the vascular
24 problems involving the spine and brain, as well as
25 infections. We do diagnoses, medical treatment, as

1 well as the surgical treatment of these problems.

2 Q And is that what you were doing back in 2012 at
3 Richland?

4 A Yes.

5 Q Now, you saw, I assume, many patients in a day?

6 A Yes.

7 Q Do you specifically recall June 28, 2012?

8 A I did not until I reviewed my notes.

9 Q Would looking at those help refresh your memory
10 as far as testifying to this jury?

11 A Yes.

12 Q Do you have those with you?

13 A Yes, some of them I have on my iPad and I have
14 another paper one.

15 Q Okay. Do you need another hard copy? I have
16 hard copies available, if you need them.

17 A Well, you can give me a hard copy. That might be
18 easier.

19 Q I'm going to start with Jamal Pratt --- excuse
20 me, Athell Johnson, I'm going to start with Athell
21 Johnson.

22 I want you to first look at that. Can you tell
23 the jury what you're looking at?

24 A This is a consultation for a patient, Athell
25 will Kentron Johnson, Jr. done on, I believe, that's

1 6/28/2012.

2 Q And do you make these consultation --- or does
3 someone make these consultation notes right after
4 whatever you've done has been done; is that correct?

5 A Typically what we do is we have a physician's
6 assistant or nurse practitioner that's on call at all
7 times, twenty four hours a day, at the hospital. They
8 would see the patient, do their examination and then
9 we would come down and do our examination, review the
10 laboratory data and the x-rays and decide what needs
11 to be done based on that information.

12 Q And so this consultation note, it states that you
13 were the attending physician?

14 A Yes, that's correct.

15 Q And then it says that Dr. Morrison was the
16 referring physician? What's the difference?

17 A Well, this is a level one trauma center, which is
18 the highest level of care serving this part of the
19 state.

20 As such, they have a dedicated trauma service,
21 and Dr. Morrison is one of the trauma doctors. They
22 had met all the major trauma to the trauma service.
23 They consult, like if you have a brain injury or spine
24 injury, they would consult neurosurgery. If you have
25 a broken bone, they would consult the orthopedist and

1 so on. They basically do the emergency medical
2 management, resuscitating the patients, and
3 maintaining the ventilator and keeping the blood
4 pressure and then consult the other specialists to
5 take care of their particular problems. That's what
6 occurred in this case. I believe Dr. Morrison was on
7 call for the trauma service on that day.

8 Q Okay. And it lists the reason for consultation
9 was a gunshot wound to the head?

10 A That's correct.

11 Q And is that what you found when you got there?

12 A Yes, that's correct.

13 Q And was Mr. Johnson able to speak at that time?
14 Was he responsive?

15 A No, he was unresponsive at that time and had a
16 breathing tube in place.

17 Q And is that --- is a breathing tube normal
18 procedure with a gunshot wound or can be?

19 A A gunshot wound to the head, frequently the
20 patients are unconscious and require --- cannot breath
21 on their own or handle their own secretions. Almost
22 all the time, with any severe head injury, a
23 ventilator and endotracheal tube, which goes into the
24 tubes that go into the lung will be needed.

25 Q And it discusses that his pupils were nonreactive

1 and dilated. What does that mean?

2 A That's part of our neurological exam. If the
3 pupils are dilated and nonreactive, it's usually a
4 very bad sign that there is some type of pressure on
5 the brain causing damage to the brainstem.

6 Now, there may be other causes, such as
7 medications or drugs or lack of oxygen, but basically
8 it means that there is usually irreversible brain
9 damage if there's not another reason and the patient
10 is unlikely to survive any type of problem when the
11 pupils are fixed and dilated.

12 Q Is that what you found in Mr. Johnson?

13 A Yes.

14 Q You said --- I'm using my lawyer term or medical
15 term, bilaterally decerebrate. What does that mean?

16 A We have something called a Glasgow Coma Scale
17 that's based on a number three of five. You look at
18 three things: motor examination --- and this is part
19 of the motor examination, but typically if you're able
20 to follow commands and move things normally, we would
21 give you a higher score. If you can't move, you get
22 the lowest score possible and decerebrate is almost
23 not moving at all, which is a very bad, bad sign.

24 Q And ---

25 A Along with the pupils, usually meaning a severe

1 brain injury.

2 Q This is the way he presented upon being placed in
3 the emergency room?

4 A Yes.

5 Q And the impression that is listed here is the
6 patient has suffered a fatal gunshot wound to the
7 head?

8 A Yes.

9 Q Is that what you found when you got there?

10 A Yes.

11 Q All right. So what was your --- the plan at that
12 point for Mr. Johnson?

13 A Well, at this point, it was felt that he had
14 irreversible brain injury secondary to his gunshot
15 wound to the head and there was no way that any
16 surgical treatment or medical treatment was going to
17 change this, so we recommended what we call supportive
18 care, and make sure this is correct. In order to
19 declare a brain death, we usually do certain tests and
20 wait a certain period of time. The main decision at
21 this point was to say that he could not benefit from
22 an operation, that his brain damage was irreversible
23 and there is nothing medically or surgically that
24 could be done to change that.

25 Q All right. I want to move on to Mr. Pratt at

1 this point.

2 I'm going to hand you this similarly. And is
3 that also a consultation note?

4 A Yes, this is a consultation note on Jamal Pratt
5 dated 6/28/2012.

6 Q And again, you're the attending?

7 A Yes.

8 Q And again Dr. Morrison is the referring
9 physician?

10 A Yes.

11 Q And it says 14:30 for the time, so it was around
12 2:30?

13 A 2:30 in the afternoon, that's correct.

14 Q And again, this was a gunshot wound to the head?

15 A Yes.

16 Q Okay. Was he responsive?

17 A No. Again, he was intubated, on a ventilator.
18 We stated that his GCS or Glasgow Coma Score as a
19 three, three which is the lowest score.

20 Q So would it be fair to say he and Mr. Johnson
21 were in a similar situation?

22 A Yes, that would be fair.

23 Q And again was his prognosis the same as
24 Mr. Johnson's?

25 A Yes, I mean, he would not --- this would not be a

1 survivable injury and there would be no surgical
2 treatment indicated.

3 Q And the bullet wound in this one was to the
4 right, I believe it says?

5 A Let me just double check that.

6 Q Under diagnostic data?

7 A Yes. It appeared this was a right entrance
8 wound.

9 Q Okay. And again, he would not --- this is what
10 you would consider a fatal gunshot wound?

11 A Yes. A fatal gunshot wound.

12 Q And lastly, I want to point you to Raquel Weston.

13 Q There you go. All right. With Ms. Weston, with
14 you see this again is a consultation note?

15 A Yes, it's a consultation note.

16 Q It's dated June 28, 2012?

17 A Yes.

18 Q And again, you're the attending and Dr. Morrison
19 is the referring?

20 A Yes.

21 Q And this one is approximately 2:15, correct?

22 A Yes.

23 Q And what does she have? Her chief complaint is
24 listed as what?

25 A Well, she was in much better shape than the other

1 people. She was awake and able to talk to me. She
2 stated that she had been a victim of a home invasion
3 where two other men were shot in the head and ---

4 MS. HINES: Objection.

5 THE COURT: Hold on.

6 THE COURT: The objection is what?

7 MS. HINES: Hearsay.

8 THE COURT: Oh, this is an expert, it's allowed.

9 MS. SAMPSON: Expert.

10 THE COURT: Continue.

11 BY MS. SAMPSON:

12 Q She told you that she had been shot?

13 A Yes. She had also complained of being shot in
14 the right hand and wrist area. She was seen in the
15 emergency room at that time.

16 Q I'm sorry. Were you able to look at her?

17 A You mean physically?

18 Q Yes.

19 A Yes. I was able to perform a physical
20 examination. At that time, she was awake, alert
21 oriented times three. In other words, she knew who
22 she was, where she was, and the day. Her Glasgow Coma
23 Scale was 15, which it's the highest like you and me.
24 She would be awake, alert, able to do what I told her
25 to and able to follow commands, like if I asked her to

1 lift her arm or lift her leg, so her physical
2 examination was a whole lot better.

3 Now, she did have evidence of a hole consistent
4 with a gunshot in the right frontal area and then two
5 smaller holes above the left ear, which were
6 consistent with gunshot wounds.

7 Q Okay. I want to backtrack just a little bit.
8 You said she had a Glasgow score of 15 so in other
9 words, she was able to comprehend what you were
10 talking about?

11 A Yes.

12 Q She was able to answer questions?

13 A Yes.

14 Q Was she lucid?

15 A Yes.

16 Q Did her answers make sense to you when you asked
17 her a question?

18 A Yes.

19 Q If they didn't, would that be noted in this
20 report?

21 A Yes. Her Glasgow Coma Scale would not have been
22 15. It would have been less if she hadn't made sense
23 with her answers.

24 Q Okay. And I believe you already said this, but
25 her wounds were consistent with the gunshot --- with

1 the information she gave you?

2 A Yes, with that and the physical examination.

3 Q And so based on what the injuries she had, what
4 did you do?

5 A Well, her CT scan was also supportive of her
6 head, which we always get the CT scan exam which shows
7 the inside of the head, the brain, as well as the
8 bone, and it showed depressed skull fractures on the
9 left frontal area, which would be consistent with
10 these gunshot wounds.

11 Based on my examination, the lab work, and the
12 fact that these were open wounds, it was felt surgery
13 was indicated just like any other open wound. We need
14 to debride the dirt, the residual material, and with
15 the brain injuries if there is a break in the bone,
16 sometimes it opens directly into the brain which, of
17 course, can lead to infections and brain abscesses so
18 we usually try to get surgery done rather quickly. We
19 took her to the operating room that afternoon and
20 operated on both of these areas in the head.

21 Q And what operation did you perform on her?

22 A Well, these were craniotomies or more technically
23 craniectomy, which removes the broken bone. The one
24 on the left was the more serious one. That's where
25 the bone had poked through the dura, which it went

1 through the scalp, the bone, the bone was pushed into
2 the dura, which is the tough membrane that's on top of
3 the brain and actually the fragments were pushed into
4 the brain itself, so basically what we would do is cut
5 away any dead or dirty scalp, remove the bone
6 fragments, and then remove the fragments from the
7 brain because they can be an area where a brain
8 abscesses or infection occurs at a later point. We
9 don't want to go too deep into the brain because we
10 can cause more damage, but the area up there in the
11 first couple of inches or so, we will try get rid of
12 the necrotic brain and bone tissue and then sew all of
13 this back together.

14 The one in the frontal area was not as serious.
15 It did not go through the dura to the brain so we
16 basically cleaned up the scalp, the bone fragments,
17 and then closed that one back up. We did put
18 artificial titanium mesh to cover the defects from the
19 bone.

20 Q Why do you do that?

21 A Well, it provides protection for the brain where
22 the bone is not there anymore and plus for cosmetic
23 reasons.

24 Q Okay. And was the surgery successful?

25 A Yes, the surgery was successful.

1 Q I think you mentioned she had an injury to her
2 arm. You didn't have to do --- you personally didn't
3 have to do anything to that?

4 A No, like I said, the trauma team kind of
5 coordinates the care for all the specialists. As I
6 recall, I think she was referred to an orthopedist. I
7 don't know if she had surgery on that hand or not.

8 MS. SAMPSON: Thank you, Dr. Sweet. Please
9 answer any questions the defense has.

10 THE COURT: Cross?

11 MS. HINES: Beg the Court's indulgence.

12 (Pause.)

13 MS. HINES: I have no further --- I have no
14 questions for this witness.

15 THE COURT: Thank you very much. Have a nice
16 day.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MS. SAMPSON: The State calls Dr. Marcus Bradley.

20 DR. BRADLEY MARCUS,

21 after being duly sworn, testified as follows:

22 THE CLERK: Please have a seat. State your full
23 name for the record.

24 THE WITNESS: Dr. Bradley J. Marcus, M-A-R-C-U-S.

25 DIRECT EXAMINATION:

1 BY MS. SAMPSON:

2 Q Good morning, Dr. Bradley. I'm sorry, I always
3 want to switch it; it's Dr. Marcus. You have two
4 first names. I get a little confused there.

5 Can you tell us a little bit about your
6 educational background?

7 A Yes. I have an MD degree. To get that, I had to
8 go to college. I went to the University of North
9 Carolina Chapel Hill for my undergrad, graduated from
10 there. I enrolled in a medical school, The American
11 University of the Caribbean. I spent two years in
12 St. Martin and then two years in Ireland working to
13 get my MD degree. Graduated in 2001, started
14 residency and training program at the Medical
15 University of South Carolina in anatomical pathology,
16 clinical pathology, forensic pathology, and
17 cytopathology. I did that through 2008, so I spent
18 six years in MUSC in Charleston training to be a
19 pathologist, a forensics pathologist, a clinical
20 pathologist and a cytopathologist.

21 Q I'm going to break each one of those down. What
22 is anatomical pathology?

23 A Anatomical pathology deals with diseases of the
24 body. Particularly, the thing I do the most every day
25 is I diagnose cancer, breast cancer and so forth. A

1 surgeon will go get a breast biopsy. What we do is
2 bring it to a lab, and then under the microscope we
3 will take a look at it, make a diagnose of what type
4 of cancer it is and so forth. That's anatomical
5 pathology.

6 Q What is clinical pathology?

7 A Clinical pathology is the part of the hospital
8 that no one really knows about. Every time you give
9 blood or have a blood test, it goes to the clinical
10 lab, so our job as a clinical pathologist is to
11 interpret those blood tests and so forth. If someone
12 has lupus, they do a test. Then we sign off on
13 everything.

14 Q And what is forensic pathology?

15 A Forensic pathology is the subspecialty of
16 pathology dealing with autopsies, determining the
17 cause and manner of death of people. For instance,
18 cause of death can be listed as, you know,
19 complications of breast cancer, okay.

20 We do that through doing an autopsy. Now,
21 granted, yes, a woman who has breast cancer generally
22 doesn't get an autopsy because it's --- clinically you
23 can see how she died. You know, what I mean. In
24 cases in forensic pathology dealing with the medical
25 legal aspects of death investigation dealing with, if

1 some sort of foul play was involved, usually the
2 coroner or the sheriff, depends on what jurisdiction
3 you're in, orders an autopsy to investigate the cause
4 of death. My job is to come up with a cause of death
5 statement.

6 For instance, if someone is hit about the head
7 with a hammer, I would, you know, I do an autopsy to
8 confirm that and then I would say cause of death would
9 be blunt trauma to the head due to being struck with a
10 hammer or something along those lines.

11 That's my job to determine the cause of death.
12 Now, cause of death by definition is a disease or
13 injury that brings about death. And my job is to
14 determine that and write a report based on that.

15 Q And are you --- do you have a license?

16 A Yes, I have an unrestricted South Carolina,
17 Georgia, and North Carolina medical license.

18 Q And what are you licensed in?

19 A I'm licensed in medicine.

20 Q Okay.

21 A In medicine.

22 Q And have you ever been an instructor or college
23 instructor?

24 A Yes, I work as an instructor for a year at the
25 Medical University of South Carolina teaching

1 residents. That was after I --- well, it was when I
2 was completing a fellowship. Then in 2008, I moved to
3 Columbia, and I worked, and where I am now currently
4 working, for Professional Pathology Services.

5 Q And do you have privileges? Where do you have
6 hospital privileges?

7 A I have privileges at several hospitals. I have
8 privileges at Kershaw, I have privileges at Baptist,
9 Palmetto Health Baptist, Palmetto Health Richland,
10 Park Ridge Hospital and Newberry Hospital, which I
11 work in all of these hospitals throughout the month.

12 Q Are you a member of any professional societies?

13 A Yes, I'm a member of the National Association of
14 Medical Examiners, College of American Pathologists,
15 American Society of Clinical Pathology, and I'm also
16 --- the most important thing is I'm also a member of
17 the pathology board. I'm board certified in
18 pathology.

19 Q Are you board certified in anything besides ---

20 A I have four board certifications. I have
21 certification in anatomical pathology, clinical
22 pathology, forensic pathology, and cytopathology,
23 which I practice all those and I take my --- I took a
24 test to that --- I took a test for that.

25 Q And are you published?

1 A Yes, I've published several articles when I was
2 at MUSC.

3 Q Are they all on different versions of pathology
4 or different parts of pathology?

5 A I believe I did all of them in forensic
6 pathology.

7 MS. SAMPSON: At this time Your Honor, I'd ask
8 that Dr. Marcus be made an expert in the field of
9 anatomical pathology and forensic pathology for this
10 particular case.

11 THE COURT: Voir dire?

12 MS. HINES: Yes, please.

13 Good morning, Dr. Marcus.

14 THE WITNESS: Good morning.

15 MS. HINES: How are you?

16 THE WITNESS: Very well.

17 MS. HINES: When did you become certified in ---
18 or licensed in North Carolina?

19 THE WITNESS: I became licensed recently. I'd
20 have to look at my CV. I believe it was in 2013. Let
21 me --- let's double check that. Yes, it was the
22 Spring of 2013, because I renewed my license once
23 already. Yes.

24 MS. HINES: Do you know when you became licensed
25 in Georgia?

1 THE WITNESS: It was around the same time. I
2 believe it was the Spring or early Summer 2013.

3 MS. HINES: And you've been licensed in South
4 Carolina for a number of years, correct?

5 THE WITNESS: Yes, approximately nine years.

6 MS. HINES: And can you explain again anatomical
7 pathology.

8 THE WITNESS: Anatomical pathology is the study
9 of disease by looking at the gross tissues. Like I
10 said, it's --- for instance --- okay. So, for
11 instance today, I have to --- a woman has malignant
12 fluid on her abdomen, so they drained the fluid. They
13 sent it to the lab and they made a slide of it. So
14 today after I go to court, I'm going to look at the
15 microscope and determine what type of cancer she has.
16 I'm going to issue a report, sign it and then she goes
17 to an oncologist and gets treated for that. That's
18 what anatomical pathology is, studying tissues, cells
19 in the body.

20 MS. HINES: So as an anatomical pathologist,
21 you're looking at, not a deceased's body, but you're
22 looking at tissue samples that have been sent from ---

23 THE WITNESS: It depends. Sometimes, you know, I
24 will have to go to see a person, and in this case in
25 Richland, I will do the biopsies sometimes myself on a

1 patient. I've done that many times.

2 MS. HINES: Right, but the live patients. The
3 anatomical ---

4 THE WITNESS: Right, generally, and ---

5 MS. HINES: --- diagnosis of something for
6 treatment.

7 THE WITNESS: Right. And generally I'm not
8 dealing with live patients. You're kind of behind the
9 scenes.

10 MS. HINES: I have no further questions. I do
11 have an objection. Can we approach?

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the
14 jury.)

15 THE COURT: All right. So the defense objects to
16 him being qualified as an expert in the area of
17 anatomical pathology. They have no objection to him
18 being admitted in the area of forensic pathology. The
19 objection as to anatomical pathology is overruled and
20 Dr. Marcus will be qualified as an expert in the areas
21 of anatomical and forensic pathology based on his
22 experience, knowledge, training, education and work
23 history.

24 Ladies and gentlemen, as I have told you before,
25 normally a person is not allowed to give opinion

1 testimony. They must testify as to what they either
2 saw, heard or sensed by smell or something of that
3 nature. There is an exception when somebody is
4 qualified by the court as an expert. This witness
5 will be qualified as an expert in the area of forensic
6 and anatomical pathology.

7 He will be allowed to give opinion testimony in
8 those areas. Now, that does not mean that you must
9 accept the opinion, but it is evidence for you to use
10 in any way that you see fit and to give this testimony
11 the weight and the credibility that you believe is
12 appropriate as you are required to do with every
13 witness that appears before you.

14 Ms. Sampson, continue.

15 MS. SAMPSON: Thank you, Your Honor.

16 BY MS. SAMPSON:

17 Q Now, Dr. Marcus, I'm going to move you on to back
18 in June of 2012. How did you become involved in this
19 case?

20 A I take call. I usually take call two times
21 a month. So on the weekends I'm on call as the
22 forensic pathologist on call. I believe the coroner's
23 office was notified of a sudden unexpected death in
24 the hospital, and I believe it involved gunshot
25 wounds, so they got --- the coroner's office got

1 involved. They basically do the death investigation,
2 and then they decide whether or not a body gets sent
3 for autopsy or not. I happened to be on call that
4 weekend, so I was notified of an autopsy, that they
5 needed two autopsies to be performed.

6 Q So you did both autopsies on Athell Johnson and
7 Jamal Pratt; is that correct?

8 A Correct.

9 Q I know you're referring to some notes. Does
10 referring to your notes help refresh your memory of
11 what you did and said back in 2012?

12 A Yes, it does.

13 Q I'm going to start --- do you have a preference
14 of which one we start with?

15 A It makes no difference to me.

16 Q Then I'd like to start with Athell Johnson.

17 A That's fine.

18 Q You did the autopsy on Mr. Johnson?

19 A Yes. I did the autopsy on Mr. Johnson on
20 June 30th, 2012, at 9:45 a.m.

21 Q Okay. And I'm going to talk about --- I want you
22 to talk about in general a little bit about --- what's
23 the first thing you do when you receive a body that
24 you're going to autopsy?

25 A The first thing that we do when we receive a body

1 that we're going to autopsy is we check the, you know,
2 check the --- we bring the body out. Check the body
3 bag, make sure the name matches.

4 Then I look at the --- the coroner gives their
5 report of what his initial investigation has shown so
6 far, you know, names, so forth like that.

7 I check all that. Then I make my labels. Then
8 they --- usually the coroner and the police that are
9 investigating whether it was Columbia or Richland
10 County, and I can't recall in this case which agency
11 was involved in the investigation, but generally
12 someone is there during the autopsy doing the crime
13 scene, fingerprints and so forth like that.

14 Then basically open the body bag. We start to
15 examine the body as it was received in the morgue.

16 Q Is that what you did to Mr. Johnson?

17 A That's what I did, yes.

18 Q So what is the first thing that you did upon
19 receiving --- you said you opened the bag. Then what
20 do you do?

21 A We opened the bag. Then both the coroner's
22 representative and the police agency that's
23 investigating, they start taking photos of the body
24 and then they generally --- I generally fingerprint
25 the bodies. Sometimes they do it at the scene or if

1 this person is in the hospital, they may have done it
2 at the hospital. I can't recall exactly. They might
3 do fingernail scrapings, depending on the
4 circumstances. Then we basically start to unclothe
5 the body. I start looking for any type of injury.

6 Q In this case, is that what you did?

7 A Yes. That's what we did. I believe this body
8 was unclothed due to him being in the hospital.

9 Q And what was your normal next procedure? Do you
10 start with the body, the head?

11 A Well, in this case, I noticed that he had an
12 injury to his head. It appeared to be a gunshot wound
13 and he had actually in this case he had two injuries
14 to the head. He had a what appeared to be a gunshot
15 wound to his right head and then it appeared to be a
16 grazed gunshot wound to the back of the head.

17 Q I'm going to stop you for just a second and ask
18 you to look at State's Exhibit Number 97 and tell the
19 jury --- don't show it to them, but tell them what
20 that is.

21 A This the diagram that I prepared during the
22 autopsy of Mr. Johnson. I prepared a diagram. We
23 also take notes.

24 Q Why do you prepare that diagram?

25 A I prepare the diagram so I have --- it's my notes

1 when I dictate my autopsy report. I can go through my
2 template that I have. I'm able to remember what I do,
3 because in this case I had multiple cases that day, so
4 I had to remember everything and basically also, you
5 know, if you need to project it in a courtroom or
6 something, you need to have a diagram as a backup for
7 the photos. Back when I started, you know, in the
8 early 2000, I used to use the 35-millimeter film, and
9 every once in a while the film would get exposed and
10 you have to have a backup.

11 Q Does that copy of your diagram accurately reflect
12 the way you made it back in 2012?

13 A Yes, ma'am.

14 MS. SAMPSON: At this time we would ask to
15 introduce State's number 97 into evidence, Your Honor.

16 MS. HINES: No objection.

17 THE COURT: Ninety-seven without objection.

18 (WHEREUPON, State's Exhibit Number 97 was
19 admitted into evidence.)

20 MS. SAMPSON: Beg the Court's indulgence. We
21 have the computer.

22 (Pause.)

23 BY MS. SAMPSON:

24 Q Can you see that from there or would it help to
25 come down?

1 A It would help to come down. I'm at a bad angle.

2 Q Come on down.

3 THE COURT: There is a pointer right to your
4 right, if you need it, doctor.

5 BY MS. SAMPSON:

6 Q You talk pretty loud. I don't think that's a
7 problem. You can stand wherever you need to

8 A Yes.

9 Q You can come over here. Whatever works for you.

10 A It projects better. So this is the diagram.
11 Now, there is another, you know, part to it. You can
12 scan down.

13 Q Make it come closer?

14 A No, this part. Name is Athell Johnson, date of
15 the autopsy. These are my labels I print out. That's
16 the Richland County coroner's office case
17 investigation number. That's my internal autopsy
18 number.

19 So here is, you know, I do height, weight,
20 length, temperature, rigor. Rigor is the stiffening
21 of the body after death. So when you die, your
22 muscles don't have any energy anymore, so you start to
23 get stiff, okay. It's rigor, rigor, rigor. Some
24 people pronounce it differently.

25 Livor is the settling of blood when your heart

1 stops beating and you're laying. Gravity just pulls
2 your blood so you get a reddening discoloration of
3 your back or of your front. Depends on where you're
4 found lying.

5 Here, it's facial hair, eyes, ears, nose, teeth,
6 neck, abdomen, genitalia. I document that. Then I go
7 to the body and I start documenting, you know, scars,
8 some medical therapy, tattoos, scaly skin on the feet,
9 so forth like that. I document things like.

10 Q Now, in this particular one, you have an area in
11 the middle right here. What is that?

12 A Yeah, here he had --- here, it looks like he had
13 been --- well, I know this because I was told this,
14 but it appeared that he had been shot before in this
15 area.

16 So a surgeon had to go in and open his abdomen,
17 so he had this really dark hyper-pigmented skin there.
18 So I'm thinking what happened was that he was in the
19 hospital for awhile and the surgeon opened him up to,
20 I guess, retrieve a bullet or repair whatever was
21 damaged in there.

22 Because it's so hyper-pigmented, I think the
23 surgeon actually left the abdomen open to heal that
24 way. I think it's called healing by secondary
25 intention. What you get is just tissue grows in and

1 then closes the abdomen slowly over time. I believe
2 that's probably what happened because he also had a
3 tracheotomy scar there, so if he had been in the
4 hospital for a long while at some point earlier in his
5 life.

6 Q You can tell that this is not from this
7 particular injury?

8 A No, it's old. It's definitely old. It's hyper-
9 pigmented skin; new skin always grows in very light in
10 color.

11 Q Could you tell if he was paralyzed or able to
12 move after that injury?

13 A I couldn't tell. I know he was in a wheelchair.
14 That I know, so I'm assuming he was paralyzed.

15 Q You were given that information?

16 A I was given that information verbally.

17 Q And that was prior to this incident?

18 A Yes.

19 Q Is there anything else on that picture you need
20 to show the jury?

21 A No.

22 Q I'm going to move onto State's Exhibit Number --
23 - I'm going to leave you standing there. Number 98.
24 Can you tell the court what this is before we show it
25 to the jury?

1 A Yeah, this is a picture of the head. I diagram
2 out every gunshot wound that I labeled. In this case
3 he had sustained a gunshot wound to his right head, so
4 I diagrammed it out to the best of my ability.

5 Q And is this a fair and accurate reflection of the
6 diagram that you made?

7 A Yes. That's the diagram that I made.

8 MS. HINES: Without objection.

9 MS. SAMPSON: We'd ask to introduce State's
10 Exhibit Number 98 without objection.

11 THE COURT: All right.

12 (WHEREUPON, State's Exhibit Number 98 was
13 admitted into evidence.)

14 MS. SAMPSON: Thank you, Your Honor.

15 BY MS. SAMPSON:

16 Q I'm going to use this now, Doctor. Can you tell
17 the jury what this shows?

18 A Yes, in doing my external exam of the body, I
19 noticed that, you know, he had a gunshot wound here.
20 So when someone has a gunshot wound, the first thing I
21 do when they have a gunshot wound is I call x-ray down
22 to x-ray the body. Because one, finding bullets in a
23 body is lot easier said than done. I always call
24 x-ray down to get the anatomical location of where in
25 the body it is and look at the x-ray.

1 Now, in this case he had had a previous CT scan
2 that I had access to via the computer. I went online.
3 I saw the CT scan. I was able to document in the CT
4 scan that he did have a gunshot wound to his head and
5 where the bullet was. So in this case I forgo any
6 x-rays of the body because it was already done on a CT
7 scan and a CT scan will actually give me a better
8 anatomical location of where the bullet is rather than
9 an x-ray.

10 Q And in this case, you've got some notes that says
11 GSW? What is that?

12 A This is my shorthand. This is gunshot wound (A).

13 Q Okay.

14 A I label it as (A).

15 Q Okay, and you have STIPL right here?

16 A All right. So Mr. Athell Johnson had hair in
17 this area, so what I did was I cut the hair away. Any
18 time you have a gunshot wound to the head, you want
19 to --- especially if you have thick hair, it's hard to
20 see. So, you know, to get the best description of
21 what I needed to make sure that this was an entrance
22 wound not an exit, I needed to shave the head around,
23 shave the head and look at it without no hair around
24 it. I shaved the hair so I noticed that was an
25 entrance gunshot wound and then around the gunshot

1 wound there were these little abrasions on the skin.
2 Now, an abrasion is like a cut. You fall down and you
3 skin your knee, that's an abrasion. You have
4 superficial, you know, loss of the skin. Superficial
5 loss of the skin is an abrasion.

6 This is what we call stippling, also known as
7 tattooing, also known as powder burns.

8 Q And we're going to talk about that more later.

9 A That's fine.

10 Q I just wanted you to tell the jury what that was.
11 You mentioned just now that you got a CT scan of his
12 head or they provided you?

13 A Yeah Dr. Sweet's team provided us a CT scan.

14 Q I'm going to show you what's been marked as
15 State's Exhibit 88. Is this the CT scan you're
16 referring to?

17 A Yeah, this is actually it.

18 Q Don't show it to the jury yet. Does that fairly
19 and accurately depict the CT scan as you saw it back
20 in 2012?

21 A It does.

22 MS. SAMPSON: I would like to offer State's
23 Exhibit Number 88 into evidence, Your Honor.

24 MS. HINES: Without objection.

25 THE COURT: State's Exhibit Number 88 without

1 objection. That's the CT scan?

2 MS. SAMPSON: Yes, sir.

3 (WHEREUPON, State's Exhibit Number 88 was
4 admitted into evidence.)

5 BY MS. SAMPSON:

6 Q Is this what you were referring to?

7 A Yes.

8 Q What does it show?

9 A So this is actually --- this is my computer
10 screen in the autopsy room. I had either the coroner
11 or the police take a photo of it. So basically a CT
12 scan, it uses very complex x-ray algorithms. It takes
13 slices through your body as the scan goes down you, so
14 when you --- when that photo was taken, you're
15 actually looking at the body. The body is laying down
16 and you're looking at it from the feet up. That's
17 basically a cross section of the head. These are your
18 sinus cavities so right side, left-side there.

19 Q So it would basically if I can turn you around.
20 It would be like this?

21 A Yes, like that (indicating).

22 Q All right. So can you tell us what that is?

23 A Yes, on the right side of his head, you have some
24 of this --- when you have radio --- when you have
25 gunshots, you get the fragments of bullets and this

1 here is a bullet, some fragments of bullets here, and
2 an obvious defect in the skin right over here with the
3 black shows air, so you have a defect in the skin
4 compared to over here.

5 That's some of the projectiles that are in the
6 head.

7 Q And were you able to remove those at some point?

8 A Yeah, I removed most of them.

9 Q All right. At this point, since you're up here,
10 I'm going to go over some other things. We'll get
11 back to that. You stated --- maybe you haven't. Did
12 Mr. Johnson have more than one gunshot wound or just
13 one?

14 A Yeah, Mr. Johnson had a gunshot wound to the
15 right head. He also had a graze wound.

16 Q And I'm going to talk about the graze wound first
17 and show you what's been marked as State's Exhibit
18 Number 91. Can you show us what that is?

19 A Yes.

20 Q What is that?

21 A This is a graze wound to the posterior head.

22 Q And that's a photo of what you saw back in 2012?

23 A Yes.

24 Q Does it fairly and accurately depict the way that
25 you saw it back on June 30th, 2012?

1 A Yes, it does.

2 MS. HINES: Judge, I do object to the admission
3 of this based on previous argument.

4 THE COURT: All right. State's Exhibit Number 91
5 admitted over defense objection.

6 (WHEREUPON, State's Exhibit Number 91 was
7 admitted into evidence.)

8 BY MS. SAMPSON:

9 Q I'm going to put this up here. If you could
10 explain to the jury what they are seeing in this
11 picture.

12 A Okay. So in this case, Mr. Johnson's forehead is
13 right here. This is his hair. He had quite thick
14 hair. I noticed that he had a wound to the back of
15 his head here. So I shaved the area around the wound
16 exposing the wound.

17 Q I'm sorry. It's the computer. Okay. There you
18 go.

19 And how can you tell that's a graze wound versus
20 a penetrating wound?

21 A Because underneath it, it never penetrated the
22 skull. Okay. The bullet never actually entered the
23 cranial cavity. It just kind of --- the bullet went
24 like this. It just kind of.

25 Q You can use my head.

1 A Turn around.

2 Q Okay. Like this?

3 A So the projectile that was fired just actually
4 went like this across the scalp like that.

5 Q Would that injury itself be fatal?

6 A No. It's not a fatal wounds. It could be fatal.
7 The scalp tends to bleed like crazy. In this case,
8 that --- since I another gunshot wound, too, that
9 other wound was the fatal wound. This is not a fatal
10 wound right here.

11 Q You were able to conclude, in your expert
12 opinion, that that's not a fatal wound?

13 A Yes. I'm able to conclude that, yes.

14 Q I'm going to show you what's been marked as
15 State's Exhibit Number 89. What is that?

16 A This is this entrance gunshot wound to the right
17 head.

18 Q And does this photograph fairly and accurately
19 depict the way that you saw it back on June 30th,
20 2012?

21 A Yes, ma'am.

22 MS. HINES: Judge, I'm going to object to this
23 based on my previous argument.

24 THE COURT: All right. State's Exhibit Number 89
25 admitted over defense objection.

1 (WHEREUPON, State's Exhibit Number 89 was
2 admitted into evidence.)

3 BY MS. SAMPSON:

4 Q All right. Could you explain to the jury what
5 they are seeing in this photograph?

6 A Yes. Okay. So this is Mr. Johnson laying on the
7 table. You have his shoulder is there. Ear is right
8 here. As you see, he had quite thick hair. So I
9 shaved around where the hair was, where the gunshot
10 wound was. This here is --- this here is a picture of
11 what an entrance gunshot wound looks like. The bullet
12 goes in. It slightly abrades the skin around here
13 okay. This is a textbook photo of an entrance gunshot
14 wound.

15 But then in addition to that, if you notice and
16 this is covering it, but do you see these little punk
17 tape abrasions.

18 Q Yes. I see.

19 A They even actually extend out to over here, this
20 is what we call the stippling or the powder tattooing.
21 It's known as powder burns that occur when sometimes a
22 gun is fired in close proximity to somebody.

23 Q You said tattooing. You are not referring to ---
24 like I have a tattoo from a tattoo parlor?

25 A No, it's just different terms, people use

1 different things.

2 Q So what do you mean by tattooing or powder burns?

3 A Powder burns --- basically when a gun is fired,
4 when a gun is fired, out of the barrel comes many of
5 the gases that are formed. The projectile comes out
6 of the barrel, but also what propels the bullet down
7 the barrel is the burning of the gunpowder, but in
8 some cases, all the gunpowder actually does not burn.
9 Some of it comes out, out of the barrel with the
10 projectile, with the bullet.

11 Now, that gunpowder is kind of like, it's flakes.
12 Like, think of very course sand, okay. Everyone has
13 been on the beach, the sand hits you. When it's
14 traveling at several hundred feet per second, this
15 unburned gunpowder, what it does is it makes little
16 small abrasions on the skin, little scratches on the
17 skin.

18 Q So what does that stippling signify to you?

19 A That signifies to me with handguns that this gun
20 was in close proximity to his head. Maybe up to 30
21 inches, two feet. There is a range of variation when
22 stippling can cause damage to the skin, all right.
23 The only way to know for certain exactly how far the
24 gun was from somebody's body is to test fire the
25 weapon, the same weapon with the same type of

1 ammunition. That's the only way to know. I call
2 these intermediate range gunshot wounds.

3 Q Intermediate in your opinion means that it was
4 close enough to leave stippling, but not so far that
5 you didn't?

6 A Right. It wasn't across the room.

7 Q Is there anything else that this picture shows?

8 A No, ma'am.

9 Q Before I remove it, you said the gunshot wound, I
10 think you said it was textbook, but does it --- not
11 from this picture I know you can't do it, but can you
12 explain to the jury the trajectory of the bullet
13 entering the brain?

14 A Only from this picture I can say it's going to
15 the left. I wrote down the trajectory in my report.
16 I can give them a demonstration if need be.

17 Q Can you do that with me?

18 A Yes.

19 Q Do you need your report?

20 A Yes.

21 Q You can use --- that's it right here. I just
22 want to do everything before you sit back down.

23 A That's fine. So this gunshot, this one I labeled
24 as number (A).

25 Q You mean letter (A)?

1 A Letter (A), okay. The gun --- so this gunshot is
2 going to the left, going from right to left. It's
3 going slightly backward, so maybe like that and
4 slightly downward.

5 So something like --- something like this. Again
6 it's hard, but something along these lines, okay.
7 Okay. Something along those lines. That's the
8 trajectory of the bullet pathway in the head.

9 Q So it's going downward?

10 A It's going downward, yes.

11 Q It wasn't front on. From the trajectory that you
12 got, it wasn't a front on shot?

13 A It could have been if he had turned his head.

14 Q Could have been?

15 A Correct.

16 Q It's not like straight on his face. It's to the
17 side?

18 A To the side of his right head, that's correct.

19 Q You can sit down.

20 So to kind of sum up what we've shown the jury,
21 there were two gunshot wounds?

22 A Yeah, there were two gunshot wounds. I think I
23 left my notes somewhere around there.

24 Q Is that what you need?

25 A Yes, ma'am.

1 Q So there were two gunshot wounds?

2 A There's two. There's gunshot wound labeled
3 number (A) and then a graze wound to his head, that's
4 correct.

5 Q All right. Which gunshot wound was fatal?

6 A The gunshot wound (A) was fatal.

7 Q Were you able to determine with a reasonable
8 degree of medical certainty what he died from?

9 A Yes.

10 Q And what did he die from?

11 A He died as a result of his gunshot wound to the
12 head.

13 Q And what damage did he receive as a result of
14 this gunshot wound to the head?

15 A Okay. So he had a subarachnoid hemorrhage. He
16 had bleeding around the brain. He had ---

17 Q I'm going to stop you. What's a subarachnoid ---
18 we heard about the dura from Dr. Sweet. What's the
19 subarachnoid?

20 A Subarachnoid is the membrane that lies on the
21 brain itself. Blood is underneath. You can't
22 actually wipe the blood away. When you have the brain
23 in your hand and you try to wipe the blood away, it
24 doesn't wipe away. It's right there adjacent, next to
25 the brain fragment itself, the tissue. He had

1 cerebral contusions, which are actual hemorrhage in
2 the brain itself from the trauma. He had a subdural
3 hemorrhage, which is outside the dural membrane. It's
4 outside, so those you can wipe away.

5 He had skull and anterior, the bottom part of the
6 skull, anterior cranial fractures, so he had a bunch
7 of broken bones up in his skull. He had scalp
8 hemorrhage, which is in the tissue, a lot of
9 hemorrhage out there. He had cerebral edema, which is
10 swelling of the brain. The brain when you have a
11 traumatic injury like anything, trauma, traumatic, it
12 swells. You know, the brain has no where to go cause
13 it's in a boney vault.

14 So he had --- and then what you get from cerebral
15 edema, swelling of the brain, is you get uncal
16 herniation, which is the brainstem herniates down
17 through the foramen magnum, which is where the spinal
18 cord goes through. When you have that, you can't
19 breathe and it's --- that's considered brain dead.

20 Q You also note in your report--- you note that
21 there was stippling present, correct?

22 A Right. There's stippling present and then I
23 noted that the bullet was recovered.

24 Q And based on --- I think I just said this, your
25 determination was he died as a result of a gunshot.

1 wound that was fatal?

2 A That's correct.

3 Q I'm going to move on to Mr. Pratt. Do you have
4 his notes up there with you?

5 A Yes, ma'am.

6 Q I'm not going to go through your entire procedure
7 again, but did you do the same procedure with
8 Mr. Pratt as you've already testified that you did
9 with Mr. Johnson?

10 A Yes, I performed the autopsy on Mr. Pratt on
11 June 30th, 2012, at 8:00 a.m. in the morning.

12 Q Did you do these basically --- were they near in
13 time to each other?

14 A Yeah, this one I had done first, and then I did
15 Mr. Johnson's second.

16 Q Okay.

17 A I did this one at 8:00 a.m. I did Mr. Johnson at
18 9:45.

19 Q Okay. So Mr. Pratt, you received him, did all
20 the same things you said with Mr. Johnson. Did you do
21 a diagram with him, as well?

22 A I did.

23 Q Before you come --- I'll have you come down in a
24 minute. Let me just do all of these with you so I
25 don't have to stop you in the middle. I want to show

1 you what's been marked as State's Exhibit 95 and 96
2 and ask if you recognize those?

3 A Yeah. These are the diagrams I prepared during
4 the autopsy of Mr. Pratt.

5 Q And do these fairly and accurately depict the
6 diagrams that you made that day?

7 A Yes, yes; yes, ma'am.

8 MS. SAMPSON: At this time, we'd ask to introduce
9 State's Exhibit 95 and 96 into evidence, Your Honor.

10 THE COURT: Are those the diagrams?

11 MS. SAMPSON: Yes, sir, both diagrams; one of the
12 head and one of the body. I'm showing them to
13 Ms. Hines.

14 MS. HINES: Without objection.

15 THE COURT: All right. Ninety-five and 96
16 without objection.

17 (WHEREUPON, State's Exhibit Number 95 and 96 were
18 admitted into evidence.)

19 THE COURT: Hold on a second.

20 (Pause.)

21 MS. SAMPSON: Okay. Is it okay for us to
22 proceed, Your Honor?

23 THE COURT: Yes, ma'am, I'm sorry.

24 BY MS. SAMPSON:

25 Q All right. So I'm going to start with State's

1 Exhibit Number 95 and it has --- I'll have you start
2 at the top again.

3 A Okay.

4 Q You have the same information as you did with
5 Mr. Johnson?

6 A Yeah, I have the same thing as Mr. Johnson, the
7 basic things I measure out, height, length, rigor, so
8 forth. Again, that's the sticker I give him.
9 8:00 a.m., Richland County coroner's office
10 investigation number, my internal control for my
11 autopsy.

12 Q Okay.

13 A And this is the diagram. Again, what we did ---
14 the same thing we did is the body comes out, the
15 coroner's office and the investigating agency start to
16 photograph the body. Document any clothing that was
17 on him. Again, he was in the hospital, so he didn't
18 have any clothing, as I recall.

19 From that point on, I start looking for any type
20 of, you know, injuries. After I do the basic exam,
21 you know, any scars, tattoos and so forth. I start
22 looking for any type of the injuries that were on him.

23 Q Actually at the top right here, I think that you
24 did note he had multiple tattoos?

25 A When I start getting --- when somebody has, you

1 know, one tattoo I might say a single tattoo, but when
2 they have multiple tattoos, I used to draw them all
3 out, but since we take photos I just photograph them
4 now. They can become very complex.

5 Q So when you're saying multiple tattoos in that
6 one, you're not talking about stippling, you're
7 talking about actual tattoos?

8 A Right. Ink tattoos.

9 Q All right. I'm going to move onto State's
10 Exhibit Number 96. Is this the other diagram that you
11 prepared?

12 A Yeah, this is the other diagram. Again the same
13 thing. I noted a gunshot wound to the right head on
14 Mr. Pratt, and what I did then, again, is try to x-ray
15 the body, but in this case, he was admitted to the
16 hospital, and I know --- I went to the computer. he
17 did have a CT scan again done on him that showed that
18 a projectile was in his head along with the injuries,
19 so I forgo any x-rays since we already had it
20 documented by radiograph that a bullet was in him.

21 Q Okay. And the little --- are those little dots -
22 --- is that stippling here or not?

23 A Okay. Yeah, so again, we have a gunshot wound
24 labeled as (A) and that's our hole in the head, and we
25 had, again, all these little marks around. They

1 covered the ear and again this was stippling that I
2 noted, that I noted, and what I do is I document its
3 height in vertical and horizontal dimensions.

4 Q So where you have 4.5 here and 4 even; is that
5 4.5 inches and 4 inches?

6 A Yes, ma'am.

7 Q So that's your measurements. You actually took a
8 tape measure and measured them?

9 A I measured them, yes, with a ruler.

10 Q And while you're standing there --- all right,
11 I'm going to show you what's been marked as State's
12 Exhibit Number 94. Is that what you saw back in 2012
13 in June 2012?

14 A Yes, ma'am.

15 Q And does that fairly and accurately depict the
16 way you saw it back then?

17 A Yes, ma'am.

18 MS. HINES: I object to the entrance of this
19 photograph, Judge.

20 THE COURT: What number is it?

21 MS. SAMPSON: Ninety-four.

22 THE COURT: Is that one we previously did?

23 MS. SAMPSON: Yes, sir. I'll show you.

24 THE COURT: All right. State's Exhibit
25 Number 94, over defense objection.

1 MS. SAMPSON: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit Number 94 was
3 admitted into evidence.)

4 BY MS. SAMPSON:

5 Q All right. Can you explain to the jury --- this
6 is Mr. Pratt, correct?

7 A Yes.

8 Q Can you explain to the jury what they are seeing
9 in this photo?

10 A Yes, again --- again, rather thick hair around
11 the area of the entrance gunshot wound and so again
12 what I did is I shaved around the wound to get a
13 better visualization of the entrance wound. That's
14 just basically a picture of the gunshot wound entrance
15 wound here with the stippling that you saw that I
16 diagramed on my diagram around very exactly, you know,
17 almost exactly like previous --- the previous ---
18 Mr. Johnson's.

19 Q And when you say --- you're talking about the
20 stippling?

21 A Yeah, the stippling and the entrance wound looks
22 almost exactly identical and almost in the exact same
23 spot.

24 Q So the demo on me would be the same as you did,
25 more or less?

1 A The only thing, Mr. Pratt did not receive a graze
2 wound to his head. He only received a single entrance
3 gunshot wound.

4 Q And you were able also on this one to see
5 stippling, I think you already said that?

6 A I was able to see stippling on this one, yes.

7 Q Okay. You can have a seat.

8 Q So again with Mr. Pratt, is it your medical
9 opinion that he died from a gunshot wound?

10 A Yes, he died of a gunshot wound, that's correct.

11 Q And can you determine that to a fair degree of
12 reasonable certainty?

13 A Absolutely certain.

14 Q Okay. Can you tell us what injuries he had as a
15 result of that gunshot wound?

16 A Yes. He had a subdural hemorrhage, which is
17 hemorrhage around the dural of the brain. He had a
18 subarachnoid hemorrhage, the hemorrhage that you can't
19 wipe away on the brain. He had cerebral contusions on
20 his --- on his brain. He had, again, uncal herniation
21 at the base of the brain because the base of the brain
22 was swelling and herniated and basically you can't
23 breathe. That's the brain death. He also had scalp
24 hemorrhage, again, from the bullet, you know, damaging
25 the scalp as it entered into the head and stippling

1 present at the entrance wound.

2 Q I didn't ask you with the other, but with both
3 gentlemen, did you take blood for toxicology?

4 A I do.

5 Q Do you submit that somewhere?

6 A It's submitted to either a private lab or we
7 submit it to SLED for toxicology.

8 Q And in this particular case, would the drug
9 screen change your opinion at all?

10 A No. It wouldn't change it at all because they
11 had fatal gunshots to their head.

12 Q So drugs or alcohol or anything wouldn't have
13 changed their outcome?

14 A No.

15 MS. SAMPSON: Beg the Court's indulgence.

16 (Pause.)

17 BY MS. SAMPSON:

18 Q Doctor, you --- I think you said this, but were
19 you able to retrieve the bullet from Mr. Pratt's head,
20 as well?

21 A Yes, I was able to get a bullet out of his head
22 also.

23 Q And you took bullets and a jacket I believe out
24 of Mr. Johnson's head, correct?

25 A I think so. Let me double check that.

1 A Yes, the bullet with a deformed gray metal
2 projectile with a deformed copper toned jacket, that's
3 correct.

4 Q So you took --- just because you said that really
5 fast, you took a copper metal jacket and a projectile?

6 A Yeah, basically this --- bullets are made out of,
7 you know, gray lead and they put ---

8 MS. HINES: Objection. It's outside the scope of
9 expertise.

10 MS. SAMPSON: I think he can talk.

11 THE COURT: Overruled.

12 MS. SAMPSON: Thank you, Your Honor.

13 BY MS. SAMPSON:

14 Q Go ahead, Doctor.

15 A Again, the bullet is made of gray metal, usually
16 lead and then around the bullet is a copper jacket.
17 Sometimes the bullets, you know, you get them intact
18 in the body. Sometimes, especially if they hit bone,
19 the jacket rips off the bone and you get those two
20 pieces.

21 Q And you were able to retrieve those out of
22 Mr. Johnson?

23 A Yes, ma'am.

24 Q And what did you do with them once you retrieved
25 them?

1 A I signed them over to the --- whatever
2 investigating agency there was.

3 Q If I told you it was Richland County, you
4 wouldn't disagree with me?

5 A Probably --- yea, now that I think about it,
6 since it was out on Garner's Ferry Road, it was
7 probably Richland County, yes.

8 MS. SAMPSON: All right. Thank you, Dr. Bradley
9 --- Dr. Marcus. Please answer any questions Ms. Hines
10 may have.

11 THE WITNESS: No problem.

12 CROSS-EXAMINATION:

13 BY MS. HINES:

14 Q Hello, Dr. Marcus.

15 A Hi.

16 Q How are you?

17 A Very well.

18 Q You actually work with law enforcement quite
19 frequently, correct?

20 A Yes, ma'am.

21 Q And you consider yourself kind of an arm of law
22 enforcement in doing these autopsies, don't you?

23 A I guess you could say that, yeah.

24 Q Yeah?

25 A Yes, ma'am.

1 Q And part of your --- what you consider --- just a
2 second. What you consider to be part of your job is
3 --- hold on just a ---

4 MS. HINES: Beg the Court's indulgence.

5 (Pause.)

6 MS. HINES: Sorry about that.

7 BY MS. HINES:

8 Q So you have actually --- you --- you feel that
9 you speak for the dead?

10 A Oh, yes. I've been known to say that in the
11 past.

12 Q You've been known to say that. You've also been
13 known to say that your feeling is that when you get on
14 the stand, it's over for the defendant?

15 A Right.

16 Q You've said that?

17 A I said that on a TV program, that's correct.

18 Q And you also said, "Based on my track record over
19 the last ten years, when I go to court and testify,
20 people are convicted?"

21 A That's correct.

22 Q So as an arm of law enforcement, you're here
23 testifying as an expert pathologist, but also as an
24 arm of law enforcement with the intention of having
25 someone convicted, correct?

1 A If that's what the jury sees. Again, I have a
2 loyalty to my two --- they're called victims, but I
3 see them as my patients, so basically I'm speaking for
4 them trying to say what happened in their last moments
5 of their life, and I'm trying to paint that picture.

6 Q You're a member of the National Association of
7 Medical Examiners?

8 A Yes, ma'am.

9 Q Okay. And they have standards, correct?

10 A Yes, they do.

11 Q And one of the standards, actually A1.1 is
12 "Medicolegal death investigation officers should
13 operate without any undue influence from law
14 enforcement agencies and prosecutors," correct?

15 A Correct.

16 Q And yet some of the things that you have said on
17 television and here today might go against that.

18 A Well, you know, you're talking about a television
19 program. Now, we're in court, so I haven't said --- I
20 just --- basically, I know what I have said here
21 today. I basically have said that these people died
22 of gunshot wounds. I have not said or told anybody
23 who is responsible for that.

24 Q Because you can't ---

25 A I don't know.

1 Q --- know who is responsible?

2 A That's correct. I don't know.

3 Q And when you do your autopsies, you have
4 information from law enforcement, though, correct?

5 A Generally, I have very limited information, first
6 because the autopsies are generally usually done
7 within 12 hours of when these incidents occur. So I'm
8 given a little bit of information, yes, but most of
9 what I go on is in my own coroner's report and what
10 the investigating officer at the autopsy says to me.

11 A lot of times that officer has never gone to the
12 scene and they're just there to do the crime scene in
13 the autopsy room.

14 Q Right. In this case --- now, let me just ask you
15 a couple of questions about this case in particular.
16 Just to clarify for the jury, you mentioned hemorrhage
17 several times. I'm not sure if you defined it for the
18 jury. I mean, that just means bleeding, excessive
19 bleeding, correct?

20 A That's correct, excessive bleeding, correct.

21 Q Just --- I'm not sure if I missed it or if you
22 even defined it. I know you defined some of the other
23 terms, but I didn't hear the definition of that, and
24 in this case, when you examined these victims,
25 Mr. Johnson and Mr. Pratt, did you see any signs of

1 burning on either of them? I mean, you talked about
2 the stippling --- let me just clarify. You talked
3 about the stippling and that's sometimes called powder
4 burns. Those are not actually burns, correct?

5 A Because the gunpowder is hot, it technically
6 could be considered a burn.

7 Q It ---

8 A It could be either ---

9 Q But ---

10 A --- the velocity of what struck you, too.

11 Q Right. It could be a burn or it could be an
12 abrasion from what struck you?

13 A That's correct, you could say that, yes.

14 Q Other than the stippling that you've testified to
15 already, you didn't see any signs of burning, burn
16 marks on either of these victims, correct?

17 A Not that I can recall, no, ma'am.

18 Q And you didn't see any signs that either of these
19 victims had been choked?

20 A No, ma'am.

21 Q And the projectiles, the bullet and bullet
22 fragments that you pulled out --- that you removed,
23 did you wash them?

24 A Yeah, I generally wash them because a lot of
25 times, sometimes if they have tissue stuck on them,

1 you know, I try to wash them because I don't want
2 them --- they're already a biohazard, but if you have
3 tissue stuck to the bullets, it becomes even greater
4 of a biohazard. So I do wash them and photograph
5 them. Sometimes the tissue is so embedded in the
6 metal --- the lead is very soft, so soft that you
7 can't even get the tissue out of them. I do the best
8 I can.

9 Q What do you use to wash them with?

10 A Water.

11 Q Just water?

12 A Yes, ma'am.

13 Q No soap?

14 A No, ma'am. I don't use any soap. I just use
15 water.

16 Q Do you wipe them now?

17 A Sometimes I put them in just a little bit of a
18 water bath and then I might wipe it down. I'm not
19 sure. It depends. Sometimes I just lay a bullet on
20 a --- like a towel, because --- and maybe let it dry
21 because then either the coroner's office or the
22 police, they take a photo of it. I don't like to take
23 a photo of a bloody bullet.

24 Q Right. When you put them in the water bath, do
25 you jiggle it around at all or do you just let it

1 soak?

2 A I generally keep it in my hands, because I don't
3 like to --- I generally just keep it in my hands.

4 Q So you keep the bullet in your hand and put it
5 down into the water bath and just kind of ---

6 A Uh-huh.

7 Q --- swirl it around a little bit and then ---

8 A And pull it out, yeah.

9 Q And you mentioned that both Mr. Pratt and
10 Mr. Johnson had tattoos?

11 A That's correct.

12 Q Do you recall what those tattoos were of?

13 A No, ma'am. I'd have to look at the photos to
14 tell you exactly what they are.

15 Q Okay. That's quite all right.

16 MS. HINES: Beg the Court's indulgence just a
17 moment.

18 (Pause.)

19 BY MS. HINES:

20 Q Now, you mentioned earlier, when you were talking
21 about the bullet and when it impacts bone, it
22 fragments?

23 A It can.

24 Q It can. The --- and when a bullet impacts bone,
25 you expect to see damage to the bullet?

1 A You can. It depends, you know, the temporal
2 skull is probably one of the thinnest parts of the
3 head. You can have damage. You might not, you know.

4 Q Okay.

5 A A 22 bullet for instance, I've seen them almost
6 perfectly intact in the brain after they have
7 penetrated bone.

8 Q And in this case, the bullet fragment and jacket
9 that you pulled from Mr. Johnson had significant
10 damage, correct?

11 A Yeah, I said it was, you know, it was deformed,
12 so yes, that's damage.

13 Q Yeah. On the bullet that you pulled from
14 Mr. Pratt, it had very little damage?

15 A Can I check my report, ma'am?

16 (Pause.)

17 Yeah, I wrote that this one is slightly deformed.

18 Q Can I look at your --- can I see what you have up
19 there? Is it just your autopsy reports?

20 A This stuff is the sweet stuff.

21 MS. HINES: I nothing further for this witness.

22 THE COURT: Redirect?

23 MS. SAMPSON: Briefly, Your Honor.

24 (WHEREUPON, State's Exhibit Numbers 99 through
25 104 were marked for identification only.)

1 MS. HINES: Judge, can we approach?

2 THE COURT: Talk amongst yourselves. Stand up,
3 stretch.

4 (WHEREUPON, a bench conference was held in the
5 presence, but not within the hearing of the
6 jury.)

7 THE COURT: Okay. We'll take a break in just a
8 few minutes. Bear with me.

9 Okay. Go ahead.

10 REDIRECT EXAMINATION:

11 BY MS. SAMPSON:

12 Q Dr. --- Dr. Marcus, I keep doing that.

13 A Yes, ma'am.

14 Q All right. I'm going to show you what's been
15 marked as State's Exhibits 99 through 104 and ask you
16 to look at them all.

17 (Pause.)

18 A Yes, ma'am, I looked at them.

19 Q Okay. Other than what I just did by cutting this
20 one, do they fairly and accurately depict what you saw
21 back in June of 2012?

22 A Yeah. This is generally the way I would place
23 the bullets on a towel.

24 Q And we're going to go through each one. I just
25 want to get through that part first. There are

1 pictures of the bullets, bullet fragment and the
2 jacket; is that correct?

3 A That's correct.

4 Q And they fairly and accurately depict what you
5 saw back in June of 2012?

6 A Yes, ma'am.

7 MS. SAMPSON: I'd ask to introduce State's
8 Exhibit 99 through 104 into evidence.

9 MS. HINES: Without objection.

10 THE COURT: All right. State's 99 through 104
11 without objection.

12 (WHEREUPON, State's Exhibit Numbers 99 through
13 104 were admitted into evidence.)

14 BY MS. SAMPSON:

15 Q I'm not going to ask you to --- if you can just
16 hold them and show them to the jury as we go through
17 them.

18 A Okay.

19 Q I'm going to start --- let's just go
20 chronological with 99. Can you tell the jury what
21 that is?

22 A That's a slightly deformed copper metal jacketed
23 projectile.

24 Q And is that the bullet you were discussing with
25 Ms. Hines on cross?

1 A Yeah, that was --- this looks like it came from
2 Mr. Pratt.

3 Q Can you show it to the jury? So this is the
4 bullet. There's something on the end of that. Can
5 you tell what that is?

6 A That appears to be a hollow point bullet.

7 Q Okay. What about State's Exhibit Number 100?
8 You can just put everything right there.

9 A Yeah, this is just another photo. This here is
10 just another photo of the --- you take it from a
11 higher --- the back, a back, higher photo. He took
12 the photo higher up of the bullet.

13 Q Okay. And State's Exhibit Number 101, what is
14 that?

15 A Okay. Yes. Remember, I had said that we --- on
16 Mr. Johnson, the jacket separated from the bullet
17 itself. So in this case, I pulled out some, you know,
18 some gray metal and I also pulled out a jacket, a
19 deformed jacket.

20 Q On cross-examination she asked you some questions
21 about that. Is that what you were speaking of?

22 A Yes, ma'am.

23 Q Can you show that to the jury what you're talking
24 about?

25 A What we have here is, that's the core of the

1 bullet, the gray metal. That's just part of the
2 jacket of that bullet. It's separated.

3 Q Okay. And 102, what is that?

4 A Okay. Again, this is the jacket of that bullet
5 that we just saw here. It's a close up because you
6 can see the copper color to it.

7 Q Okay. And State's Exhibit 103?

8 A That's just another picture of the jacket, the
9 deformed jacket.

10 Q That's what you're talking about. It becomes
11 deformed and that's what it ended up looking like?

12 A Sometimes it can be worse, but that's what this
13 one looked like.

14 Q And State's Exhibit Number 104?

15 A This here, that appears to be the gray metal core
16 of the bullet.

17 Q And those were all that you took out of --- the
18 core and the jacket were from Mr. Johnson, and the one
19 that's together is from Mr. Pratt; is that correct?

20 A That's correct.

21 Q Now, she asked you about some things you said in
22 the past, all the law enforcement and all that stuff.
23 Does law enforcement being there change your position
24 in this case at all?

25 A No, no. It doesn't. Basically, this is my

1 patient. Although the patient is dead, it's still my
2 patient, so I'm still responsible for that patient
3 doing the autopsy to the best of my ability for that
4 patient.

5 Q And when you were discussing it, did you even
6 remember who was at the autopsy as far as law
7 enforcement until I told you?

8 A I can't remember who was there.

9 Q Did they in any way, shape, or form change your
10 decision that both of these people died of a gunshot
11 wound?

12 A No, no, no, ma'am, not at all.

13 Q Did they in any way change your position that
14 there is stippling on the head?

15 A No, no.

16 Q Did they in any way change the position about the
17 trajectory of the bullet?

18 A No, those were all my decisions.

19 Q Okay. And the fact that you're not supposed to
20 have any undue influence, as she stated from the
21 membership and what that says, did you have any in
22 this case?

23 A No, I didn't.

24 Q Did it in any way shape or form your opinion?

25 A No.

1 Q And again, your opinion is that both of these
2 people died from a gunshot wound to the head?

3 A That's correct.

4 MS. SAMPSON: That's all I have.

5 THE COURT: Recross?

6 MS. SAMPSON: Oh, oh, I'm sorry, one more thing,
7 Your Honor.

8 BY MS. SAMPSON:

9 Q She asked you about choking. Can someone be
10 choked and not have marks from choking?

11 A It depends on how long they were choked for.

12 Q So, if you're just briefly choked, would that
13 leave marks?

14 A Not necessarily.

15 MS. SAMPSON: Nothing further, Your Honor.

16 THE COURT: Recross?

17 MS. HINES: Just briefly, Judge.

18 RECROSS-EXAMINATION:

19 BY MS. HINES:

20 Q And again, you testified on cross-examination
21 just a moment ago that you do consider yourself an arm
22 of law enforcement?

23 A Sure, yes.

24 Q Thank you. That's it.

25 THE COURT: All right. Thank you very much.

1 Have a nice day.

2 All right. Ladies and gentlemen, we've been
3 going for almost an hour-and-a-half. Dr. Marcus,
4 you're excused. We're going to take our mid morning
5 break now. If you will retire to the jury room. Keep
6 an open mind, do not discuss the case. We'll see you
7 back in about 15 minutes. Thank you very much.

8 Everyone remain seated while the jury is dismissed.

9 (WHEREUPON, the jury left the courtroom at 11:22
10 A.M.)

11 THE COURT: Anything before we break?

12 MS. SAMPSON: Not from the State, Your Honor.

13 MS. HINES: Nothing from the defense.

14 THE COURT: All right. Fifteen minutes.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: All right. Bring them in.

17 (WHEREUPON, State's Exhibit Numbers 105 through
18 116 were marked for identification only.)

19 MS. SAMPSON: Your Honor, before we get started
20 with the jury, since we were at a break, we thought we
21 would go ahead. One is short, but the one after is
22 Stan Richards, and we have marked 105 through 112,
23 which are photographs. There are some photographs
24 that I believe the defense is objecting to 105 ---
25 hold on one second, Your Honor. I mis-numbered this.

1 It's actually 105 through 116. And I believe she is
2 objecting to 113, 114, 115, 116 and 105, so --- is
3 that, correct?

4 MS. HINES: That is correct. It's Mr. Krzyston's
5 witness, though.

6 THE COURT: Let me see them.

7 MS. HINES: I can argue.

8 THE COURT: All right. So tell me why you need
9 105?

10 MS. SAMPSON: I've got to look at them, Your
11 Honor. I believe --- oh, I just needed to check if 17
12 is already in, then we can agree not put that one in
13 that we already have that is similar.

14 THE COURT: I have 17 as being in.

15 MS. SAMPSON: So we can agree to not using that
16 one.

17 THE COURT: All right.

18 MS. SAMPSON: And I believe that one that you
19 have is ---

20 THE COURT: 113.

21 MS. SAMPSON: For our presentation, Your Honor,
22 it goes to show the state of the apartment as they
23 found it once the victims had been removed. Their
24 argument has been in part that this is a drug deal or
25 where it happened. There is blood nowhere else in the

1 apartment except there and the other room, and I think
2 that just shows that everything happened in the
3 bathroom. That would be the purpose of the
4 photograph.

5 MS. HINES: And this is the same --- as we argued
6 yesterday on number 20 and I think Your Honor ruled
7 yesterday on number 20 that they had to make a
8 foundation on that, that you needed more information
9 as to whether --- because the argument on that is that
10 that's not how it was. The blood was not on the
11 toilet --- we have no testimony that the blood was on
12 the toilet when EMS arrived. The photograph --- it's
13 13 or 15 shows the side of the bathtub where there is
14 no blood, and so this is after EMS removed the body.
15 It's not how it was at the time.

16 MS. SAMPSON: The difference is 20 actually
17 showed the tub and like all down --- we just did a
18 wide angle. It's not --- I don't see the prejudice if
19 it's a wide angle. There's no --- you can't tell it's
20 pooling of brain matter or any of that, which was the
21 objection to 20 yesterday. I'm not using it for that
22 purpose at all.

23 THE COURT: All right. 114.

24 MS. SAMPSON: I'll remove that one, as well.
25 It's the same as the one that has already been

1 introduced.

2 THE COURT: All right. 115.

3 MS. SAMPSON: It is --- again, there is a little
4 bit of blood at the doorway, and they take a
5 photograph of that. That's what that is and our
6 person is going to come testify about taking it.
7 Again, there's been some conversations about what we
8 did and what we didn't do. That just goes to show
9 that that was one of the things we looked at. It's
10 just a spot of blood. It's not even a pooling.

11 MS. HINES: Our contention with that is the
12 State's theory just articulates that all the blood was
13 in the bathroom. That is by the front door. We
14 believe that was when EMS was removing them and
15 therefore wouldn't be relevant. I don't believe that
16 accurately reflects how the scene was when they
17 arrived. It's after EMS removed the bodies. There
18 was ---

19 THE COURT: You have no foundation to make that
20 statement, though, right?

21 MS. HINES: We can take testimony.

22 THE COURT: I mean, do you have a foundation? Do
23 you have anybody that says that wasn't there when they
24 walked in?

25 MS. HINES: No.

1 THE COURT: Okay. All right. And 116?

2 MS. SAMPSON: That is --- and I believe their
3 objection to that one, Your Honor, is ---

4 THE COURT: What is it?

5 MS. SAMPSON: It's a close-up. If you go to ---
6 it's a close-up. It's not in this one. It's in one
7 of the other ones that we agreed not to use. It's
8 right around here, a close-up.

9 MS. HINES: Is that a fragment?

10 Our objection is just to cut the blood out. The
11 probative value is the very center there by (J), the
12 fragment, the metal fragment not the blood around it.
13 I know that when we introduced the other picture of
14 the fragment at the autopsy, the State agreed to cut
15 the blood in the picture out.

16 MS. SAMPSON: I didn't have a problem with that
17 one because it had more value than the autopsy photo
18 and the blood was from --- clearly didn't have
19 anything to do with this case. That is an actual
20 picture of the crime scene, so I do have a problem
21 with that.

22 THE COURT: And what's the fragment? What's the
23 testimony of that? What do you expect on that?

24 MS. SAMPSON: That's one of the fragments that
25 they found at the scene near the body of Mr. Johnson.

1 MS. SAMPSON: Yes, my understanding --- I'm
2 asking because --- I'm looking at Mr. Eaton because
3 it's not any witness. I have a copy of the report to
4 be sure.

5 MS. HINES: My understanding is that it was a
6 bullet fragment, but it was untestable.

7 MS. SAMPSON: They couldn't match it to anything
8 one way or the other, but it is one of the fragments
9 found by the body.

10 THE COURT: 113 is out. It has no relevant
11 value. This 113 is out because the body is moved.

12 MS. SAMPSON: Which one is 113?

13 THE COURT: Number 113 is the one in the bathroom
14 that's almost identical to the picture that I excluded
15 earlier. It has no probative value, and it's
16 prejudicial effect would outweigh its probative value.
17 115 is admissible. 115 is in. The officers can say
18 whatever the officers they can say about it, but I
19 don't --- it's not prejudicial. It's a spot of blood
20 on the floor in a doorway. There is virtually no
21 prejudicial effect to it in any way, shape, or form.
22 It is relevant due to this being a crime scene under
23 404 or 401, and 116 is in. It's a bullet, picture of
24 a bullet fragment, a lead bullet fragment found at the
25 scene. There is blood on the floor and the overview

1 of this area is already admitted into evidence. This
2 is just a close-up of the bullet fragment and the
3 blood that is in the picture is not overwhelming at
4 all, so the probative value of it outweighs any
5 potential prejudicial effect that it has.

6 All right.

7 MS. SAMPSON: That's it, Your Honor. Is there
8 anything else?

9 MS. HINES: I'm just checking to make sure I have
10 rulings on all of them.

11 (Pause.)

12 Yes, that's it.

13 MS. SAMPSON: These are the --- did you say yes
14 or no?

15 THE COURT: Those are in.

16 MS. SAMPSON: Do you have the other ones?

17 THE COURT: No. I'm keeping them.

18 MS. SAMPSON: The ones that --- I thought there
19 were other ones that were in. I'm confused.

20 THE COURT: The only ones I was told there is an
21 objection to are those three.

22 MS. SAMPSON: Perfect, thank you, Your Honor.
23 The rest of them are right here, and we also showed
24 them exhibits 110, 106, 107, 108, 109, 10, 11 and 12.
25 My understanding is, based on foundation, of course,

1 but there was no objection as to probative versus
2 prejudicial issues on these; is that correct?

3 MS. HINES: Yes, there is no objection under 403.

4 MS. HINES: Okay.

5 All right. Bring them in.

6 THE BAILIFF: Yes, sir.

7 (WHEREUPON, the jury entered the courtroom at
8 11:55 A.M.)

9 THE COURT: Who is the next witness?

10 MR. EATON: Craig Montjoy, Your Honor.

11 THE COURT: Okay.

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Thank you very much. Welcome back,
14 ladies and gentlemen.

15 Call your next witness.

16 MR. EATON: Craig Montjoy.

17 THE BAILIFF: Place your left hand on the Bible,
18 raise your right hand.

19 CRAIG MONTJOY,

20 after being duly sworn, testified as follows:

21 THE CLERK: Please have a seat. State your full
22 name

23 THE BAILIFF: Watch your step.

24 THE COURT: State your full name, sir.

25 THE WITNESS: Timothy Craig Montjoy.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION:

3 BY MR. EATON:

4 Q Good morning, Mr. Montjoy. Mr. Montjoy, what to
5 you do?

6 A I'm a paramedic for Richland County.

7 Q Were you doing that in June of 2012?

8 A Yes.

9 Q Were you working June 28th, 2012?

10 A Yes, sir.

11 Q Do you remember all your calls that day in
12 detail?

13 A Not in detail. I remember most of the calls that
14 day.

15 Q Do you recall a call around noon more
16 specifically?

17 A Yes, sir.

18 Q Okay. Would it help refresh your memory about
19 that call if I showed you patient records?

20 A Yes, sir.

21 MR. EATON: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. EATON:

24 Q So, Mr. Montjoy, what happened when you responded
25 to 8100 Garners Ferry?

1 A When I arrived, I was actually one of the
2 supervisors that arrived before the ambulance arrived.
3 As we entered an apartment complex there or actually
4 entered an apartment, we found two victims. One was
5 laying in the floor, I believe, of the bedroom. One
6 was laying in the bathtub. Both victims had gunshot
7 wounds to the head.

8 Q Were people on the scene already?

9 A Law enforcement and two other supervisors from my
10 department was there.

11 Q And how many of y'all were there? I'm sorry, how
12 many EMT's were there?

13 A There was two supervisors and --- two other
14 supervisors other than myself there when I arrived.

15 Q And what did y'all do when you got there?

16 A We went in and assessed the patients. As I
17 stated earlier, both of them had gunshot wounds to the
18 head.

19 Q And where did you find them in the house?

20 A One was laying in the bedroom floor and one was
21 laying in the bathtub.

22 Q What did you do in the way of aid?

23 A We assessed the pulse, determined that they did
24 have a pulse and were breathing, both the patients.
25 Once the unit got there, we took spinal immobilization

1 and removed them from the residence and transported
2 them to the hospital.

3 Q And how did you remove them?

4 A We put them on what we call a long back board,
5 which is to protect the spine and their neck.

6 Q I assume you transported them in an ambulance?

7 A Yes, sir.

8 Q To where did you transport them?

9 A To Richland Memorial.

10 Q Did you do anything on the way?

11 A Yes, sir, we monitored their vital signs,
12 monitored their EKG and started I.V.'s on both of them
13 and assisted in their respirations.

14 Q When you arrived at the hospital, what happened
15 then?

16 A We turned patient care over to the hospital staff
17 and gave our report and got some information as far as
18 patient name and age and stuff like that and then we
19 left the hospital.

20 MR. EATON: Thank you. No further questions.

21 MR. KRZYSTON: Thank you, Judge Hood. May it
22 please the Court.

23 CROSS-EXAMINATION:

24 BY MR. KRZYSTON:

25 Q I'm not going to keep you too long. I hope you

1 weren't busy last night.

2 Mr. Montjoy, you stated that you arrived at the
3 crime scene after law enforcement?

4 A Yes, sir.

5 Q When you arrived, was law enforcement inside the
6 apartment or outside?

7 A They were both inside and outside.

8 Q Okay.

9 A The best I can remember.

10 Q So there was no tape securing the area or
11 anything like that?

12 A Not at that time.

13 Q And you arrived at 12:03? Excuse me, go ahead.

14 A That's what time the unit arrived. The units was
15 all actually on the scene at 12:22.

16 Q Okay.

17 A But as I stated earlier, I was one of the
18 supervisors and I responded in a separate unit.

19 Q After you removed the individuals from the house,
20 was law enforcement in there still behind you?

21 A Yes, they were there in the residence with us.

22 Q And when you left, they left with you?

23 A No, sir, they stayed there at the residence.

24 Q Okay. But you did carry individuals out of the
25 house?

1 A Yes, sir.

2 MS. SAMPSON: Okay. Thank you. No further
3 questions, Judge.

4 MR. EATON: Nothing further, Your Honor.

5 THE COURT: Have a nice day.

6 Call your next witness.

7 MR. EATON: The State calls Stan Richards.

8 STAN RICHARDS,

9 after being duly sworn, testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record.

12 THE WITNESS: Stan Richards.

13 DIRECT EXAMINATION:

14 BY MR. KRZYSTON:

15 Q Is it Sergeant Richards?

16 A It is.

17 Q Good morning, Sergeant Richards. What do you do,
18 Sergeant Richards?

19 A I'm the operations officer for the crime scene
20 unit at the Richland County Sheriff's Department.

21 Q Was that your job in June of 2012?

22 A It was.

23 Q What was your involvement with this case?

24 A My --- one of my investigators, Investigator
25 Bouknight, received a call to respond at 8100 Garners

1 Ferry Road at the Deer Meadow Apartments, Apartment
2 412, for what was believed to be two victims of
3 gunshot wounds. He responded as the supervisor on
4 call that day. I went with him to assist.

5 Q And what did you find there?

6 A When we first got there, we were informed that
7 two victims --- like I said, who were presumed to have
8 gunshot wounds at the time, had already been
9 transported, so they were no longer at the apartment.
10 The apartment was secured, a crime scene log was being
11 maintained at the time, and we waited for a short
12 period of time in order to get the search warrant
13 before we could enter.

14 Q Did the search warrant come?

15 A It did. After we got the search warrant around
16 12:47 to 12:50, we entered the apartment both
17 Investigator Bouknight and myself. We walked --- we
18 did a walk through to assess the situation and things
19 that we seen, some items that might be of importance
20 to us. Once we did the walk through and the
21 assessment, we started documenting the interior of the
22 apartment, taking photographs.

23 Q So you took a number of photographs?

24 A I did. So did he.

25 MR. EATON: If I may approach the witness, Your

1 Honor.

2 BY MR. EATON:

3 Q I'm going to show you State's Exhibits 106, 7, 8,
4 9, 10, 11, 12, 15, and 16 for identification.

5 (Pause.)

6 A Yes, these were photographs that either myself or
7 Investigator Bouknight took that morning.

8 Q You recognize those?

9 A I do.

10 Q You recognize the scene?

11 A I do.

12 Q Do those fairly and accurately represent the
13 scene as it looked that day when you took the
14 pictures?

15 A Yes, I do..

16 MR. EATON: Your Honor, I would offer these as
17 State's Exhibits --- do you need the numbers again?

18 THE COURT REPORTER: Yes, please, and if you
19 could say like 110, instead of 10 to avoid confusion
20 later.

21 MR. EATON: Oh, sure. State's Exhibits 106, 107,
22 108, 109, 110, 111, 112, 115 and 116.

23 MR. KRZYSTON: Judge, we would object insofar as
24 we already --- 115 and 116 as outlined in pretrial.

25 THE COURT: All right. So, 106, 107, 108, 109,

1 110, 111, 112 are admitted without objection. 115 and
2 116 are admitted over defense's objection.

3 (WHEREUPON, State's Exhibit Numbers 106 through
4 112 and 115 and 116 were admitted into evidence.)

5 MR. EATON: Thank you, Your Honor.

6 BY MR. EATON:

7 Q And Sergeant Richards, did you take any physical
8 evidence?

9 A Yes, once the photography was done and
10 Investigator Bouknight went through and marked several
11 items of interest to us, I went back through and
12 collected several items of interest myself and so did
13 Investigator Bouknight.

14 MR. EATON: If I may approach again, Your Honor.

15 (WHEREUPON, State's Exhibit Numbers 117, 118 and
16 119 were marked for identification only.)

17 BY MR. EATON:

18 Q Okay. I'm handing you what's been marked for
19 identification as State's Exhibit 117. Do you
20 recognize that, Sergeant?

21 A I do. It has my initials on the back and the
22 date that it was submitted to evidence.

23 Q And the jury has heard this with the previous
24 witnesses, but briefly would you describe the process
25 of collecting that and putting it into evidence?

1 A Yes, as I said, when we identify something that's
2 important to us, or believe it might be important, we
3 will mark it with a number or a letter, photograph it
4 again, and then we will collect it. Sometimes they
5 are to be processed back in our lab before they are
6 turned in to evidence, but once those things are done,
7 they are eventually turned in to evidence in a sealed
8 envelope, with an evidence label signed by whoever
9 turned it in. In this case it was me. It goes then
10 to the proper lab, be it the firearms section or DNA
11 section. Whoever needs to do the analysis.

12 Q Can you tell from the packaging that --- well,
13 what can you tell from the packaging?

14 A What can I what?

15 Q What can you determine from the packaging right
16 now?

17 A These were three items that I collected at the
18 scene. Number one was a nine millimeter cartridge
19 casing. That means it was a fired cartridge casing,
20 which means that this had already been fired and the
21 casing had ejected or was laying there from some type
22 of weapon, and this was a nine millimeter and it was
23 marked number (D). That was on the bed in the bedroom
24 at the end of the hallway of the apartment, another
25 one was a nine millimeter unfired cartridge. That

1 means it was the entire bullet. It had not been
2 fired. That was found in a closet down the hallway to
3 the right. I say a closet. I was a small closet that
4 contained the water heater and those types of things
5 in the apartment. It was lying on the floor. It was
6 marked as (B).

7 Then I also, later in the day, found a fragment,
8 which means a portion of the bullet that expended from
9 the cartridge. The bullet was not found in its
10 entirety, but a very small piece of it is called a
11 fragment. That was found on the bedroom floor.
12 That's also in the bedroom at the end of the hallway
13 that was marked (J) and collected by me. All three of
14 these items were collected by me.

15 Q Can you tell from the packaging and tape and
16 everything the procedures for submitting it?

17 A Yes. Myself, I put the items inside the
18 envelope, I seal it. I put my initials and the date
19 over the top, so if it's torn open by anyone, it would
20 have to be resealed with their initials, plus you can
21 always go through our computer system and identify and
22 track the chain of custody from these things. If it's
23 entered by me, taken in by evidence, and if someone
24 checks it out from evidence, if it's DNA or some other
25 section, that can be tracked also. That's the way

1 it's handled.

2 Q If you would please, go ahead and open that?

3 A This contains three smaller envelopes. All three
4 of those also sealed, my initials are probably the
5 initials of the firearm examiner. They are marked as
6 (B), which was an unfired nine millimeter Luger
7 cartridge. That means the entire bullet.

8 Marked as (D), a nine millimeter cartridge
9 casing, which is just a casing and the bullet had been
10 expended from that casing, also a Luger.

11 And marked as (J), the fragment that was also
12 found on the floor of the bedroom at the end of the
13 hallway and all three are sealed.

14 Q Thank you. If you could go ahead and open those,
15 please.

16 A This is the unfired cartridge. As I was talking
17 about, that's the entire bullet. The casing is on
18 your left, the bullet itself, the projectile, is on
19 your right. It's just what is considered a cartridge
20 or a bullet in its entirety. This would be the one
21 that was found in the closet of the hallway.

22 MR. KRZYSTON: Objection, Judge. We'd ask that
23 he refrain from publishing it.

24 BY MR. EATON:

25 Q At this point if you would just look at them, let

1 me know if they are in the same condition as when you
2 found them, please.

3 A Yes.

4 A This is ---

5 Q I'm sorry, Sergeant, if you would just go ahead
6 and look at them and not ---

7 A Just look at them, not show them?

8 Q Yes, I apologize. Just take a look at them. Let
9 me know if they are in the same condition as when you
10 found them and collected them and put them into
11 evidence, please.

12 A Yes, all three in the same condition as I found
13 them.

14 MR. EATON: I would offer these ---- I'll stand
15 corrected as State's Exhibit 117, 118 and 119.

16 MR. KRZYSTON: We'd object to the admission until
17 such time the chain is procedurally established.

18 THE COURT: It's not fungible, admitted over
19 defense's objection. 117, 118, 119.

20 (WHEREUPON, State's Exhibit Numbers 117 through
21 119 were admitted into evidence.)

22 MR. EATON: For the record, fired nine millimeter
23 Luger cartridge marked as (D) Delta, that is 117,
24 fragment marked as (J) Juliette is 118, and unfired
25 cartridge marked as (B) Bravo is 119.

1 MR. EATON: Sergeant, if I could get you to step
2 down for a second?

3 You may want to grab the pointer over there.

4 THE COURT: If you will stand on the other side
5 for me, Sergeant ---

6 THE WITNESS: Yes, sir.

7 THE COURT: I appreciate that. Keep your voice
8 up so the last jurors on the back row can hear you and
9 madam court reporter can hear you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. Thank you.

12 BY MR. EATON:

13 Q Sir, as we go through these, just tell the jury
14 what they are. This is State's Exhibit 107?

15 A That's the cartridge in its entirety, the bullet.

16 Q Which one?

17 A This one.

18 Q Right.

19 A That's the one that was found in the hallway to
20 the right down the hallway. That would be a closet
21 that I told you that there with the hot water heater
22 and things of the nature that was found lying on the
23 floor.

24 Q State's Exhibit 106?

25 A Yes, that's the same cartridge. It's just with a

1 Marker (B). As I indicated, as we mark each one, we
2 photograph it before they are collected so we can
3 place them back if need be.

4 Q 115?

5 A 115 is Marker (A). Once we entered, we started
6 assessing the --- what was inside the apartment and
7 started photographing for documentation. We noticed a
8 stain just inside the entrance way to the apartment.
9 This was thought to possibly be blood. We don't
10 determine that at the scene, of course, but we mark it
11 with Marker (A) and photograph it. I collected a swab
12 of that stain, and it was returned to our DNA lab.

13 Q This is Exhibit 116.

14 A This is (J), as you can see, you can see right
15 there a very, very small piece of metal. That is what
16 I indicated as being a fragment, a projectile
17 fragment.

18 Sometimes when a gun is fired and a projectile is
19 expended from the weapon itself and hits something, it
20 can fragment. That's what happened to something in
21 this room. This was on the floor of the rear bedroom
22 at the end of the hall.

23 Q And 108?

24 A 108 is just another (B). You can barely see the
25 (B), the marker. This is the hallway that's coming

1 from the entrance down to the end. This is the closet
2 on the right. This is approximately where that
3 cartridge was found.

4 Q And State's Exhibit 112?

5 A 112 is (K) and this was marked and collected by
6 Investigator Bouknight. I believe this indicates the
7 computer that's on the bed --- in the bedroom at the
8 end of the hallway.

9 Q And what does State's Exhibit 110 depict?

10 A This is Marker (D). This is a fired cartridge
11 casing that was also found on the bed in the bedroom
12 at the end of the hallway. A fired cartridge casing
13 means, as you can tell, there is no projectile or
14 bullet at the end of it, so that means it had already
15 been fired. It was found on the bed. We marked it as
16 (D). I collected this.

17 Q And finally State's Exhibit 109?

18 A 109 is the bed itself. You can see where we
19 marked a fired cartridge casing as (D). This was the
20 bed in the bedroom at the end of the hallway. That's
21 where that fired cartridge casing was found.

22 Q Did you do any other processing?

23 A Yes, I collected --- besides the cartridge
24 casings fired and unfired and the fragment, I did
25 indicate that I took a swab of a stain marked (A) at

1 the entrance way of the apartment.

2 I also took some additional swabs, one on the
3 floor in this bedroom as a matter of fact, which was
4 marked (C). It was also thought to be possible blood,
5 so I swabbed it. I took two additional swabs in a
6 bathroom where a victim was found and one was from the
7 bathtub. One was from the floor on the bathroom.
8 They were marked (E) and (F) and I collected those
9 also.

10 Q Did you collect any fingerprints?

11 A No, I didn't.

12 Q If you want to take a seat, that's fine. Thank
13 you.

14 And just finally, Sergeant, do you remember doing
15 any other analysis back at the lab?

16 A Yes, any time we have items of interest that can
17 be processed for latent prints, that's also done. I
18 took the cartridge casings, both fired and unfired and
19 fragment, of course, back to our lab at on Two Notch
20 Road. The following morning about 8:30, I started
21 processing those two items that I felt like I might
22 could get something off of. It's very hard to get
23 anything off of a shell casing or a bullet for that
24 matter, but I did process both and did not get any
25 latent prints from either one, but I swabbed both for

1 possible DNA.

2 MR. EATON: Thank you. That's all my questions.

3 MR. KRZYSTON: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION:

7 BY MR. KRZYSTON:

8 Q Good morning, Mr. Richards. How are you doing
9 today?

10 A Fine, sir.

11 Q This thing is a little heavy, so bear with me
12 while I move it.

13 Q Now, you don't go out to a scene unless you're
14 asked, correct?

15 A Asked?

16 Q To go out to a scene. You don't just get a call
17 and respond, do you? Your superiors call you and tell
18 you to go some place?

19 A We can get a call from a deputy ---

20 Q Right.

21 A --- who may be on the scene, and yes, we will
22 respond.

23 Q And when you responded in this instance, you
24 walked into the home, correct?

25 A After receiving a search warrant, yes.

1 Q And just kind of took in the general situation?

2 A Yes.

3 Q And it's your job to investigate the apartment
4 thoroughly, correct?

5 A Yes, for physical evidence, yes.

6 Q So if a door is closed, you'll open and it take a
7 look inside?

8 A Yes.

9 Q Because evidence can sometimes be secreted in
10 locations, such as closets and drawers et cetera?

11 A Correct.

12 Q In this case when you arrived at the scene, you
13 found the closet door with the tires and the unfired
14 cartridge closed?

15 A Correct.

16 Q In going through the rest of the apartment,
17 anything that you saw that was of evidentiary value,
18 you swabbed or collected that, correct?

19 A Yes.

20 Q The unfired nine millimeter cartridge that was
21 marked as (D), you tested that for fingerprints?

22 A I did.

23 Q And that was negative results, meaning no
24 fingerprints were found?

25 A No.

- 1 Q And you also swabbed it for DNA?
- 2 A I did.
- 3 Q And you didn't test it for DNA, did you?
- 4 A I don't do the analysis, no.
- 5 Q But it is Richland County's job to do the
- 6 analysis?
- 7 A We don't ---
- 8 Q But not your particular ---
- 9 A That's correct.
- 10 Q Somebody else has to tell them or tell the other
- 11 individual to test it, correct?
- 12 A Yes.
- 13 Q And the bullet --- excuse me, the cartridge
- 14 marked (B)?
- 15 A Yes.
- 16 Q You tested that for fingerprints?
- 17 A I did.
- 18 Q Again, that had no --- had negative results, no
- 19 fingerprints on it?
- 20 A No.
- 21 Q And you swabbed that for DNA test, correct?
- 22 A I did.
- 23 Q And you submitted that just like you submitted
- 24 Item (D)?
- 25 A I did.

1 Q And when you were doing all that, you noticed
2 that bullet (D) was a good bit different from bullet
3 (B), correct?

4 A One was fired, one was unfired.

5 Q Okay, and you also noticed that they were
6 different colors?

7 A I didn't put it in my report as them being
8 different colors, no.

9 Q And you also noticed that Item (D) was a Tula
10 nine millimeter shell and Item (B) was a Remington
11 shell?

12 A I have both Luger.

13 Q Okay. Then the last thing you did was you
14 photographed the scene?

15 A Yes.

16 Q And then you released it to the property manager.

17 A Well, we went back the second day.

18 Q After ---

19 A I mean, after everything was finished and we went
20 back the second day and did some other items there,
21 Investigator Bouknight collected some more items
22 there, yes, we briefed then Lieutenant McDonald on
23 what we had found and we released the scene.

24 Q And when you release a scene, it goes back to
25 property management, and they're free to clean the

1 apartment, rent it, et cetera?

2 A Either that or whoever is on the lease, if
3 they're still available, yes.

4 Q And throughout the entire time and throughout
5 reviewing all the evidence, you didn't find --- you
6 personally didn't find any of William's fingerprints?

7 A Not me personally, no.

8 Q And you didn't find any of William's DNA?

9 A Not me personally, no.

10 MR. KRZYSTON: Thank you. No further questions.

11 THE COURT: Redirect?

12 MR. EATON: Briefly, Your Honor.

13 REDIRECT EXAMINATION:

14 BY MR. EATON:

15 Q Now, Sergeant Richards, do you always find prints
16 or anything on a shell casing?

17 A On a shell casing or cartridge casing or a bullet
18 that's intact, seldom, very, very seldom.

19 Q Why is that?

20 A Well, for one reason, when you leave a ---

21 MR. KRZYSTON: Objection, Your Honor. Calls for
22 speculation.

23 THE COURT: Overruled.

24 BY MR. EATON:

25 Q Go ahead.

1 A When you leave a fingerprint, it's because you're
2 leaving water, salts, amino acids, and other liquids
3 and particles from the pores in the ridges on your
4 fingers. Those type of things are destroyed very
5 easily. They go away if something is touched or they
6 can be smeared. Particularly on a round or a
7 cartridge that's put into a gun, whether it's in a
8 magazine or whether it's in a cylinder, those are
9 going to be handled very hard and not very loosely, so
10 you're looking at the possibility of destroying any
11 fingerprints there.

12 Even if there were some there, once they are
13 fired out of the gun, if one is fired, it's very
14 seldom you get anything there because of the heat
15 that's inflicted, the twisting that's coming out of
16 the barrel, and other things of that nature.

17 Basically what you'll find on the cartridge
18 that's been fired is maybe some etching. That means
19 something has been there for a little while, maybe
20 heated for a little bit and etched into the metal. If
21 we find that and that's why we process every one any
22 way because we very seldom find a fingerprint, but
23 there's a possibility that etching exists. So we
24 process it and if we find something, then we would
25 photograph it and we would submit it to our latent

1 print section.

2 Q Okay. Thank you, Sergeant.

3 MR. EATON: May I approach, Your Honor?

4 BY MR. EATON:

5 Q I'm going to show you one more photo. This is
6 State's Exhibit 17.

7 A Yes, this is the rear ---

8 Q And I'm sorry --- do you recognize that?

9 A I recognize it, yes, sir. It depicts what we
10 saw.

11 MR. EATON: Thank you. I would offer this as
12 State's Exhibit 17. I think there was some confusion
13 about whether it was in. It was one that had been
14 discussed, Your Honor.

15 MR. KRZYSTON: Judge, we would object to it to
16 the extent we've already argued it and obviously based
17 on further objection.

18 THE COURT: All right. So 17 is already in.

19 MR. KRZYSTON: Over the defense objection,
20 correct?

21 THE COURT: Yes.

22 BY MR. EATON:

23 Q And if you would, Sergeant Richards, just from
24 there show the jury that picture and tell them what it
25 shows, please.

1 A As you can see this, that is the bedroom at the
2 end of the hallway that we've been talking about. You
3 can see the markers on the floor. Next to the bed is
4 Marker (C). That is what we believed to have been
5 blood on that floor. You can pick up Marker (D) on
6 the bed. That is where the fired cartridge casing was
7 located.

8 You find a couple of (H) and (I), I believe,
9 which is the computer that Investigator Bouknight
10 would have collected and some kind of electronic
11 device on the floor that seemed to be out of place,
12 that's the reason it was marked and photographed, and
13 Investigator Bouknight collected that.

14 MR. EATON: Thank you, sir, no more questions.

15 THE COURT: All right. State's 17 was not in.
16 It is now in over defense objection based upon the
17 proper foundation. I had that it was not in.

18 Just out of an abundance of caution, if it wasn't
19 in earlier, it is now over defense's previously stated
20 objection.

21 (WHEREUPON, State's Exhibit Number 17 was
22 admitted into evidence.)

23 THE COURT: Recross?

24 MR. KRZYSTON: Yes, sir. May it please the
25 Court.

RECROSS-EXAMINATION:

BY MR. KRZYSTON:

Q Again, throughout the entire scene and throughout all the evidence you collected, William's fingerprints weren't at the scene?

A I don't know if they were or not.

Q Well, you didn't ---

A Of the things I collected and processed, no prints were found.

Q Okay. But you didn't collect anything with his fingerprints on it?

A I did not.

Q And you did not collect anything with his DNA on it, correct?

A I do not know. I didn't do the analysis. I collected swabs from several locations, but I didn't do the analysis.

Q And you have not heard back anything?

A I have not heard back.

MR. KRZYSTON: Thank you.

THE COURT: Have a nice day.

MR. COBLE: The State calls Investigator Bouknight, Your Honor.

THE COURT: Okay.

MS. SAMPSON: If we can approach while we're

1 waiting for him.

2 HAROLD BOUKNIGHT,

3 after being duly sworn, testified as follows:

4 THE COURT: Please have a seat.

5 THE WITNESS: Investigator Harold Bouknight.

6 DIRECT EXAMINATION:

7 BY MR. COBLE:

8 Q Investigator Bouknight, where are you currently
9 employed?

10 A Richland County Sheriff's Department crime scene
11 investigation unit.

12 Q How long have you been with them?

13 A Nine years this month.

14 Q And what are some of your roles in the crime
15 scene unit?

16 A I'm a supervisor in the crime scene unit. I also
17 respond to crime scenes for processing, documenting,
18 collecting and preserving evidence. Also, I do blood
19 stain pattern examination, fingerprint examination,
20 footwear and tire wear examination, shooting
21 reconstruction and crime scene reconstruction.

22 Q Were you in that same capacity on June 28th,
23 2012?

24 A I was.

25 Q Did you respond to this incident location?

1 A I did.

2 Q When did you get there; do you recall? Was it
3 the day of this incident?

4 A Yes, on the 28th.

5 Q What did you when you arrived?

6 A When we got there, we observed that there were
7 some reddish brown stains that we believed to be blood
8 just inside the front door. There was a blue and
9 white iron on the kitchen counter and there was some
10 more reddish brown stains on the master bedroom floor
11 in the second bedroom or the second bathroom floor and
12 the tub and the toilet. There was a laptop on the
13 master bedroom bed and a cartridge casing on the bed
14 as well, and an LG wall charger on the phone and
15 unfired cartridge in the hallway closet.

16 Q Were there other responding deputies still at
17 this location?

18 A Yes, sir.

19 Q Who did you go with from CSU?

20 A Sergeant Richards.

21 Q Who just testified?

22 A Yes.

23 Q What was y'all's role when you went there?

24 A To process the scene, we had to wait on a search
25 warrant. Whenever we got the search warrant, we were

1 able to go in and photograph and then document
2 evidence, look for anything that looked out of place.
3 Blood obviously looks out of place at a residence. and
4 we also were able to look at some other photos that
5 showed what the crime scene looked like before EMS got
6 there and the bodies were removed.

7 We were able to tell that the blood from on the
8 floor and in the second bathroom were post incident
9 artifacts from EMS removing the bodies.

10 Q What do you mean by post incident artifacts?

11 A Meaning it didn't occur during the incident.
12 Whenever the deputies arrived, the incident was over
13 and there was no blood on the bathroom floor and then
14 by EMS removing that, it created what could be
15 considered, you know, a blood incident, but it was not
16 related to the actual incident.

17 Q So by the time you arrived ---

18 MR. KRZYSTON: Judge, objection, I have a matter
19 of law.

20 THE COURT: Ladies and gentlemen, if you'll
21 retire to your jury room. We're not going to take a
22 lunch break right now. We'll be back with you just as
23 soon as possible. Do not discuss the case. Keep an
24 open mind.

25 (WHEREUPON, the jury left the courtroom at 12:32

1 P.M.)

2 THE COURT: All right.

3 MR. KRZYSTON: Judge, this relates to the
4 photograph that showed the droplet of blood at the
5 doorway, the entry way to the apartment. We were just
6 told by the State that there was no evidence or no way
7 of knowing where that blood droplet came from. The
8 defense has not been made aware or have not received
9 any documentation indicating that that droplet of
10 blood was not related to the actual allegations as
11 opposed to that droplet of blood being placed there or
12 being there as a result of EMS as opposed to an
13 artifact.

14 MS. SAMPSON: Your Honor, I believe he just
15 testified about what was in the bathroom, not the
16 front door.

17 THE COURT: What did you say about the front door
18 blood?

19 THE WITNESS: It was my knowledge that that
20 wasn't there when the deputies arrived. I don't have
21 a photograph to prove that.

22 THE COURT: Okay.

23 THE WITNESS: The only photographs I have are
24 about the blood and the bathroom.

25 THE COURT: Alright. So what's the motion?

1 What's the objection?

2 MR. KRZYSTON: Discovery objection. We have to
3 move for a mistrial.

4 THE COURT: Based upon what?

5 MR. KRZYSTON: Based on the fact that we were
6 just told by the State they had no way of knowing that
7 that blood was there or wasn't there when deputies
8 arrived. They represented to the court that that
9 possibly could be part of the altercation.

10 THE COURT: Nobody represented that to the court.

11 MR. KRZYSTON: When Ms. Hines was making her
12 objection, she was asked if she had any evidence that
13 that would be a post action type thing.

14 THE COURT: Right.

15 MR. KRZYSTON: And we did not because that
16 information was not disclosed to us by the State.

17 THE COURT: Okay. How is that exculpatory?

18 MR. KRZYSTON: It's potentially exculpatory and
19 it's relevant material.

20 THE COURT: It's not exculpatory. You can't
21 state to me how it is exculpatory.

22 MR. KRZYSTON: Again, it --- again, it could be
23 potentially exculpatory and it's relevant.

24 THE COURT: How? How?

25 MR. KRZYSTON: It's relevant.

1 THE COURT: How?

2 MR. KRZYSTON: Okay.

3 THE COURT: How can it be potentially
4 exculpatory?

5 MR. KRZYSTON: Although it may not establish that
6 is potentially relevant --- excuse me, potentially
7 exculpatory. It is relevant and material.

8 THE COURT: And how is it ---

9 MR. KRZYSTON: To the admission of that
10 photograph.

11 THE COURT: Okay. Well, I'm happy to exclude
12 that photograph now that somebody said it didn't
13 happen when they came in.

14 MR. KRZYSTON: It's already been published to the
15 jury, Your Honor.

16 THE COURT: It has?

17 MS. SAMPSON: (A) has?

18 THE COURT: The picture of the blood stain near
19 the door.

20 THE WITNESS: That would be (A).

21 THE COURT: What?

22 THE WITNESS: That's Marker (A).

23 MS. SAMPSON: I think it may have been, Your
24 Honor.

25 THE COURT: Well, I just don't understand how it

1 affects your client negatively. Somebody testifies
2 that doesn't have anything to do with the incident. I
3 don't know how that hurts your client at all.

4 MS. SAMPSON: Does Your Honor want to see it?

5 THE COURT: No, I remember it very clearly.

6 MR. KRZYSTON: Again, Judge, it's just yet
7 another example of the issues we have with the
8 discovery in this case.

9 THE COURT: Is this just another example of a
10 witness you were free to talk to prior to trial that
11 you could have interviewed about this issue and he
12 could have explained it to you.

13 MR. KRZYSTON: I believe we're entitled under
14 Riddle to learn that information prior to ---

15 THE COURT: I think you have a misreading of
16 Riddle. This is not exculpatory information about
17 your client. Investigator Bouknight is free like
18 every other State's witness to be interviewed by the
19 defense to say what do you know or not know and how
20 did you know it and when did you know it? I mean,
21 it's a drop of blood on an entry way to a door and to
22 the room that a State's witness has just testified
23 that in his opinion, essentially as a crime scene
24 investigator, had nothing to do with the incident
25 based upon what he learned. I just don't understand

1 the relevance of why we're even dealing with this
2 argument.

3 MR. KRZYSTON: I just wanted to preserve
4 objections and have them noted for the record.

5 THE COURT: Okay. Your motion for a mistrial is
6 denied. Let's move on.

7 Bring the jury back in.

8 (WHEREUPON, the jury entered the courtroom at
9 12:37 P.M.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: All right. Thank you very much.
12 Welcome back.

13 You may continue.

14 BY MR. COBLE:

15 Q Investigator Bouknight, when we left off, you
16 were talking about processing on June 28, 2012, this
17 incident location?

18 A Yes, sir, the other processing that I did was
19 using black powder. I processed the door knobs inside
20 the residence, the bedrooms and the bathroom, didn't
21 get any fingerprints on those and then swabbed those
22 for possible DNA and whenever we do that, it's just
23 distilled water and a swab, a sterile swab, place it
24 in a box and then that's forwarded to our DNA lab for
25 our analysis. I collected the iron and the LG wall

1 plug and brought those back for processing at the lab
2 at a later time.

3 Q You said you processed the door knobs for
4 fingerprints?

5 A Correct.

6 Q With negative results?

7 A Correct.

8 Q Do you usually get results when you process them,
9 in your experience?

10 A It's hit or miss. It depends. I think with a
11 fingerprint, if you look at your hand, you can see
12 you've got lines on the palm of your hand and on your
13 fingers, think of that like an ink stamp. If there's
14 ink on a stamp, it's going to leave that impression.
15 You have to have something on your fingers whether
16 it's sweat, oils, paint, or something else that will
17 leave that impression. Sometimes things aren't left.
18 Sometimes things are smudged. They're 99 percent
19 water so they're very fragile.

20 Q Did you process anything outside of the house ---
21 excuse me, outside the apartment?

22 A I photographed a vehicle that may have been
23 related. I was never told anything else about the
24 vehicle.

25 THE COURT: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 (WHEREUPON, State's Exhibit Numbers 120 through
4 125 were marked for identification only.)

5 BY MR. COBLE:

6 Q I'm going to show you been marked as 120 through
7 125. Can you just briefly look at those without
8 showing them to the jury?

9 A Yes.

10 Q Are those pictures of the apartment?

11 A Items in the apartment, yes, sir.

12 Q Do all those photographs fairly and accurately
13 represent the scene on that day as you remember it?

14 A Yes, sir.

15 MR. COBLE: Your Honor, I'd now move to introduce
16 State's Exhibit 120 through 125 into evidence.

17 THE COURT: Without objection?

18 MR. KRZYSTON: Without objection. I'm sorry,
19 Judge.

20 THE COURT: Admitted without objection, 120
21 through 125.

22 (WHEREUPON, State's Exhibit Numbers 120 through
23 125 were admitted into evidence.)

24 MR. COBLE: May I publish, Your Honor?

25 THE COURT: Yes, sir.

1 MR. COBLE: Investigator Bouknight, do you mind
2 stepping down?

3 THE COURT: Make sure you keep your voice up,
4 please, investigator..

5 THE WITNESS: Yes, sir.

6 BY MR. COBLE:

7 Q If you don't mind standing right over here. I'm
8 going to show you what's marked as State's
9 Exhibit 121. What is that?

10 A That's a photograph of the fired cartridge case
11 that we located on the bed.

12 Q And who is we?

13 A Sergeant Richards and I.

14 Q Did you collect that cartridge?

15 A Sergeant Richards did, yes.

16 Q And this is number 121?

17 A Yes, sir. That's a closer up view of the fired
18 cartridge casing.

19 Q 122?

20 A The Toshiba laptop that was marked as (I)..

21 Q And what is that right there?

22 A That's a scaled marker that we use to identify
23 pieces of evidence and if we need an enlargement, it
24 has millimeter scales on it.

25 Q 123?

1 A That's the blue and white iron that was in the
2 kitchen.

3 Q The 124?

4 A That's the LG wall charger that was on the master
5 bedroom floor.

6 Q And again this is what you placed?

7 A Yes, sir.

8 Q And 125?

9 A The blue and white iron also.

10 Q Is this the kitchen in the apartment, correct?

11 A Yes, sir.

12 Q Thank you. You can take your seat.

13 Q Investigator Bouknight, did you return to the
14 scene after June 28th?

15 A Yes. The next day on the 29th that morning, I
16 processed the iron and the LG wall charger using
17 superglue fuming and black powder with negative
18 results from that, and then I swabbed those items.
19 Once again, I turned the swabs into evidence.

20 I went back out the next day to search for any
21 additional evidence to clear the scene, and there was
22 a roll of translucent trash bags in the bedroom. I
23 collected those and brought those back and processed
24 those once again with superglue fuming and black
25 powder with no prints developed. I swabbed those and

1 turned the swabs in to be sent for DNA analysis.

2 Q Again, is it difficult to collect fingerprints
3 from trash bags?

4 A Yes, sir. Your best surface is a smooth
5 nonporous surface such as glass, ceramic, painted
6 items, metal, things like that.

7 Q Why did you go back out the next day to that
8 incident location?

9 A We typically go back out the next day. We wait
10 until after autopsy and just do a final sweep for any
11 more evidence.

12 Q Your Honor, may I approach the witness?

13 THE COURT: Yes.

14 (WHEREUPON, State's Exhibit Numbers 126 was
15 marked for identification only.)

16 BY MR. COBLE:

17 Q I'm going to show you what's been marked as
18 State's Exhibit 126. Do you recognize that?

19 A Yes, sir, that's the iron.

20 THE COURT: Are you saying iron like a ---

21 THE WITNESS: Clothes iron.

22 THE COURT: Like you iron clothes with?

23 THE WITNESS: Yes, sir.

24 MR. KRZYSTON: No objection, Judge.

25 BY MR. COBLE:

1 Q Does this fairly and accurately represent the
2 iron as you saw it in that apartment on that day?

3 A Yes, sir.

4 Q Your Honor, I'd now move State's Exhibit 126 into
5 evidence?

6 THE COURT: Admitted without objection.

7 MR. COBLE: Thank you.

8 (WHEREUPON, State's Exhibit Numbers 126 was
9 admitted into evidence.)

10 BY MR. COBLE:

11 Q Will you show the jury what you collected on that
12 day? You can take it out of the bag?

13 A Do you have any gloves?

14 Q Yes, sir. And how did you process that?

15 A Using superglue fuming, cyanoacrylate. It's a
16 fuming chamber. The fumes will adhere to the moisture
17 in the print and you get a better bond. Then they can
18 be further developed with black powder, other
19 fluorescent powder, things like that, and then it's
20 swabbed for any possible DNA.

21 Q When it's swabbed --- what do you do what do you
22 do with the swabs?

23 A They're packaged in a box and then inside of an
24 envelope, and then turned in to evidence to be in
25 forwarded to our DNA lab.

1 Q So you don't do any analyzing of DNA?

2 A No, sir.

3 Q After leaving the incident location on June 29th,
4 what was your further involvement with this case?

5 A On July 3rd I received a Hi-Point nine millimeter
6 and magazine from the evidence custodian and processed
7 that using the same techniques, the cyanoacrylate, the
8 superglue fuming or black powder with no fingerprints
9 developed. Then I swabbed the barrel, the exterior of
10 the handgun and the magazine. Then I transferred that
11 to --- the handgun and magazine to Investigator
12 Collins.

13 MR. COBLE: Your Honor, may I approach the
14 witness one more time in?

15 THE COURT: Yes, sir.

16 BY MR. COBLE:

17 Q I'm going to show you what's been marked ---
18 what's in evidence as 25 and 26. Do you recognize
19 these?

20 A Yes.

21 Q What are those?

22 A That's the Hi-Point and the magazine, the
23 handgun.

24 Q Are these the ones that you processed?

25 A Yes, sir.

1 Q So you swabbed them for DNA?

2 A Yes, sir.

3 Q And collected fingerprints?

4 A There were no fingerprints.

5 Q And in your dealings as a --- you're working in
6 the crime scene unit, do you usually get fingerprints
7 off of weapons?

8 MR. KRZYSTON: Objection to leading.

9 MR. COBLE: Withdrawn. Withdrawn.

10 THE COURT: You can answer that.

11 THE WITNESS: Okay. It depends. It's hit or
12 miss. Sometimes we get them. Sometimes we don't.
13 The heat from a firearm discharging a lot of times
14 will --- like I said, it's 99 percent water, so like I
15 said, we just get smudges.

16 MR. COBLE: Thank you, Investigator Bouknight.

17 THE COURT: Cross-examination?

18 MR. KRZYSTON: Thank you, Judge. May it please
19 the Court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION:

22 BY MR. KRZYSTON:

23 Q This is battle of the podium. It keeps moving
24 around the courtroom. I don't know who is winning.

25 All right. Investigator Bouknight, you just

1 testified that the best surface to pull a latent, or
2 fingerprint, off of is glass, metal, or ceramic?

3 A Yes, plastics, also. Just a smooth nonporous
4 surface.

5 Q A nonporous surface. Okay.

6 MR. KRZYSTON: Judge, permission to approach the
7 little pad up there?

8 THE COURT: Yes, sir.

9 BY MR. KRZYSTON:

10 Q When you do the fingerprint --- the --- how do
11 you say it again?

12 A Cyanoacrylate.

13 Q Okay. You mentioned a fuming chamber. What
14 you're talking about is a clear box, correct?

15 A It has a clear window.

16 Q Okay. So it's a window and it probably has a
17 stand inside?

18 A It has hooks that we hang things from or we can
19 place things on stands.

20 Q And when you place something in there, you also
21 place like a Petri dish with chemicals, correct?

22 A It's a small aluminum pan that we put superglue
23 in.

24 Q And the entire chamber fills with fumes and
25 powder and particulates, correct?

1 A Just the fumes from the cyanoacrylate.

2 Q And those attach to any moisture or any
3 fingerprint that's on that surface?

4 A Yes, sir.

5 Q So you don't miss anything. You're not in
6 jeopardy of ever missing anything that had ---

7 A Unless you don't look for it, correct.

8 Q And you conducted that test on the firearm?

9 A Yes, sir.

10 Q And you conducted that test on the casings?

11 A I didn't conduct it on the casings, no, sir.

12 Q But you did process door knobs and, again, you
13 processed the firearm?

14 A Yes, sir.

15 Q And you processed the roll of translucent bags?

16 A Yes, I did.

17 Q And no fingerprints were found on any of that
18 evidence?

19 A No, sir, they weren't.

20 MR. KRZYSTON: No further questions, Judge.

21 THE COURT: Redirect?

22 MR. COBLE: Nothing, Your Honor.

23 THE COURT: Have a nice day.

24 All right. Ladies and gentlemen, we're going to
25 break for lunch. It's about ten till one. If you

1 will take a break for lunch. Do not discuss the case.
2 Keep an open mind about the case and we'll start back
3 at 2:30. Thank you very much.

4 Everyone remain seated while the jury is
5 dismissed.

6 (WHEREUPON, the jury left the courtroom at 12:50
7 P.M.)

8 THE COURT: Thank you, Investigator. You're free
9 to leave.

10 All right. Anything before we break for lunch?

11 MS. SAMPSON: Not from the State, Your Honor.

12 MR. KRZYSTON: Nothing from the defense, Your
13 Honor.

14 THE COURT: Okay. On this issue of exhibit
15 number 17. When it was originally argued by --- and
16 we do this for the purposes of expediency and trying
17 to move things in front of the jury in an efficient
18 manner. The defense, as they should have, had
19 notified me, you know, we're going to object to this
20 picture pursuant to the proper witness bringing it in
21 or not. At that point in time I said State's Exhibit
22 Number 17 would be admissible. When the State went to
23 introduce it through Sergeant Moreland, Sergeant
24 Moreland said I never saw the scene like that, and so
25 they withdrew it at that point, so State's Exhibit

1 Number 17 was never properly introduced through a
2 witness until the witness that it came in through
3 today who was able to lay the proper foundation of the
4 picture based upon the scene as he saw it.

5 So that's the history of how we came into State's
6 Exhibit Number 17, which is now evidence over defense
7 objection based upon my reasoning that I ruled in the
8 pretrial hearing. Okay.

9 Anything else?

10 MR. COBLE: No, sir.

11 THE COURT: All right. 2:30.

12 MR. HAWKS: Thank you, Judge.

13 (WHEREUPON, a lunch break was taken.)

14 THE COURT: All right. Anything before we bring
15 in the jury?

16 MS. SAMPSON: Your Honor, with the next couple of
17 witnesses, there are some lay witnesses.

18 THE COURT: Okay.

19 MS. SAMPSON: I was going to go ahead and settle
20 the record. Let me go and check. I can do Diggs
21 record right now.

22 THE COURT: Okay.

23 MS. SAMPSON: We have two other witnesses,
24 Kimberly Conway and Tashonda Toatley. We were
25 provided the raps, but literally right this minute, I

1 left them upstairs so I just sent my clerk to go get
2 them. I figured we could do it before we brought the
3 jury in. She should be back any minute.

4 DeAndre Diggs, as far as a rap sheet goes, Your
5 Honor, I believe the only prior that would come in
6 would --- he had a habitual traffic offender in 2011.
7 He has prior convictions, but they're beyond the ten
8 year range.

9 THE COURT: Okay. Are any those beyond the ten
10 year range dealing with crimes of dishonesty?

11 MS. HINES: Accessory after the fact of attempted
12 armed robbery.

13 THE COURT: I thought the court ruled that armed
14 robbery wasn't a crime of dishonesty.

15 MS. HINES: Without more information.

16 THE COURT: Yes.

17 MS. SAMPSON: And I don't have --- I mean, it's a
18 Richland County case, but I didn't go get --- they
19 didn't put me on any notice about that one so I didn't
20 go look for it in terms of if they were going to
21 trying to get that one in. That was it. I didn't
22 know any more about it. It is from 1993.

23 THE COURT: Okay.

24 MS. SAMPSON: But I would agree the habitual
25 traffic offender could come in. It was from 2011.

1 THE COURT: All right.

2 MS. SAMPSON: Other than that I don't know of any
3 prior that would come in.

4 THE COURT: So what about Mr. Diggs, besides the
5 HTO?

6 MS. HINES: That's the only thing that we have,
7 Judge.

8 THE COURT: Okay.

9 MS. HINES: Other than the specific information.
10 We do have the indictment.

11 THE COURT: Okay. All right. So on Mr. Diggs,
12 the habitual traffic offender from 2011 will be
13 admitted.

14 MS. SAMPSON: And if you'll give me ---

15 THE COURT: It's permissible for impeachment
16 purposes.

17 MS. SAMPSON: If you'll give me just one second.
18 I just want to make sure --- Ms. Toatley has a hit and
19 run from 2005, theoretically, I guess that could be a
20 crime that come in.

21 THE COURT: It depends on what kind of hit and
22 run it is.

23 MS. SAMPSON: It is hit and run with accident and
24 property damage. She got a year suspended on a year's
25 probation.

1 THE COURT: Okay.

2 MS. SAMPSON: Well, doesn't sound like it ---
3 well, actually it does 56-5-1220.

4 MS. HINES: That carries up to a year.

5 THE COURT: Right.

6 MS. HINES: And I would argue that would be
7 indicative of a crime of dishonesty.

8 THE COURT: Do you have a case that says that?

9 MS. HINES: I don't have a case specifically on
10 hit and run, but for purposes to evade and not provide
11 your information.

12 THE COURT: So it's definitely not in excess of
13 one year, so the issue is, it is a crime of
14 dishonestly or false statement.

15 MS. HINES: I would argue that it would be a
16 crime of dishonesty when you have hit and run and
17 leaving the scene without providing information in an
18 attempt to ---

19 THE COURT: It doesn't have anything to do with
20 the decedents, so I'm not going to allow it..

21 MS. HINES: Okay.

22 THE COURT: Dishonesty and false statements are
23 deceit, and leaving the scene of the accident doesn't
24 go to deceit unless we have some more factual basis to
25 base that on.

1 All right.

2 MS. SAMPSON: And then the on other thing we have
3 is Kimberly Conway. She has a possession with intent
4 to distribute cocaine and the proximity charge, as
5 well as an attempt and conspiracy of drug laws from
6 2003 where she received five years suspended upon
7 three years' probation. That would be within the ten
8 year time period ---

9 THE COURT: Okay.

10 MS. SAMPSON: --- of when she was released. And
11 a forgery from 2003, she received one year suspended
12 upon one year probation. Out of an abundance of
13 caution, it may fall into the category of one year. I
14 don't know when the probation ended.

15 THE COURT: All right.

16 MS. HINES: For forgery, that would be a crime of
17 dishonestly.

18 THE COURT: Yeah, does it fall under the ten year
19 rule?

20 MS. SAMPSON: I'll be honest, I can't tell from
21 this. She received the convictions in March of 2003.
22 If she completed her probation a year later, she would
23 have been released in March of 2004, so it would be
24 outside the range of ten years. We're not provided
25 with when they complete, so that's --- again, I have

1 the court date that she pled to. If they used that
2 date, she would have been off probation and
3 therefore --- I don't have that she was revoked on
4 probation or anything like that. That would be on the
5 rap sheet, so if she completed a year later, she would
6 be outside of the ten year range..

7 THE COURT: So the drugs are definitely in on
8 Ms. Conway, the issue is the forgery within the ten
9 year portion of the rule.

10 MS. SAMPSON: Correct.

11 MS. HINES: We could get someone to check with
12 probation.

13 THE COURT: Okay..

14 MS. HINES: As to when she completed probation.

15 THE COURT: Good.

16 MS. HINES: They're in the building.

17 THE COURT: That would be great.

18 MS. SAMPSON: She is our first witness. I did
19 not --- if you can give us five minutes to go get
20 probation and just check with them. The next one is a
21 lot longer. I can do it the opposite way. I'd prefer
22 to get her in and out since she is much quicker and
23 shorter. Is that okay, Your Honor?

24 THE COURT: Somebody see if you can find Troy.

25 (Pause.)

1 MS. SAMPSON: I checked with probation and a
2 member of the Public Defender's Office. It expired in
3 March of 2004.

4 THE COURT: Okay. So that's outside the ten year
5 timeframe. So on Ms. Conway, the drugs and the
6 conspiracy are in for impeachment purposes. All
7 right.

8 MS. SAMPSON: The only other matter that ---
9 there's been all these disclosure issues, in preparing
10 for this afternoon, we believe Mr. Diggs' codefendant
11 of Mr. Wallace is going to testify, Your Honor. His
12 attorney Ms. Barbier is here. Prior --- when we broke
13 for lunch, she had met with her client today, and he
14 informed her that since, on the afternoon --- and I'm
15 looking at her to make sure I repeat this right, that
16 on the day that we turned over some communication
17 letters that her client had received from the
18 defendant, we gave that to the defense to let them
19 know that we had them, that that day when he returned,
20 the defendant was agitated --- they're in the same
21 dorm, and that he then received some threats in terms
22 of --- I don't want to get the wording incorrect, but
23 that he better handle business or that he would take
24 care of business or something to that effect. You can
25 ask her the specifics. I'm just disclosing that to

1 the other side and I just found out like an hour ago.

2 THE COURT: Okay..

3 MS. SAMPSON: If you have any questions or want
4 the specifics, you can ask Ms. Barbier. I didn't even
5 talk to the defense ---

6 MS. HINES: If he received some threats, I would
7 be curious, was it threats from Mr. Wallace or other
8 inmates or what?

9 THE COURT: Yes, ma'am, Ms. Barbier.

10 For the record, that's Debbie Barbier, who
11 represents Mr. Diggs.

12 MS. BARBIER: Your Honor, my understanding is
13 that Mr. Diggs received these threats through another
14 inmate who indicated that he had been told the
15 prosecution had received these letters and that
16 Mr. Wallace had asked this inmate to take care of
17 Mr. Diggs, and Mr. Diggs indicated that this inmate
18 said he was --- inmate said he would take care of him,
19 meaning he threatened him, and threatened to harm him.

20 THE COURT: When was this?

21 MS. BARBIER: This was last week, Your Honor. He
22 said after Mr. Wallace received a visit from his
23 lawyer --- apparently, it was believed that during
24 that meeting, those letters were disclosed to
25 Mr. Wallace and that was what resulted in the threats

1 being made.

2 THE COURT: Does the State intend on introducing
3 that?

4 Thank you, Ms. Barbier.

5 MS. SAMPSON: I think in terms of they may --- I
6 don't know what their --- it might be in redirect. I
7 wasn't planning on getting into it in my case in
8 chief, no.

9 THE COURT: Okay.

10 MS. HINES: We would object to without being able
11 to cross-examine that other inmate or have knowledge
12 of who that inmate is.

13 THE COURT: Well, they're not intending or
14 introducing it at this point. I would assume the
15 caveat would be unless the door is opened.

16 All right. Let's go. Bring them in.

17 THE BAILIFF: Yes, sir.

18 (WHEREUPON, the jury entered the courtroom at
19 2:45 P.M.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: All right. Welcome back, ladies and
22 gentlemen. I hope you enjoyed your lunch. Tomorrow I
23 am going to be providing lunch for you, so you can
24 plan accordingly. That will help the day go a little
25 bit faster. We aren't real fancy on where we get food.

1 from, but at least it doesn't cost you anything.

2 Call your next witness.

3 MR. EATON: The State calls Kimberly Conway.

4 THE COURT: All right.

5 KIMBERLY CONWAY,

6 after being duly sworn, testified as follows:

7 THE BAILIFF: Watch your step.

8 THE COURT: State your full name.

9 THE WITNESS: Kimberly Conway.

10 DIRECT EXAMINATION:

11 BY MR. EATON:

12 Q Hi, Ms. Conway.

13 A How are you?

14 Q Ms. Conway, where are you from?

15 A Columbia, South Carolina.

16 THE COURT: I need you to speak up a little bit,
17 ma'am, get closer to the microphone for me. Thank
18 you.

19 BY MR. EATON:

20 Q Do you still live here?

21 A Yes, I do.

22 Q Ms. Conway, how do you know William Wallace?

23 A I've been knowing William for awhile. Grew up
24 pretty much at the same time in the same neighborhood.

25 Q And in 2012, what was your relationship with him?

- 1 A He was my friend.
- 2 Q Okay. Now Ms. Conway, before we go any further,
3 just about your background, I understand in 2003 you
4 were convicted of a few charges; is that correct?
- 5 A A few charges?
- 6 Q Yes, ma'am.
- 7 A No.
- 8 Q Were you convicted of possession with intent to
9 distribute crack cocaine?
- 10 A That was in 2001.
- 11 Q Okay. Excuse me, but you were convicted of that?
- 12 A Uh-huh.
- 13 Q As well as a proximity charge for a school and
14 then a conspiracy charge, as well?
- 15 A Correct.
- 16 Q Okay. And did you complete whatever sentence you
17 had?
- 18 A Yes, I did.
- 19 Q Now, Ms. Conway, you said you and William were
20 friends?
- 21 A Uh-huh.
- 22 Q Did you see him a good bit?
- 23 A Yes, I did.
- 24 Q How frequently would you say you saw him?
- 25 A Every day.

- 1 Q Okay. Did you see him on June 28, 2012?
- 2 A Yes, I did.
- 3 Q When did you see him that day?
- 4 A After class.
- 5 Q About what time of day, do you know?
- 6 A After 12:30.
- 7 Q Okay. And where did you see him?
- 8 A At his aunt's house.
- 9 Q Who is his aunt?
- 10 A Vernell.
- 11 Q Okay. Is that 1203 Denny street?
- 12 A Yes.
- 13 Q And William was there?
- 14 A Yes, he was.
- 15 Q Who else was there?
- 16 A It was another guy and his cousin.
- 17 Q And was --- I'm sorry, two other guys?
- 18 A No, it was another guy and his cousin.
- 19 Q Okay. And when you got there, what were they
- 20 doing?
- 21 A They went in the house.
- 22 Q Okay. And what did y'all do?
- 23 A When we got there, he came on out and saw me.
- 24 THE COURT: Who is he?
- 25 THE WITNESS: William. So we left.

1 BY MR. COBLE:

2 Q You and who?

3 A Me, William and the other guy.

4 Q Did you know his name or anything?

5 A No, I didn't.

6 Q Where did you go?

7 A I took him to work.

8 Q Him?

9 A That's the other guy.

10 Q The other guy. Where did he work?

11 A At that chicken farm.

12 Q Okay. After y'all had dropped him off at the
13 chicken farm, where did you go?

14 A After I dropped him off to the chicken farm, we
15 stopped by somebody's house, but I wasn't sure who it
16 was.

17 Q About where was that?

18 A Off Rosewood.

19 Q Off Rosewood. What kind of place was that?

20 A I would assume apartments, some kind of
21 apartments.

22 Q Apartments off Rosewood. What did y'all do
23 there?

24 A I stayed in the car. He got out, and I assumed
25 the person wasn't home because he came straight back.

1 Q Did you see him go up to the apartments or what
2 did you see him do exactly?

3 A Well, he got out. The apartment was like around
4 a curve, so, you know, he was like around a curve and
5 in the back.

6 Q All right. And from there, where did y'all go?

7 A We went over on Broad River. I needed to check
8 to see about getting my brakes done in time to get him
9 back home. We went to Midas.

10 MR. KRZYSTON: Objection. Approach judge?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was held in the
13 presence, but not within the hearing of the
14 jury.)

15 BY MR. EATON:

16 Q Ms. Conway, so you all checked on getting the
17 brakes done. Where did you go from there?

18 A From there he had on a tank top. I wanted to get
19 something to eat. I told him he couldn't go to Ruby
20 Tuesday's to get something to eat with a tank top like
21 he had on, so we went to Family Dollar and he got him
22 a t-shirt. We went to Ruby Tuesday. I got me
23 something to eat, but he wasn't hungry. When we went
24 from there, we went to Burlington.

25 Q Which Ruby Tuesday? Let me back up. Which

1 Family Dollar, do you remember?

2 A The Family Dollar was on Bush River.

3 Q What about the Ruby Tuesday?

4 A On Bush River.

5 Q So after you go to Ruby Tuesday, where did you
6 go?

7 A When we left Ruby Tuesday, we went to Burlington.
8 We just walked around Burlington.

9 Q And what happened after that?

10 A Once we left Burlington, we was leaving out.
11 That's when we was surrounded.

12 Q Now, do you know anything about earlier that day?

13 A No.

14 MR. EATON: Thank you, Ms. Conway. Please answer
15 the defense questions.

16 THE COURT: Yes, sir.

17 MR. KRZYSTON: Thank you, Judge. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION:

21 BY MR. KRZYSTON:

22 Q How are you doing today, Kimberly?

23 A I'm doing good.

24 Q All right. Now, back then you were renewing your
25 nursing certification, weren't you?

1 A Uh-huh.

2 Q Did that come out all right?

3 A It did.

4 Q All right. I only have a few questions for you.

5 I'm going to let you get out of here pretty soon, but

6 on June 28th, you picked William up at Vernell's

7 house?

8 A Uh-huh.

9 Q She doesn't live there now, but it used to be

10 1203 Denny Road, right?

11 A Uh-huh.

12 Q And from there you went to the chicken farm?

13 A Uh-huh.

14 Q And then you went down towards Bush River Road,

15 correct?

16 A No, once we left the chicken farm, we went to off

17 of Rosewood.

18 Q I'm sorry. I'm sorry. That's right, but after

19 that you went down to Bush River?

20 A Uh-huh.

21 Q And William was wearing a tank top at the time,

22 correct?

23 A Yes.

24 Q And he was wearing that same tank top when he was

25 arrested, wasn't he?

1 A Yes.

2 Q That was under t-shirt that you made him buy?

3 A Yes.

4 Q You made him buy that because you wanted to go
5 into Ruby Tuesdays, right?

6 A Right.

7 Q Now, William didn't tell you what had happened
8 earlier in the day?

9 A No.

10 Q Okay. And you didn't know Gottie, who was in the
11 car --- the man you dropped off at the chicken farm,
12 you didn't know him?

13 A No.

14 Q But he didn't say anything to you, did he?

15 A No.

16 Q And you knew Athell, right?

17 A Yes.

18 Q Or Tron, and you knew his brothers, you knew of
19 his brothers?

20 A Yeah.

21 Q But you didn't want William to hang out with
22 them, right?

23 A Only because of the incident he had prior.

24 Q And the reason for that is because you looked ---

25 MR. EATON: Objection.

1 MR. EATON: May we approach, Your Honor.

2 THE COURT: Yes, sir.

3 (WHEREUPON, a bench conference was held in the
4 presence, but not within the hearing of the
5 jury.)

6 BY MR. KRZYSTON:

7 Q And you look out for William's best interests,
8 don't you?

9 A Yes.

10 Q Because you care about William?

11 A Yes.

12 Q And you actually knew William and Athell from
13 coming up together in the neighborhood, right?

14 A No.

15 Q Okay. But you did know William and Athell
16 individually?

17 A I knew William. I did not know Athell.

18 Q But do you know that William and Athell are like
19 family?

20 A From me being around him, he was --- I knew they
21 were friends.

22 Q Okay. You never knew William to have any kind of
23 beef with Athell whatsoever?

24 A Right.

25 Q Okay.

1 Q Thank you Kimberly. That's all I have today?

2 MR. EATON: Nothing further, Your Honor.

3 THE COURT: Have a nice day, ma'am.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 MS. SAMPSON: The State calls DeAndre Diggs.

7 THE COURT: All right.

8 THE COURT: Come on over, Mr. Diggs.

9 DEANDRE DIGGS,

10 after being duly sworn, testified as follows:

11 THE CLERK: Please have a seat for me. State
12 your full name.

13 THE WITNESS: My name is DeAndre Diggs.

14 MS. SAMPSON: Can you spell your first name for
15 us?

16 THE WITNESS: DeAndre Diggs, D-E-A-N-D-R-E.

17 THE COURT: Mr. Diggs, can you speak up, please.
18 Can you move a little closer to that microphone? If
19 you can't, I can get somebody to help you.

20 DIRECT EXAMINATION:

21 BY MS. SAMPSON:

22 Q Now, let's address the big elephant in the room,
23 Mr. Diggs. You're in a jailhouse uniform. Where are
24 you currently staying?

25 A I'm in the shoe.

1 Q Which is where?

2 A Lock up.

3 Q At what facility?

4 A Alvin S. Glenn Detention Center.

5 Q And you're there because you're charged with
6 several crimes, correct?

7 A Yes, ma'am.

8 Q You're charged with --- in this particular case,
9 correct?

10 A Yes, ma'am.

11 Q You have the same charges as Mr. Wallace,
12 correct?

13 A Yes, ma'am, I do.

14 Q So you have two counts of murder?

15 A Yes, ma'am.

16 Q You have an armed robbery?

17 A Yes, ma'am.

18 Q You have three counts of kidnapping?

19 A Yes, ma'am.

20 Q And you have an attempted murder?

21 A Yes, ma'am.

22 Q Okay. And we've spoken before, correct?

23 A Yes, ma'am, we have.

24 Q And your lawyer is here?

25 A Yes, ma'am, she is.

1 Q Was she there when we talked?

2 A Yes, ma'am, she was.

3 Q Did I make you any promises?

4 A No, ma'am.

5 Q About ---

6 A You didn't.

7 Q Did I promise to let you go if you talked?

8 A No, ma'am, you didn't.

9 Q Did I promise you a lesser sentence if you
10 talked?

11 A No, ma'am, you didn't.

12 Q Did I promise to dismiss any charges if you
13 talked?

14 A No, ma'am, you did not.

15 Q Did I tell you anything about your charges?

16 A No, ma'am, you didn't.

17 Q But let's be clear. You're hoping it helps you,
18 correct?

19 A I pray.

20 Q You pray that it helps you, and you actually ---
21 before you even met me, you spoke with Investigator
22 McDonald, correct?

23 A Yes, ma'am, I did.

24 Q And you spoke with other law enforcement?

25 A Yes, ma'am, I did.

1 Q Did they make any promises to you when you talked
2 to them?

3 A No, ma'am, they did not.

4 Q Did they tell you they weren't going to charge
5 you?

6 A No, ma'am, they did not.

7 Q In fact, they charged you after you spoke?

8 A Yes, ma'am, they did.

9 Q All right. Now, I want to backtrack a little
10 bit. I just wanted to kind of get that established.
11 Do you have a nickname?

12 A Gottie.

13 Q Gottie. People call you that?

14 A Yes, ma'am.

15 Q Did Mr. Wallace call you that?

16 A Yes, ma'am, he does.

17 Q How long have you known Mr. Wallace?

18 A I've known Mr. Wallace since he is about eight
19 years old.

20 Q Are you guys related?

21 A Cousins.

22 Q Do you know how that works, or do you just know
23 you're cousins?

24 A We just know that we folks.

25 Q And how old are you?

- 1 A I'm 39.
- 2 Q So you're older than Mr. Wallace?
- 3 A Yes, ma'am, I am.
- 4 Q I'm going to take you back and actually --- I'm
5 going to take you back to June 28th, 2012. Where did
6 you work at that time?
- 7 A I worked at Columbia Farms.
- 8 Q And where is that?
- 9 A Beginning of West Columbia.
- 10 Q So it's over in the West Columbia area?
- 11 A West Columbia area.
- 12 Q What did you do there?
- 13 A Package.
- 14 Q So what is that; I've never worked in a chicken
15 farm?
- 16 A I packaged the chicken legs and breasts.
- 17 Q Okay. And you worked --- how long had you been
18 working there on June 28th?
- 19 A Close to eight months.
- 20 Q And I want to do one thing I kind of left out a
21 little bit. In talking about in terms of any charges
22 you've ever had or anything like that, you have one
23 conviction for a habitual traffic offender, don't you?
- 24 A Yes, ma'am, I do.
- 25 Q Okay. All right. So you were working at

1 Columbia Farms back in June of 2012. Did you ever
2 receive a phone call from Mr. Wallace?

3 A Yes, ma'am, I did.

4 Q What did he want?

5 A He wanted me to come with him.

6 Q Come with him where?

7 A He didn't say exactly, but I went with him.

8 Q And I'm going to stop you a little bit. I just
9 want to focus on the phone call, okay.

10 A Uh-huh.

11 Q Where were you when he called you?

12 A I was at my job.

13 Q Were you working?

14 A It was at the beginning of --- before the shift
15 started.

16 Q What time did you normally show up to work?

17 A About 8:15, 8:20.

18 Q Did you go that day about that time?

19 A Yes, ma'am, I did.

20 Q And were you feeling well that day?

21 A Not too well.

22 Q Okay. Had you been sick that day?

23 A I was.

24 A I was a little nauseated. I didn't know at the
25 time, but a female was pregnant by me.

1 Q Okay.

2 A And I had like morning sickness.

3 Q And so you received a call from him. Had you
4 clocked in to work?

5 A I did. No, I didn't. I didn't.

6 Q Did you clock in at all or clock back out or do
7 you remember?

8 A I clocked --- I clocked in. As soon as when I
9 get there I clock in.

10 Q And he called you after you clocked in or before?

11 A It was after I clocked in.

12 Q So did you clock back out or what did you do?

13 A I went and clocked back out. I went to my
14 supervisor and informed my supervisor that I was very
15 nauseated. My supervise said I could have the day
16 off.

17 Q So you clocked back out?

18 A Yeah.

19 Q So what happened after you clocked back out?

20 A Mr. Wallace gave me a call, and he arrived at my
21 job.

22 Q He came and picked you up?

23 A Yes, ma'am, he did.

24 Q Do you remember what kind of car he picked you up
25 in?

- 1 A A white LeSabre.
- 2 Q Was there any damage to the car?
- 3 A Passenger's side, passenger's side mirror.
- 4 Q What was wrong with the mirror?
- 5 A It was hanging off.
- 6 Q Did you get in the car?
- 7 A Yes, ma'am, I did.
- 8 Q And what did you do once you're in the car?
- 9 A We drove. We didn't do much talking.
- 10 Q Okay. Where did you guys go?
- 11 A We went to his grandmother's house.
- 12 Q Do you remember what street it was on?
- 13 A Palmland.
- 14 Q And what did you do while you were there?
- 15 A He collected two guns.
- 16 Q Did you see what kind of guns?
- 17 A Yes, I did.
- 18 Q What kind were they?
- 19 A AK-47 and a nine millimeter, 380, one of the two.
- 20 Q One of the two. Okay. Did you see him go get
- 21 it, or did he just come out of the house or what
- 22 happened?
- 23 A I was in there when he got it.
- 24 Q Does he give you either of the guns?
- 25 A Not at that time.

1 Q So what do you all do at that point?

2 A We get in the vehicle and we take a ride. We
3 ended up on Garners Ferry Road at some apartments.

4 Q Did he ever tell you where you were going?

5 A Not at that point in time.

6 Q So you get to some apartments, I think you said?

7 A Yes, ma'am.

8 Q What do you do once you're at the apartments?

9 A We get out and we walked to the apartments. We
10 hang on to some stairs. A guy comes out. He tells me
11 to hold off.

12 Q And I'm going to stop you. Who tells you to hold
13 off?

14 A Mr. Wallace..

15 Q Okay.

16 A Evidently he recognized who he was, because he
17 told me we had to wait until the guy came back.

18 Q Now, I'm going to stop you for a minute. What
19 did you think you were there for?

20 A I knew it had the to be something illegal.

21 Q You thought you were going to do something
22 illegal?

23 A Yeah, I knew it was something illegal.

24 Q Did you think --- and I'm --- you thought you
25 were going to rob somebody or steal something?

1 A I thought it was more likely a robbery.

2 Q So he told you to wait a minute?

3 A Yes, ma'am.

4 Q So where do you guys wait?

5 A He waited on the stairs.

6 Q You waited on the stairs? Are they the stairs to
7 the apartment building?

8 A The stairs to the apartment building, yes.

9 Q I'm going to show you what's been marked as
10 State's Exhibit Number 28. Is that where you're
11 talking about?

12 A Yeah. That was the stairs, but the backside of
13 the stairs.

14 Q So you were on the part of the stairs we can't
15 see?

16 A On the part that you can't see.

17 Q Okay. But this would be the stairs that you're
18 talking about?

19 A Yes, ma'am.

20 Q You don't have any doubt this is where you were?

21 A No doubt.

22 THE COURT: What's he referring to?

23 MS. SAMPSON: I'm sorry. We're referring to
24 State's Exhibit 28, the stairs on there.

25 THE COURT: All right.

1 BY MS. SAMPSON:

2 Q Just so we're clear, you said that you were
3 behind the stairs where we can't see?

4 A It was a level up.

5 Q You were above? You had gone up the stairs?

6 A Went up the stairs.

7 Q And you waited. How long did you all stay up
8 there?

9 A I can't say how long we stayed up there.

10 Q A few minutes, a few seconds?

11 A More than a few minutes.

12 Q What happened while you were up there? Did you
13 speak? What happened?

14 A Yeah, we talked and he said the guy would be
15 back. He told me to hold on.

16 Q Did he tell you who the person was?

17 A Not at that point.

18 Q Did you know who it was at that point?

19 A No, I didn't know who.

20 Q Does he return?

21 A Yes, the person returns.

22 Q What happens when he returns?

23 A Wallace goes down the stairs and approaches him
24 with a gun in hands.

25 Q Now, is he --- which gun did he have?

1 A He had the AK-47.

2 Q Did you have a gun at that point?

3 A No, I didn't.

4 Q So he goes up to --- does he say something to the
5 guy?

6 A He said something to him, but I can't really say
7 what he said. I don't quite remember, but the guy
8 acknowledged Wallace because I assume from my looking
9 that he knew who I was.

10 MS. HINES: Objection, speculation.

11 MS. SAMPSON: I can lay some foundation.

12 THE COURT: Okay.

13 BY MS. SAMPSON:

14 Q You said that you thought he --- why did you
15 believe that he knew him? Did he respond or did he
16 shake his hand or what did he do?

17 A Could you repeat the question?

18 Q You stated that you thought that the person knew
19 Wallace.

20 A Uh-huh.

21 Q Did he do something that made you think he knew
22 him; did he shake his hand, do something or ---

23 A No, they just looked at each other.

24 Q To you that meant he knew him?

25 A Yes, ma'am.

1 Q So I this I you said they were speaking. You
2 couldn't hear him?

3 A I couldn't hear what was being said.

4 Q So then you --- did you go back down the stairs?

5 A I came down the stairs halfway until Mr. Wallace
6 entered with the guy and went inside.

7 Q Did you follow them inside?

8 A I followed --- I followed them inside.

9 Q What did you see once you got inside?

10 A Mr. Wallace had one guy apprehended and another
11 guy was asleep on the couch.

12 Q Okay. Who was asleep on the couch?

13 A Mr. Johnson.

14 Q Did you know Athell Johnson?

15 A I knew him prior to an incident.

16 Q You knew who he was?

17 A I didn't know who he was at that point in time.

18 Q Okay.. I'm going to show you what's been marked
19 as State's Exhibit Number 32 and entered into
20 evidence. Is this the living room you went into?

21 A Yes, ma'am, that's the living room.

22 Q That was the living room you went into?

23 A Yes.

24 Q And where was he asleep?

25 A On the couch.

1 Q He was asleep on that couch right there?

2 A That couch.

3 Q Is there any doubt in your mind that he was
4 asleep on the couch --- or that he was on the couch,
5 let me put it that way?

6 A He was on the couch, definitely.

7 Q And so you and Mr. Wallace enter?

8 A Yes, ma'am.

9 Q What happens once you get inside?

10 A Mr. Wallace put the guy that he met inside on the
11 breezeway on the floor, and told Mr. Johnson to don't
12 move.

13 Q And what did --- did the other guy --- is that
14 who we know to be Mr. Pratt now?

15 A Yes, ma'am.

16 Q Okay. Did he say anything?

17 A No, he didn't say anything. Mr. Wallace grabbed
18 a handgun that was on the floor.

19 Q So he got a gun from inside the apartment?

20 A Yes, ma'am.

21 Q What did he do with that gun?

22 A He kept it on his person.

23 Q Mr. Wallace did?

24 A Yes, ma'am.

25 Q And what, if anything, did Mr. Johnson say?

1 A He didn't say much.

2 Q So what happens at that point?

3 A Mr. Wallace asked him where is the items.

4 Q You can say the way he says it. What did he say?

5 A He say where the shit was.

6 Q And what did you think that meant?

7 A Drugs.

8 Q Okay. So you thought he was wanting the drugs?

9 A Yes, ma'am.

10 Q And what --- did Athell --- did Mr. Johnson say

11 anything?

12 A He told him where it was.

13 Q And where did he tell him?

14 A He said something like in the kitchen and also

15 some --- somewhere else.

16 Q Okay.

17 A I'm not sure.

18 Q And then what happened?

19 A Mr. Wallace hands me a gun.

20 Q He hands you a gun?

21 A He hands me a gun.

22 Q Which gun?

23 A The handgun.

24 Q The one he had just taken or the one that he went

25 in the house with?

- 1 A The one that he had just taken.
- 2 Q Okay.
- 3 A He ties up Mr. Pratt and Mr. Johnson.
- 4 Q Ties them up with what?
- 5 A Trash bags.
- 6 Q Did you guys bring those or were they in the
- 7 house?
- 8 A They was already in the house.
- 9 Q He ties them up and then what happens?
- 10 A He searches the house.
- 11 Q And this is an apartment?
- 12 A That's an apartment.
- 13 Q Can you see where he goes and searches or ---
- 14 what did you do?
- 15 A He goes towards the kitchen, realizes it's not in
- 16 the kitchen, and he asked him again and they went
- 17 towards the back of the house, the apartment.
- 18 Q And does he eventually find drugs?
- 19 A He finds them.
- 20 Q What were they in?
- 21 A I don't know what we was in, but when he came
- 22 out, they was in luggage.
- 23 Q A piece of luggage?
- 24 A Like a suitcase luggage.
- 25 Q So some sort of bag or suitcase?

1 A Bag, suitcase, yes.

2 Q And did he find anything else?

3 A He found a vest and a Tec-9.

4 Q A Tec-9. Is a Tec-9 a gun?

5 A Yes, ma'am.

6 Q So he finds a vest, a Tec-9 and drugs?

7 A Yes, ma'am.

8 Q And you see that?

9 A Yes, ma'am.

10 Q All right. So what happens at that point?

11 A Mr. Wallace gets Mr. Johnson to call a girl.

12 Q And why does he ask him to do that?

13 A Because Mr. Wallace --- as soon as Mr. Wallace

14 knew that the girl had the money.

15 Q Okay. So they asked him to call the girl?

16 A Yes, ma'am.

17 Q Did Johnson want to call her or could you tell?

18 A I couldn't tell.

19 Q Okay. So does he call her?

20 A Yes, he does.

21 Q And what does he say?

22 A He tells the girl to bring the money.

23 Q So what do you guys do after that?

24 A We wait.

25 Q And?

- 1 A Until the girl gets there.
- 2 Q Are they still tied up?
- 3 A Yes, ma'am.
- 4 Q Are your guns still out?
- 5 A Yes, ma'am.
- 6 Q What happens when she gets there?
- 7 A She comes to the door and she was about to come
8 in, but she was kind of hesitant until Mr. Wallace
9 pulled her in.
- 10 Q He pulls her in?
- 11 A He pulls her in.
- 12 Q Any doubt in your mind that Mr. Wallace did that?
- 13 A Yes, ma'am, he did.
- 14 Q Okay. And once she is in the house, what
15 happens?
- 16 A He takes a bag from her.
- 17 Q She has a bag on her?
- 18 A She has a bag, a purse and he asked where the
19 money was. She says in the purse. Mr. Wallace grabs
20 the money out of her purse.
- 21 Q What happens? Where does he tell her to sit or
22 does he?
- 23 A He asks her to sit on the couch.
- 24 Q Okay. So she is sitting next to Mr. Johnson?
- 25 A No, Mr. Johnson is on the floor.

1 Q Okay. Who put him on the floor?

2 A Wallace told him to get on the floor or pulled
3 him to the floor.

4 Q So she is sitting on the floor, did anyone tie
5 her up?

6 A I did.

7 Q With what?

8 A A trash bag.

9 Q Why did you do that?

10 A Mr. Wallace told me to.

11 Q So what --- I'm going to ask you, did an alarm
12 ever go off while you were there?

13 A Yes, several.

14 Q And did you do anything when that happened?

15 A Before it was over, I left out.

16 Q So this was later on that the alarm goes off?

17 A Yes, it went all the way off.

18 Q So I just want to make sure I haven't missed
19 anything. She's --- at this point the girl is there
20 tied up, Mr. Johnson and Mr. Pratt, they're both still
21 tied up?

22 A Yes, ma'am.

23 Q You and Mr. Wallace are both still armed?

24 A Yes, ma'am.

25 Q Then what happens?

1 A Mr. Wallace is talking to the girl, Raquel, and
2 he had --- him and Ms. Raquel go to the back of the
3 apartment and stay for awhile and they talk.

4 Q And are you still in the living room?

5 A I'm still in the living room.

6 Q Do you say anything to Pratt or Johnson at that
7 time?

8 A No, ma'am, I don't.

9 Q But you still have your gun?

10 A Yes, ma'am.

11 Q Do they come back out?

12 A Yes, ma'am, they do.

13 Q Then what happens?

14 A They sit, and they --- well, she sits back down,
15 and Wallace is still moving around, so she goes --- he
16 grabs her --- well, not grabs her, but he asks her to
17 come back to the back of the apartment again, so she
18 went back with him.

19 Q Does Mr. Wallace ever leave the apartment?

20 A Yes, ma'am, he does.

21 Q And does he take anything with him when he
22 leaves?

23 A He takes the suitcase with the items.

24 Q With the drugs, the vest, and the guns?

25 A Guns.

- 1 Q And the money?
- 2 A And the money.
- 3 Q Okay. Well, does he put the money in that
- 4 suitcase?
- 5 A Yep, he does.
- 6 Q That's after Ms. ---
- 7 A That's after Ms. Raquel has come over.
- 8 Q Okay. So at some point he leaves and takes
- 9 everything outside?
- 10 A Yes, ma'am, he does.
- 11 Q You stayed in the apartment?
- 12 A Yes, ma'am, I do.
- 13 Q So he comes back?
- 14 A Yes, ma'am.
- 15 Q And what happens after he comes back?
- 16 A The alarm goes off, and I wanted to leave.
- 17 Q The alarm in the apartment building is going off
- 18 or the alarm on you?
- 19 A No, the alarm on me. It was an alarm on the
- 20 apartment building that went off. I went out and came
- 21 back.
- 22 Q Did you see anyone when you went out?
- 23 A Yes, ma'am, I did.
- 24 Q A man, a woman?
- 25 A I seen a man and a woman.

1 Q Okay. And then you go back in the apartment?

2 A Yes, ma'am, I do.

3 Q So you said that at some point you're ready to
4 go?

5 A Yes, ma'am.

6 Q So what happens?

7 A I leave out.

8 Q Before you leave out, do you do anything with the
9 towel?

10 A I grabbed the --- I took a towel and wiped down
11 the walls.

12 Q Why did you do that?

13 A Because I had touched the walls.

14 Q Did Mr. Wallace direct you to do that?

15 A No, ma'am, he didn't.

16 Q Did he wipe down anything or do you know?

17 A Not that I know of.

18 Q But you did?

19 A I did.

20 Q Okay. Did you ever see him take Mr. Pratt or
21 Mr. Johnson anywhere in the apartment?

22 A He took them to separate rooms, I believe.

23 Q And how did he take them?

24 A Pratt walked and he pulled Athell.

25 Q How did he pull Athell?

- 1 A By his hands.
- 2 Q Did he drag him, carry him?
- 3 A Dragged him.
- 4 Q He dragged him?
- 5 A Yes, ma'am.
- 6 Q Was he using the plastic bags or just by the
- 7 hands?
- 8 A He was using his hands.
- 9 Q So he drug him down the hall?
- 10 A Down the hall.
- 11 Q All right. And at that point, do you leave?
- 12 A Yes, ma'am, I do.
- 13 Q So when you leave, Athell --- Mr. Johnson and
- 14 Mr. Pratt are alive?
- 15 A Yes, ma'am, they are.
- 16 Q Did you ever hear any gunshots yourself?
- 17 A No, ma'am, I didn't.
- 18 Q And Ms. Weston is still in the apartment when you
- 19 leave?
- 20 A Yep, she is.
- 21 Q So when you leave the apartment, what do you do?
- 22 A I go to the vehicle.
- 23 Q The vehicle you guys had come in?
- 24 A Yes, ma'am.
- 25 Q Why did you go there?

1 A Because I didn't want any part of what was going
2 down anymore. I didn't want, I canceled myself out.

3 Q Okay. So you were okay with robbing, is that a
4 fair?

5 A Yes, ma'am.

6 Q You were okay if you were going to do a robbery?

7 A Yes, ma'am.

8 Q And you were okay with stealing?

9 A Yes, ma'am.

10 Q But you thought something else was going to
11 happen, so you left? Is that what you were saying?

12 A No. I didn't think anything else was going to
13 happen. I just --- something just overcame me, and I
14 didn't want any part of it.

15 Q Okay. So did you leave?

16 A I left out of the apartment, but I didn't leave
17 the apartment complex.

18 Q Once your in the car, why don't you drive off?

19 A I don't know. I should have.

20 Q You just stayed in the car?

21 A Yes, ma'am.

22 Q How long were you in the car, do you know?

23 A I can't say.

24 Q A couple minutes, an hour?

25 A About ten, ten minutes.

- 1 Q Okay. And did you see Mr. Wallace again?
- 2 A Yes, ma'am.
- 3 Q And when --- is he with anyone?
- 4 A He is with Ms. Weston.
- 5 Q Is her --- are her hands tied or untied?
- 6 A Untied.
- 7 Q Okay. Does he still have the gun?
- 8 A Yes, ma'am.
- 9 Q Can you see it?
- 10 A Yes, ma'am.
- 11 Q Where is he holding it?
- 12 A He is holding it in his hand close to his body.
- 13 Q Is he holding her?
- 14 A He is holding her by the arm.
- 15 Q So they come to the car?
- 16 A They come to the car.
- 17 Q Where are you sitting in the car or, were you?
- 18 A I was standing outside of the car after I ---
- 19 after I moved the car.
- 20 Q Oh, let's go back to that. You moved the car?
- 21 A I moved the car from where it was originally
- 22 parked.
- 23 Q Did you not park in front of the apartment at
- 24 first or did you park it further away?
- 25 A I parked it towards the front of the apartment

1 entrance at the gate.

2 Q When you first get there, is Mr. Wallace driving?

3 A Yes.

4 Q Where did he park the car?

5 A He had parked the car catty-corner behind the
6 building.

7 Q So you move it from that spot to closer to the
8 front of the building --- or the front of the
9 apartment complex?

10 A Yes, ma'am.

11 Q So when you see them you get out of the car or at
12 some point you get out of the car?

13 A I was already out of the car.

14 Q And they come to the car?

15 A Yes, ma'am.

16 Q And then what happens?

17 A Mr. Wallace put Ms. Weston in the backseat. I
18 got in the backseat.

19 Q Why didn't you get in the front seat?

20 A Again, I cancelled myself out.

21 Q What do you mean by you cancelled yourself out?

22 A I didn't want to have anything else to do with
23 it.

24 Q So you guys are in the car. Do you know where
25 you're going?

1 A No, ma'am.

2 Q Okay. So where --- is there any conversation in
3 the car?

4 A From Ms. Weston.

5 Q Do you remember what that was about?

6 A She just asked was anything going to happen to
7 her.

8 Q And what was the response?

9 A I told her no.

10 Q You told her no. Okay. Did you ask Mr. Wallace
11 anything about Jamal --- Mr. Pratt or Mr. Johnson?

12 A Yes, ma'am.

13 Q What did you ask him?

14 A I asked him what happened to the boys. He said
15 they were asleep.

16 Q What did you take that to mean?

17 A That he had killed them.

18 Q Did he say anything about being permanent?

19 A Ma'am?

20 Q All he said was he put them to sleep?

21 A Yes, ma'am.

22 Q You took that to mean he killed them?

23 A Yes, ma'am.

24 Q Okay. So what happens once you all are in the
25 car?

1 A We drive towards Bluff Road.

2 Q Okay.

3 Q And then where do you go?

4 A We go to Beckham Swamp.

5 Q Okay. And I'm going to show you State's

6 Exhibits 22 and 46. Are these where you went? Does

7 it look familiar to you?

8 A Not the dirt Road. It was a paved Road.

9 Q It was paved. What about this area?

10 A It looks somewhat familiar.

11 Q State's Exhibit Number 11. Is that where you

12 went?

13 A Yes, ma'am.

14 Q So where the sign says Beckham and Bluff Road?

15 A Bluff Road.

16 Q And any doubt in your mind you were with

17 Mr. Wallace when you were there?

18 A Yes, ma'am. I was with Mr. Wallace.

19 Q So there is no doubt in your mind?

20 A No doubt.

21 Q And so you guys get there to this area. What

22 happens?

23 A We pull up.

24 Q And who is driving?

25 A Mr. Wallace is driving.

- 1 Q Okay. And what happens?
- 2 A We pull up to the swamp area. We get out and
- 3 he --- Ms. ---
- 4 Q Weston?
- 5 A Weston gets out and ---
- 6 Q Do you have a gun at that time?
- 7 A I left the gun inside of the car. The gun that
- 8 he gave me, I left it inside of the car on the seat.
- 9 Q But do you get out of the car?
- 10 A Yes, ma'am.
- 11 Q And she get out of the car?
- 12 A Yes, ma'am.
- 13 Q Does Mr. Wallace get out of the car?
- 14 A Yes, ma'am.
- 15 Q And what happens once you all are outside of the
- 16 car?
- 17 A Mr. Wallace instructs me to get rid of
- 18 Ms. Weston.
- 19 Q To get rid of Ms. Weston?
- 20 A Yes, ma'am.
- 21 Q What did you think that meant?
- 22 A To shoot her.
- 23 Q Did he tell you to shoot her?
- 24 A Yes, ma'am, he did.
- 25 Q What did he tell you would happen if you didn't?

1 A He had this look on his face that if I didn't do
2 what he said, he was going to do me.

3 MS. HINES: Objection. I don't understand if he
4 said that or if the look said that.

5 THE COURT: The look said that.

6 BY MS. SAMPSON:

7 Q Is that what you meant? You can clarify it.

8 A The look said that.

9 Q And you took it to mean what?

10 A That he would cause me harm if I didn't do
11 anything that he had asked me to do.

12 Q So tell the jury what you did.

13 A I took Ms. Weston to a wooded area, a small dirt
14 and wooded area, then I proceeded --- I shot her in
15 the arm. After she dropped, I shot her again.

16 Q And who did you get the gun from?

17 A Mr. Wallace.

18 Q Any doubt in your mind that he gave you that gun?

19 A He gave me the gun.

20 Q What happened after you shot her?

21 A We leave the scene.

22 Q Does he --- is he with you when you shoot her or
23 does he stay at the car?

24 A He stays at the car.

25 Q Can you see the car from where you shot her?

- 1 A Yes, ma'am.
- 2 Q So you get back in the car?
- 3 A Yes, ma'am.
- 4 Q And what happens --- you get in the passenger,
5 the backseat?
- 6 A I get in the passenger's seat.
- 7 Q What happens then?
- 8 A We leave the Beckham area.
- 9 Q And where do you go?
- 10 A We go to his grandmother's house.
- 11 Q And does Mr. Wallace ask you anything about the
12 girl?
- 13 A He asked me was she dead. I told him yeah, but I
14 felt in my heart that she wasn't.
- 15 Q But you didn't ---
- 16 A I didn't intentionally try to harm her.
- 17 Q But you did shoot her?
- 18 A But I did shoot her.
- 19 Q And you did shoot her in the head?
- 20 A Yes, ma'am, I did.
- 21 Q And he asked you was she dead?
- 22 A Yes, ma'am, he did.
- 23 Q Did you pass any cars as you're leaving Beckham
24 Swamp getting on to Bluff Road?
- 25 A Yes, ma'am, two cars.

1 Q What kinds of cars, do you remember?

2 A I think a Jeep and a small car, sedan.

3 Q Okay. And where do you go after you leave
4 Beckham Swamp Road?

5 A We go to Mr. Wallace's grandmother's house.

6 Q Where you've been before?

7 A Yes, ma'am.

8 Q And what do you do when you get there?

9 A He drops off the AK-47.

10 Q Do you see him do that or do you stay in the car?

11 A I stay in the car.

12 Q Does he go in with the gun?

13 A He goes in with it.

14 Q Does he come out with a gun?

15 A No, ma'am.

16 Q Then where do you go?

17 A We leave his grandmother's house and we go to ---
18 we get on the highway, but as we're leaving, we see
19 the patrol cars.

20 Q As you're leaving the grandmother's house?

21 A Yes, ma'am.

22 Q Does anything happen when you see the patrol
23 cars?

24 A Mr. Wallace was driving a little erratic, but I
25 told him to slow down, that we was going to get messed

1 up.

2 Q You thought you got caught?

3 A Yes, ma'am.

4 Q So then where do you go?

5 A We go to his house.

6 Q Which was where? Do you know where?

7 A I didn't know where.

8 Q So it was near Monticello? Was it near --- do

9 you remember where it was near? If you don't, that's

10 okay.

11 A No, I didn't quite, not the area that we went to.

12 I had no --- didn't know where I was at that point in

13 time.

14 Q Was it the house he lived in?

15 A Yes, ma'am.

16 Q Was anybody there?

17 A Yes, ma'am.

18 Q Who was there?

19 A His sister or his cousin.

20 Q A female?

21 A Yes, a female.

22 Q And related to him?

23 A Yes, ma'am.

24 Q So when you get there, where --- is the suitcase

25 still with you guys, the suitcase with the drugs, the

1 money, the gun?

2 A The suitcase was in the car.

3 Q What happens once you get to the house?

4 A Mr. Wallace unloads the car.

5 Q What does he take out when he unloads it?

6 A He takes the suitcase out of the car.

7 Q Where does he take it?

8 A He takes it to a smaller house behind the big
9 house.

10 Q So you say a little house? Not like a regular
11 house, a small house?

12 A A small one like an outhouse.

13 Q Like an outhouse; is that what you just said?

14 A Yes, ma'am.

15 Q So do you both go into that or just Mr. Wallace?

16 A He goes in. He comes out and he goes inside of
17 the big house.

18 Q Okay.

19 A I stayed outside.

20 Q You stayed outside, but you saw him --- did you
21 see him take the suit case in there?

22 A Yes, ma'am, I did.

23 Q Did you guys change your clothes?

24 A T-shirts.

25 Q Just you or both of you?

1 A Both of us did.

2 Q Okay. Did he ever do anything with the money or
3 the drugs in front of you?

4 A No, ma'am, he didn't.

5 Q He didn't separate it or anything like that?

6 A No, ma'am, he didn't.

7 Q Okay. Did he say anything about what was going
8 to happen with the vest?

9 A No, he didn't say what was going to happen to the
10 vest.

11 Q Okay. So what do you do at this point?

12 A I'm kind of paranoid.

13 Q Okay. So what do you want to do at this point?

14 A I went back to work.

15 Q And did you think --- what did you think was
16 going to happen with the drugs and the money?

17 A I thought Mr. Wallace was going to share with me.

18 Q Okay. Did y'all talk about it?

19 A Yes, we --- no, we didn't.

20 Q But you thought he would split it?

21 A I thought he would.

22 Q And that never happened?

23 A That never happened.

24 Q And how did you guys leave?

25 A A female came and picked me and Mr. Wallace up.

1 Q Did you know who that was?

2 A No, ma'am, I didn't.

3 Q You didn't leave in the car you came in?

4 A No, ma'am.

5 Q And where does she take you?

6 A She takes me to my job.

7 Q So you went back to work?

8 A Yes, ma'am.

9 Q You clock back in?

10 A Yes, ma'am.

11 Q You work for the rest of the shift?

12 A Yes, ma'am, I did.

13 Q So after all this has happened, you still go back
14 to work?

15 A Yes, ma'am.

16 Q Why?

17 A I don't know. I just felt that my whole day was
18 wasted.

19 Q Okay. Why didn't you call the police?

20 A I don't know. I mean. I felt like I should
21 have, but then again I was kind of more scared to call
22 the police than anything.

23 Q Okay. So nothing else happens that day. You get
24 off work. Everything is fine?

25 A Yes, ma'am.

1 Q Do you ever receive a call from Mr. Wallace's
2 sister?

3 A No, ma'am, I didn't. I received a call from my
4 sister.

5 Q From your sister, I'm sorry, and what --- that
6 was informing you that someone had been killed?

7 A She informed me that Athell had been killed and
8 that Mr. Wallace was incarcerated --- not incarcerated
9 but Athell.

10 Q Had been arrested?

11 A Had been killed.

12 Q I'm sorry, that Athell had been killed?

13 A Yes.

14 Q I'm sorry. I want to get that clear. And where
15 were you living at the time?

16 A I was from different girl's house to different
17 girl's house.

18 Q So you didn't really have your own place to stay,
19 is that fair to say?

20 A No, ma'am, I didn't.

21 Q At some point the police come to speak with you,
22 correct?

23 A Yes, ma'am, they did.

24 Q And do they speak with you?

25 A Yes, ma'am, I did.

1 Q I want to show you something. I'm going to show
2 you couple of things, okay. This right here, this was
3 done with you with Scott McDonald?

4 A Uh-huh.

5 Q Do you recognize him sitting right here?

6 A Yes, ma'am.

7 Q That's called an Advice of Rights. Did he go
8 over that with you?

9 A Yes, ma'am, he did.

10 Q You agreed to talk to him after that?

11 A Yes, ma'am.

12 Q Even though he told you he didn't have to?

13 A Yes, ma'am, he did.

14 Q He told you it could be used against you?

15 A Yes, ma'am.

16 Q Did you talk to him anyway?

17 A Yes, ma'am, I did.

18 Q Do you recognize that?

19 A It's a statement that I gave.

20 Q And you gave this statement?

21 A Yes, ma'am.

22 Q I'm going to talk about that procedure a little
23 bit. I'm going to leave that up there. When you gave
24 that statement, he was asking you questions?

25 A Yes, ma'am.

- 1 Q And then you gave him answers?
- 2 A Yes, ma'am.
- 3 Q Did he force you to talk to him?
- 4 A No, ma'am, he didn't.
- 5 Q Did he keep you from going to the bathroom in
- 6 order to keep you from talking to him?
- 7 A No, ma'am.
- 8 Q Did he do anything negative to you, yell at you,
- 9 beat you, anything at all?
- 10 A No, ma'am, he didn't.
- 11 Q Once --- did you write for him or did --- how did
- 12 that happen?
- 13 A They did the writing.
- 14 Q And then they typed it up?
- 15 A Yes, ma'am.
- 16 Q And they printed it?
- 17 A Yes, ma'am, I believe.
- 18 Q And did he read it to you or did you read it
- 19 yourself after you were finished?
- 20 A I read it.
- 21 Q Did he allow you to make any changes?
- 22 A He did.
- 23 Q And did you make any?
- 24 A No, ma'am, I didn't.
- 25 Q Could you have if you wanted to?

1 A Yes, ma'am, I could have.

2 Q Could you have added anything if you wanted to?

3 A Yes, ma'am, I could have.

4 Q He didn't stop you from doing anything?

5 A No.

6 Q Did he force you?

7 A No, ma'am.

8 Q Did you tell him who you did this with? Who you
9 committed these crimes with?

10 Q Yes, ma'am.

11 Q Who did you tell him you did it with?

12 A Mr. Wallace.

13 Q And what's his first name?

14 A William.

15 Q Do you see him in the courtroom?

16 A Yes, ma'am, I do.

17 Q Can you point him out for us?

18 A Yes, ma'am.

19 Q Can you tell us what he has on?

20 A He has an on orange shirt.

21 Q And is there any doubt in your mind that you
22 committed all of this that you just told the jury
23 about with Mr. Wallace?

24 A I committed all this with Mr. Wallace.

25 MS. SAMPSON: Beg the Court's indulgence.

1 Q Mr. Diggs, did you try to be honest with
2 Lieutenant McDonald when you talked to him?

3 A Yes, ma'am.

4 Q You tried to tell him everything you knew?

5 A Yes, ma'am, I did.

6 Q Is it possible you forgot some things?

7 A I could have.

8 Q Are you telling us the truth today?

9 A Yes, ma'am, I am.

10 MS. SAMPSON: No further questions, Your Honor.

11 THE COURT: Cross?

12 MS. HINES: Thank you, Judge. May it please the
13 Court?

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION:

16 BY MS. HINES:

17 Q How are you doing today, Gottie?

18 A I'm doing okay.

19 Q Good. Now, Ms. Sampson started out talking to
20 you about the charges that you're facing right now,
21 right?

22 A Yes, ma'am.

23 Q You're facing two counts of murder, right?

24 A Yes, ma'am.

25 Q And you've spoken with your lawyer, right?

1 A Yes, ma'am, I have.

2 Q She is sitting right behind the solicitor's table
3 there in the courtroom?

4 A Yes, ma'am, she is.

5 Q And she has told you that murder carries 30
6 years, a mandatory minimum of 30 years, correct?

7 A Yes, ma'am, she did.

8 Q And a maximum sentence of life, correct?

9 A Yes, ma'am, she did.

10 Q And you have two counts of murder, correct?

11 A Yes, ma'am, I do.

12 Q And that 30 years, that's day for day, right?

13 A Yes, ma'am.

14 Q So if you get sentenced to 30 years, you spend 30
15 years in prison, correct?

16 A Yes, ma'am, I do.

17 Q You do not get out early?

18 A No.

19 Q If you get sentenced to life, you spend the rest
20 of your life in prison, correct?

21 A Yes, ma'am, I do.

22 Q You do not get out alive, correct?

23 A Yes, ma'am.

24 Q And you have one count of attempted murder?

25 A Yes, ma'am, I do.

- 1 Q And Ms. Barbier has told you that attempted
2 murder carries up to 30 years in prison, right?
- 3 A Yes, ma'am.
- 4 Q That's zero to 30, correct?
- 5 A Yes, ma'am.
- 6 Q And you have three counts of kidnapping?
- 7 A Yes, ma'am.
- 8 Q And Ms. Barbier has told you that those three
9 counts of kidnapping carry up to 30 years in prison,
10 right?
- 11 A Yes, ma'am.
- 12 Q So that's zero to 30, correct?
- 13 A Yes, ma'am.
- 14 Q Times three, correct?
- 15 A Yes, ma'am.
- 16 Q And you have a count of armed robbery, correct?
- 17 A Correct.
- 18 Q And Ms. Barbier has told you that carries between
19 ten and 30 years?
- 20 A Yes, ma'am.
- 21 Q So if you add all of this up, you're looking at
22 two life sentences and 150 years in prison, correct?
- 23 A Yes, ma'am.
- 24 Q You don't want that, do you?
- 25 A No, ma'am, I don't.

1 Q You don't want to spend the rest of your life in
2 prison, do you?

3 A No, ma'am, nobody does.

4 Q And you don't want to spend 150 years in prison,
5 do you?

6 A Nobody would.

7 Q You want to get out one day?

8 A Yes, ma'am.

9 Q And you're 39 years old?

10 A Yes, ma'am, I am.

11 Q And the only way --- you don't want to spend 30
12 years in prison, do you?

13 A I could.

14 Q You don't want to?

15 A But I don't want to.

16 Q No. The only way that you could get out of
17 spending at least 30 years day for day, up to two life
18 sentences plus 150 years in prison is the power of
19 Ms. Sampson, correct?

20 A No, ma'am.

21 Q No?

22 A No, ma'am.

23 Q There's a ---

24 A I mean, I understand where you're going, but no,
25 ma'am. Ms. Sampson didn't promise me, offer me

1 anything. As far as I'm concerned, I'll get the same
2 punishment that Mr. Wallace will get.

3 Q But you know that she has the power to give you a
4 deal later, don't you?

5 A No, ma'am, I don't because she never mentioned
6 anything to me about it.

7 Q Your lawyer hasn't told you that she has the
8 power to reduce those charges?

9 A No, ma'am.

10 Q And your lawyer hasn't told you that she has the
11 power to dismiss those charges?

12 A No, ma'am, she didn't.

13 Q I think you need to speak with your lawyer some
14 more about that. The life, plus life, plus 150 years
15 is what you're facing, right?

16 A Yes, ma'am.

17 Q Now, you've told people at Alvin S. Glenn you're
18 getting 15, haven't you?

19 A No, ma'am, I haven't.

20 Q You haven't told that to any of the officers down
21 at Alvin S. Glenn?

22 A No, ma'am, I haven't.

23 Q Okay. Let's talk what about you did say to this
24 jury. Now, when you said that Mr. Wallace went in
25 armed with the AK-47 to the apartment?

1 A Yes, ma'am.

2 Q How big was that?

3 A (Indicating.) Big.

4 Q This big? (Indicating.)

5 A About that big.

6 Q About this big? (Indicating.)

7 A Yes, ma'am.

8 Q And it's got the clips that come down?

9 A Yes, ma'am.

10 Q So it's about this big? (Indicating.)

11 A Yes, ma'am.

12 Q And you mentioned --- now, you mentioned him
13 handing you a gun?

14 A Yes, ma'am.

15 Q He handed you the gun that he found in the
16 apartment, according to your testimony, correct?

17 A Yes, ma'am.

18 Q Okay. And that was the same gun you used to
19 shoot Raquel Weston?

20 A No, ma'am. It's not.

21 Q You didn't just testify on direct that that was
22 --- that you had put the gun in the car, left the gun
23 in the car?

24 A I left that gun in the car. He gave me another
25 gun, which was the same gun that he shot the victims

1 with, that's the gun he gave me to shoot Raquel Weston
2 with.

3 Q Were you in the apartment when --- according to
4 your testimony, you were not in the apartment?

5 A No, ma'am. I had left out of the apartment.

6 Q That ---

7 A When I left, the victims was alive.

8 Q How do you know what gun he would have used?

9 A Because I had the gun that came out of the
10 apartment.

11 Q So he handed you the AK-47?

12 A No, ma'am.

13 Q How do you know what gun was used to shoot the
14 victims inside the apartment?

15 A Because I had the gun that came out of the
16 apartment on my person. He --- it was two separate
17 handguns, ma'am.

18 Q Uh-huh. How do you know what kind of gun was
19 used to shoot --- what gun was used to shoot the
20 victims in the apartment if you were not in the
21 apartment?

22 A Because I had the other gun on my person.

23 Q How do you know he didn't use the AK-47?

24 A I don't know, because I don't know if he used the
25 AK-47. I'm not sure. I wouldn't think that he would

1 use a AK-47.

2 Q So you don't know?

3 A I'm pretty sure he didn't use the AK-47.

4 Q You're speculating on that?

5 A No, ma'am. I'm not speculating on that.

6 Mr. Wallace had shells in his hand, shells that came
7 from ---

8 Q Have you told anybody that?

9 A Did I tell anybody that? This is what I seen.

10 Q Okay. But prior to today, have you said that?

11 A No, I didn't.

12 Q Okay. So you don't think he would have used the
13 AK-47 in the apartment?

14 A It wouldn't be likely that he would.

15 Q Or you know that he wouldn't use it?

16 A I just know he didn't.

17 Q You just know?

18 A Yes, ma'am.

19 Q That that's not what was used to shoot Mr. Pratt
20 and Mr. Johnson?

21 A Mr. Wallace showed me shells in his hand that
22 came from the handgun.

23 Q Okay. And that's how you know ---

24 A Yes, ma'am.

25 Q --- what was used?

1 A Yes, ma'am.

2 Q Okay.

3 Q Now, you testified earlier that Mr. Pratt,
4 Mr. Johnson, and Ms. Weston were all tied up with
5 trash bags, correct?

6 A Yes, ma'am.

7 Q And when you left the apartment, they were all
8 alive?

9 A Yes, ma'am.

10 Q And they were still tied up?

11 A Yes, ma'am.

12 Q Okay.

13 A Not --- except for Ms. Weston.

14 Q Ms. Weston was not tied up?

15 A No, she wasn't.

16 Q You tied Ms. Weston up, correct?

17 A I did, but I didn't tie her up where she was
18 bounded. I put the trash bag on her hands. When she
19 got up to move, it came off.

20 Q Okay, and you did that because you didn't want to
21 participate in this, right?

22 A Yes, ma'am.

23 Q And when you left the apartment, the only thing
24 that you took with you was the nine millimeter that
25 was found in the apartment, correct?

1 A Yes, ma'am.

2 Q So when you left the apartment the AK-47 was
3 still in the apartment?

4 A No, ma'am.

5 Q No?

6 A No, ma'am.

7 Q Okay. Where was the AK-47?

8 A When Mr. Wallace took the suitcase out he took
9 the AK-47 out.

10 Q Did he have it in the suitcase when he took it
11 out or did he just have it in his hand?

12 A I forgot how he took it out, but he didn't come
13 back in with it.

14 Q Just about the AK-47 you said that when you were
15 waiting in the breezeway, you went up the stairs and
16 you were standing in the breezeway and he has got the
17 AK-47 in his hands?

18 A He has the AK-47 in a trash bag.

19 Q In a trash bag?

20 A Yes, ma'am.

21 Q Okay. What color was the trash bag?

22 A Black.

23 Q Okay. And then when he goes down the stairs, he
24 is armed with the AK-47, correct?

25 A Yes, ma'am.

- 1 Q So he approaches Pratt armed with an AK-47?
- 2 A Yes, ma'am.
- 3 Q Where was the handgun at that point?
- 4 A On his person.
- 5 Q You don't know where on his person?
- 6 A No, ma'am, I don't.
- 7 Q Okay. All right, so --- and you keep saying ---
- 8 you keep saying in your, in your direct, that you were
- 9 trying to cancel yourself out, right?
- 10 A Yes, ma'am.
- 11 Q So you're trying to cancel yourself out of what
- 12 was happening?
- 13 A Yes, ma'am.
- 14 Q And that's why you flimsily tied Ms. Weston up,
- 15 right, because you were trying to cancel yourself out?
- 16 A Yes, ma'am.
- 17 Q That's why you went out to the car and moved it
- 18 because you were trying to cancel yourself out of it?
- 19 A I moved the car. I didn't think about moving the
- 20 car. I just moved the car.
- 21 Q And you got in the backseat with Ms. Weston?
- 22 A Yes, ma'am.
- 23 Q And the AK-47 was in the car when you got back in
- 24 it?
- 25 A (No response.)

1 Q When you got in the car, where was the AK-47?

2 A The first time?

3 Q When you got in the car after leaving the
4 apartment?

5 A After I got in the car, the AK-47 was inside of
6 the car.

7 Q Where?

8 A The backseat.

9 Q Was it laid across the backseat?

10 A Laid across the backseat.

11 Q Okay. And did it ever get moved until you got to
12 Palmland after that?

13 A It got moved after we got to Palmland.

14 Q So it was laid across the backseat, and it stayed
15 there until Mr. Wallace took it out of the car at
16 Palmland, correct?

17 A Yes, ma'am.

18 Q And you sat in the backseat after you left the
19 apartments, correct?

20 A Yes, ma'am, I did.

21 Q Because you were trying to separate yourself
22 from --- cancel yourself out, right?

23 A I was trying to separate myself as far as
24 possible.

25 Q Okay. And were you behind the driver's seat or

1 behind the passenger's seat?

2 A I was behind the passenger's seat.

3 Q Okay. So Ms. Weston was behind the driver's
4 seat?

5 A Yes, ma'am.

6 Q And so when they came out, Ms. Weston and
7 Mr. Wallace, according to your testimony, came out
8 together?

9 A Yes, ma'am, they did.

10 Q And he was holding her at gunpoint?

11 A Yes, ma'am, he was.

12 Q Which gun?

13 A The handgun.

14 Q Did he have ahold of her?

15 A Yes, ma'am, he did.

16 Q With one hand. Okay. So he had ahold of her
17 with one hand?

18 A Uh-huh.

19 Q Was it --- which hand did he have the handgun in?

20 A Right.

21 Q Okay. So he was holding her with his left hand?

22 A Uh-huh.

23 Q And had the handgun pointed at her with his right
24 hand?

25 A Yes, ma'am.

1 Q And put her --- or she got in the car in the
2 backseat?

3 A Yes, ma'am, she got in the backseat.

4 Q He gets into the driver's seat?

5 A Yes, ma'am.

6 Q Where does he put the gun?

7 A I don't know. I guess, I would assume he placed
8 it up in his lap or something.

9 Q He wasn't holding it and driving at the same
10 time?

11 A No, ma'am.

12 Q Okay. So he is in the front seat driving. You
13 and Ms. Weston are both in the backseat scared, right?

14 A Yes, ma'am.

15 Q And ---

16 A I can't say if Ms. Weston was scared or not.

17 Q But you were scared?

18 A Yes, ma'am.

19 Q Of course. And there was no way for you to get
20 out of situation that you were in at that point,
21 right?

22 A No, ma'am.

23 Q If there would have been, you would have, right?

24 If there had been a way out, you would have taken it,
25 right?

1 A I had an opportunity to leave Mr. Wallace at the
2 apartment building, but I didn't.

3 Q Right. But you did try to separate yourself or
4 cancel yourself out because you didn't really want to
5 do this, did you?

6 A No, ma'am, I really didn't.

7 Q Okay. And when you got to Beckham Swamp, did you
8 go down the dirt road or were you on the paved road?

9 A We went on the paved road.

10 Q So you never drove on the dirt road?

11 A No, ma'am.

12 Q Did you walk down a dirt road?

13 A No, ma'am.

14 Q So there was no dirt road where y'all were?

15 A I didn't --- it was a dirt road, but we wasn't on
16 it.

17 Q And Beckham Swamp is a paved road, right?

18 Beckham Swamp Road is paved, right?

19 A Yes, ma'am.

20 Q All right. And you took Ms. Weston into the
21 woods without Mr. Wallace, right?

22 A It wasn't woods. It was a patch of woods. It
23 was more like --- more dirt than woods.

24 Q More dirt than woods?

25 A Yes. I believe they were doing some type of work

1 back there, and they didn't quite dry all of the green
2 areas out, and it was like a little mirage.

3 Q A mirage?

4 A Of woods. I mean, I'm just trying to ---

5 Q Like a ---

6 A --- give you a good description of it.

7 Q Right. Okay. But you --- this area where you
8 took Ms. Weston to shoot her?

9 A Yes, ma'am.

10 Q Mr. Wallace was in the car, right?

11 A No, he was outside of the car.

12 Q But he stayed at the car?

13 A Yes, ma'am.

14 Q And you took her in the woods or into this area.
15 You shot Ms. Weston?

16 A Yes, ma'am, I did, and I apologize for shooting
17 Ms. Weston.

18 Q You shot her more than once, right?

19 A Yes, ma'am, I did. I shot her twice.

20 Q You shot her twice. Could you have shot her
21 three times?

22 A No.

23 Q But you didn't intentionally try to harm her, did
24 you?

25 A No, I didn't want to.

- 1 Q You didn't want to?
- 2 A No, ma'am.
- 3 Q You just shot her, right, but you weren't trying
4 to harm her?
- 5 A I harmed her by shooting her.
- 6 Q But you weren't intentionally trying to harm her
7 when you shot her?
- 8 A No, ma'am, I didn't.
- 9 Q Now, when you left there, y'all went back to
10 Palmland, right?
- 11 A Yes, ma'am.
- 12 Q You said as you were leaving out of Palmland that
13 you saw patrol cars?
- 14 A Yes, ma'am.
- 15 Q They were at the corner of Beckham Swamp and ---
16 Bluff Road.
- 17 Q --- Bluff Road, right?
- 18 A Yes, ma'am.
- 19 Q And then you went back to his house and you went
20 back to work that day?
- 21 A Yes, ma'am, I did.
- 22 Q You thought you were going to get something out
23 of this robbery, didn't you?
- 24 A I thought, but I didn't.
- 25 Q You expected to, didn't you?

1 A I expected to, but I didn't.

2 Q Okay. Ms. Sampson asked you --- you didn't call
3 the police that day?

4 A No, ma'am.

5 Q And you said that you were more scared in the
6 beginning to think about calling the police, right?

7 A Yes, ma'am, I did.

8 Q So the reason you didn't call the police is
9 because you were scared?

10 A The reason I didn't call the police is because I
11 didn't want to go to jail, and I was scared.

12 Q Okay. And you didn't talk to the police until
13 several days later, right?

14 A I didn't talk to the police until the police came
15 and apprehended me at my job.

16 Q And that was several days later?

17 A Yes, ma'am.

18 Q Okay. Now, when you first talked to the police,
19 you never told them anything about an AK-47, did you?

20 A No, I don't believe I did.

21 Q Okay. And you never told them about going to
22 William Wallace's grandmother's house and picking up
23 an AK-47 or dropping it off, did you?

24 A I'm not quite sure.

25 Q But you wouldn't disagree that it's not in your

1 written statement, would you?

2 A It's just been so long ago, I cannot remember.

3 Q Okay. When you first talked to the police
4 in 2012, you didn't mention anything at all about a
5 vest, another gun, or a blue suit case, did you?

6 A I'm not quite sure.

7 Q You have your statement up there with you, right?

8 A Yes, ma'am.

9 Q Can you look in there and see if there is
10 anything about a vest, a Tec-9, or a suitcase?

11 A Could you repeat your question?

12 Q Is there anything in your written statement about
13 a vest, a Tec-9, or a blue suitcase?

14 A No, ma'am, not that I see.

15 Q Okay. And there's nothing in there about an AK-
16 47 either, right?

17 A No, ma'am.

18 Q And when --- let me just go back to inside the
19 apartment. I just want to understand how this all
20 played out. When Mr. Wallace, according to your
21 testimony, found the nine millimeter there, he handed
22 it to you, right?

23 A Yes, ma'am.

24 Q And then he tied up Mr. Pratt and Mr. Johnson,
25 Jamal and Athell, right?

1 A Yes, ma'am.

2 Q He moved them to the other rooms, right?

3 A Yes, ma'am.

4 Q When he was tying them up, where was the AK-47?

5 A He laid the gun down.

6 Q Where did he lay it down?

7 A In front of me on the chair.

8 Q In front of you on the chair?

9 A Yes, ma'am.

10 Q Which chair?

11 A The small chair.

12 Q The small chair?

13 A Yes, ma'am.

14 Q Where was the small chair?

15 A In front of the big chair. Not in front of it,

16 but by the big chair. It's in the photo.

17 Q It's in the photo?

18 A Yes, ma'am.

19 Q The small chair is in the photo?

20 A Yes, ma'am.

21 Q This photo?

22 A Yeah. That's the chair, right there. There
23 where your finger is at.

24 Q Right here?

25 A Yes.

1 Q That's the chair?

2 A Yes, ma'am.

3 Q Is that the small chair or the big chair?

4 A That's the small chair.

5 Q That's the small chair, the red --- it looks like

6 a blanket on it?

7 A Yes, ma'am.

8 Q This red blanket right here?

9 A I can't say.

10 Q Does that appear to be the same red blanket here

11 and here? Do you see the small chair in this

12 photograph?

13 A No, ma'am, I don't.

14 Q But it's this right here?

15 A It's there.

16 Q That's --- may I publish these to the jury?

17 THE COURT: What numbers are they?

18 MS. HINES: It is State's 32 and 33.

19 THE COURT: Okay.

20 BY MS. HINES:

21 Q Were you sitting or standing?

22 A Standing.

23 Q So Mr. Wallace put the AK-47 down, tied up Jamal

24 and Athell, put them in the other room, and was

25 managing Ms. Weston?

1 A No, I was managing Ms. Weston.

2 Q You were managing Ms. Weston. Okay. And then
3 eventually you left the apartment?

4 A Yes, ma'am.

5 Q Right. And when you left the apartment
6 Mr. Wallace was there in the apartment with Athell,
7 Jamal and Ms. Weston?

8 A Yes, ma'am.

9 Q Okay. And approximately ten minutes later he
10 comes out with Ms. Weston, right?

11 A I wouldn't say approximately ten minutes later.
12 I don't know what the time frame was.

13 Q Okay. You testified on direct that it was about
14 ten minutes, so it wasn't ---

15 A It could have been ten minutes or ten minutes or
16 longer. I smoked a cigarette. It took me --- after I
17 smoked a cigarette, I stood there and waited.

18 Q Okay. What did you do with the cigarette butt?

19 A I threw it on the ground.

20 Q Okay. And you moved the car up by the gate,
21 right?

22 A Yes, ma'am, I did.

23 Q How close to the gate were you?

24 A Directly in front of it.

25 Q Directly in front of the gate?

1 A Yes, ma'am.

2 Q Is that before or after you smoked a cigarette?

3 A That was after.

4 Q Was the gate open or closed?

5 A It was open.

6 Q And by directly in front of the gate, what
7 approximate distance? Would you say it was one car
8 length away from the gate, within one car length or
9 what?

10 A From here to the back wall where the prosecutor
11 and them sits at.

12 Q You mean this wall?

13 A There.

14 Q There?

15 A There.

16 Q Okay.

17 Q And that would be approximately 30 feet?

18 A I don't know.

19 Q Thirty-five? Once you moved it to the gate, did
20 you get out of the car again?

21 A I got out of the car after I moved it to the
22 gate.

23 Q And stood there?

24 A That's where I stood and smoked a cigarette.

25 Q So you get out of the car. After you moved it to

1 the gate, you got out of the car and stood there and
2 smoked a cigarette?

3 A Yes, ma'am.

4 Q And that's where you dropped the butt?

5 A Yes, ma'am.

6 Q You only smoked one cigarette while you were
7 waiting on them?

8 A Yes, ma'am, I did.

9 Q Okay.

10 MS. HINES: Beg the Court's indulgence just a
11 moment.

12 (Pause.)

13 Thank you, Judge.

14 BY MS. HINES:

15 Q Now, also in your statement, you didn't mention
16 anything about seeing Mr. Pratt come out of the
17 apartment and waiting and then waiting for him to come
18 back, did you?

19 A No, ma'am, I didn't mention that.

20 Q You didn't mention that. You didn't tell it?

21 A I don't believe so. I didn't.

22 Q Okay. You didn't mention finding the nine
23 millimeter in the house, did you?

24 A No, ma'am, I didn't.

25 Q No?

1 A I didn't mention those things because I was still
2 at that point half scared.

3 Q Oh, okay.

4 A Yes, ma'am.

5 Q You didn't mention going to your house, the place
6 where you were staying at on Schoolhouse Road either,
7 did you?

8 A I didn't go there.

9 Q Oh, you didn't go there?

10 A No.

11 Q Okay. But you were staying on Schoolhouse Road
12 at the time with a girl?

13 A Yeah, with one of the girls that I lived with.

14 Q You have talked to some people at the jail about
15 what happened, too, haven't you?

16 A I was approached.

17 Q Do you remember talking to Ronald Martin?

18 A Yes, ma'am, I do.

19 Q And that was in Mike dorm, right?

20 A Yes, ma'am, it was.

21 Q Do you remember telling Ronald Martin that you
22 both had guns?

23 A That we both had guns at one point.

24 Q Do you remember telling Ronald Martin that Jamal
25 struggled going into the other room and that it took

1 both of you?

2 A No, ma'am. That never happened. The only reason
3 I was talking to Ronald Martin is because he had ties
4 with Ms. Weston. I had wrote a letter to Ms. Weston
5 apologizing and asking her to forgive me. He was
6 going to give the letter to Ms. Weston. As far as
7 Mr. Martin's statement, everything Mr. Martin said is
8 a lie.

9 Q Oh, okay. So everything that Ronald Martin has
10 to say is a lie?

11 A Yes, ma'am.

12 Q And everything that you're telling the jury here
13 today is the truth?

14 A Yes, ma'am.

15 Q You've been as honest with them as anyone could
16 be, right?

17 A I've been as honest with them as I possibly can.

18 Q As you possibly can.

19 A Yes, ma'am.

20 Q You said that you got nothing out of this?

21 A No, ma'am. I feel like I'm not going to get
22 anything out of it anyway.

23 Q Do you remember telling Ms. Sampson that ---
24 withdraw that question, but you don't think you're
25 going to get any kind of offer in this case?

1 A No, ma'am, I don't.

2 Q You're not here testifying trying to get rid of
3 this life, plus life, plus 150 years?

4 A No, ma'am I'm not.

5 Q That's not why you're here today?

6 A No, ma'am, I'm not. I'm here because I'm doing
7 the right thing.

8 Q Okay. Because that's what --- you're here to do
9 the right thing?

10 A Yes, ma'am.

11 Q Okay.

12 A I'm trying to correct as much --- do as much
13 right as I possibly can, trying to correct a wrong
14 that I have done.

15 Q So your testimony has nothing to do with the fact
16 that the State, Ms. Sampson, has the power to --- or
17 the discretion to reduce your charges or dismiss some
18 of them or recommend a lesser sentence for you?

19 A No, ma'am, that's not why I'm here today.

20 Q Okay. And you now know that she does have that
21 power, right?

22 A I understand from what you're telling me that she
23 does.

24 Q Just so I understand your testimony, from the
25 time that you walked out of this apartment, you were

1 trying to get separation between yourself and what was
2 going on, right?

3 A Yes, ma'am, I was.

4 Q You were. Even when you were in the apartment
5 when you were tying up Ms. Weston and you tied her
6 real flimsy so she could possibly have a chance of
7 getting away, right?

8 A Yes, ma'am.

9 Q And that was your intention of making those ties
10 as loose as you could and as flimsy as possible so
11 that she would have a chance --- that she could get
12 away if the opportunity arose, right?

13 A Yes, ma'am.

14 Q And then when you got in the car and you got in
15 the backseat with her, and ---

16 A Uh-huh.

17 Q --- and the AK-47 and the nine millimeter, you
18 were still trying to separate yourself from this
19 situation?

20 A As much as possible.

21 Q As much as possible. If you could have helped
22 her get away at that point, you would have, right?

23 A Yes, ma'am, I would have.

24 Q Uh-huh. And when you got to Beckham Swamp Road
25 and you walked out into this mirage clearing wooded

1 area with an armed gun, with an armed weapon, if you
2 could have helped her get away at that point, you
3 would have, too, right?

4 A Because I didn't want to shoot her.

5 Q Because you didn't want to shoot her. You would
6 have helped her get away if you could have?

7 A If I could have.

8 Q But you had no choice but to shoot her twice,
9 right?

10 A Yes, ma'am.

11 Q And that's the truth, right?

12 A Yes, ma'am.

13 MS. HINES: No further questions.

14 THE COURT: Redirect?

15 MS. SAMPSON: I do.

16 THE COURT: How long do you think it will be?

17 MS. SAMPSON: Fifteen?

18 THE COURT: Seriously?

19 MS. SAMPSON: I hope not, but I don't know.

20 THE COURT: All right. Go ahead.

21 REDIRECT EXAMINATION:

22 BY MS. SAMPSON:

23 Q All right. Mr. Diggs, Ms. Hines asked you a
24 whole lot about what you didn't say. Do you still
25 have your statement up there?

1 A Yes, ma'am.

2 THE COURT: Actually let's just go ahead and take
3 a break. Ladies and gentlemen, if you'll retire to
4 your jury room. Do not discuss the case. Keep an
5 open mind. We'll be back with you in about ten, 15
6 minutes. Thank you very much.

7 Everyone remain seated while the jury is
8 dismissed.

9 (WHEREUPON, the jury left the courtroom at 4:23
10 P.M.)

11 THE COURT: All right. Mr. Diggs, can you hear
12 me?

13 THE WITNESS: Yes, sir.

14 THE COURT: You're not allowed to discuss your
15 testimony with anyone including your own lawyer in any
16 way, shape, or form until you're released from the
17 witness stand. Do you understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: So during this break, you are allowed
20 to use the facilities. The deputies can take you
21 whatever they need to in order to accomplish whatever
22 you need to do, but you're not allowed to discuss your
23 testimony in any way, shape, or form with anyone. Do
24 you understand that?

25 THE WITNESS: Yes, sir, I do.

1 THE COURT: Do you have any questions about that?

2 THE WITNESS: No, sir I don't.

3 THE COURT: Thank you very much. Ten minutes.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: All right. Go ahead and bring them
6 in, Mr. Addison.

7 THE BAILIFF: Yes, sir.

8 (WHEREUPON, the jury entered the courtroom at
9 4:39 P.M.)

10 THE BAILIFF: The jury is seated.

11 THE COURT: Thank you very much.

12 I apologize for interrupting you on your
13 redirect. Let's go ahead.

14 MS. SAMPSON: Thank you.

15 BY MS. SAMPSON:

16 Q Mr. Diggs, in cross she talked to you about some
17 things you didn't say. Let's talk to you about some
18 things you did say. Do you still have your statement
19 up there?

20 A Yes, ma'am, I do.

21 Q Now, did you tell them that you went to work at
22 Columbia Farms?

23 A Yes, ma'am, I did.

24 Q And did you tell them that Athell --- that
25 Mr. Wallace called you?

1 A Yes, ma'am, I did.

2 Q Did you tell him that you left?

3 A Yes, ma'am, I did.

4 Q Did you tell them that you went to the apartment?

5 A Yes, ma'am.

6 MS. HINES: Objection, leading.

7 THE COURT: Overruled.

8 BY MS. SAMPSON:

9 Q Did you tell them that you were with Mr. Wallace?

10 A Yes, ma'am, I did.

11 Q Did you tell them that he --- that people got
12 tied up?

13 A Yes, ma'am, I did.

14 Q Did you tell them that Ms. Weston came over?

15 A Yes, ma'am, I did.

16 Q Did you tell them that you had guns when
17 Ms. Weston came over?

18 A Yes, ma'am, I did.

19 Q Did you tell them about Athell getting dragged
20 from one place to another?

21 A Yes, ma'am.

22 Q Did you tell hem about smoking a cigarette?

23 A Yes, ma'am.

24 Q In fact, when you were back in the car, did you
25 tell them about feeling trapped?

1 A Yes, ma'am.

2 Q Okay. You talked about having a gun?

3 A Yes, ma'am.

4 Q And back then, this was done on what day? What

5 date does it say at the bottom?

6 A Twenty-nine ---

7 Q At the very bottom.

8 A July 3rd.

9 Q I'm sorry, can you speak up?

10 A July 3rd.

11 Q July 3rd of what year?

12 A 2012.

13 Q So roughly four or five days after this happened?

14 A Six days.

15 Q Six days and you told them back then that you

16 were involved?

17 A Yes, ma'am.

18 Q And you told them back then --- who did you tell

19 them was with you when you did all this?

20 A Mr. Wallace.

21 Q And back then in 2012, did you tell them that you

22 shot Ms. Weston?

23 A Yes, ma'am, I did.

24 Q Did you tell them that Mr. Wallace was with you

25 when you shot Ms. Weston?

1 A Yes, ma'am, I did.

2 Q Did you tell him that you guys both went into the
3 apartment?

4 A Yes, ma'am.

5 Q She also asked you --- and let me just talk a
6 little bit --- this statement is what, about five
7 pages, I think?

8 A I think so.

9 Q You can look at it. I know it's hard to tell.

10 A Five.

11 Q Okay. Was it like we're doing now where they're
12 asking you questions and you are answering and getting
13 interrupted or is it just a question at a time?

14 A It's a question at a time.

15 Q Okay. Did you sit and review it and think did
16 you tell them everything?

17 A No, ma'am, I didn't.

18 Q Did you lie to them?

19 A I did at one point.

20 Q And why?

21 A Because --- I don't know. I mean, I told them
22 that the clothes that they took from me, I told them
23 that I had wore them, but I didn't wear them.

24 Q And that was what you lied about?

25 A Yes, ma'am.

1 Q And today there are some things you told us. For
2 example, she asked you about how did you know he used
3 the smaller gun, and you said because he had shells in
4 his hand?

5 A Yes, ma'am.

6 Q Is that true?

7 A Yes, ma'am.

8 Q You didn't tell them that back then?

9 A No, ma'am, I didn't.

10 Q If they had asked you that, would you have told
11 them?

12 A Yes, ma'am, I would have.

13 Q Did they ask you how many guns you had?

14 A No, ma'am, they didn't.

15 Q Did they ask you how many types of guns you guys
16 had?

17 A No, ma'am.

18 Q If they had asked you, would you have told them?

19 A Yes, ma'am, I would have.

20 MS. SAMPSON: Beg the Court's indulgence.

21 (Pause.)

22 BY MS. SAMPSON:

23 Q Okay. I just want to clarify some things. She
24 talked to you about the AK-47. Let's clear that up.
25 Who put AK-47 in the car?

1 A Mr. Wallace.

2 Q And that's not in your statement, correct?

3 A No, it's not.

4 Q Did that happen?

5 A Yes, ma'am, it did.

6 Q Where was it when you got back in the car and you
7 guys left the apartments?

8 A It was in the backseat.

9 Q Were you sitting on it or where was it?

10 A It was on top of the suitcase.

11 Q And where is the suitcase?

12 A In the backseat. It was in between me and
13 Ms. Weston.

14 Q Okay. So it's just laying there on top between
15 you and Ms. Weston?

16 A Yes, ma'am.

17 Q She talked about some other things. Did you tell
18 --- in your statement, did you tell the investigators
19 about receiving cell phone calls from family members
20 of Mr. Wallace after you were ---

21 A Yes, ma'am.

22 Q Or after he was arrested?

23 A Yes, ma'am.

24 MS. HINES: Judge, outside the scope of cross.

25 MS. SAMPSON: I'm asking what about in his

1 statement and she went all over his statement.

2 THE COURT: Overruled.

3 BY MS. SAMPSON:

4 Q In your statement, did you tell them about
5 speaking with family members of Mr. Wallace?

6 A Yes, ma'am, I did.

7 Q And who would --- you told them that you spoke
8 with Mr. Wallace's brother?

9 A Yes, ma'am.

10 Q And you told them that he want you to do what?

11 A He wanted me to go to the hospital to finish
12 Ms. Weston.

13 Q That's what they wanted you to --- that's what
14 you were told by Mr. Wallace's brother?

15 A Yes, ma'am.

16 MS. HINES: Objection. That's not in his
17 statement.

18 MR. HAWKS: It's hearsay.

19 MS. SAMPSON: I can go over the statement
20 specifically, if she likes.

21 MS. HINES: And it's hearsay.

22 THE COURT: Let me see it.

23 (Pause.)

24 BY MS. SAMPSON:

25 Q All right. Mr. Diggs, I'm going to have you read

1 --- can you find page three on your statement?

2 A Yes, ma'am.

3 Q Okay. And see the question, "When did you learn
4 that and Bubby --- is that what you called
5 Mr. Wallace?

6 A Yes, ma'am.

7 Q Where Bubby had been arrested. Do you see that
8 question, right here?

9 A Okay.

10 Q Do you see that?

11 A Okay.

12 Q And is it okay if I read to you what it says?

13 A Okay.

14 Q "I didn't know he was arrested until his brother
15 Pooh called me. Pooh told me that his brother told me
16 to handle my end. I told him I didn't know what he
17 meant."

18 A Yes, ma'am.

19 Q Is that what you told the police back in 2012?

20 A Yes, ma'am.

21 Q Is that what happened?

22 A Yes, ma'am.

23 Q Mr. Diggs, when Ms. Hines was asking you about
24 how did you know which gun was used by Mr. Wallace
25 inside of the apartment, how did you know?

1 A Because he had --- he showed me the shells. He
2 had them inside his hand.

3 Q When did he do that?

4 A When he was inside of the car.

5 Q And that's not in your statement?

6 A No, ma'am.

7 Q Is that the truth?

8 A Yes, ma'am. It's the truth.

9 MS. SAMPSON: Nothing further, Your Honor.

10 THE COURT: Recross?

11 MS. HINES: Briefly.

12 RECROSS-EXAMINATION:

13 BY MS. HINES:

14 Q Which hand were the shells in?

15 A I can't recall. I believe it was his right.

16 Q So he had the shells in his right hand?

17 A Yes, ma'am.

18 Q How many shells?

19 A I don't know.

20 Q So when he was walking out of the apartment ---
21 put together what you testified to earlier and what
22 you're testifying to now, he was holding Ms. Weston
23 with his left hand?

24 A Uh-huh.

25 Q Holding a gun on her with his right hand?

1 A Uh-huh.

2 Q And had an unknown number of shells in his right
3 hand?

4 A He didn't show me the shells until after he was
5 inside of the car.

6 Q And they were in his right hand when he showed
7 them to you?

8 A Yes, ma'am.

9 Q And when you talked to law enforcement on the 3rd
10 of July 2012, you told them the truth?

11 A Yes, ma'am.

12 Q Just like you've told the truth to this jury
13 right here about everything you've said today?

14 A Yes, ma'am.

15 MS. HINES: No further questions.

16 THE COURT: All right. Thank you, Mr. Diggs.
17 You may step down.

18 All right. Call your next witness.

19 MR. EATON: Tashonda Toatley.

20 TASHONDA TOATLEY,
21 after being duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness stand.
23 State your full name for the record.

24 THE WITNESS: Tashonda Toatley.

25 DIRECT EXAMINATION:

1 BY MR. EATON:

2 Q Ms. Toatley, how do you know William Wallace?

3 A I was his schoolmate, high school, middle school.
4 We went to school together.

5 Q And in 2012, what was your relationship with him
6 then?

7 A Friend.

8 Q And where did you live in 2012?

9 A 1432 Aralia Drive.

10 Q Where is that, more or less?

11 A South Beltline, Rosewood area.

12 Q Off of Rosewood?

13 A Uh-huh.

14 Q Is that a house or apartment?

15 A Apartment R-2.

16 Q Okay. Did you see --- how do you know him as ---
17 what name do you call him?

18 A Bubby.

19 Q Did you see Bubby on June 28th?

20 A Yeah.

21 Q And when did you see him?

22 A He had a key to my home, and we had a
23 disagreement, so I left my home. He was there.

24 Q Okay. What disagreement? You mean that day or
25 some previous day?

1 A Previously.

2 Q Previously?

3 A He said he lost my key, but he came to my home.

4 Q On the 28th?

5 A Uh-huh.

6 Q Do you remember about what time that was?

7 A About 12, one o'clock.

8 Q And you were at home?

9 A Yeah.

10 Q And what happened?

11 A I was leaving and he stayed, so I didn't see him
12 until no time after that.

13 Q So he knocked on the door?

14 A He had a key to my home. He unlocked the door.

15 Q He walked in?

16 A He walked in.

17 Q Did you all talk?

18 A No, we didn't say any words, because I was on my
19 way out the door anyway.

20 Q Did you see him go anywhere in the house?

21 A No, I immediately left the house once he came.

22 Q Later, did you get any calls from his family
23 members?

24 A Yes.

25 Q Who was calling you?

1 A I didn't get a call. I didn't answer the phones,
2 but I received calls from his sister.

3 Q Uh-huh and what was she saying?

4 A I didn't answer the phone.

5 Q No voice mails?

6 A Voice mails --- I don't recall what it was
7 saying, something regarding him.

8 Q And did you call law enforcement later on?

9 A Yes. Once I returned to my home, because I hade
10 seen on the news, had caught the news, so I was in
11 fear to go back home. I didn't return to my home
12 until the next following week.

13 Q Then when you returned home?

14 A I returned home, sat on my bed and a gun was
15 found.

16 Q What do you mean a gun was found?

17 A A gun was under my bed.

18 Q You felt it?

19 A Uh-huh.

20 Q And what did you do? You looked under the
21 mattress?

22 A Once I sat down, yeah, I looked under the
23 mattress. I never owned a gun.

24 Q What did you see when you pulled the mattress up?

25 A A gun.

1 Q How was it?

2 A There's a gun.

3 Q Okay. Was it just --- was it by itself?

4 A Yeah.

5 Q Was there anything else there?

6 A No.

7 Q Was there a magazine?

8 A No.

9 Q Do you know what a magazine is?

10 A No.

11 Q And so you called law enforcement?

12 A Uh-huh.

13 Q Did they come over?

14 A Yes.

15 Q Did you show them the gun?

16 A Yes.

17 Q Did they take it?

18 A Yes.

19 MR. EATON: I beg the Court's indulgence, Your
20 Honor.

21 (Pause.)

22 BY MR. EATON:

23 Q Now, did you give a statement to Investigator
24 McDonald?

25 A Yes.

1 MR. EATON: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes.

4 BY MR. EATON:

5 Q Could you take a look at this ---

6 MR. HAWKS: Objection.

7 THE COURT: Yes. You haven't laid the proper
8 foundation.

9 BY MR. EATON:

10 Q Do you remember everything that you told
11 Investigator McDonald?

12 A No.

13 Q Would looking at your statement help you remember
14 what you said to him?

15 A Yeah, if I can see that.

16 MR. HAWKS: Objection, Your Honor. He has to ask
17 a question.

18 THE COURT: That's correct.

19 BY MR. EATON:

20 Q Did you tell Investigator McDonald what Latoya
21 told you over the phone when she called you?

22 A I may have.

23 Q Do you remember what?

24 A It's been a while, so I don't recall.

25 Q That's fine. Do you remember what you told him

Cross of Toatley by Hawks

1 that she said?

2 MR. HAWKS: Objection, Your Honor. That would be
3 hearsay.

4 THE COURT: Sustained.

5 BY MR. EATON:

6 Q Do you remember if the gun was in a plastic bag?

7 A I don't recall. It may have been.

8 Q Thank you.

9 MR. EATON: No further questions.

10 THE COURT: Cross?

11 MR. HAWKS: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. HAWKS:

15 Q Good afternoon, Ms. Toatley.

16 A Good afternoon.

17 Q So Mr. Wallace just appeared in your apartment?

18 He didn't knock on the door?

19 A No.

20 Q You didn't think that was odd?

21 A Yeah, I did. Due to the fact we had an argument
22 recently and I had asked for my key. He said he had
23 lost the key, so due to the disagreement we had, we
24 were already on bad terms, so I just automatically
25 left my house because I didn't want any confrontation.

1 Q So you thought it was odd, but you didn't ask him
2 any questions?

3 A No.

4 Q You didn't talk at all?

5 A No.

6 Q Did he have anything in his hands?

7 A Not that I recall. Like I said, I was on my way
8 out anyway.

9 Q So he had nothing in his hands and you didn't
10 exchange any words?

11 A No.

12 Q And you didn't inquire as to that visit
13 afterwards at all? You didn't call him or anything?

14 A No.

15 Q And all you found was a gun?

16 A Yes.

17 Q So you --- that day when you left, you didn't
18 come back to your apartment for approximately how many
19 days?

20 A Until the next following week.

21 Q Okay. Where did you stay?

22 A At my grandma's house.

23 Q And that was because you were afraid?

24 A Not necessarily afraid. I just didn't, you know,
25 want the --- once I found out --- like I said, through

1 the news, yeah. I didn't want to return to my home,
2 and he was there ---

3 Q The news didn't say that he was arrested?

4 A I just seen that it was --- something was done.
5 I didn't know whether he had --- even though he may
6 have been arrested or whatever, I didn't know. I just
7 didn't want to get myself into any of it.

8 MR. HAWKS: Beg the Court's indulgence.

9 (Pause.)

10 I have nothing further, Judge

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION:

13 BY MR. EATON:

14 Q Ms. Toatley, you're sure that gun didn't belong
15 to you?

16 A No, sir, I never owned a gun in my life.

17 Q Thank you.

18 MR. EATON: No further questions.

19 THE COURT: Anything further?

20 MR. HAWKS: Nothing, Judge.

21 THE COURT: Have a nice day, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Call your next witness.

24 MR. EATON: Thank you. The State calls

25 Investigator Isenhoward.

1 KEVIN ISENHOWARD,
2 after being duly sworn, testified as follows:

3 THE CLERK: Please have a seat. State your full
4 name.

5 THE WITNESS: Kevin Isenhoward.

6 DIRECT EXAMINATION:

7 BY MR. EATON:

8 Q Is it Sergeant Isenhoward?

9 A It is.

10 Q Sergeant Isenhoward, where do you work?

11 A I work for the Richland County Sheriff's
12 Department, Major Crimes Unit.

13 Q And what are your duties there?

14 A I supervise the Major Crimes Unit. My unit is
15 responsible primarily for robberies and homicide.

16 Q What was your involvement with this case?

17 A I responded to an area to assist on Bluff Road
18 where one of the victims had waved down a passerby.
19 She had been transported, and I initially met with the
20 person who had located her and spoke with him, I then
21 responded to the hospital a few times.

22 Q And when you responded to the hospital, what did
23 you do there?

24 A The first time was immediately after I had
25 responded to Bluff Road as she had been transported.

1 I went to the hospital to see, you know, if she was in
2 a condition --- what kind of condition she was in, was
3 she able to talk. Investigator Boland had also been
4 there.

5 When I arrived, she was being treated, so there
6 was not --- an extended conversation was not going to
7 happen. While there, I learned the identity of the
8 offender that she had provided.

9 Q Did you do a lineup?

10 A We did. Again, she was being treated that day
11 for some substantial injuries. We responded the next
12 day to the hospital, met with her and her mother, I
13 believe, and showed her a lineup.

14 Q And who did she identify in that lineup?

15 A She identified William Wallace.

16 Q At this point, was she able to write?

17 A She was having difficulty writing, and she was
18 able to --- as I recall, identify him for us basically
19 by pointing.

20 Q Did she hesitate?

21 A No, not at all.

22 Q Was she lucid?

23 A She was. She was clear headed. We had a
24 conversation about the event, and what had happened.
25 There were no problems, in fact, given what she had

1 been through that she was able to communicate as well
2 as she had.

3 Q So she was coherent?

4 A Absolutely.

5 Q Confident in what she was saying?

6 A Absolutely. I got the feeling that this was a
7 known person that she had interaction with.

8 MR. HAWKS: Objection, Your Honor. Speculation.

9 THE COURT: Overruled.

10 BY MR. EATON:

11 Q And what else did you do in the course of this
12 investigation?

13 A Not a lot. I did respond to --- after that, I
14 responded back to the sheriff's office where an
15 interview had been conducted with other detectives,
16 and I had brief interaction with Mr. Wallace after he
17 was located.

18 Q Did you participate in that interview?

19 A Briefly. I challenged him on some of the ---
20 some of the --- his statement he provided to the other
21 investigators, primarily Major Smith, based on my
22 conversation with Raquel, basically chopping up his
23 statement, and what I found to be hard to believe.

24 Q And how did that challenge go?

25 A He initially --- he provided a statement that he

1 was, I believe --- driving down Rosewood drive, seen
2 some people he knew, flagged them down or they flagged
3 him down and he --- they wanted to go to Athell's
4 house, and he went out there with them and sat in the
5 car and obviously after speaking with Raquel, I knew
6 that wasn't the truth.

7 You know, I just challenged him on that. I said
8 his statement was a lie.

9 Q How did he react?

10 A He did not change his statement. He sort of shut
11 down shortly thereafter.

12 Q Okay. Do you remember doing anything else of
13 significance in this investigation?

14 A The majority of my experience or involvement in
15 the investigation was that response to the hospital
16 and to assist as far as transporting some other people
17 --- looking at some people not involved in it.

18 MR. EATON: Thank you, Sergeant all --- Sergeant
19 Isenhoward, excuse me.

20 THE COURT: Cross?

21 MR. HAWKS: May it please the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION:

24 BY MR. HAWKS:

25 Q How many times did you go see Ms. Weston?

1 A Twice.

2 Q And the first time was right after the incident?

3 A Yes.

4 Q And then the following day with her mother there?

5 A Yes, McDonald and I went there.

6 Q And were you alone the first time?

7 A Investigator Boland was there.

8 Q Do you know if she had received any anesthesia?

9 A Which time?

10 Q The first time.

11 A I can just tell you that the second trip when I
12 had the extended conversation with her, she was
13 absolutely coherent and described the event in great
14 detail and, based on my experience, was providing her
15 knowledge of the event clearly, concisely, and
16 accurately.

17 Q But you don't know if she had been anesthetized
18 at that point?

19 A I don't know.

20 MR. HAWKS: Beg the Court's indulgence.

21 (Pause.)

22 Nothing further.

23 THE COURT: Redirect?

24 MR. EATON: Nothing further, Your Honor.

25 THE COURT: All right. Have a good day.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you, Sergeant.

3 All right. Any other witnesses tonight?

4 MS. SAMPSON: Do we need to approach?

5 THE COURT: Sure.

6 MS. SAMPSON: We sent...

7 (WHEREUPON, a bench conference was held in the
8 presence, but not within the hearing of the
9 jury.)

10 THE COURT: Okay. Ladies and gentlemen, we're
11 going to go ahead and break for the evening. We've
12 been through a number of witnesses today. You've done
13 a good job of staying with us and staying awake and
14 paying attention, and the court certainly appreciates
15 that as I know all the parties do throughout this
16 case.

17 Now, let me remind you, you will recall that I
18 previously told you in great detail about how you must
19 decide this case solely on what happens in this
20 courtroom, the evidence presented in the courtroom,
21 and the law that I will give you at the end of the
22 case.

23 Because we are about to break for the evening, I
24 want to remind you again that you are not to engage in
25 any form of social media or internet or research or

1 the newspaper or Facebook or Twitter or any type of
2 electronic device to get or send any type of
3 information about this case. You are not allowed to
4 discuss this case with anyone, including friends or
5 family members or even each other.

6 At the beginning of this case you made that
7 commitment not only to each other, but to the parties
8 and the Court. The Court expects you to maintain that
9 admonition that I provided you from the very beginning
10 of this case. Do not discuss the case this evening
11 with anyone in any way, shape, or form. Do not watch
12 any news accounts about the case in any way, shape, or
13 form, and we will see you back here tomorrow morning
14 with an open mind and ready to go, and we'll start at
15 9:30, and thank you very much for your service.
16 Remember tomorrow I'm going to order in lunch.

17 There's only three places to pick from, one of
18 which most of the courthouse staff doesn't like, so we
19 really narrow it down to two, but we are going to get
20 you lunch tomorrow for your hard service this week, so
21 just for your planning purposes you can plan on that.
22 Thank you very much. Have a good night.

23 (WHEREUPON, the jury left the courtroom at 5:07
24 P.M.)

25 THE COURT: All right. Anything substantive

1 before we break?

2 MS. SAMPSON: Nothing from the State.

3 MR. KRZYSTON: Nothing from the defense, Your
4 Honor.

5 (WHEREUPON, Court was adjourned for the day.)

6 August 14, 2014

7 (WHEREUPON, Court's Exhibit Numbers 6 and 7 were
8 marked for identification only.)

9 THE COURT: Did you get to shave?

10 THE DEFENDANT: (Nods in the affirmative.)

11 THE COURT: Did they let you shave?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I did what I could last
14 night to try make sure that happened, but if something
15 happens again, you let your lawyers know, and I'll
16 deal with that with the jail.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. We're back on the record.
19 I have two juror notes this morning. One is Court's
20 Exhibit Number 6. They are looking for an estimated
21 time that we'll get finished tomorrow, and one that
22 says she has to --- I don't know if it's male or
23 female, the second note asks if they could be done by
24 5:30 tonight. That's all they are. Those are Court's
25 Exhibits Number 6 and 7 that I received this morning.

1 Ms. Sampson?

2 MS. SAMPSON: Just briefly, Your Honor, I believe
3 I placed up there two charges.

4 THE COURT: I saw them.

5 MS. SAMPSON: And I e-mailed them to Your Honor,
6 as well.

7 THE COURT: Okay.

8 MS. SAMPSON: And I gave a copy to the defense.
9 It's just a hand of one charge and an expert witness
10 charge.

11 THE COURT: Do you know what email you e-mailed
12 them to?

13 MS. SAMPSON: Robert Hood at that ---

14 THE COURT: Oh, it's rhoojd.

15 MS. SAMPSON: It might not have gone. I'll get
16 it done at the next break. I didn't ask for anything
17 else, but in the email, I did say whatever your
18 standard direct and circumstantial and reasonable
19 doubt and the law. That was it, but I'll make sure I
20 send it again. I'm sorry about that.

21 THE COURT: All right. What else?

22 MS. SAMPSON: That's it from the State.

23 THE COURT: Mr. Krzyston?

24 MR. KRZYSTON: Nothing from the defense, Your
25 Honor.

1 THE COURT: All right. Very good. To the
2 audience members, the bailiffs are still having issues
3 with you still using your phones, getting messages,
4 and leaving and coming and going. That's extremely
5 distracting, so I need --- if you're going to be in
6 here, you need to be in here and you don't need to be
7 on your phone. If you want to be outside, where you
8 can use your phone that's fine, but the going in and
9 out, going in and out, going in and out needs to slow
10 down. It's distracting even to me, so I'm sure it's
11 distracting to the jurors. Okay. Bring them in.

12 (There was no response.)

13 THE COURT: Mr. Hollis?

14 THE BAILIFF: Yes, sir.

15 THE COURT: Can you bring in the jury?

16 (WHEREUPON, the jury entered the courtroom at
17 9:51 A.M.)

18 THE BAILIFF: The jurors are all present, Your
19 Honor.

20 THE COURT: All right. Welcome back. Thank you
21 for being on time. I didn't know about the third
22 option for lunch. They change things on me all the
23 time. I'm glad you got a third option.

24 All right. Call your next witness.

25 (WHEREUPON, State's Exhibit Numbers 127 and 128

1 were marked for identification only.)

2 MR. EATON: The State calls Michael Beeler.

3 THE COURT: All right.

4 MICHAEL BEELER,

5 after being duly sworn, testified as follows:

6 THE WITNESS: Investigator Michael Beeler.

7 DIRECT EXAMINATION:

8 BY MR. EATON:

9 Q Investigator Beeler, where do you work?

10 A I work for the Richland County Sheriff's
11 Department in the crime scene unit.

12 Q And what are your duties there?

13 A The general duties include responding to all
14 types of crimes in Richland County, documenting,
15 taking photographs, collecting, processing and
16 submitting evidence items to our evidence division to
17 our evidence division to be forwarded to other various
18 divisions to be processed.

19 Q What's your involvement in this case?

20 A In this case, I responded to the Richland County
21 morgue and attend the autopsy of two gentlemen down
22 there.

23 Q What did you do there?

24 A This would have been on July 30th of 2012.

25 Q Thank you. What were you doing?

1 MS. HINES: Judge, I think that he's reading. I
2 don't think a foundation has been established for
3 that.

4 THE COURT: It hasn't.

5 BY MR. EATON:

6 Q Do you remember what you did there?

7 A I would need to look at my notes. I go to many,
8 many crime scenes in Richland County and take lots of
9 notes.

10 Q Understood.

11 A That's the purpose of that.

12 Q Would your notes help refresh your memory about
13 this?

14 A Yes, they would.

15 THE COURT: All right. Keep going.

16 BY MR. EATON:

17 Q What did you do when you got there?

18 A I made contact with Dr. Marcus, the assistant
19 pathologist there, Devenish, and Deputy Coroner Boone
20 at the morgue.

21 I began taking photographs, taking notes and at
22 the end of it collecting several items through the
23 chain of custody from Dr. Marcus.

24 Q And what items did you collect there?

25 A There were two different autopsies from F(A) (1)

1 2-142, Mr. Pratt, and I collected a projectile and
2 from ---

3 Q Where was that projectile?

4 A The projectile was recovered by Dr. Marcus in the
5 right side of the head, the temporal cerebrum, and
6 these are the terms that I got from Dr. Marcus with
7 his certification, not mine.

8 Q What else did you collect?

9 A For autopsy F(A) (1) 2-143, Mr. Johnson, I
10 collected a --- the projectile lead and the projectile
11 jacket through the chain of custody on both of these
12 from Dr. Marcus.

13 Q If I may approach. I'm handing you what --- for
14 the record, just so we're clear a bag that was marked
15 for identification as State's Exhibit 85, which was
16 never admitted into evidence, inside that are what's
17 marked for identification as State's Exhibits 127 and
18 128.

19 Q Would you look at all that please and tell the
20 jury what it is?

21 A This is --- at one point it was a sealed
22 envelope, enveloped by me, label filled out, ballistic
23 containing projectile from Pratt, projectile lead from
24 Johnson and a jacket from Johnson, and it has two
25 sealed envelopes inside.

1 Q And what are those?

2 A One of them is labeled "projectile right side
3 temporal cerebrum from Pratt" and then the other one
4 inside the envelope is two more listed "projectile
5 from Johnson, the lead from the left frontal lobe and
6 jacket from --- projectile jacket from Johnson and
7 jacket from the right occipital area."

8 Q And you submitted those to evidence?

9 A Yes, sir, I did.

10 Q Where did you submit them?

11 A I submitted them on the same day, the 30th, at
12 1:50.

13 Q To whom?

14 A This would have been most likely through our drop
15 box at our headquarters.

16 Q Okay. And are --- is the evidence the same as
17 when you collected it from Dr. Marcus and submitted it
18 to the --- sealed it and submitted it?

19 A The packages have been opened and, of course,
20 have y'all's labels on them and other writings that I
21 can only guess came from ---

22 MS. HINES: Objection, speculation.

23 THE COURT: Sustained.

24 BY MR. EATON:

25 Q That's fine. The fragments themselves, the

1 projectiles themselves, can you take a look at those?

2 A No, sir, I can't. These were inside people, and
3 I don't have biohazard gloves to handle them at this
4 moment.

5 Q Would this suffice?

6 A Yes, sir.

7 (Pause.)

8 The envelope labeled Pratt contains a projectile.
9 If I'm allowed to look back at my notes, I will --- it
10 would appear to be the same projectile that was
11 photographed in my notes.

12 Q Do you have more gloves, sir?

13 MR. EATON: Beg the Court's indulgence. This box
14 is out.

15 BY MR. EATON:

16 Q Yes, sir.

17 A We are very concerned about cross contamination.

18 Q I understand. While we're waiting on that,
19 Investigator Beeler, could you tell the jury, and they
20 heard this more than once in this trial about the
21 procedure for collecting that, sealing it and putting
22 it into evidence, please?

23 A As you can tell, we value cross contamination.
24 We take that very seriously, so that everything would
25 be handled with separate gloves to prevent any kind of

1 --- my DNA, the DNA from the two separate cases,
2 getting mixed together. Everything would be
3 packaged --- typically in this case, it would be
4 repackaged from a smaller envelope into a larger
5 envelope, sealed with evidence tape that we will
6 initial and date. Evidence labels were to go on the
7 particular evidence labels, and then they're submitted
8 to our evidence division, either in person or through
9 drop box in lockers that only the evidence people,
10 personnel, have keys to, then I'm sure the evidence
11 technicians or whoever else they have, will go further
12 into how items are checked out through bar codes and
13 stuff like that.

14 Q Did you follow these procedures with this
15 evidence?

16 A Yes.

17 Q Thank you.

18 Here you go, Investigator.

19 A Thank you, sir.

20 (Pause.)

21 The label marked "Projectile Johnson" appears to
22 be lead, and the package labeled "Johnson Jacket"
23 appears to be a projectile jacket, a bullet projectile
24 jacket.

25 Q And they're the same ones that you collected and

1 put into evidence?

2 A Yes, sir.

3 MR. EATON: Your Honor, I'd offer these as
4 State's Exhibit 127 and 128.

5 THE COURT: What about 85?

6 MR. EATON: Eighty-five was previously marked.
7 It was just the external folder.

8 THE COURT: All right. 127 and 128?

9 MS. HINES: I would object to the full chain of
10 custody being established. I would argue that
11 projectiles and jacket are not fungible.

12 THE COURT: Was there testing done on those?

13 MS. HINES: Yes.

14 THE COURT: Okay. So is the chain of custody
15 complete? Has somebody else ---

16 MR. EATON: Investigator Beeler submitted that
17 into evidence and the commander of the evidence room
18 testified yesterday.

19 THE COURT: Right.

20 MR. EATON: The only other person is the expert
21 who will testify today.

22 THE COURT: Then, we'll need to wait until he
23 testifies today.

24 MR. EATON: That's fine.

25 Thank you, Investigator Beeler.

Cross of Beeler by Hines
Direct of Robinson by Coble

1 THE COURT: Cross?

2 CROSS-EXAMINATION:

3 BY MS. HINES:

4 Q In addition to taking those projectiles, you also
5 did fingernail scrapings?

6 A Yes, ma'am, I did.

7 Q And you submitted that for DNA?

8 A Yes, ma'am.

9 They would be in a different envelope because
10 it's different testing.

11 MS. HINES: Okay. No further questions.

12 THE COURT: Okay. Have a nice day, sir.

13 THE WITNESS: Yes, sir.

14 THE COURT: Call your next witness.

15 MR. COBLE: The State calls Investigator Don
16 Robinson.

17 THE COURT: All right.

18 (WHEREUPON, State's Exhibit Number 129 was marked
19 for identification only.)

20 THE BAILIFF: Place your left hand on the Bible,
21 raise your right, face the judge for me.

22 DONALD ROBINSON,
23 after being duly sworn, testified as follows:

24 THE COURT: Thank you. Have a seat in the
25 witness stand. State your full name for the record.

1 THE BAILIFF: Watch your step for me, please, and
2 speak into the microphone.

3 THE WITNESS: My name is Donald Robinson.

4 DIRECT EXAMINATION:

5 BY MR. COBLE:

6 Q Investigator Robinson, where do you currently
7 work?

8 A Richland County Sheriff's Department.

9 Q How long have you been employed there?

10 A Twenty-two years.

11 Q What's your current capacity there?

12 A Current capacity is I have a rank of sergeant. I
13 am a supervisor over our burglary unit in the criminal
14 investigations division.

15 Q What were you doing in June of 2012 at the
16 Richland County Sheriff's Department?

17 A That day I was kind of on patrol out in the lower
18 Richland area. I was over there at the Richland I
19 substation on a follow-up that we were working on with
20 a separate issue. I heard on the radio that Deputy
21 Taylor and other deputies had gotten involved in a
22 situation in an apartment where they believed another
23 crime scene was, so myself and another investigator,
24 another deputy, took off and went over to Deer Meadow
25 Apartments right away and went straight to the

1 apartment.

2 Q This is the apartment, the incident location
3 apartment?

4 A That's correct.

5 Q How many people, by the time you arrived, how
6 many people were there, or were there already
7 responding deputies there?

8 A They were responding deputies. We are all open.
9 I mean, it was --- by the time I got to the door, I
10 believe there are two marked deputies and another
11 investigator. We all generally arrived roughly about
12 the same time, so I mean, around three or four.

13 Q What did you do then?

14 A At that time, we knew that we needed to get into
15 the apartment. We already had --- another deputy had
16 already gone to the office manager to acquire a key to
17 get into the apartment. I had mentioned at the door
18 that we needed to have a camera available. One of our
19 deputies was at the door, had a cell phone and camera
20 in his hand as we went in there. We unlocked the door
21 and then went into the scene.

22 Q Let me pause you right there. Why did you want a
23 camera?

24 A Because we knew through prior experiences that
25 once you get to a scene where you have someone's life

1 is in peril, the EMTs are going to come in. They're
2 going to want to render aid as quick as possible,
3 probably remove the guy, so you want to be able to
4 document what you see right there on the spot, just to
5 document as much as possible because when you get in
6 there, it's so chaotic and so erratic, that you want
7 to take as much advantage as you can to try to get
8 that picture.

9 Q And you entered the apartment then?

10 A We did.

11 Q What did you do from there?

12 A When we walked into the apartment, the first
13 thing we did was clear the first area, which was the
14 den and the kitchen. We didn't see anyone there. We
15 got past that and went to the hallway. The first
16 bedroom on the left is where we saw one of the first
17 victims there laying --- he was laying on --- not
18 really on the floor, but kind of falling off the bed
19 on his side onto the floor.

20 Q Okay. Let me stop you right there. What did ---
21 when you first saw that, what was your reaction to
22 that?

23 A The first thing I saw was --- you can hear, you
24 can tell his life was in extreme peril. You could
25 tell that he was --- it looked like he was dying on

1 the spot. You could hear the death rattle, you could
2 hear he was choking on his own fluids.

3 MR. KRZYSTON: Objection Judge, speculation.

4 THE COURT: Overruled.

5 THE WITNESS: It was rough.

6 BY MR. COBLE:

7 Q Was there any trauma to this victim?

8 A Yeah, he was in pain very bad. He was in very
9 bad condition.

10 MR. KRZYSTON: Objection. Speculation. He
11 doesn't know whether he's in pain or not.

12 THE COURT: He's a police officer with 22 years
13 experience. Overruled.

14 BY MR. COBLE:

15 Q Thank you.

16 A And then we had EMTs coming in right there with
17 us. That's the first place they went, straight to
18 that guy. Then when you look at the rest of the
19 apartment and on to the next room, there wasn't
20 anything there. Inside the bathroom next to that was
21 the second suspect --- or rather the second victim was
22 actually laying in the bathtub there, and he was in
23 just as bad condition.

24 Q As the other victim you found? You didn't find
25 him first though, right, you ---

1 A No. I went to the bedroom first. I believe that
2 was --- I think that was Athell that was in the
3 bedroom and Jamal was the one that was in the bathtub,
4 if I have the names correct.

5 Q Now, after the EMTs left with the victims, what
6 did you do from there?

7 A At that point, we just maintained the remainder
8 of --- we did a sweep of the apartment, just looked
9 around. You could see there was a wheelchair in the
10 front corner of the den, make sure there were no other
11 victims in the house or in the apartment, tried to
12 secure everything, look for any evidence immediately.
13 Really all we did was get them out of there and secure
14 everything.

15 Q Did you do anything outside of the apartment?

16 A We tried to canvass. The first thing we did is
17 we went to the management to try to determine who was
18 the lessee of the apartment and any documentation on
19 the --- from the apartment's angle, if they had any
20 complaints there, any kind of information we could try
21 to learn about the apartment.

22 Of course, we went straight from the beginning.
23 Then we went looking around, knocking on doors,
24 canvassing other apartments, see if anyone heard
25 anything, see if anyone seen anything, try to look

1 around for cars, try to find out what cars are in the
2 parking lot.

3 Q What did you find?

4 A During the day time, there wasn't that many
5 people there. Most of the residents were out working
6 and whatnot. We just wanted to get results from
7 anyone there that heard anything. We didn't get many
8 people to come to the door. The cars that were there,
9 and everything that we could find, we ran the tags and
10 as far as other tenants, they didn't see any cars that
11 were there out of place.

12 Q After you left this incident location, what did
13 you do from there?

14 A Then I went back to --- once we secured
15 everything, we were there for a couple of hours, I
16 guess, making sure everything was under control. At
17 that point, once everything was determined there, we
18 got the lab there to start their process. Then we
19 went back to the office, tried to do a little research
20 and then went for the follow-up on the rest of the
21 case.

22 Q Did you speak with Captain McDonald about this
23 case?

24 A I did. He was the case officer who became the
25 lead on the case, so we just came into a support

1 capacity at that point.

2 Q When was your --- when did you come in contact
3 with the defendant first?

4 A The first time with the defendant was, I believe
5 that Captain McDonald received a phone call, the task
6 force ---

7 Q Let me pause you right there. Could you describe
8 in relation to the time when you left the incident
9 location to when you came in contact with either
10 Captain McDonald or the defendant?

11 A Specifically what time, I couldn't tell you.

12 Q Not specifically, just a range?

13 A It was just a few hours later.

14 Q Where did you go from there?

15 A We received a phone call from the --- the
16 defendant was detained, so we got his car, took off,
17 left from headquarters, went down to, I believe, Bush
18 River and I-20, in that general area at a business
19 there. We rolled up. As we rolled up, the team that
20 had apprehended the defendant was there, and brought
21 him over to the car that we were in, which was Captain
22 McDonald's vehicle.

23 Q Okay.

24 A I was in the backseat and ---

25 Q I'm just going to pause you right there. When

1 you come up on the scene, could you describe how many
2 officers were there?

3 A How many?

4 Q Just approximately.

5 A There were a few. Maybe several. I don't know
6 exactly. I didn't know all the people there, so some
7 of the officers were in plain clothes, so I'm not sure
8 exactly who was an officer and who was --- because it
9 was in a business area. There may have been someone
10 watching us. I didn't know all the people there
11 but...

12 Q When you first saw the defendant was he in
13 custody?

14 A He was, yes. He was in custody. He was brought
15 over to the car. He was placed in the front
16 passenger's seat of Captain McDonald's car, and I sat
17 in the back seat.

18 Q What kind of car was this?

19 A Chevy Tahoe, I believe.

20 Q Was it marked?

21 A No. It was unmarked.

22 Q What happened when the three of you were inside
23 this vehicle?

24 A When we got him in there, we did introductions.
25 Captain McDonald introduced himself and I introduced

1 myself. Captain McDonald was driving in the driver's
2 seat. The defendant was in the front passenger's
3 seat. I was in the rear seat, kind of sitting in the
4 hump in that middle area, just sitting there observing
5 everything.

6 So I leaned in, introduced myself, told him who I
7 was. He acknowledged who we were.

8 Q Would it be correct if that's where you were
9 sitting, Captain McDonald would be here? (indicating.)

10 A Yeah, and I was pretty much at this angle here.

11 Q And the defendant would be here?

12 A Yes, that's correct.

13 Q I'm sorry, you can continue.

14 A At that point, that's when McDonald, after the
15 introductions, he gave him his Miranda warning. He
16 read the Miranda warning verbally.

17 Q Now, without going into specifics of what he
18 said, you've been an officer of 22 years. Was this
19 the Miranda you've always used and heard?

20 A Absolutely it is. It is repetitive. I've
21 probably said it a thousand times.

22 Q What's what Captain McDonald spoke to the
23 defendant?

24 A Yes.

25 Q What was the defendant's demeanor at this point?

1 A His demeanor? I think he was nervous, curious.

2 Q And by curious, what makes you say that?

3 A Well, he was wanting to know why we had him and
4 why we were there.

5 Q So there was a conversation going on between
6 Captain McDonald and the defendant?

7 A A little bit. You know, it wasn't really a whole
8 lot. There was a little bit of conversation of what
9 happened earlier and transpired earlier during the
10 day, and the defendant was giving some story about how
11 he had, I think, his mother's car and he was using it
12 to get some brake parts or it needed brake parts or
13 something to that effect.

14 MR. KRZYSTON: Objection, Judge, just to the
15 extent that we have raised this issue already.

16 THE COURT: All right. Overruled.

17 BY MR. COBLE:

18 Q Now, during this --- when the defendant is
19 talking to Captain McDonald about this, was the
20 captain forcing him to speak?

21 A No, it was a very open conversation.

22 Q Was the defendant responsive to Captain
23 McDonald's questions?

24 A He was. You could tell he was a little bit
25 inquisitive about it, but he was very responsive.

1 Q And about how long was this --- were you all in
2 the Tahoe together?

3 A Before leaving?

4 Q Before leaving, yes.

5 A It wasn't --- maybe five minutes, maybe not even
6 that. We just really went there to get him, get him
7 secured. We really wanted to get him back to
8 headquarters.

9 Q Now, as you were sitting in this vehicle are ---
10 and you said you came from the scene. Where was the
11 scene, in reference to the Tahoe, where was the arrest
12 location scene?

13 A I really don't know.

14 Q Approximately how far?

15 A I wasn't present, so I really don't know.

16 Q When you first came upon the scene and the
17 defendant was there, approximately how far did you
18 walk to the Tahoe?

19 A 10 feet, maybe.

20 Q Were there officers ---

21 A All I know is when I appeared. We were in the
22 car the whole time, never got out. There was another
23 car --- we kind of parked near that car, and I'm
24 deducting that that's the car that the defendant came
25 out of. That's all I really know.

1 Q Where did you go after you left this scene?

2 A We went to our headquarters.

3 Q Okay.

4 A Which was located on Two Notch Road. It's ---
5 5623 Two Notch Road is our address, just on the
6 northeast side of town, maybe a ten minute ride
7 approximately.

8 Q It was the three of y'all?

9 A It was three of us. Before we left, Sergeant
10 Isenhoward came over to the car and was in the apex of
11 the passenger's side door.

12 While I was present, you know, we were talking to
13 him for that brief moment, brief exchange, I remember
14 he just said something like he needed to tell the
15 truth and get his head right or something like that.
16 It was when he was present right there in the apex of
17 the door.

18 Q I need to apologize. What do you mean by the
19 apex of the door?

20 A The apex of the door would be the --- this right
21 here would be the door and you're sitting in your
22 seats. The apex is when you are open the door, that
23 general area. You could stand right there.

24 Q Reaching distance?

25 A Absolutely, touching distance, very close.

1 Q So you all went back to headquarters?

2 A Absolutely.

3 Q What do you do from there?

4 A When we get back to headquarters, we sit him
5 down, brought him in and actually sat him down in
6 Captain McDonald's office. I went with them because I
7 was in the support capacity at that point. So at that
8 point, that's when we sat him down, Captain McDonald
9 started going through the interview process and
10 started asking him questions, a little bit more
11 detailed questioning about what had happened earlier
12 during the day.

13 Q So it's just the three of y'all during --- that's
14 Captain McDonald's actual office?

15 A Yes, it's his office, maybe about the size of ---
16 half the size of the jury panel, maybe a third of the
17 size of the jury panel.

18 Q Was the defendant still in handcuffs?

19 A He was.

20 Q And when just the three of y'all were in there at
21 first, what did the defendant tell Captain Scott
22 McDonald, if you recall?

23 A Well, I mean, it was more --- the acknowledgment
24 that I heard was that, "I don't know what you're
25 talking about, I wasn't around. I wasn't present."

1 It was just denial, denial, denial.

2 Q And then what did you do from there? Did you
3 stay in there?

4 A No. I walked out and left. At that point, Major
5 Smith came in.

6 Q Who is Major Smith, just ---

7 A Major Smith is our major crimes supervisor. He
8 is our second in charge of the investigations
9 division. He is our leader.

10 Q Is he ranked above Captain McDonald?

11 A Yes, sir, he is.

12 Q And so you left?

13 A I left because the defendant wanted to speak with
14 him alone.

15 Q Speak with who alone?

16 A Major Smith, so at that point I stepped out, went
17 back to my office, which is nearby. We're right
18 beside each other, so you can hear everything,
19 roughly, going back and forth, outside of my office
20 just kind of listening and getting an update, see if
21 anything was happening and moving on the case.

22 Q And then approximately how long was it before you
23 went back to the interview --- the office?

24 A Fifteen minutes maybe. Well, I don't think it
25 was that long.

1 Q Okay. And when you went back in, who was in the
2 room at this point when you went back?

3 A Major Smith was in there when I went back in.

4 Q Just he and the defendant?

5 A Well, when he wanted to speak with Major Smith,
6 all of us left.

7 Q Okay.

8 A So apparently once Major Smith talked to him and
9 said, "Y'all come back in, I need you witness this,"
10 then everybody went back in. So myself and Captain
11 McDonald went back in. And then Major Smith walked
12 out. That's when he wanted to go through documenting
13 and getting the statement, et cetera.

14 Q And what happened then?

15 A That's when I whipped out the Miranda form and I
16 presented the Miranda form and I provided him written
17 Miranda. This is when we went through the Miranda
18 process.

19 MR. COBLE: Your Honor, beg the Court's
20 indulgence.

21 (Pause.)

22 MR. COBLE: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, sir.

25 BY MR. COBLE:

1 Q Investigator Robinson, I'm going to show you
2 what's been marked as State's 129. Could you look
3 over this without presenting it to the jury right now?

4 A Yes.

5 Q Without ---

6 A Sorry.

7 Q That's fine.

8 A What this is, this is our departmental policy, a
9 copy of our form of what's called a Miranda warning
10 with a waiver attached to it.

11 Q And what is a waiver?

12 A The waiver --- there are two sections of this.
13 The first section is what's called the Advice of
14 Rights, typically what you may have seen on TV. If
15 you want, I can recite it. It's kind of a little
16 checklist. We go down this list. After we introduce
17 ourselves, "At this point, I'm going to read you your
18 rights. Before we ask you any questions you must
19 understand your rights."

20 THE COURT: Whoa, whoa, whoa. Slow down.

21 BY MR. COBLE:

22 Q Does that form right there fairly and accurately
23 represent the same form that you presented to the
24 defendant on June 28, 2012?

25 A That is correct. It's a copy of it.

1 MR. COBLE: Your Honor, I would now move State's
2 Exhibit 129 into evidence.

3 MR. KRZYSTON: Without objection, Your Honor.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit Number 129 was
6 admitted into evidence.)

7 MR. COBLE: May I publish, Your Honor

8 THE COURT: Yes, just read it slow. She's got to
9 write it all down.

10 BY MR. COBLE:

11 Q If you could start under where it says, "Your
12 Rights." Could you start there, slowly, please?

13 A Sorry. I speak fast sometimes.

14 "Before we ask you any questions, you must
15 understand your rights. You have the right to
16 remain silent. Anything you say can --- anything
17 you say can be used against you in court. You
18 have the right to talk to a lawyer for advice
19 before answering any questions and to have a
20 lawyer with you during questioning. If you
21 cannot offered a with lawyer, one will be
22 appointed to you before any questioning if you
23 wish. If you decide to answer any questions now
24 without a lawyer present, you still have the
25 right to stop answering at any time. You also

1 have the right to stop answering at any time to
2 talk to a lawyer."

3 Here at that point is where he can sign there as
4 being advised of his rights. Also, at that point he
5 was advised --- we also have --- I sign as a witness,
6 and also whoever is there present with me will sign as
7 a witness. In this form here, at that point, he
8 signed there. I signed as a witness and Captain
9 McDonald signed as the other witness.

10 Q So who are the three --- who are the two
11 witnesses of this?

12 A Myself and Scott McDonald.

13 Q Captain McDonald?

14 A Yes.

15 Q And then when you go further down there, are
16 those your signatures again?

17 A Right.

18 Q What are the other signatures on there?

19 A The signatures on the bottom section?

20 Q Where it says Waiver of Rights.

21 A The Waiver of Rights --- do you want me to read
22 the waiver also?

23 Q Please, slowly.

24 A After this --- after we do the Miranda advisement
25 of rights, then next we do the Waiver of Rights. The

1 Waiver of Rights says:

2 "I have read this statement of my rights and I
3 understand what my rights are. I am willing to
4 talk and answer questions. I understand and know
5 what I am doing. No promises have been made to
6 me and no pressure or coercion of any kind has
7 been used against me."

8 I have one specific thing that I do every time I
9 do the Miranda myself. I always underscore twice
10 "coercion" here. I specifically, each time, go over
11 the definition of coercion to make sure it's clear
12 that they understand what coercion is, and after I
13 underscore it twice, I initial again right there
14 acknowledging that I went through that and discussed
15 what coercion is.

16 Q What is your definition of coercion?

17 A What I do is I try to go through --- I guess, the
18 dictionary definition is --- I explain that coercion
19 is to force or to compel someone to do something
20 without them understanding what's going on. I would
21 provide an example of, you're not here in the office
22 and we're not holding you down, not holding a gun to
23 your head making you say something that you don't want
24 to voluntarily say or explain. So I go through that.
25 We're not forcing you, but what you're here to tell us

1 is of your own free will.

2 As I explain that, then I'll sign here, myself
3 again as a witness, and then Scott McDonald signed
4 down here acknowledging. Here, the section on the
5 sides where he would typically sign, he didn't want to
6 sign, so I just put on there and underscored the word
7 declined. I made my note there that he declined to
8 sign.

9 Q So you explained these rights to him, though?

10 A I did, very clearly.

11 Q Now, we were talking about earlier when you and
12 Captain McDonald were in the car together. Are these
13 the same Miranda warnings that Captain McDonald went
14 over with the defendant?

15 A Same warnings, not exactly word for word, but
16 it's the same warnings.

17 Q And you --- let me see that, please. Where it
18 says declined?

19 A Yes.

20 Q Who wrote that?

21 A I did.

22 Q Why did you write that?

23 A Because he declined. He didn't want to sign it.

24 Q And then after he declined, what did you do from
25 there?

1 A After I did that, I listened because they were
2 still talking, very briefly, you know, and while
3 talking to him --- because the plan was to get the
4 statement that he told Major Smith is to get it
5 reduced to writing and get it in written form. That
6 was the plan, and then while I was there, that's when
7 Sergeant Isenhoward actually came into the office.

8 Sergeant Isenhoward knew more about the specifics
9 of the details because I think he had been
10 interviewing Raquel.

11 Q Were you still in the room when Sergeant
12 Isenhoward came in?

13 A I was.

14 Q Were you still there when he spoke along side
15 with the defendant?

16 A I was there for about maybe another two, two
17 minutes. I wasn't there much longer after he came in.

18 Q Now, if you recall, how did the defendant's story
19 change when Isenhoward confronted him?

20 A Well, I don't know the details. I know that he
21 started to ---

22 MR. KRZYSTON: Objection, personal knowledge,
23 Judge. He just indicated.

24 MR. COBLE: Your Honor, he was in the room.

25 THE COURT: I got confused when he said, "I don't

1 know the details."

2 MR. COBLE: Your Honor, we asked ---

3 THE COURT: Go ahead.

4 MR. COBLE: We asked him the difference between
5 the story that he first heard and then how the story
6 changed when Sergeant Isenhoward came in the room.
7 Just trying to explain the difference between the
8 stories, which he was present in the room for.

9 THE COURT: Okay.

10 MR. KRZYSTON: And judge, I believe --- I mean, I
11 understand what Mr. Coble is trying to do, but I
12 believe Sergeant Robinson just indicated that he
13 doesn't remember the details.

14 THE COURT: He can only testify to what he heard
15 Mr. Wallace say in his presence.

16 MR. COBLE: We'll move on.

17 BY MR. COBLE:

18 Q Approximately how long did you stay before
19 Sergeant Isenhoward left, before you left?

20 A I mean, I wasn't in there maybe a minute or two
21 after that.

22 Q Okay.

23 A Because I knew once he comes in with better
24 details ---

25 MR. KRZYSTON: Ob --- withdrawn.

1 THE COURT: Keep going.

2 THE WITNESS: I knew that once another
3 investigator comes in with better details --- there's
4 no need to have too many in there, so I left. If
5 there's no reason for me to be there --- if you have
6 another case officer who comes in with better details.
7 So at that point, I left.

8 Q Did the defendant's story change when Isenhoward
9 came in and confronted him?

10 MR. KRZYSTON: Objection, Judge.

11 MR. COBLE: Your Honor, this is how I rephrase
12 this and not getting into the details. He is
13 explaining it. He heard two stories. He was there
14 when Isenhoward was there.

15 MR. KRZYSTON: If he doesn't remember the
16 details, then he was ---

17 THE COURT: Overruled.

18 BY MR. COBLE:

19 Q Go ahead.

20 A His --- the details were a little different in
21 the fact that he, I think, he started out telling us
22 that he was in the general area, but not anything
23 specific about that incident. That's when I left. In
24 other words, I knew they needed to challenge him more
25 without my presence.

1 Q When you left, was the defendant still speaking
2 Sergeant Isenhoward with Captain McDonald?

3 A He was.

4 Q Is that all that happened with you that day?

5 A Yes.

6 MR. COBLE: Thank you. Nothing further.

7 THE COURT: Cross?

8 MR. KRZYSTON: Thank you, Judge. May it please
9 the Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION:

12 BY MR. KRZYSTON:

13 Q Good morning, Mr. Robinson, how are you today?

14 A Pretty good.

15 Q Looking forward to getting out of here, I'm sure.

16 A I've been up all night for the last couple of
17 nights.

18 Q I won't keep you long, okay?

19 A Thank you.

20 Q I'm kind of going to take you a little bit
21 backwards. When you arrived at Bush River Road, which
22 is the arrest location, you kind of came onto a scene,
23 law enforcement, Ms. Conway was out there, Mr. Wallace
24 was out there?

25 A Ms. Conway?

1 Q Yeah, the lady that Mr. Wallace was riding with.
2 A I have no idea.
3 Q So you didn't see her in handcuffs out there?
4 A No, I have no idea.
5 Q But you got there and Mr. Wallace was already in
6 the Tahoe, correct, or he was being brought over?
7 A He was brought over to the Tahoe.
8 Q You handcuffed him to the Tahoe --- or he was
9 handcuffed to the dash of the Tahoe?
10 A He was handcuffed to the dash?
11 Q Well, he was secured in the Tahoe --- that you
12 testified to at pretrial?
13 A He was handcuffed in the Tahoe. I don't know
14 about handcuffed to the Tahoe.
15 Q Okay. You all went through his Miranda warnings?
16 A Yes.
17 Q The right to remain silent?
18 A Yes.
19 Q The right to have a lawyer present?
20 A Yes.
21 Q The right to say nothing to you all?
22 A Yes.
23 Q But you didn't go over the waiver part, did you?
24 A It was verbally stated to him. We did go through
25 the waiver.

1 Q So again the warning, the right to remain silent
2 and all that?

3 A Yes.

4 Q And then you took him right back to McDonald's
5 office, right?

6 A Yes.

7 Q And that's just kind of --- to give the jury an
8 idea, kind of a smaller office, isn't it?

9 A Is it a small office?

10 Q Yes, as far as offices go. I mean, if you, me
11 and McDonald were in the office, we would be feeling
12 pretty cramped. I don't think we could eat lunch in
13 there together, you know.

14 A Well, to give you, I guess, an estimate about the
15 size of his office, it's --- the area of that table
16 back to the back chair, that's probably about the
17 general square shape of the office. If you take that
18 table and just go to that little barricade or whatever
19 it is over there.

20 Q Okay.

21 A That's about the size.

22 Q It was you?

23 A Yes.

24 Q McDonald?

25 A Yes.

1 Q William?

2 A Yes.

3 Q And Isenhoward?

4 A Later on, yes.

5 Q And who else?

6 A Initially, it was just the three of us.

7 Q Okay.

8 A It was just myself and McDonald ---

9 Q Okay.

10 A --- and Wallace were in there.

11 Q And obviously that office is in Richland County

12 headquarters?

13 A Yes, it is.

14 Q And y'all control the whole building?

15 A Yes.

16 Q And you control what goes on there?

17 A Within reason, yes.

18 Q And you control if there's video equipment in the

19 room?

20 A There is no video equipment.

21 Q Right, but you have the ability to control that

22 or the police have the ability to control that?

23 A It's not even installed.

24 Q Right. But that's their decision, right?

25 A That would be the policy of the department.

1 Q Right. I understand.

2 A Well, without our control. I have no control
3 over that.

4 Q But that's your territory, that's what I'm
5 getting at.

6 A I'm sorry? Territory?

7 Q Yeah. Your building?

8 A I mean, it's just the lay out, the construction,
9 yes.

10 Q And you kind of jumped ahead on me, but there is
11 no video there, no video recording equipment?

12 A The only video there is, I think, at the door.
13 ringing someone in.

14 Q But it's not in McDonald's' office.

15 A No, absolutely. That's another 50 feet away.

16 Q Right. And there's no audio recording equipment
17 there?

18 A That is correct.

19 Q And you guys didn't take any handwritten notes of
20 your conversation between you guys and William, right?

21 A I did not. I don't have any. I don't know about
22 other people.

23 Q Right. Now, you said that William asked to speak
24 to Major Smith, and you and McDonald left, right?

25 A That's correct.

1 Q And you don't know what went on in there?

2 A I do not.

3 Q Okay. The only people that definitively know
4 every word that was spoken in there are McDonald (sic)
5 and William?

6 A Yes.

7 Q And let's go back to the crime scene a little
8 bit, the 8100 Garners Ferry.

9 A Okay.

10 Q You stated that --- now were you in the column of
11 officers that entered initially or were you there
12 shortly thereafter?

13 A No, when I went there I was one of the first ones
14 in.

15 Q So you were in the column?

16 A Yes.

17 Q And you said that right behind you someone had a
18 camera, correct?

19 A Yes.

20 Q That was so that as you were going in you could
21 snap pictures?

22 A Not as we were walking in, mainly to focus on the
23 bodies.

24 Q But prior to EMS's arrival, you want to document
25 the scene, right?

1 A Well, as much as you can.

2 Q Right.

3 A You're trying to go in there to ---

4 Q Find out what's going on, right?

5 A You don't have the time to take all these
6 pictures of an open kitchen and open --- you want to
7 get that secured. That's the first objective.

8 Q But that was a still shot camera, right? That
9 wasn't a video camera recorders, right?

10 A No, that wasn't anything that --- in other words,
11 we had to deal with what was present.

12 Q Right. And you used the cell phone, I think you
13 said? One of the officers did?

14 A I don't know whether it was a cell phone.

15 Q Okay.

16 A It might have been a digital camera. It was one
17 of the uniform deputies that had it. I think it was
18 Deputy Metz, so we had provided those deputies with
19 small digital cameras at that time. This was a couple
20 of years ago. We provided them to use when they go on
21 CDV calls and stuff like that.

22 Q But either way, those devices do have video
23 recording capabilities?

24 A That specific camera, I'm not quite sure. It's
25 been awhile ago. It's not sure.

1 Q 2012. That's pretty recent. Now, after you got
2 in there and realized what was going on with the
3 scene, you guys took pictures, right, before EMS
4 arrived?

5 A This is the way it happened: we went in there,
6 he had the camera. I said make sure you get a picture
7 of those bodies real quick. We wanted to see the
8 bodies. He went in and did that. Then we had EMS.
9 Everything is happening in probably 15 seconds.

10 Q But you didn't take pictures of the rest of the
11 apartment?

12 A That was for the forensics people when they came
13 and documented ---

14 Q So it wasn't important to document that scene
15 before the EMTs arrived?

16 A We got the bodies out. Everything was secured.
17 Nothing else happens. The lab will come in. They
18 will do all their photographing of the scene and all
19 that. In other words, the bodies are out, it's
20 undisturbed.

21 Q Right.

22 A There's nothing else happening ---

23 Q Apart from your presence?

24 A Pardon?

25 Q Apart from you and the column of officers?

1 A Once we go in, and they get the bodies ---

2 Q Okay.

3 A --- we're out when we've secured it, and we don't
4 touch it again.

5 Q Okay.

6 A The lab comes in. They control the processing.

7 Q Correct.

8 A There it's photographed, there it's documented
9 before anything else happens to the actual scene.

10 Q Right, but the purpose of that camera is to
11 document the scene before EMS arrives and before you
12 guys ----

13 A The purpose of that camera at that moment, and
14 you have to understand this is a very rare occurrence,
15 is to get a picture of that body ---

16 Q So it's just to take pictures of ---

17 A --- and try to get the pictures ---

18 Q --- the bodies ---

19 THE COURT: I need you to stop talking over him,
20 Mr. Krzyston. He is allowed to answer his question
21 completely and fully before you ask another question.
22 The court reporter can't take down two people at the
23 same time. The same goes for you, Sergeant Robinson.
24 Mr. Krzyston needs to be allowed to finish his
25 question before you answer it, please.

1 THE WITNESS: Sorry, Judge.

2 THE COURT: Thank you.

3 BY MR. KRZYSTON:

4 Q Go ahead.

5 A The purpose of taking that picture is to document
6 the position of that body as it lays at that moment,
7 to try to preserve that position of the body in that
8 quick condition. That's not a --- you're making it
9 out to be like it's the actual photographing of the
10 crime scene and ---

11 Q Okay. No, no, I'm not trying to say that. I'm
12 just seeing if that was the --- if the purpose of that
13 was to document the scene?

14 A Okay.

15 Q Which you told us already.

16 A Okay.

17 Q Now, you had 22 years as a law enforcement
18 officer, right?

19 A Right.

20 Q And you said you've read those Miranda warnings
21 thousands of times, right?

22 A Right.

23 Q And you said you've arrested hundreds of
24 suspects, right?

25 A Yes.

1 Q You didn't write a report on the scene, did you?

2 A Did I write a report on the scene?

3 Q At 8100?

4 A On the scene, no. The report that I wrote right
5 here is my follow-up report.

6 Q Uh-huh.

7 A This is the one here.

8 Q Right.

9 A And it was ---

10 Q But that wasn't on the scene, right?

11 A No, no, no. That's a follow-up after we go back
12 and get back into the office. The deputies that were
13 there, I don't know who wrote the incident report on
14 the scene.

15 Q You didn't take any hand written notes, right?

16 A No, anything I wrote to acknowledge what I had
17 learned went back straight to this follow-up.

18 Q And McDonald actually wrote this, not you?

19 A McDonald? No, this is something I typed up.

20 Q I'm sorry. I thought you were referencing
21 McDonald's follow-up, not yours?

22 A No, I'm referencing my follow-up.

23 Q That's fine.

24 MR. KRZYSTON: Beg the Court's indulgence, Your
25 Honor.

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. KRZYSTON: Permission to approach the
4 witness, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. KRZYSTON:

7 Q Can I see your report?

8 (Complies.)

9 (Pause.)

10 MR. KRZYSTON: I'm sorry, Your Honor. Just a
11 brief moment.

12 (Pause.)

13 MR. KRZYSTON: Judge, we've got a matter of law.

14 THE COURT: All right. Ladies and gentlemen, if
15 you'll step back to your jury room. Do not discuss
16 the case. Keep an open mind. We'll be back with you
17 in a few moments.

18 THE BAILIFF: Everyone remain seated.

19 (WHEREUPON, the jury left the courtroom at 10:40
20 A.M.)

21 THE COURT: He can stay there.

22 MR. KRZYSTON: Judge, this is the first time
23 we've ever seen this report.

24 THE COURT: Okay.

25 MS. SAMPSON: I don't know what they're talking

1 about. I haven't seen what they're talking about. Is
2 this what you're talking about?

3 MR. KRZYSTON: The entire thing.

4 MS. SAMPSON: That front sheet you have. It's
5 just another sheet, and this is --- it's the same one
6 you have. We gave it to you.

7 MR. KRZYSTON: I understand you, but we don't.

8 MS. SAMPSON: I gave that to you. I can show you
9 the marks. Do you have the list that we gave him?

10 (Pause.)

11 MS. HINES: Judge, we haven't seen this. This is
12 another discovery violation. We have not seen this.

13 MS. SAMPSON: Your Honor, it was given to them
14 without his name on it. We had a meeting, and I had
15 all the discovery. I can show them exactly what I
16 gave them. We showed him a copy without his name on
17 it. I had them write Robinson on the top of it.

18 MS. HINES: Judge, when we had the meeting, we
19 were shown a box that had a stack of papers about this
20 thick. There were items in the box that had --- there
21 were items that we had that were not in the box. We
22 asked to see their notebook. We were told that we
23 couldn't see their notebook. In other cases I've had
24 with the Fifth Circuit Solicitor's Office and with
25 other solicitor's offices, I have been allowed to look

1 at their notebook. We were not allowed to look at
2 their notebook. This is something that we haven't
3 seen. It hasn't been turned over to us. This is yet
4 another discovery violation.

5 MS. SAMPSON: Your Honor, we've gone to get the
6 checklist. It's on the original checklist that we
7 gave them. It's on everything we gave them. The only
8 difference is I did not know whose it was initially.
9 It didn't have his name on the top. It was not typed.
10 We went and asked them which one it was. When they
11 came and looked at the box, it was in the box.
12 Everything was in the box. Then they said we don't
13 have this, we don't have this, and we gave it to them.

14 MS. HINES: This was not in the box when we
15 looked at the box.

16 THE COURT: Define for me ---

17 MS. HINES: We have ---

18 THE COURT: --- the exculpatory information in
19 there. Define for me the impeachment material
20 information in there. Show me something that has
21 something to do with exculpatory evidence or
22 impeachment.

23 MS. HINES: Well, Judge, this says --- let me
24 just read it quickly.

25 THE COURT: Is somebody going to get the

1 discovery checklist?

2 MS. SAMPSON: Yes, I'll have a copy here ---

3 MS. HINES: I have a copy of the discovery
4 checklist, Your Honor.

5 THE COURT: Okay. Give it to Ms. Sampson.

6 MS. HINES: "When we entered the apartment, there
7 was a strong odor of marijuana and two persons in
8 serious need of medical aid. The deadbolt was not
9 locked." We've had testimony already that the
10 deadbolt was locked.

11 THE COURT: I'm looking for exculpatory
12 information.

13 MS. HINES: That would be impeachment.

14 THE COURT: Impeachment of this witness? He
15 hadn't testified contrary to that. No one has asked
16 him.

17 MS. SAMPSON: And, Your Honor, for the record
18 what she handed me is not the last checklist. This is
19 the very first one. It doesn't even have all the DVDs
20 and CDs that they have admitted they have, so this is
21 not the checklist.

22 THE COURT: Has somebody gone to go get that?

23 MS. HINES: Okay. Lieutenant McDonald's report,
24 through statements provided by the female victim, says
25 that she witnessed William Wallace murder both of the

1 victims and tried to kill her. That is different from
2 what we've been told. We've been told in statements
3 from Raquel Weston that she did not witness the
4 shootings of Pratt and Johnson and that Diggs tried to
5 kill her, not our client, so that would be information
6 that would be potentially exculpatory or used
7 potentially for cross-examination, impeachment.

8 THE COURT: Is that in McDonald's report?

9 MS. SAMPSON: Yes, sir.

10 THE COURT: Okay. Then it's not ---

11 MR. HAWKS: Judge ---

12 MS. HINES: I don't believe it's worded that way
13 in McDonald's report.

14 MS. SAMPSON: And for the record, Your Honor, he
15 testified at the pretrial hearing and used the exact
16 same report when he testified at the pretrial hearing.

17 MS. HINES: In McDonald's report it says Weston
18 states after this Wallace went and shot Pratt and
19 Athell, not that she witnessed it, but he went into a
20 separate room that she wasn't in. In Robinson's
21 report it says that she witnessed it.

22 Also, in McDonald's report, it says Weston states
23 that Darryl, who she is calling Diggs Darryl, would
24 grab the gun out of a black cloth Tweety bag that
25 belonged to her. Darryl then began to walk her down

1 the dirt path. Wallace would holler to Darryl to
2 throw the gun in the water. She could see Darryl lift
3 the gun up and shoot her.

4 MS. SAMPSON: That's in McDonald's report.

5 MS. HINES: That is in McDonald's report. It is
6 different from what is in Robinson's report.

7 Robinson's report says she witnessed William Wallace
8 murder both of the victims and tried to kill her.

9 In McDonald's report, it says that Diggs ---

10 THE COURT: Okay. So tell me how you've been
11 prejudiced since she hasn't testified.

12 MS. HINES: We've been --- Judge, we've been
13 preparing the case based on the information that we
14 have. We've been putting in effort. We've been
15 poring over the information that we've been given to
16 prepare our defense, to prepare our case. Now, in mid
17 trial, we're handed an investigator's report that we
18 didn't have.

19 THE COURT: But they say you have it, but ---

20 MS. HINES: Preparation ---

21 THE COURT: --- let's move past that. How have
22 you been prejudiced specifically in the
23 cross-examination of Raquel Weston by the information
24 that you have allegedly just now received?

25 MS. HINES: Judge, I mean, we have this

1 information now, but I think we should have been given
2 the information before.

3 THE COURT: Well, they say they did give it to
4 you before. The question is, now, how have you been
5 prejudiced at this moment? Raquel Weston has not
6 testified, so how have you been prejudiced? How has
7 Mr. Wallace been prejudiced?

8 MS. HINES: We were not prepared for the
9 cross-examination of this witness based on this ---
10 his notes and his testimony.

11 THE COURT: And your cross-examination of this
12 witness isn't over, so... So the answer is that you
13 haven't; is that correct?

14 MS. HINES: Judge, I believe that --- I believe
15 that when we add this to the other discovery
16 violations that we've had, we've had other motions for
17 discovery, I believe that it is prejudicial to the
18 defense, and I move for a mistrial based on ---

19 THE COURT: You can't just say it's prejudicial,
20 Ms. Hines. You have to state the reason why it's
21 prejudicial. Everything in this case that the State
22 intends on introducing against Mr. Wallace is
23 prejudicial. You have to state how it's prejudicial.
24 How is it prejudicial to the defense, since Ms. Weston
25 has not testified.

1 MS. HINES: Because we are --- we have prepared
2 based on the information we were given and we're being
3 thrown more notes, more things mid trial. It affects
4 our ability to defend this case properly and make an
5 informed decision about how to proceed.

6 THE COURT: Okay. Where is the discovery
7 checklist?

8 MS. SAMPSON: Your Honor, I sent them to print it
9 off of Spartan. If you can give us two minutes, they
10 will print it. It will show when we sent it, as well,
11 as --- there's been more than one because we've had
12 this issue so many times. Last time they said they
13 didn't have everything, we got the changes and showed
14 you that it had been sent, so I just need to print the
15 final list.

16 Your Honor, here are copies of the final
17 checklist that we gave them, and I would point Your
18 Honor to number 23 on the final checklist. It says D.
19 Robinson follow-up. This would be D Robinson, that
20 would be his follow-up and that's the same checklist
21 that we showed you prior to where he said about that
22 he knew of 12 things that he said we didn't have and
23 hadn't given them, and this is the final checklist.
24 It's also got the CDs that we sent them. It also has
25 the cell phone sites we sent them. It's longer than

1 the original one because it's the second one we sent.
2 It's got detailed pages of how many things for each
3 page. That's what we started to do because we were
4 having this problem.

5 MS. HINES: I would ask when this was sent.

6 THE COURT: That was my question.

7 MS. SAMPSON: It's been sent twice. I don't have
8 my computer. If you want me to go get it, I will go
9 get it.

10 THE COURT: Go get it.

11 MR. KRZYSTON: I guess I lied. I'm sorry. I'm
12 keeping you a little longer.

13 THE WITNESS: Thank you. I've been short on
14 sleep the last couple of days. Why not a little bit
15 more.

16 (Pause.)

17 MS. SAMPSON: For the record, Your Honor, I went
18 and printed off the email where I sent it on July 2,
19 2014.

20 THE COURT: Thank you, ma'am.

21 MS. SAMPSON: Here is a copy of the attached
22 checklist along with on the email it shows that there
23 was a document attached. It's got a PDF. The PDF is
24 the last checklist that went with it. That's the
25 checklist that went with it. Everything in there is

1 there. That's number 23.

2 MS. HINES: Judge, we would have to look at the
3 PDF to see if it's actually in there.

4 THE COURT: Well, that's your problem. I mean,
5 it was sent to you on July 2nd of 2014. Your
6 inability to go through it, review it, look at it and
7 make sure that every single thing they say is in there
8 is there is no one's fault but your own.

9 I mean, we have now spent north of twenty minutes
10 outside the presence of the jury on day four of a
11 trial over a document that the State has just proved
12 that they provided to the defense.

13 MS. HINES: Okay. Judge.

14 THE COURT: Your motion for a mistrial is denied.
15 Your motion --- whatever the discovery motion is --- I
16 don't even understand what it is, but whatever it is
17 it's denied.

18 Bring the jury back in.

19 (WHEREUPON, the jury entered the courtroom at
20 11:03 A.M.)

21 THE COURT: Take them right back out, Mr. Hollis.
22 They don't need to go back in their room; they can
23 stay in the hallway. This is just going to take one
24 second.

25 (WHEREUPON, a bench conference was held in the

1 presence, but not within the hearing of the
2 jury.)

3 THE COURT: Who is it?

4 MR. KRZYSTON: Lucinda Nelson --- or Lucinda
5 Diggs.

6 THE COURT: Where is Ms. Nelson? Where is Ms.
7 Nelson?

8 THE WITNESS: I'm here.

9 THE COURT: Lucinda Nelson, Lucinda Diggs?
10 You're not allowed in this courtroom. You're a
11 witness on the witness list. Witnesses are
12 sequestered. You will stay out of this courtroom
13 unless you're brought in by a court official or until
14 you testify.

15 Thank you for letting me know. It was the right
16 thing to do. Mr. Dye, if you have a problem ---

17 THE BAILIFF: Not yet.

18 THE COURT: --- you just let me know.

19 All right. Bring them in.

20 (WHEREUPON, the jury entered the courtroom at
21 11:05 A.M.)

22 THE BAILIFF: The jury is all present, Your
23 Honor.

24 THE COURT: All right. Thank you very much. I
25 forgot to answer your question this morning, ladies

1 and gentlemen. We will be out of here way before
2 5:30. Probably close to 5:00 or earlier than that
3 today. As to tomorrow, I can't answer that question
4 just yet until I see how far we make it today. Don't
5 worry about tonight. Whoever has events tonight, we
6 will be out of here in plenty of time for you to make
7 those events.

8 I apologize for that interruption, Mr. Krzyston.
9 You may continue.

10 MR. KRZYSTON: Not at all, Judge. Sorry about
11 that.

12 BY MR. KRZYSTON:

13 Q Now, with the column of officers that you were
14 with prior to entering the apartment, Corporal
15 Moreland was one of them?

16 A There's some of the deputies I don't know.

17 Q Okay.

18 A I'm not sure on Moreland.

19 Q Okay.

20 A I'm not sure.

21 Q But you checked the door first, to see if it was
22 open?

23 A The door was locked.

24 Q Okay. The door was locked.

25 A Not a deadbolt, but the door was locked.

1 Q The door knob was locked, but the deadbolt was
2 not?

3 A Yes.

4 Q You're sure about that?

5 A Yeah.

6 MR. KRZYSTON: Beg the Court's indulgence.

7 (Pause.)

8 No further questions, Your Honor.

9 THE COURT: Redirect?

10 MR. COBLE: Nothing further.

11 THE COURT: Call your next witness.

12 MS. SAMPSON: The State calls Major Stan Smith.

13 THE COURT: All right.

14 STAN SMITH,

15 after being duly sworn, testified as follows:

16 THE WITNESS: James Stanley Smith.

17 DIRECT EXAMINATION:

18 BY MS. SAMPSON:

19 Q Major Smith, you're a major now, right?

20 A I am.

21 Q How long have you been with Richland County?

22 A I started in June of 1984 and with the exception
23 of a couple of years in the private sector in the late
24 '90s, I've been here about 30 years.

25 Q You've gone through the ranks?

1 A I have.

2 Q Now, you're a major?

3 A I am.

4 Q Back in 2012, were you a major?

5 A I believe I was, yes.

6 Q And what are your responsibilities as a major?

7 A Under the criminal investigative division at the
8 sheriff's department, I actually answer to a deputy
9 chief who is directly under the sheriff. I'm
10 responsible for the general administration of cases,
11 supervisors, lieutenant, captains. Sometimes I still
12 get involved in homicides occasionally, as I did in
13 this case.

14 Q I'm going to ask you some policy questions
15 because that's come up today. What is the policy for
16 recording interviews?

17 A We don't tape record or videotape the interviews
18 at the Richland County Sheriff's Department.

19 Q What about audio tape?

20 A No.

21 Q Is that a policy?

22 A It is.

23 Q When you interview witnesses, is there an
24 interview room or where are they normally interviewed?

25 A We don't have the luxury of having formal

1 interview rooms. Generally, it's in an office or
2 cubicle.

3 Q So it's not out of the ordinary to do it in an
4 office where everyone can hear what's going on?

5 A We have enclosed offices for some of the
6 supervisors. The interview in this case took place in
7 one of those offices, but a lot of our detectives do
8 the interviews in cubicles.

9 Q Now, I want to get you back to this date, back to
10 June 28th, 2012. How did you become involved?

11 A I was informed by some of my supervisors that we
12 had a shooting incident, and that a ---

13 MR. KRZYSTON: Objection, foundation.

14 THE COURT: Overruled.

15 THE WITNESS: --- a survivor from this incident
16 had emerged from a wooded area. Based on some reports
17 from her, we returned to a location where in the
18 apartment complex was found two victims who were
19 mortally wounded with gunshot wounds.

20 Q And you were provided with William Wallace as a
21 suspect at that time?

22 A Yes, the survivor was able to relate that full
23 name and, I believe, a nickname, as well.

24 Q And, I believe --- was a search warrant prepared
25 for the apartment complex?

1 A Right. I actually prepared the search warrant.
2 At that time, we weren't sure who all the players were
3 and who may or may not have an expectation of privacy
4 in that apartment complex. So out of an abundance of
5 caution, I prepared a search warrant for the crime
6 scene.

7 Q And you were granted it?

8 A Yes.

9 Q You also prepared a search warrant for a Mercury
10 Marquis, for Ms. Conway's vehicle?

11 A Yes, that was the vehicle that we understood that
12 Mr. Wallace, I understand at the time was in, and that
13 he was actually located in after this incident.

14 Q So you got that?

15 A Yes.

16 Q So at some point you go back to headquarters?

17 A I did both of those at headquarters. Other
18 individuals actually swore to the affidavits in front
19 of the magistrate.

20 Q And I'm going to speed up because the jury has
21 heard a lot of this. At some point, Mr. Wallace is
22 brought to headquarters?

23 A Yes.

24 Q How did you become involved in speaking to him?

25 A It was about 5:30 that afternoon and McDonald and

1 Robinson were interviewing him. As I sometimes do, I
2 was sort of monitoring what was going on. It was a
3 double homicide case. It's big case.

4 Q I'm going to stop you for a second. Was his door
5 opened or closed?

6 A It was closed at the time. I believe I tapped on
7 it or opened it and inquired how it was going and
8 introduced myself.

9 Q Just sort of stuck your head in?

10 A Yes.

11 Q And then what happened?

12 A I think I introduced myself by rank. Then, as
13 sometimes is the case in these situations, Mr. Wallace
14 wanted to speak to me without Robinson and McDonald
15 being there.

16 Q Is that out of the ordinary?

17 A No. It happens a lot. Obviously, there were
18 some problems with the story he was providing at the
19 time and denying total involvement, so he wanted to
20 take it to another individual hoping they would go
21 along with his story.

22 Q Did you know if he had been Mirandized at that
23 point?

24 A I was aware that he had been verbally Mirandized
25 by Captain McDonald, then Lieutenant McDonald.

1 Q And then did he --- do you ask him if he wanted
2 to speak to you or does he ask you?

3 A No, he indicated to me he wanted to talk to me
4 alone.

5 Q Did you allow him to do so?

6 A Yes, I asked those two individuals got the cue
7 and left the office.

8 Q Did you force him to talk to you in any way?

9 A No.

10 Q So what happens once you're alone?

11 A I knew that one of the things that they had been
12 discussing with him was the fact that his cell phone
13 was hitting a tower in close proximity to the crime
14 scene, and that he had been making some statements
15 about being nowhere near there. I think he was
16 indicating he was in the northeast or northern part of
17 Columbia that morning and had not been in that area.
18 We began talking about how his cell phone could have
19 possibly been hitting a tower on Cheval Street, which
20 is off Leesburg Road.

21 MR. KRZYSTON: Objection Judge, pretrial
22 argument.

23 THE COURT: Overruled.

24 BY MR. COBLE:

25 Q So you asked him, "Are you guys talking about the

1 cell phone?"

2 A Yes.

3 Q And what's the conversation?

4 A Yes.

5 Q Before you say anything, you're looking at
6 something. Does having your records help refresh your
7 memory of what took place?

8 A Yes, those are my actual notes, my typed follow-
9 up notes.

10 Q You type those notes on follow-up?

11 A Yes, yes, ma'am.

12 Q So, go ahead?

13 A Basically he denied it a couple more times to me.
14 At some point in time, he did render an account
15 wherein he placed himself at the scene.

16 Q Okay. And what --- how did he place himself at
17 the scene?

18 A He basically said that he had been at his car and
19 saw another vehicle with three individuals in it, and
20 he recognized the driver as Charlie G.

21 Q Okay.

22 A He said that they were in a silver Buick Park
23 Avenue and he wound up explaining to me who Charlie G
24 was. Charlie G was allegedly sort of an adversary of
25 Athell Johnson.

1 Q Athell Johnson, the victim?

2 A Yes.

3 Q Okay.

4 A He went on to explain to me how they were
5 adversaries and he knew about a conflict between the
6 two of them.

7 Q And that's between Athell and Charlie G?

8 A That's correct.

9 Q Okay.

10 A He said he pulled over and got out to talk to
11 these three guys.

12 Q He being William Wallace got out?

13 A Yes, William Wallace. And he actually indicated
14 that the location he pulled over was Cheval Street,
15 which again is the location of the tower, but I don't
16 think he understood that at the time.

17 Q So --- continue.

18 A He said that at some point during the
19 conversation with one of the guys that he didn't know,
20 that he had pulled out a gun and ordered him in the
21 car to basically kidnap him. Then they ordered --- he
22 was ordered to take them to Athell's apartment.

23 Q Okay.

24 A Because apparently he was saying they didn't know
25 exactly where the apartment was. He then went on to

1 explain --- he told me how we could find out who
2 Charlie G was by contacting Athell's attorney.

3 Q Okay.

4 A He identified this guy as Jason Holme and I later
5 learned that to be Jason Hall. He said we could get
6 it --- he actually used the word "discovery." Said
7 that we could get Charlie G's information from
8 Athell's discovery.

9 Q Okay.

10 A He said that after they pulled up to the
11 apartment complex, they spotted Raquel, who again is
12 the survivor in this case, pulling up ahead of them.

13 Q And did he know the relationship? Was he able to
14 explain the relation to you between Raquel and
15 Mr. Johnson?

16 A Yeah, he knew that Raquel was the girlfriend. He
17 said that he pointed out to this crew that had
18 kidnapped him that that was Athell's girlfriend. As
19 he saw Raquel, she saw him and they waved at each
20 other, basically. He said they entered the complex
21 behind her, actually, behind her through a gate. When
22 they got to Athell's building, Charlie G. got out and
23 held Raquel at gunpoint. Charlie G. and the second
24 gunman used her as a way to get into the apartment
25 while the third gunman stayed in the car with him

1 holding the gun on him.

2 He said that at one point he saw the door to
3 Athell's apartment open and nobody exited. Then he
4 heard the shots, is what he said.

5 Q He told you he heard shots?

6 A He said he heard shots.

7 Q Did he tell you he was in the parking lot or
8 where?

9 A Yes, he said he was in the parking lot, in the
10 backseat, I think he said, of the car with this third
11 gunman. As soon as they heard the shots, he said this
12 unidentified third gunman drove him back to his car on
13 Cheval Street where he was released, you know, without
14 further incident. He told me at the time he intended
15 to explain how he was involved in this to Athell later
16 on as if he was explaining that he didn't know Athell
17 was mortally wounded, but he was going to use his
18 brother as a go-between to sort of relay this
19 information. Again, he said that he didn't know that
20 Athell and Pratt had been shot until we told him at
21 the point of his arrest.

22 Q So this version of events, he told you all of
23 this?

24 A Yes.

25 Q Based on him telling you this, what did you

1 decide to do?

2 A I wanted him to repeat that version to these
3 detectives who had just been interviewing him.

4 Q Why?

5 A So they could witness what he was saying as well.

6 Q Is that normal procedure?

7 A Yes, he now --- he's gone from denying total
8 involvement to being at the scene. It's pretty
9 significant, so I asked McDonald and Robinson to enter
10 the office. By this time Sergeant Isenhoward was back
11 at headquarters. I believe he had been involved in
12 the interview with Raquel, so he came in the office as
13 well.

14 Q So at this point in the office that --- it was
15 Lieutenant McDonald's office, correct?

16 A Yes.

17 Q In the office it's you, Mr. Wallace, Lieutenant
18 McDonald, Sergeant Isenhoward and was Sergeant
19 Robinson there, too?

20 A He is still there, too.

21 Q Okay.

22 A At least initially, yes.

23 Q Okay.

24 A So I asked Wallace to repeat the story for these
25 other detectives.

1 Q Okay.

2 A And he did. We went through the story explaining
3 what he had just explained to me. Isenhoward at that
4 point started questioning him about the truthfulness
5 of his story having just interviewed the survivor,
6 Raquel Weston.

7 Q Do you remember what the issue was of the
8 difference between what he just --- what Mr. Wallace
9 had just told you and what Isenhoward was asking?

10 A Well, the difference was that she had identified
11 him as the main one involved and not any of the other
12 three individuals, Charlie G. and all that.

13 Q Did he give a response to that?

14 A Yes, he ultimately --- he continued with his
15 story at that point. At some point in time I left to
16 let them --- my understanding was they were going to
17 go ahead and put this down on paper.

18 Q Did that ever get done?

19 A It never got done, no.

20 Q Okay. Now, I want to talk to you about you
21 speaking with him. It's just you two, correct?

22 A Yes.

23 Q You didn't tell him what to say, did you?

24 A No.

25 Q Did you in any way make him say that?

1 A No, I didn't know who Charlie G. was.

2 Q At any point did you force him to talk to you at
3 all?

4 A No.

5 Q You've been with law enforcement since 1984, so
6 30 years?

7 A Thirty years this summer, I think.

8 Q So you --- do you have any reason to implicate
9 him in this if he didn't do it himself?

10 A No, ma'am, and again he didn't implicate himself
11 in the actual double homicide. He had a story which
12 explained why his phone was hitting in that area.

13 Q Any reason for you to make up this version of
14 events that he gave you?

15 A No, ma'am.

16 Q Okay. So once you leave the room and let
17 McDonald continue to do what he supposed to do; is
18 that correct?

19 A That's correct.

20 Q Did you tell Mr. Wallace to do anything as you
21 left the room?

22 A No, at a later point in time, when I learned that
23 he did not want to put it on paper, I did --- I think
24 I reentered the office and I told him that ought to
25 want to have his story in writing if it was the truth.

1 Q Why did you do that?

2 A Because I was --- I mean, if it's he's telling
3 the truth ---

4 MR. KRZYSTON: Objection. He's already ---
5 approach, Judge, I'm sorry.

6 (WHEREUPON, a bench conference was held in the
7 presence, but not within the hearing of the
8 jury.)

9 MS. SAMPSON: Thank you, Your Honor.

10 BY MS. SAMPSON:

11 Q Why did you ask him to do that?

12 A Well, the point I was trying to make was, if the
13 story was the truth after having previously denied
14 being in the area and he now saying this is really why
15 the phone was in the area, then that's why you want to
16 have it down on paper. At that point in time, he
17 said ---

18 THE COURT: Whoa, whoa, whoa, stop. Is this
19 after he has declined to sign the Advice of Rights?

20 THE WITNESS: I just have in my notes that he
21 refused to give a written statement. He may ---

22 MS. SAMPSON: That's fine.

23 THE COURT: I don't want any information that he
24 says after that.

25 MS. SAMPSON: I was just asking why you were

1 speaking to him.

2 THE WITNESS: Yes, that's the reason why.

3 BY MS. SAMPSON:

4 Q Without going into details, were you ever able to
5 confirm that a Charlie Mack existed?

6 A Yes, I did some research with the solicitor's
7 office and found out that Charlie G ---

8 Q Sorry, Charlie G ---

9 A --- is the name that he gave me. That indeed was
10 a real individual and he was indeed involved in a
11 previous conflict with Athell and Athell's brother.

12 Q Was he involved in any way with this incident?

13 A No, ma'am.

14 Q So you all did look into that?

15 A Yes.

16 Q And I think --- did you get a search warrant for
17 the Buick that he had been in earlier that day?

18 A I actually participated in the search warrant on
19 Denny Road.

20 Q I'm sorry. I skipped that.

21 A And bear with me one...I don't think I actually
22 prepared that search warrant.

23 Q Okay. I skipped it, but --- you said you went to
24 Denny Road. You were part of the search of that?

25 A Yes.

1 Q I believe you guys found a burn pile. Were you
2 there for that?

3 A I was. I also located a traffic ticket there
4 that wound up being significant.

5 Q Did you see the burn pile?

6 A I did.

7 MR. KRZYSTON: I have an objection, Your Honor,
8 based on relevance. If you wish to approach, we
9 could.

10 (WHEREUPON, a bench conference was held in the
11 presence, but not within the hearing of the
12 jury.)

13 THE COURT: Overruled.

14 BY MS. SAMPSON:

15 Q So there was a burn pile?

16 A Yes.

17 Q And there were some --- let me ask you this
18 question: Did you find evidence that Mr. --- you all
19 found evidence that that is where Mr. Wallace resided
20 at the time?

21 A That was our understanding, yes.

22 Q And I'll get back to the burn pile in a minute.
23 So did you ever --- I want to go specifically to some
24 of your other involvement --- you spoke with --- you
25 went with Sergeant McDonald to look for Ms. Toatley,

1 correct?

2 A I did.

3 Q What did you all do in terms of that?

4 A We tried several times to make contact with her
5 at her residence. I believe we left a business card.

6 Q This happened on, I believe, a Thursday or
7 Friday?

8 A I believe so, yes.

9 Q So was this over the weekend?

10 A It was before the weekend, I believe, that we
11 actually went and, I believe, over the course of the
12 weekend is when she made contact there at her
13 apartment.

14 Q So the times that you all went, she was not
15 there?

16 A That's correct.

17 Q At some point, you all speak with the defendant's
18 brother Charlie Wallace; is that correct?

19 A We spoke to Charles Wallace several times.

20 Q Were you part of those interviews?

21 A I believe I was part of all of them, yes, ma'am.

22 (WHEREUPON, State's Exhibit Numbers 130 and 131
23 were marked for identification only.)

24 BY MS. SAMPSON:

25 Q Major Smith, I'm going to show you what's being

1 marked as State's Exhibit 130 and 131 and ask if you
2 recognize those?

3 A Yes, ma'am. That's the rear of that Denny Road
4 house. That's the pile that I'm talking about.

5 Q Do those photographs accurately reflect the way
6 they looked back in June of 2012?

7 A They do.

8 MS. SAMPSON: At this time, Your Honor, I'd ask
9 to introduce State's Exhibit Numbers 130 and 131 into
10 evidence.

11 MR. KRZYSTON: We would object to any extent
12 already stated.

13 THE COURT: Overruled.

14 (WHEREUPON, State's Exhibit Number 130 and 131
15 were admitted into evidence.)

16 BY MS. SAMPSON:

17 Q All right. I'm going to show these to the jury.
18 Can you tell them what's in this photograph?

19 A It's the back door of the house and the burn pile
20 is to the left of it. It has some blue jeans and some
21 other things that you can't really tell what's in
22 there.

23 Q And what does 131 show?

24 A It's the same burn pile. It's close-up version
25 of it. You see some sticks, some debris that I think

1 was used as accelerants.

2 Q Is that blue jeans in there?

3 A It is.

4 Q Could you tell by looking at it if anything had
5 actually been burned?

6 A It appeared to be that it had been burned.

7 Q Is that why you all called it a burn pile?

8 A It is.

9 Q All right. So let's go back to speaking to
10 Mr. Wallace's brother. I'm going to lead you a little
11 bit. Had you all had information that he had been
12 talking to Mr. Wallace after Mr. Wallace's arrest?

13 A We did.

14 Q Is that why you were interviewing him?

15 A It was.

16 Q Were you able to confirm that they actually did
17 have these phone calls?

18 A We did.

19 Q He didn't deny it?

20 A He did not.

21 Q Were you able to take a written statement from
22 Mr. Wallace, Charles Wallace?

23 A I believe we took a couple.

24 Q Did you make him talk to you?

25 A No.

1 Q Did you force him to say whatever he said?

2 A No, ma'am.

3 Q Did you allow him to make any changes to his
4 statement that he wanted to make if he wanted to make
5 it?

6 A Yes.

7 Q In fact, when you did one of the interview,
8 didn't he have his lawyer with him?

9 A No, I believe the final interview --- I had
10 gotten a call from his attorney indicating that he had
11 additional information.

12 Q Okay.

13 A So he came there with us.

14 MR. KRZYSTON: Objection, hearsay.

15 THE COURT: Overruled.

16 BY MS. SAMPSON:

17 Q Go ahead.

18 A He came in with a member of that attorney's
19 staff, who actually sat there.

20 Q Okay. And the first time you met with him, you
21 listened to the phone call with him?

22 A I believe, so yes.

23 Q And I'm just going to ask you, there is a mention
24 in the phone call of Grinches. What are Grinches?

25 A I didn't know what Grinches were, other than the

1 cartoon character, but I later learned it's a slang
2 name for marijuana.

3 Q Did he confirm with you that Mr. Wallace wanted
4 him to relay some information --- that William Wallace
5 wanted Charles Wallace to relay some information?

6 MR. KRZYSTON: Objection, hearsay.

7 THE COURT: I don't understand the question at
8 all. I'm so confused.

9 MS. SAMPSON: Did he confirm with you ---

10 THE COURT: Did who confirm with who?

11 MS. SAMPSON: Did Charles Wallace confirm with
12 you that William Wallace wanted him to relay some
13 information?

14 THE WITNESS: Yes.

15 THE COURT: Objection overruled. You can't say
16 what he said.

17 BY MS. SAMPSON:

18 Q And he --- I'm sorry, you said yes, he did?

19 A Yes, yes.

20 Q And you also participated in the interview of
21 Ms. Toatley once she came to headquarters, correct?

22 A Yes. On the 3rd, and I believe that would have
23 been a Monday. She came forward that Sunday night and
24 we interviewed her that Monday.

25 Q To be clear, she is the woman that found the

1 firearm in her apartment?

2 A She lived on Aralia Street, yes, ma'am.

3 Q And did --- you all were able to confirm that's
4 not her gun, correct?

5 A That's correct.

6 Q And she came and she voluntarily spoke with you
7 all?

8 A Yes.

9 Q You didn't make her?

10 A No, ma'am.

11 Q Did you use the same procedure in speaking with
12 her as you did with Mr. Wallace?

13 A Yes.

14 Q And she gave you consent to search her apartment,
15 correct?

16 A She did.

17 Q You all didn't --- did anyone search the
18 apartment?

19 A She had already turned over the firearm.

20 Q Did they go back and search it again?

21 A I believe they did, yes.

22 Q And they didn't find anything or did they?

23 A I don't believe they did.

24 Q And at some point --- let's be clear, this
25 investigation was over a period of time, correct? It's

1 not like it was investigated one day and you were
2 done, correct?

3 A No, ma'am, not a double homicide.

4 Q So at some point Mr. Diggs was arrested?

5 A He was.

6 Q Where was he arrested?

7 A He was actually arrested, I believe, at his place
8 of employment it was Columbia Farms in West Columbia a
9 processing plant.

10 Q So you all went there and arrested him?

11 A Our fugitive team did, yes.

12 Q And were you able to confirm whether he was
13 clocked in at work on June 28th?

14 A He initially had clocked in, but had clocked out
15 and then clocked back in.

16 Q Okay. And you guys brought him to headquarters
17 or someone brought him to headquarters?

18 A Yes, he was brought to headquarters.

19 Q And were you part of that interview?

20 A I was.

21 Q Let's talk about that interview. Was he
22 interviewed in the same manner as Mr. Wallace was
23 interviewed?

24 A I believe his interview was in my office. That's
25 the only difference, but it was in the same fashion,

1 yes, ma'am.

2 Q Was he given his Miranda rights?

3 A He was.

4 Q Did he agree to waive those?

5 A He did.

6 Q And he spoke with you all?

7 A He did.

8 Q Did you force him to speak to you all?

9 A No, ma'am.

10 Q Did you not let him leave when he wanted to or
11 did he ask to leave?

12 A Well, he was under arrest.

13 Q Did he ever ask to stop talking to you?

14 A No, ma'am.

15 Q And he spoke and he actually told you all that he
16 was involved?

17 A Yes.

18 MR. KRZYSTON: Objection, calls for hearsay.

19 Basis is knowledge, hearsay.

20 THE COURT: Sustained.

21 BY MS. SAMPSON:

22 Q After speaking with him, did he confirm that he
23 committed this crime?

24 MR. KRZYSTON: Objection, the basis is hearsay.

25 THE COURT: Don't object until the question is

1 over. Objection is overruled.

2 BY MS. SAMPSON:

3 Q Did he confirm that he was involved in this crime
4 with Mr. Wallace?

5 MR. KRZYSTON: Objection. The basis of this
6 information is hearsay.

7 THE COURT: Overruled.

8 MS. SAMPSON: Thank you, Your Honor.

9 BY MS. SAMPSON:

10 Q Did they confirm that they were using Ms. Vernell
11 Wallace's car?

12 A He did.

13 MR. KRZYSTON: Objection, hearsay again.

14 THE COURT: Overruled.

15 BY MS. SAMPSON:

16 Q Did he confirm that they left Mr. Wallace's home
17 in Kimberly Conway's car?

18 MR. KRZYSTON: Objection, hearsay.

19 THE COURT: Overruled.

20 THE WITNESS: He did.

21 BY MS. SAMPSON:

22 Q And during the interview, you guys offered him
23 food and drink?

24 A Yes, ma'am, I had it in my notes that we did.

25 Q What did he want?

1 A He wanted a cigarette.

2 Q All right. Did he want to do anything else while
3 he was being interviewed?

4 A He wanted us to talk to his supervisor at
5 Columbia Farms. He wanted some personal items out of
6 his work locker.

7 Q Did you let him do that?

8 A Yes.

9 MR. KRZYSTON: Objection, relevance.

10 THE COURT: Sustained.

11 Disregard that answer, ladies and gentlemen.

12 BY MS. SAMPSON:

13 Q Was he cooperative?

14 A He was.

15 Q And after he spoke, you guys charged him with all
16 the charges he is now facing?

17 A We did.

18 Q And I believe you've already said this, but you
19 in total interviewed Charles Wallace how many times?

20 A I believe it was a total of three times.

21 MS. SAMPSON: Beg the Court's indulgence.

22 (Pause.)

23 BY MS. SAMPSON:

24 Q I'm sorry, I'm going back a little bit. When you
25 were speaking with Charles Wallace about the phone

1 calls between him and Mr. Wallace ---

2 A Yes.

3 Q --- William Wallace, did he confirm that he was
4 asked to speak to ---

5 MR. KRZYSTON: Objection.

6 THE COURT: Sustained.

7 BY MS. SAMPSON:

8 Q Did he ever confirm with you that he knew ---

9 MR. KRZYSTON: Objection.

10 THE COURT: Sustained.

11 MS. SAMPSON: It's not about what --- if I could
12 finish my question --- did he confirm that he knew who
13 Cuz was?

14 THE COURT: Sustained.

15 MS. SAMPSON: That Charles Wallace knew who he
16 was? I'm not asking what Mr. ---

17 THE COURT: Move on.

18 MS. SAMPSON: Okay.

19 BY MS. SAMPSON:

20 Q Did you speak to any other family member about
21 Trey?

22 A I think Captain McDonald did. I may have also, a
23 combination of us.

24 MR. KRZYSTON: Objection, personal knowledge.

25 THE COURT: Overruled.

1 BY MS. SAMPSON:

2 Q So were you there when he spoke with Vernell
3 Wallace?

4 A I spoke to Vernell myself one time on Monday, on
5 that Monday, and I believe at a later time Lieutenant
6 McDonald's spoke to Sandra Wallace.

7 Q And you weren't part of that conversation?

8 A I wasn't part of that conversation.

9 MS. SAMPSON: No further questions, Your Honor.

10 THE COURT: All right. We're going to take a
11 break. I know you all had a little bit of a break
12 earlier, but the court staff has not. We're going to
13 take a break for about ten, fifteen minutes. If
14 you'll retire to your jury room. Keep an open mind
15 and do not discuss the case.

16 (WHEREUPON, the jury left the courtroom at 11:37
17 A.M.)

18 THE COURT: Quiet down.

19 All right. Major Smith, you're allowed to leave
20 the witness stand and do whatever you need to do. You
21 are not allowed to discuss your testimony with
22 anybody. Do you understand that?

23 THE WITNESS: Yes, sir, I do.

24 THE COURT: All right. For everybody out in the
25 audience, listen to me and listen to me now. Number

1 one, if you have a phone, it's going to be off. It's
2 not on vibrate, it's not on silent, its' not on I'm
3 checking my text messages or anything else. It's
4 going to be off.

5 Number two, if you want to be in this courtroom
6 when this trial returns, you need to be back here in
7 ten minutes. I'm not going to have 20 and 30 people
8 walking in whenever you feel like it that interprets
9 this jury and everything else. I'm very close to
10 having Mr. Dye lock the back door when I start back
11 and no one comes in or out except for the witnesses.
12 This is a courtroom. This is not entertainment. If
13 you are not going to be respectful of when the court
14 says things are going to start, then you are not going
15 to be allowed in the courtroom.

16 If they see people playing on their phones or
17 looking at their phones or dealing with their phones
18 or anything else, I'm just going to take them up.
19 It's going to cost you \$250 to get it back.

20 Now, I've been as tolerant as I am humanly,
21 possibly able to be this week with people coming in
22 and out, and I do not mean and I do not intend to
23 restrict access to this courtroom, but I'm not going
24 to allow this jury to be disrupted and have their
25 distractions taken away from what is going on in this

1 courtroom out of an abundance of caution for all
2 sides, for the State and the defense. It is not fair
3 to either side in any way, shape, or form for this
4 jury to be distracted because people can't be bothered
5 to come back in this courtroom and sit down when I
6 tell them court is going to start back.

7 That goes for first thing in the morning, too.
8 When I say 9:30, that means I'm starting at 9:30. If
9 I start late, then I'm allowed to start late, and I'm
10 starting late for a reason, but if you want to be in
11 here, you're going to be in here. That's the last I'm
12 going to say about it. If I find the system is being
13 abused again, we're just going to lock the back door.
14 All right. Ten minute break.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Thank you, Major Smith.

17 MS. SAMPSON: Can we approach, Your Honor?

18 THE COURT: Yes.

19 (WHEREUPON, there was a bench conference.)

20 THE COURT: All right. Mr. Smith, you're still
21 under oath, do you understand that?

22 THE WITNESS: Yes, sir.

23 THE COURT: Did Mr. Wallace say something to you
24 upon entering the courtroom?

25 THE WITNESS: He said something to me upon

1 entering and entering.

2 THE COURT: What did he say upon exiting?

3 THE WITNESS: Upon exiting, he said I have a hard
4 on for him.

5 THE COURT: Okay.

6 THE WITNESS: Some words to this that effect.

7 Just now, Your Honor, when we were coming back in he
8 said if he could, he would F-U-C-K me right here.

9 THE COURT: All right.

10 All right, what's your matter of law?

11 MS. HINES: Judge, we pulled the --- earlier we
12 were talking about the PDF, the discovery, we pulled
13 the PDF and there is no discovery attached. It's only
14 the checklist. We've got the email pulled up on the
15 computer here and the only thing that's attached to
16 that email was sent up to the court as proof that they
17 had turned over Sergeant Robinson's report is a
18 checklist, the checklist, not the actual discovery.

19 There's five pages of the checklist.

20 THE COURT: Okay.

21 MS. SAMPSON: And the point of the checklist is
22 that we had already given them all of that, so he was
23 given the checklist to see if they had it all. The
24 only thing he told me he didn't have, we sent and it
25 did not include Boland's report --- I mean, Robinson's

1 report.

2 THE COURT: Okay.

3 MS. HINES: We still don't have --- our
4 contention is that we were never given Robinson's
5 report.

6 THE COURT: All right. We're going to make this
7 email and the attachment to it and a Court's exhibit
8 because what the email says, which was sent from
9 Ms. Sampson to Ms. Krzyston is "Attached is all of the
10 discovery with the exception of the coroner's report,
11 which I believe you have." There is apparently a PDF
12 attached to that with a list of it, which included
13 Sergeant Robinson's report, so if you didn't have
14 Sergeant Robinson's report, you should have responded
15 and said, "I don't have Sergeant Robinson's report."
16 Even beyond all that, Sergeant Robinson's report
17 doesn't contain anything that's caused any prejudice
18 to the defendant because Ms. Weston hadn't testified.
19 She still hasn't even testified. You still are
20 allowed to be processing what Sergeant Robinson's
21 report says that Ms. Weston said to somebody so we're
22 going to mark this has a Court's exhibit.

23 (WHEREUPON, Court's Exhibit Number 8 was marked
24 for identification only.)

25 MS. HINES: Judge, if I could briefly ---

1 THE COURT: Hold on.

2 (Pause.)

3 Okay, now.

4 MS. HINES: Judge, the prejudice to our client is
5 that if he had the information, he's made a decision
6 to go to trial as opposed to plead based on the
7 information that we've provided him, and we didn't
8 provide him with that report or that information.
9 He's turned down an offer as Your Honor is aware of 50
10 to 60, which has now expired in reliance on the
11 discovery that we showed him and that would be how he
12 would be prejudiced in this case.

13 MS. SAMPSON: Your Honor, if she feels that has
14 prejudiced her client in anyway, I will give her as
15 much time as she needs to talk to him about taking the
16 50 to 60 right now.

17 (Pause.)

18 MS. SAMPSON: Your Honor, if this is about
19 photographing, the only thing I would ask, and I know
20 this doesn't have anything to do with what we're
21 talking about now, the victim, Ms. Weston, is hesitant
22 to be photographed. That's just her. She does not
23 want --- her name is already out there. She would
24 prefer not to have her picture out there. That would
25 be our only hesitation not to photograph her.

1 THE COURT: What's your position on that,
2 Mr. Monk?

3 NEWSPAPER REPORTER: We would --- is she in fear
4 of her life and retaliation?

5 MS. SAMPSON: She is in fear of her life, just in
6 general. She has been that way the whole time.
7 That's why she has not been here during this trial.

8 NEWSPAPER REPORTER: We would abide by that.

9 THE COURT: Thank you.

10 MS. SAMPSON: That's the only thing we were
11 asking.

12 NEWSPAPER REPORTER: Can I have permission to
13 leave the courtroom briefly to message my editor to
14 tell him that?

15 THE COURT: Yes, sir, and you can come back in as
16 you need to.

17 NEWSPAPER REPORTER: Okay. Thank you.

18 THE COURT: All right. Are you all talking or
19 what?

20 MS. HINES: Yes. We have --- we don't need my
21 more time.

22 THE COURT: Okay.

23 MS. HINES: Mr. Wallace has informed us he wants
24 to pursue.

25 THE COURT: All right. Let's bring the jury back

1 in.

2 THE BAILIFF: The jurors are all present, Your
3 Honor.

4 THE COURT: Thank you very much, Mr. Hollis.
5 Welcome back, ladies and gentlemen. We'll keep
6 working through until someone tell us that lunch is
7 here, just so you know from timing perfective.

8 THE COURT: Okay. Are we on cross? Any cross-
9 examination?

10 MR. KRZYSTON: Thank you, Judge. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. KRZYSTON:

15 Q Smith, how are you doing today?

16 A Fine, sir.

17 Q Now, in addition to being major at the Richland
18 County Sheriff's Department, you're also a lawyer
19 aren't you? You've been to law school?

20 A (There was no response.)

21 Q Yes, no?

22 A No, sir.

23 Q You didn't go to law school?

24 A No, sir.

25 Q I could have swore you did. So you don't have

1 your JD?

2 A No, sir.

3 Q Okay. I thought you did. I'm sorry.

4 All right. I want to go back over just a few
5 things you talked about in testimony. You testified
6 that you and McDonald went down to Tashonda Toatley's
7 apartment?

8 A Yes, sir.

9 Q How many times did you go down there, two or
10 three?

11 A Bear with me.

12 Q Yes, sir.

13 (Pause.)

14 A I just have in my notes that we had repeatedly
15 tried to locate her, but I don't have the exact
16 number.

17 Q Okay. And you testified that you all placed
18 business cards, kind of stuck business cards in the
19 door there?

20 A I recall that, yes, sir.

21 Q When you went back the next time, the business
22 cards weren't there or were they?

23 A I don't recall that detail.

24 Q You probably wouldn't have stuck another business
25 card in there, right?

1 A I just don't recall.

2 Q So you don't have the luxury of having interview
3 rooms down there, correct, at headquarters?

4 A Yes, sir.

5 Q But you do have the luxury of having tanks and
6 all other kinds of personnel carriers, don't you?

7 MS. SAMPSON: Objection, Your Honor.

8 MR. KRZYSTON: Withdrawn.

9 BY MR. KRZYSTON:

10 Q Now, when you were interrogating Mr. William, it
11 was you and Mr. Robinson and McDonald and Isenhoward
12 right, plus William?

13 A At different times, yes.

14 Q Different times, but at times y'all were all in
15 there together?

16 A Towards the end of it, yes, sir.

17 Q And again, we've already talked about McDonald's
18 office. Now, you said that you had interrogated
19 Charles?

20 A I didn't say I interrogated Charles. I said I
21 had interviewed Charles.

22 Q Well, tomato/tomato. And it was about three
23 times, it was?

24 A Think it was a total of three times, yes, sir.

25 Q And of these three times you produced four

1 statements, correct?

2 A I don't recall.

3 Q Okay. And after the second time that Mr. Charles
4 Wallace was interrogated, he hired Todd Rutherford,
5 didn't he?

6 A I believe I got a phone call from Todd Rutherford
7 after the second interview.

8 Q And in that phone call, Mr. Rutherford said he
9 represented Charles Wallace?

10 MS. SAMPSON: Objection, Your Honor, hearsay.

11 THE COURT: Overruled.

12 THE WITNESS: What he said was that Charles was
13 scared and that he admitted that Charles had gone to
14 do the things that William had asked him to do.
15 Charles apparently told Todd that ---

16 MR. KRZYSTON: Objection.

17 THE WITNESS: You asked the question. I was
18 trying to answer it.

19 THE COURT: What's your objection?

20 MR. KRZYSTON: I simply asked him whether
21 Mr. Rutherford admitted to representing Charles
22 Wallace.

23 THE COURT: All right. You can answer that
24 question yes or no and then explain your answer.

25 THE WITNESS: He did, and he went on to ---

1 BY MR. KRZYSTON:

2 Q To explain that stuff?

3 A Yes, sir.

4 Q Thank you. Now, you also executed a search

5 warrant on 1203 Denny Road, right? That was formerly

6 Ms. Vernell Wallace's house, correct?

7 A We went to Denny Road, yes, sir.

8 Q Okay. And executed a search warrant, right?

9 A Yes, sir.

10 Q And you stated that you saw a burn pile, right?

11 A I did.

12 Q But that burn pile wasn't smoldering was it?

13 A Not at that point, no, sir.

14 Q And that was around what, 1:30?

15 A I just have in my notes that later that afternoon

16 this proceeds that paragraph about that. I don't know

17 the exact time. It's probably on the search warrant.

18 Q Okay. 12:53 sound right?

19 A If you tell me that, I wouldn't dispute it.

20 Q Okay. And when you talked to Luck Campbell, she

21 knew Athell, right?

22 A I'm not sure if she knew Athell.

23 Q But she knew of his name?

24 A She researched that case for me, yes.

25 Q Right. You knew of Athell, right?

1 A Not until this case, I don't believe I did. I
2 think those were CPD cases.

3 Q And you've been an investigator since 1984?

4 A No. I made investigations in '87.

5 Q Twenty-seven years, almost twenty-eight now.

6 A I had a couple years off in the private sector,
7 yes, sir.

8 Q That's as long as I've been around. And the goal
9 of investigations is to be fair?

10 A Try to be, yes, sir.

11 Q And accurate?

12 A We try to be.

13 Q And complete?

14 A Yes, sir.

15 Q And true?

16 A Yes, sir.

17 Q And oftentimes when you interrogate --- excuse me
18 I guess interrogate is an appropriate word --- when
19 you interrogate someone, there is a significant time
20 between when you charge the individual and when he is
21 brought to trial, correct?

22 A Yes, sir.

23 Q Okay. And because your goal is to be fair and
24 accurate and complete and true, it's important to keep
25 track of everything you learn, right?

1 A Well, I guess it has relevance. Not all things
2 have relevance.

3 Q Right. But at the point you interrogate
4 somebody, you're not always sure what is relevant and
5 what is not, correct? Because some things could
6 develop in a case like you stated earlier, right?

7 A Are we talking hypothetically or this case?

8 Q Just hypothetically.

9 A Well, it's difficult to say. Each case stands on
10 its own. You can't --- there's no formula for
11 investigation for each case.

12 Q Well, if you talked to Judge Hood and he said he
13 had a red car and you were investigating a murder and
14 you talked to an eye witness to that murder and he
15 said he saw a red car shooting at the scene, when you
16 questioned that eyewitness before, that might not have
17 been relevant, but after you talked to people, it
18 becomes relevant; isn't that right?

19 MS. SAMPSON: I'm going to object to giving him
20 hypothetical. That would be somebody for an expert
21 witness.

22 THE COURT: Overruled. I'm giving you a little
23 bit of leeway.

24 MR. KRZYSTON: Thank you, Judge.

25 BY MR. KRZYSTON:

1 Q Isn't that correct?

2 A That's a ridiculous analogy. I mean, the way I
3 investigate homicides is to follow the evidence trail.
4 You follow the evidence trail where it takes you. The
5 evidence trail in each case is different. It's like
6 going down different paths. There is no formula for
7 investigation.

8 Q Right.

9 A In this particular case, our evidence trail was
10 given to us pretty quickly because the surviving
11 witness named your client as the shooter.

12 Q I understand that.

13 A And that's how we began the investigation.

14 Q And again, when you are investigating things and
15 talking to people, you don't always know what is
16 relevant until you complete the investigation. It's
17 okay to say yes.

18 A If I agree with it, it's okay to say yes. It's
19 not that simple. It's just not that simple.

20 Q And you're ---

21 A Well, you're asking me, so yes, sir, it's my
22 opinion.

23 THE COURT: The commentary will cease. The
24 commentary will cease. Ask a question, please.

25 MR. KRZYSTON: Certainly, Judge.

1 BY MR. KRZYSTON:

2 Q Generally speaking again, interrogations can
3 contain very important evidence, right?

4 A Oh, yes.

5 Q And unlike other evidence of what has happened,
6 okay, unlike fingerprints for instance, interrogations
7 and confessions or statements or something that is
8 subjective, people use slang and you have to interpret
9 their words, right?

10 A That's an accurate statement, yes, sir.

11 Q And interrogations and confessions are so
12 important that when you go to the police academy, you
13 receive special training on how to do it, right?

14 A Yes, sir.

15 Q Okay.

16 A It's been so long since I've been at the police
17 academy.

18 Q Right.

19 A I don't think they give specialized training on
20 doing interviews.

21 Q But again from your experience and training in
22 law enforcement, you start to learn how to interrogate
23 somebody?

24 A You learn how to talk to people, yes, sir.

25 Q And you learn how to keep them talking. You're

1 very skilled at keeping the conversation going, right,
2 because you're a nice guy?

3 A I don't know about that.

4 Q I guess that's a subjective one, too.

5 A Again, that's a hypothetical situation. Yes, you
6 want to keep someone who is charged with a crime
7 talking, naturally, because you're trying to get to
8 the truth and that's what we tried to do in this case.

9 Q Right. And ---

10 A I didn't end the conversation in this case.

11 Q One of the ways to do that is to establish a
12 rapport with that individual, right?

13 A Well, it's certainly better to have a rapport
14 than to have a hostile situation. They're more likely
15 to talk to you if they're comfortable and there's a
16 free exchange, as it was in this case.

17 Q Ask him how his day is going? Ask him what
18 sports teams he likes?

19 A Well, he was under arrest for a double murder so
20 I don't think his day was going too good at that time,
21 and ---

22 Q Right, but again, you're establishing ---

23 A --- I don't believe I had that ---

24 Q --- but, again ---

25 THE COURT: I need the interruption to cease. He

1 is allowed to finish his answer before the next
2 question is asked.

3 MR. KRZYSTON: Certainly, Judge. It's
4 involuntary. I'm sorry.

5 THE WITNESS: I'm not sure I know the question.

6 THE COURT: I'm not sure I do either, but go
7 ahead and ask the next question.

8 BY MR. KRZYSTON:

9 Q Okay. When a suspect or a defendant makes a
10 statement, you have to jump through certain hoops,
11 okay, before the jury is even allowed to hear that
12 statement, right?

13 A You have to read them their Miranda rights ---

14 Q Right.

15 A --- if they're in custody, yes, sir.

16 Q And actually the judge has to make sure that you
17 guys obtain that statement correctly, that you read
18 the rights correctly?

19 A I believe that is his job.

20 Q He has to determine that the statement was made?

21 A Yes, sir.

22 Q That his rights were read?

23 A Yes, sir.

24 Q That he understood those rights?

25 A Yes, sir.

1 Q And that he waived those rights?

2 A And that the statement was freely and voluntarily
3 given, yes, sir..

4 Q And he has to find that occurred before the
5 statement is ever introduced or we hear anything about
6 it in court?

7 A That is correct.

8 Q Are you familiar with the term corroboration?

9 A I am.

10 Q And you know then that it means one fact supports
11 another. That's all it means, right?

12 A Yes, sir.

13 Q And just to provide an example, if the suspect
14 tells you he didn't do it, you don't just take his
15 word for it, correct?

16 A That's correct.

17 Q You ask around?

18 A Well, again, are we talking hypothetically or are
19 we talking about this case?

20 Q Hypothetically.

21 A You attempt to corroborate any statement that you
22 get.

23 Q Okay.

24 A Whether you obtain --- whether it's from the
25 defendant or from a witness. If the statement is able

1 to be corroborated, yes, you attempt to do that.

2 Q And all things being equal, you would have rather
3 have facts that have been corroborated than facts that
4 haven't been corroborated?

5 A Yes.

6 Q Okay.

7 A For example, in this case, we corroborated the
8 fact that William Wallace was in the area of the crime
9 by virtue of the cell phone records. That's
10 corroboration.

11 Q And you are familiar with the expression that ---
12 the he-said/she-said expression?

13 A I'm not sure what you're ---

14 Q Do you know what the argument was if I said to
15 you he-said/she-said. Do you know what that means?

16 A Somebody's word against somebody else's.

17 Q It means that there is no corroboration. There
18 is no other facts to support what one person is saying
19 over what another person is saying?

20 A I guess that's accurate, yes, sir.

21 Q All right. And as a major in the police
22 department and as a trained investigator, you try to
23 avoid those situations, right?

24 A It's not a matter of avoiding those situations.
25 It's a matter of attempting to corroborate. You don't

1 try to avoid it. If that's all you have, that's all
2 you have. If there's a way to corroborate it, then
3 you try do so.

4 Q Right.

5 A It's not avoiding it.

6 Q But all things being equal, again, you'd rather
7 have corroborated facts in your investigation as
8 opposed to uncorroborated facts, right?

9 A Certainly. I believe we did, certainly in this
10 case, plenty of corroboration. Again, we're talking
11 about this case, is my understanding.

12 Q And then in general if you're able to corroborate
13 something somebody says or something somebody told you
14 they have done, you do that, don't you?

15 A You attempt to, yes, sir.

16 Q Okay. In this investigation, okay, a number of
17 people were interrogated or statements were obtained
18 from those people, right?

19 A That's accurate.

20 Q And we've heard from a number of different people
21 at the sheriff's department that it's not your policy
22 to videotape interrogations?

23 A I haven't been in here.

24 Q Okay, but I'm asking you. It's not your policy?

25 A No, sir.

1 Q It's not your policy to record interrogations on
2 audio?

3 A That's correct.

4 Q And it's not your policy to take handwritten
5 notes and put them in the case jacket, is it?

6 A If the notes --- for instance, if the notes are
7 relevant to like, for instance in this particular
8 case, I thought that he was going to --- Mr. Wallace
9 was going to put his statement in writing in the form
10 of a written statement, so there were no handwritten
11 notes about what he said because I didn't know that it
12 wasn't going to go into the typed out statement.

13 Q And when you said ---?

14 A If we had a typed out statement, that would have
15 been an accurate record because he would have then
16 signed it, agreed with it, that type of thing.

17 Q Right.

18 A But we didn't get to that point.

19 Q I understand that. And when you said the
20 statement would have been in writing, that would have
21 been in your typewritten language, not his, right?

22 A No, we would do what he said.

23 Q Right, but you would be the one to type it down?

24 A Not me personally in this case, but ---

25 Q But somebody?

- 1 A --- Lieutenant McDonald or Robinson would have.
- 2 Q Certainly. And in this investigation, you spoke
- 3 to DeAndre Diggs?
- 4 A I did, yes, sir.
- 5 Q You spoke to Courtney Wallace or your
- 6 investigator did?
- 7 A Yes, she was spoken to. I'm not sure who the
- 8 investigator was ---
- 9 Q And your team spoke to Latora Wallace?
- 10 A That one I'm not as familiar with.
- 11 Q And your team spoke to Vernell Wallace?
- 12 A Yes, sir, I spoke to Vernell Wallace.
- 13 Q And your team spoke to Sandra Wallace?
- 14 A I believe Lieutenant McDonald did, yes sir.
- 15 Q And your team spoke to Tashonda Toatley?
- 16 A I did, yes, sir.
- 17 Q And James Sturm?
- 18 A I'm not familiar with James Sturm.
- 19 Q Okay. And the statements of all those
- 20 individuals weren't videotaped?
- 21 A No, sir.
- 22 Q They weren't?
- 23 A No, sir.
- 24 Q They weren't audio recorded?
- 25 A No, sir.

1 Q And William's interrogation wasn't videotaped?

2 A No, sir.

3 Q His apprehension wasn't videotaped?

4 A I don't believe it was.

5 Q His apprehension wasn't audio recorded?

6 A I don't believe it was.

7 Q His interrogation wasn't audio recorded?

8 A I think we covered that..

9 Q And his statement wasn't typewritten down, again,
10 because you say he refused, right?

11 A That's my understanding, yes, sir. I wasn't in
12 the room, but that's my understanding.

13 Q And the interrogation that we're talking about
14 took place at the Richland County Sheriff's Department
15 headquarters on Two Notch Road?

16 A It did.

17 Q Which is a three, four story building?

18 A It's a two story building.

19 Q Big building though?

20 A Not big enough.

21 Q That's your office. That's where you work?

22 A It is.

23 Q That's where Leon Lott works?

24 A That's one of the locations, yes, sir.

25 Q That's where McDonald works?

1 A Yes, sir.

2 Q That's where Richland County stores all the
3 evidence for any trial in this county?

4 A Yes, sir.

5 Q And your office controls that environment?

6 A It does.

7 Q And your office decides how this is done?

8 A Well, we have certain protocols. If you're
9 talking about evidence preservation it's not
10 necessarily decided by us. There are certain
11 protocols. We have a certified lab that covers our
12 evidence room. There are protocols that we meet for
13 that. It's not necessarily an accurate statement to
14 say we decide.

15 Q Okay. And then you also have protocols for how
16 interrogations are handled?

17 A We do.

18 Q And on your turf, in your building, in your
19 offices, you and your department choose not to
20 corroborate the statements of all the individuals that
21 I just mentioned, correct?

22 A No. We attempt to corroborate.

23 Q Not by video?

24 A No, sir.

25 Q Not by audio?

1 A No, sir.

2 Q And you testified that you have to establish a
3 rapport?

4 A Are you talking about corroboration of what they
5 give as far as the substance of the statement or
6 corroboration of the statement being taken itself?

7 Q Corroboration of the entire conversation between
8 you and Tashonda Toatley?

9 A That's not corroboration ---

10 Q Corroboration is ---

11 A I think you're talking about ---

12 Q Corroboration is ---

13 A --- verifying that they gave that statement.

14 THE COURT REPORTER: I'm sorry. I didn't
15 understand your question because you spoke over him.

16 MR. KRZYSTON: I'm sorry.

17 THE WITNESS: Corroboration, in my view, means
18 taking the substance of their statement and trying to
19 determine if it's factual, trying to gird up that
20 substance either, or not. I'm not sure you're talking
21 about the same thing.

22 MR. KRZYSTON: The court's indulgence.

23 (Pause.)

24 BY MR. KRZYSTON:

25 Q And if we had video or if we had audio, the jury

1 wouldn't rely on what your department tells them,
2 right?

3 A (There was no response.)

4 Q You need see Mr. Garfield? That's your lawyer
5 right there, right?

6 A I beg your pardon.

7 Q You were looking around. I didn't know if you're
8 looking for him.

9 MS. SAMPSON: I'll object, Your Honor. I don't
10 even know what's going on.

11 THE COURT: Move on, Mr. Krzyston.

12 MR. KRZYSTON: Certainly, Judge.

13 BY MR. KRZYSTON:

14 Q Again, if we had a video or we had audio of these
15 statements, we wouldn't rely or wouldn't have to rely
16 on a person's word, right, or the typed statements.

17 A Well, I'm telling the truth.

18 Q Okay.

19 A So you can rely on what I'm saying.

20 MR. KRZYSTON: No further questions, Judge.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION:

23 BY MS. SAMPSON:

24 Q Let's talk about this. If you were to make up
25 what somebody said, what would happen to you?

1 A Well, I would be terminated and charged
2 criminally.

3 Q You would lose your pension?

4 A In this particular instance, if I was going to
5 make something up, I would certainly make up the story
6 that he is the shooter.

7 Q So in it story that he gave you, he didn't
8 implicate himself?

9 A No, ma'am.

10 Q And you used the same procedures with him as you
11 did with DeAndre Diggs?

12 A That's correct.

13 Q And he did put himself there?

14 A He did.

15 Q You used that same information on the way that
16 you asked people to talk to Ms. Weston, correct?

17 A Yes.

18 Q Someone did?

19 A Yes.

20 Q And you did that with every single witness,
21 correct?

22 A Yes.

23 Q Do you have any reason to lie about this case?

24 A No, ma'am.

25 Q Is this case any different than any other murder

1 case in Richland County?

2 A Other than the fact it's a double homicide, no,
3 ma'am. It's --- I've been involved in hundreds,
4 hundreds of murders.

5 Q This isn't even your only double homicide, is it?

6 A No, ma'am.

7 Q Now, as far as corroboration, were you able to
8 corroborate what Ms. Weston told you?

9 A Yes.

10 Q With both physical evidence, correct?

11 A Yes.

12 Q And with what other people said?

13 A Yes.

14 Q And with photographs?

15 A Yes.

16 Q And with evidence that was taken and collected?

17 A Yes.

18 Q What about what Mr. Diggs told you, were you able
19 to corroborate that?

20 A Yes.

21 Q With evidence?

22 A Yes.

23 Q With other people's statements?

24 A Yes.

25 Q What about with what Mr. Wallace told you, were

1 you able to corroborate that?

2 A No, ma'am.

3 Q With anything?

4 A No, ma'am.

5 MS. SAMPSON: No further questions.

6 THE COURT: Recross?

7 MR. KRZYSTON: Briefly, Judge.

8 RECROSS-EXAMINATION:

9 BY MR. KRZYSTON:

10 Q Okay. And if we had a video of all these
11 statements and William's statement, the jury could see
12 for themselves what is those people said, right?

13 A They still wouldn't see corroboration because
14 there was none there.

15 Q But they still could see for themselves what all
16 those people said, right?

17 A Are you talking about Mr. Wallace or the other
18 witnesses?

19 Q All the witnesses that were interrogated at
20 headquarters?

21 A I'm not sure I understand. The corroboration was
22 presented, if there was corroboration, so they would
23 see that. Here again, I'm not sure you're talking
24 about corroboration. I think you're just talking
25 about the statement-taking progress itself.

1 Q My question would be, if we had video of the
2 interrogations conducted at headquarters, this jury
3 would be able to see what those people said and hear
4 what they said for themselves, right?

5 A I believe some of those people testified and told
6 them what they said ---

7 Q But in the interrogation ---

8 A And I'm testifying telling them what I heard, but
9 yes, they would see a video, yes, but that would be
10 the only difference.

11 MR. KRZYSTON: No further questions.

12 THE COURT: All right. Thank you very much,
13 Major Smith. Have a nice day.

14 THE WITNESS: Thank you.

15 THE COURT: What's the word on food, Mr. Addison?

16 (Pause.)

17 Not yet. Okay. Call your next witness.

18 MR. EATON: The State calls Rachel Grant.

19 RACHEL GRANT,

20 after being duly sworn, testified as follows:

21 THE BAILIFF: Watch your step for me, please.
22 Speak into the microphone.

23 THE WITNESS: Rachel Grant.

24 THE COURT: Yes, ma'am.

25 DIRECT EXAMINATION:

1 BY MR. EATON:

2 Q Is it Investigator Grant?

3 A Just Rachel Grant.

4 Q Okay. Ms. Grant. Where do you work, Ms. Grant?

5 A I work at the Richland County Sheriff's
6 Department.

7 Q And what are your duties there?

8 A I am a DNA analyst in the laboratory and
9 basically my duties are to develop DNA profiles from
10 biological material left at crime scenes.

11 Q And how long have you worked there?

12 A About six-and-a-half years.

13 Q Could you guess how many profiles you've done?

14 A A lot. I'm sorry, I don't know the exact number.

15 Q Even in a week or a month, could you guess?

16 A Well, we do our casework in batches and those
17 typically have 96 samples a batch and each analyst
18 does about two to three batches --- well, let's see.
19 Maybe at least a batch a week, so several hundreds,
20 thousands, at this point in my career.

21 Q What's your educational background?

22 A I have a bachelor's degree in biology with a
23 chemistry minor. I have a masters degree in forensic
24 serology and DNA from the University of Florida.

25 Q And after those, have you continued any training

1 or education?

2 A Yes, I have undergone extensive forensics,
3 serology, and DNA training with my employer. I have
4 successfully completed competencies set forth by the
5 DNA analysis board with the FBI, and I'm proficiency
6 tested every six months.

7 Q Have you written any articles?

8 A In my career in graduate and undergraduate
9 school, I have done several research projects and
10 given a few lectures and talks at continuing education
11 courses.

12 Q And have you been qualified as an expert before?

13 A I have.

14 Q In what?

15 A In forensic DNA and serology.

16 Q How many times would you guess?

17 A Nine.

18 MR. EATON: Your Honor, I would offer Ms. Grant
19 as an expert in DNA analysis.

20 THE COURT: All right. Voir dire?

21 MS. HINES: Yes, please.

22 Ms. Grant, how are you doing?

23 THE WITNESS: Good. How are you?

24 MS. HINES: Good. Do you have a CV?

25 THE WITNESS: I do, but not on me currently.

1 MS. HINES: Okay. But you do have one?

2 THE WITNESS: Uh-huh.

3 THE COURT: Have you provided that to the state?

4 THE WITNESS: Uh-huh.

5 MS. HINES: And your masters degree is in what?

6 THE WITNESS: Forensic serology and DNA.

7 MS. HINES: And that was from what?

8 THE WITNESS: University of Florida.

9 MS. HINES: And you mentioned training. How many
10 hours of training do you do in a year?

11 THE WITNESS: We are required to do, I think, 20
12 hours a year. I'm not sure about that. I do have to
13 do continuing education yearly and then proficiency
14 tested every six.

15 MS. HINES: I have no further questions or
16 objection, Your Honor.

17 THE COURT: All right, ladies and gentlemen, this
18 witness will be an expert in the area of DNA analysis.
19 As I have told you before, normally a person is not
20 allowed to give opinion testimony, but a person may
21 testify in certain areas if the court qualifies them.
22 Ms. Grant will be an expert in the area of DNA
23 analysis. She will be allowed to give opinion
24 testimony in that area. That does not mean that you
25 have to accept her opinion, but it is evidence for you

1 to use in any way that you see fit and give it the
2 weight and the credibility as you deem appropriate, as
3 you are required to do with every single witness that
4 appears before you.

5 Mr. Eaton.

6 MR. EATON: Thank you, Your Honor.

7 BY MR. EATON:

8 Q Ms. Grant, what did you do in relation to this
9 case, the William Wallace case?

10 A I did --- I processed and I ran some samples
11 through the DNA process that were submitted as
12 evidence in this case.

13 Q Do you know what those samples were from?

14 A I do. Would you like me to read through them?

15 Q Well, do you remember them off the top of your
16 head?

17 A There's several items that were analyzed.

18 Q Would referring to your notes help you to refresh
19 your memory?

20 A Yes. And they are here on my notes, correct.

21 Q If you would go ahead, please.

22 A The items that were submitted --- and I'll just
23 read them on this list. Item (4) was a swab from a
24 nine millimeter fired cartridge casing. Item (21) was
25 cargo pants. Item (22) was a white tank top shirt.

1 Item (23) was a white t-shirt. Item (24) socks, Item
2 (25) is a pair of shoes. Item (29) was a swab from a
3 nine millimeter fired cartridge casing (B). Item (30)
4 was a swab from a nine millimeter fired cartridge
5 casing (D). Item (31), a swab from a stain at
6 apartment entrance, Marker (A).

7 Item (32) swab from stain on bedroom floor,
8 Marker (C). Item (33) swab from stain on tub, Marker
9 (E). Item (34) swab from stain on bathroom floor,
10 Marker (F). Item (35) swab from blue/white iron.
11 Item (36) is a swab from the LG wall plug. Item (49)
12 swab from roll of plastic bags. Item (53) was a
13 buccal from Pratt. Item (54) was a buccal from
14 Johnson. Item (55) was nail scrapings from Pratt.
15 Item (56) was nail scrapings from Johnson. Item (103)
16 was a swab from the barrel of a Hi-Point. Item (104)
17 was a swab from a Hi-Point handgun exterior. Item
18 (105) swab from magazine from Hi-Point. Item number
19 (114) was a pair of blue jean shorts. Item (115) was
20 a pair of boots, and Item (116) was two white
21 t-shirts.

22 Q And did you analyze any of these swabs?

23 A I did. There were some items that were not
24 analyzed, but yes, there were specific ones that were
25 analyzed for DNA.

1 Q On the ones that you analyzed, were you able to
2 extract DNA from them?

3 A Some of them I was, and some of them I wasn't.

4 Q Is that normal?

5 A That is normal.

6 Q From which items were you able to extract DNA?

7 A DNA was extracted from Items (4), (35), (53),
8 (54), (104), (114) and --- I'm sorry, Item (14)

9 Q Of those, were you able to do an analysis of the
10 extractions?

11 A I was. From Items (4) and (104), no DNA profile
12 was developed.

13 Q And those were --- which items were those?

14 A That was the swab from a nine millimeter fired
15 cartridge casing, and then Item (104) was a swab from
16 a Hi-Point handgun exterior.

17 Q And going with the following ones if you would,
18 please?

19 A The DNA results from Item (114), which was a pair
20 of blue jean shorts, I actually took three cuttings
21 from those shorts on the back. Part of our job is to
22 look for body fluids. On the back of that, there had
23 some type of stain. With a screening test that we use
24 in the laboratory, I was able to determine the
25 presence of blood and from those three particular

1 stains I saw, I took a cutting, so there's three
2 cuttings from the back of this pair of blue jean
3 shorts. From those, I got mixtures, which just means
4 there's more than one contributor to that particular
5 DNA sample.

6 So all three of those particular cuttings had
7 mixtures. From those mixtures, Athell Johnson and
8 Jamal Pratt are eliminated from those. Basically,
9 since I ran those standards, I can make a comparison
10 and say they were not contributors to those particular
11 samples.

12 Q And did that conclude your analysis or did you do
13 more?

14 A It did not. On Item (35), which was the swab
15 from a blue/white iron, the profile that I got was too
16 weak to reliably interpret. That's not uncommon
17 either for something that a touch sample. There's not
18 enough information there to make a definitive
19 conclusion.

20 MR. EATON: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. EATON:

23 Q Can you just clarify for the jury what a buccal
24 swab is?

25 A Yes. A buccal swab is what we also call a

1 standard known reference. What that is, we take a
2 sterile swab and basically, we'll swab the inside of
3 someone's mouth. The point of that is to get their
4 known standard, they're known DNA. Because of the
5 buccal cells present in your mouth and your saliva,
6 that's what we use as evidence. So we develop that
7 profile and from there we can compare it to evidence
8 DNA profiles that we obtained from the crime scenes.

9 Q And I think you touched on this, but can you just
10 explain what it means when something --- when you're
11 unable to extract DNA from something and why that
12 might happen?

13 A Yes, the majority of our cases or the types of
14 samples we get are touch. Sometimes we don't get any
15 D.N.A. That just depends on several factors. It
16 depends on the item that's being touched. How long
17 ago it was touched. How aggressively it was touched.
18 If that person is a shedder, and basically that just
19 means that that person may shed their epithelial cells
20 more frequently than others. If that person was
21 sweating. If there was blood, or saliva or semen ---
22 body fluids are an excellent source of DNA. Because
23 something is swabbed, it doesn't necessarily mean that
24 we're going to get --- that there's going to be enough
25 DNA on that swab for us to get a profile. In relation

1 to that, if nothing is extracted, basically that means
2 there is not enough on that swab for us to extract DNA
3 to develop that profile.

4 Q Thank you, Ms. Grant.

5 MR. EATON: That's all I have.

6 THE COURT: Cross?

7 MS. HINES: Yes. Thank you.

8 CROSS-EXAMINATION:

9 BY MS. HINES:

10 Q Okay. So basically what you're testifying, is
11 that there's no matches or no --- you're not able to
12 identify any DNA to a particular person in this case
13 or to a particular ---

14 A This case, that's correct, yes.

15 Q You indicated that you tested Items (4), (35),
16 (53), (54), (104) and (114), correct?

17 A Those were the items that DNA was successfully
18 extracted from.

19 Q Okay. So DNA was successfully extracted from
20 those items?

21 A Uh-huh.

22 Q Item number (4) you weren't able to --- and
23 (104), which was the swab from the nine millimeter
24 fired cartridge case and a swab from a Hi-Point
25 handgun. You were not able to get a DNA profile?

1 A That is correct.

2 Q And basically what that means is that DNA was
3 indicated but there was just not enough to develop a
4 profile?

5 A Correct.

6 Q On the Item (114), do you know where those ---
7 you testified that was blue jean shorts. Do you have
8 in your notes anywhere where that came from?

9 A I'm sorry. Where the blue jean shorts came from?

10 Q Yes.

11 A I do not.

12 Q You do not. Okay. And you don't know whose
13 blood is on that?

14 A I do not because only two standards were
15 submitted in this particular case, so the two
16 standards that I ran, I can say they're excluded, but
17 I do not know whose blood are on the back of those
18 shorts.

19 Q Just that it is a mixture?

20 A Yes, that it's a mixture.

21 Q With a mixture, it can be two people or three
22 people or four people or any number of people,
23 correct?

24 A Yes.

25 Q And you can't tell how many people are there?

1 A If you'll allow me to look at my data, I can give
2 you a rough estimate.

3 Q That's --- I'm not asking how many people are
4 there. I'm just saying, in general, when you're
5 dealing with a mixture, the reliability goes down as
6 far as identifying an individual out of the mixture as
7 opposed to if you have a pure sample?

8 A It depends. If a mixture is discernible or
9 distinguishable, then yes, I can pull out a major and
10 minor contributor. When we interpret our data, we
11 basically are looking at the data as a whole, the
12 profile as a whole, and we can give you a rough
13 basically a minimum number of the contributors at that
14 point.

15 Q Right. Right. Okay. That's kind of what I was
16 getting at. You can tell the minimum number, but you
17 can't really tell if two people had the same alleles
18 at one and two people had the same alleles at another,
19 you wouldn't be able tell if it was two or three?

20 A It depends if you standards to compare them to.

21 Q Right. But in this case, all you can say about
22 that is that it was not Mr. Johnson or Mr. Pratt?

23 A That's correct.

24 Q And as to Item (35), that was an iron?

25 A Swab from a blue/white iron.

1 Q And that was too weak to reliably interpret?

2 A That's correct.

3 Q Now, you mentioned a shedder. It's possible that
4 with an iron when your ironing clothes that a shedder
5 might leave their DNA in the clothes that might not
6 be --- that the iron --- that could be transferred to
7 the iron that way, correct?

8 A I'm sorry. Can you repeat that question?

9 Q Yes. It's possible when you're dealing with an
10 iron, something that's come in direct contact with
11 clothes of a person, that the DNA that's on that iron
12 could have been transferred from the person to the
13 clothes to the iron?

14 A It is possible, but the heat in that --- the heat
15 factor in that would destroy any potential DNA there.
16 If you're talking about the metal part, heat will
17 severely degrade or destroy DNA, so if you're talking
18 about transferring from clothes to the metal part,
19 it's possible but highly unlikely.

20 Q And for these other items, there are a number of
21 items here that were not tested, correct?

22 A Correct.

23 Q And number --- can you just tell the jury which
24 items were not tested?

25 A No analysis was performed on Items (31) --- would

1 you like me to read the captions for those?

2 Q Yes, please.

3 A Item (31), which is a swab from the stain at
4 apartment entrance, Marker (A); a swab from Item (32),
5 which is a swab from a stain on item --- I'm sorry,
6 bedroom floor, Marker (C). No analysis performed on
7 Item (33), which is a swab from the stain on tub,
8 Marker (E). Item (34) swab from stain on bathroom
9 floor, Marker (F).

10 Item (36), swab from LG wall plug. Item (55),
11 which was the nail scrapings from Pratt. Item (56),
12 nail scrapings from Johnson. (115) which was a pair
13 of boots and (116), which is two white t-shirts.

14 Q That's all of the items that you read out to the
15 jury initially are all of the items that you received
16 to be tested, correct?

17 A That's correct.

18 Q Okay. So I'm going to hand you what's been
19 marked as State's Exhibit Number 83, just to look at
20 the outside, not the inside.

21 A Okay.

22 Q If you could look at the evidence label?

23 A Okay.

24 Q That item is the black mesh cloth, correct?

25 A That's what it's listed as, yes.

1 Q Okay, was that item submitted to you for DNA
2 testing?

3 A It was not.

4 Q Okay. And were any swabs from Beckham Swamp Road
5 submitted to you for testing?

6 A I'm sorry, what was the address?

7 Q Beckham Swamp Road?

8 A From my notes and from my report, there's no
9 swabs listed under that name.

10 Q And the swabs that --- let's see. From your
11 report, the swabs that you talked about in the bedroom
12 and apartment, those are all the swabs from --- are
13 all from inside the apartment. There's no swabs from
14 a wooded area, correct?

15 A I don't have access to that information. I don't
16 know.

17 Q That was submitted to you?

18 A Correct. I mean, all I have is what I read off.
19 I don't know exactly if there were other things
20 involved. All I have are the items that were listed.

21 Q And you weren't given any swabs from a car?

22 A Not that match that description, no.

23 Q Okay.

24 MS. HINES: No further questions.

25 THE COURT: Redirect?

1 MR. EATON: Very briefly, Your Honor.

2 REDIRECT EXAMINATION:

3 BY MR. EATON:

4 Q Ms. Grant, on the items that you didn't analyze,
5 were those requested to be analyzed?

6 A No.

7 Q Is that why you didn't analyze them?

8 A Correct.

9 MR. EATON: That's it.

10 THE COURT: Recross?

11 MS. HINES: Just briefly.

12 RECROSS-EXAMINATION:

13 BY MS. HINES:

14 Q Ms. Grant, why would items be sent to you if they
15 were not requested to be analyzed?

16 A Sometimes when things are packaged, they're
17 packaged in bulk. I don't know the answer to that at
18 this point without looking at the packaging, but
19 sometimes swabs can come in the same type of packages,
20 so at that point we pick it all up, log it all in and
21 then we process or analyze the ones that are asked to
22 be analyzed.

23 Q Okay. Who made the request for analysis in this
24 case?

25 A I believe it was Lieutenant McDonald.

1 Q Okay. So when Investigator McDonald submitted
2 the request to you, he then would have told you what
3 he wanted analyzed, correct --- or what he was
4 requesting to be analyzed?

5 A Correct.

6 MS. HINES: No further questions.

7 THE COURT: Thank you very much, ma'am. Have a
8 nice day.

9 Are you good to go?

10 THE BAILIFF: Yes.

11 THE COURT: All right. Ladies and gentlemen,
12 your lunch is here. We're going to take 45 minutes
13 for lunch. We'll start back at 1:30. Keep an open
14 mind. Do not discuss your case. We will be back and
15 ready to go at 1:30.

16 Everyone remain seated while the jury is
17 executed.

18 (WHEREUPON, the jury left the courtroom at 12:43
19 P.M.)

20 THE COURT: Anything else before we break?

21 MS. SAMPSON: No, sir.

22 MR. KRZYSTON: Nothing from the defense, Your
23 Honor.

24 THE COURT: Mr. Monk, did you --- are you good to
25 go?

1 NEWSPAPER REPORTER: We are good to go.

2 THE COURT: Okay.

3 NEWSPAPER REPORTER: We will be using the audio
4 recording, but not anything else.

5 THE COURT: Thank you very much for checking on
6 that.

7 All right. 1:30.

8 (WHEREUPON, a lunch break was taken.)

9 (WHEREUPON, State's Exhibit Numbers 132 and 133
10 were marked for identification only.)

11 THE COURT: All right. We got two notes during
12 the break, which I'm going to mark as Court's
13 Exhibits. One says, "Can we check our phones and can
14 we go outside." I told them they could, but they were
15 not allowed to use their phones for any type of
16 research or anything else that I've told them to.

17 The other one says, "As an alternate juror, will
18 I be at the final end of the trial to render a verdict
19 with this group?" I'm going to explain to all of them
20 that they are required to pay attention. Everybody
21 has an important role, just to pay attention to the
22 testimony as they have continued to do and that's it.

23 (WHEREUPON, Court's Exhibit Numbers 9 and 10 were
24 marked for identification only.)

25 THE COURT: I got a requested jury charge, it

1 looks like a mere presence charge? Is that right, Mr.
2 Krzyston?

3 MR. KRZYSTON: It is, Your Honor.

4 THE COURT: Okay. Is that the only charge you
5 are submitting?

6 MR. KRZYSTON: It is, Your Honor.

7 THE COURT: Okay. Anything before we bring the
8 jury in?

9 MS. SAMPSON: Did you want to hear arguments on
10 them or wait?

11 THE COURT: No, just have them, start processing
12 through and doing my own research and looking up stuff
13 and making sure I have what I need to have so we can
14 all have an intelligent conversation about it and I've
15 done all the stuff I need do ahead of time.

16 All right. Bring them in.

17 (WHEREUPON, the jury entered the courtroom at
18 1:38 P.M.)

19 THE BAILIFF: All jurors are all present, Your
20 Honor.

21 THE COURT: All right. Call your next witness.

22 MR. COBLE: The State calls Sergeant Robert
23 Waters.

24 THE COURT: As to the note that I received about
25 alternate jurors, everybody needs to pay attention and

1 you all have done that throughout this trial. I've
2 watched you throughout the trial. Everybody needs to
3 pay attention, watch the witnesses and everything that
4 you have been doing. Alternates are very important
5 because we never know when something may come up
6 that's completely out of our control. You'll get more
7 instructions at the end of the case at that point in
8 time. You'll understood your role then. Thank you.

9 Come on down, Sergeant Waters.

10 ROBERT WATERS,

11 after being duly sworn, testified as follows:

12 THE CLERK: Please have a seat. State your full
13 name for the record.

14 THE BAILIFF: Watch your step for me, please.
15 Speak into the microphone.

16 THE WITNESS: Robert Waters.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION:

19 BY MR. COBLE:

20 Q Sergeant Waters, where are you currently
21 employed?

22 A Alvin S. Glenn Detention Center.

23 Q What role do you play there?

24 A I'm an assistant watch commander. I work in
25 professional standards.

1 Q What are some your duties in this capacity?

2 A I monitor the phone systems, video systems. I do
3 internal investigations within the facility. If
4 anything is found to be criminal, then we notify the
5 proper authorities.

6 Q And how long have you been in this capacity at
7 Alvin S. Glenn?

8 A Fourteen years.

9 Q And Alvin S. Glenn, what is that for the jury?

10 A Detention center.

11 Q The local jail?

12 A The local jail.

13 Q You've been in this same capacity you said for 17
14 years?

15 A No, I said fourteen years.

16 Q Fourteen, excuse me.

17 A Uh-huh.

18 Q How does your phone system work at the jail?

19 A Well, we have two phone systems. We just
20 recently went to a new one. The old system, which is
21 in the Pay-Tel, when a call is made, it says a call is
22 made from Richland County Detention Center. That's
23 how we identify the calls from our facility. The new
24 system we have, it identifies the calls that are made,
25 collect calls from the Alvin S. Glenn Detention

1 Center --- excuse me, the detention center.

2 Q And by listening to that, are you able to
3 determine if a call came from the Alvin S. Glenn
4 Detention Center?

5 A Yes, sir.

6 MR. COBLE: Beg the Court's indulgence.

7 (Pause.)

8 May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 BY MR. COBLE:

11 Q Sergeant Waters, I'm going to ask you to look at
12 what's been marked as State's Exhibit 132 and 133.
13 What do you recognize these to be?

14 A These are calls made from the Alvin S. Glenn
15 Detention Center.

16 Q And did you have a chance to listen to these to
17 phone calls?

18 A I did.

19 Q And what did you hear on these phone calls,
20 briefly?

21 A When you say briefly, are you talking about the
22 instructions, or the calls in general?

23 Q I'll rephrase. Were you able to determine if
24 these calls came from the Alvin S. Glenn Detention
25 Center?

1 A Yes, I was.

2 Q How were you able to do that?

3 A Once again, a person has to identify themselves
4 and once they identify themselves, they will let them
5 know that this is a collect call from either Richland
6 County Detention Center, as I stated earlier based on
7 the old system or Alvin S. Glenn Detention Center on
8 the new system. Once they do that there, they will
9 tell them just state your name again. That's on that
10 old system.

11 Under the new system, you put in your inmate
12 number. Once you put in the inmate number, then it
13 will show your name. Once you show --- once it shows
14 your name, you put in your four digit pin number.
15 What that does is any call made under your pin number
16 will also show your name, nobody else's name.

17 Q And did you hear that in both of these two CDs
18 two separate audio formats?

19 A Well, under the new format is what I just stated.

20 Q Uh-huh.

21 A Your name, the number. Then under the old
22 format, yes.

23 Q So you're sure these phone calls came from the
24 Alvin S. Glenn Detention Center?

25 A Yes, sir.

1 MR. COBLE: Your Honor, I'd move State's Exhibits
2 133 and 132 into evidence.

3 MS. HINES: We would ask that they be marked as
4 ID only until they're authenticated.

5 THE COURT: I thought he just authenticated them.

6 MS. HINES: The --- the phone calls are
7 authenticated as having come from Alvin S. Glenn
8 Detention Center, but we don't know who --- we haven't
9 authenticated who made them.

10 THE COURT: Okay. Can this witness do that?

11 MR. COBLE: No, Your Honor.

12 THE COURT: All right. Mark them for ID only.

13 MR. COBLE: All right. Thank you, Your Honor.
14 Nothing further.

15 THE COURT: Cross?

16 MS. HINES: I have no questions for this witness.

17 THE COURT: Have a good day. Thank you, Sergeant
18 Waters.

19 THE WITNESS: You're welcome.

20 THE COURT: Call your next witness.

21 MR. COBLE: State calls Whitney Berry.

22 WHITNEY BERRY,
23 after being duly sworn, testified as follows:

24 THE BAILIFF: Want your step, please. Speak into
25 the microphone.

DIRECT EXAMINATION:

BY MR. COBLE:

Q State your name.

A My name is Whitney Berry.

Q Ms. Berry, where are you employed?

A I work for the South Carolina Law Enforcement Division, also known as SLED.

Q How long have you been the SLED?

A About a year-and-a-half.

Q What have you been doing there at SLED?

A I am a forensic scientist in the trace evidence department where I analyze gunshot residue.

Q How do you analyze gunshot residue?

A I use a scanning electron microscope with an energy dispersement x-ray detector on it, or SEM/EDX.

Q If I can back up for just a minute, what is gunshot residue?

A Gunshot residue is a broad definition for all of the material that comes out of the muzzle end of a gun when it is discharged. It also includes what comes out of the cylinder gap on a revolver or the slide on a semiautomatic. What I refer to as gunshot residue in analysis is actually primer residue. It is particles of lead, barium, and antimony that come from the primer of the cartridge when it is fired.

1 Q And you've been in this same capacity the past
2 year-and-a-half at SLED?

3 A Yes.

4 Q Did you --- are you involved in this case?

5 A Yes. I did the gunshot residue analysis in this
6 case.

7 Q Now, I see you have your report with you. Does
8 that report help refresh your memory as to exactly
9 what you did?

10 A Yes.

11 Q What did you do in this case, Ms. Berry?

12 A In this case, I analyzed a gunshot residue kit
13 from --- give me just a second. From William Wallace,
14 Jamal Pratt, and Athell Johnson.

15 Q What is a gunshot residue kit --- do you call
16 that a GSR kit?

17 A Yes.

18 Q What is a GSR kit?

19 A A GSR kit is a kit that we give out to officers.
20 It contains four stubs inside of it. These stubs are
21 in little containers. The stubs are little tiny
22 aluminum discs. They have double sided carbon tape on
23 them, and each stub is labeled for an area of the
24 hand. So we have the right palm, which would
25 encompass the entire palm of the hand and the fingers,

1 the right back, which would be the entire back of the
2 hand to the wrist, including the thumb and the
3 webbing, and then the left palm and left back areas of
4 the hands.

5 Q How does someone collect GSR from a hand?

6 A GSR is collected from a hand by taking the lid
7 off of the stub and there's --- it's in a holder. You
8 just dab it on the hand until you no longer feel
9 tackiness from the tape. So you would start on one
10 area and just continuously go all over the hands until
11 you no longer felt the resistance from the stickiness
12 of the tape.

13 Q Now, do you collect GSR?

14 A I do not collect the GSR kits.

15 Q You just analyze them?

16 A I just analyze them.

17 Q You've been trained on GSR, correct?

18 A Yes.

19 Q What is some of your training?

20 A I was trained by the SLED in-house training
21 program, which included --- I believe it was a nine
22 month training program that I went through doing hands
23 on analysis, written and practical examinations, as
24 well as testimony observation, working casework under
25 the supervision of a court qualified analyst, and

1 completed with a mock court where I had to analyze
2 evidence as though I was going to court for it and
3 prepare testimony.

4 Q Now, what are some of the ways that someone could
5 get GSR on their hand?

6 A You can get GSR on your hand by being in the
7 vicinity to the discharge of a firearm. That doesn't
8 necessarily mean pull the trigger. It means be in the
9 vicinity, so in the area of discharge of the firearm.
10 Coming into contact with something that was in it area
11 of the discharge of the firearm, such as a table,
12 clothing, a car, different objects. It would also
13 land on those.

14 Another would be handling the firearm.

15 Q How long does GSR stay on the skin?

16 A What we generally accept is that GSR will stay
17 on the skin ---

18 MS. HINES: Objection Judge. May we approach?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held in the
21 presence, but not within the hearing of the
22 jury.)

23 MR. COBLE: Beg the Court's indulgence.

24 (Pause.)

25 BY MR. COBLE:

1 Q Let's back up a little bit further. You've been
2 at SLED a year-and-a-half?

3 A Yes.

4 Q What was your training before all of that?

5 A I received a bachelor's of science degree in
6 chemistry from the University of South Carolina. I
7 also worked at a lab for environmental analysis. I
8 did environmental work, and then I started at SLED
9 in 2013.

10 Q And what were some of your work --- before SLED,
11 what were some of your duties at this previous job?

12 A In my previous job, I worked in the inorganic
13 non-metals department for Shealy Environmental
14 Services. We analyzed different environmental --- for
15 different environmental contaminants, such as
16 nutrients and different materials and water aqueous
17 samples or soil samples.

18 For example, we would look for nitrates in water.
19 We would look for E.coli bacteria in water, things of
20 that nature.

21 Q At your time at SLED, what are some of the
22 specific duties you've had there, as well?

23 A At SLED for --- as I mentioned, for the first
24 seven to nine months, I was in training to become a
25 GSR analyst. I was signed off as a GSR analyst in

1 January of 2014, so I've been working all of my own
2 cases since then.

3 Q Can I pause you right there? What was some of
4 the --- in the seven to nine months of training what
5 did that involve?

6 A That involved the written and practical
7 examinations where I would do a lot of reading. I
8 would read papers. I would read books, all about the
9 theory of gunshot residue and its analysis and
10 history. I would also take written tests on this. I
11 learned how to use the scanning electron microscope,
12 so I learned how to use the SEM. I took the tests on
13 that. I did practical exercises, such as sampling GSR
14 off of different items of clothing. I also analyzed
15 that.

16 I had clothing or samples prepared for me where I
17 had to analyze and prepare for my mock court, so I
18 didn't actually know what I was looking for or what I
19 was going to find, just like a real case, and then I
20 prepared a testimony.

21 Q And you said you started in January of this year
22 at SLED?

23 A I started in March of 2013 and in January of 2014
24 my training was completed.

25 Q So you're certified by SLED in this area?

1 A Yes.

2 Q Have you ever published before?

3 A No, I have not.

4 MR. COBLE: Your Honor, at this time the State
5 would move to offer this witness as an expert in the
6 field of gunshot residue analysis.

7 THE COURT: Voir dire?

8 MS. HINES: Thank you, Judge. May it please the
9 Court.

10 When did you graduate from the University of
11 South Carolina?

12 THE WITNESS: In 2008.

13 MS. HINES: 2008, and have you had any training
14 outside of SLED?

15 THE WITNESS: This past year I actually, in May,
16 went to Hooke College of Applied Science in Westmont,
17 Illinois, and took a class on gunshot residue
18 identification through SEM/EDX.

19 MS. HINES: What is that?

20 THE WITNESS: Scanning Electron Microscope with
21 Energy Dispersement X-ray.

22 MS. HINES: Okay. Have you testified before?

23 THE WITNESS: This is the first time.

24 MS. HINES: Okay. No further questions. No
25 objection.

1 THE COURT: All right. Ladies and gentlemen,
2 this witness will be an expert in the area of gunshot
3 residue analysis. As I've told you before, she will
4 be allowed to give opinion testimony in that area.
5 That does not mean that you must accept her opinion,
6 but it is evidence for you to use in any way that you
7 see fit and give it the weight and the credibility
8 that you believe is appropriate as you are required to
9 do with every witness.

10 You may continue, Mr. Coble.

11 MR. COBLE: Thank you, Your Honor.

12 BY MR. COBLE:

13 Q Ms. Berry, let's get back to where we were. We
14 were talking about the length of time gunshot residue
15 could remain on the hands?

16 A Yes.

17 Q And could you state that again, please? I
18 apologize.

19 A It's generally accepted that it won't last on the
20 hands or on a living person for more than six hours.
21 Typically the cut off is four to six hours. At SLED
22 our policy is that we don't analyze if the GSR kit has
23 been collected after six hours on a living person.

24 Q Why is that?

25 A The reason being, that the gunshot residue

1 because it's microscopic, okay, we have to use an
2 electron microscope to look at it, so about 100
3 particles of GSR could fit across the diameter of a
4 human hair, it's that tiny. It can easily absorb into
5 your skin. It's about the consistency of flour, so if
6 you've ever had flour on your left hands and you've
7 smacked your hands together, you know how easy it is
8 to get flour off your hands. You can just wipe it on
9 your pants.

10 Same thing with GSR. You can wipe your hands on
11 your pants to have the potential to remove it, shake
12 somebody's hand, that has the potential to remove it.
13 All these different factors have the potential to
14 remove GSR in addition to sweating, bleeding, washing
15 your hands. If it's windy outside, that could have
16 the potential, rain. All different factors could
17 remove it.

18 Q So if you had GSR on your hand and you didn't
19 touch it, would it still stay on there forever?

20 A It would not stay on there forever. Again, it
21 could absorb through the skin, and just environmental
22 factors like the wind blowing, air conditioning turned
23 up high on the car, anything like could have the
24 potential to remove it.

25 Q Now, let's turn to the report that you have in

1 front of you?

2 A Uh-huh.

3 Q On page two, did you take a GSR kit from the
4 defendant, William Wallace?

5 A I did not personally take it. It was submitted
6 to SLED.

7 Q All right.

8 A I took it from our evidence holding area from the
9 trace department and opened it, and I analyzed it.

10 Q And what were the results of that?

11 A As I mentioned before, we look at four areas of
12 the hands, the right palm, the right back, the left
13 palm and the left back. All four areas of
14 Mr. Wallace's hands, the results were negative,
15 meaning no primer residue was found, so the lead
16 barium and antimony that I would be looking for was
17 not present on his hands. When I say it's not
18 present, that doesn't mean there was nothing on his
19 hands.

20 What we're looking for are molten particles,
21 round particles, so whenever you get something really
22 hot, especially a metal, it vaporizes and when it
23 lands on the skin, it can turn into basically a small
24 steroidal particle. Those are what we were looking
25 for because it indicates they were moltenous at some

1 time. The molten aspect of it comes from firing a
2 gun. When you fire a gun, you have a reaction, you
3 know, in the primer capsule and that generates a lot
4 of heat, which will turn these primer components into
5 molten particles.

6 Q So the William Wallace in your report had no GSR,
7 no gunshot residue, from that kit you analyzed,
8 correct?

9 A No.

10 Q On that same page under results, I'm going to ---

11 MR. COBLE: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 BY MR. COBLE:

15 Q On this area right now, could you read the ---
16 finish the paragraph with the sentence that starts
17 with "A negative result..."

18 A "A negative result could also occur from
19 circumstances such as washing the hands, wiping the
20 hands, wearing gloves, sweating profusely,
21 environmental factors, including wind and rain, bloody
22 hands, excessive debris on the sample, normal physical
23 activity within four to six hours passing between
24 firing and the sampling, or the firearm not producing
25 gunshot residue on the hands when it discharged."

1 Q Thank you. Now, let's turn to page three, item
2 two. What was ---

3 MS. HINES: Objection, Judge. Under the rule of
4 completeness, I think in fairness that ought to be ---
5 the entire rest of that paragraph should be read at
6 this time.

7 MR. COBLE: Your Honor, under the rule of
8 completeness, they can do that in cross-examination.

9 THE COURT: They have their report. They can do
10 that in cross.

11 MS. HINES: Yes.

12 THE COURT: Go ahead.

13 BY MR. COBLE:

14 Q Continue on item two.

15 A Item two, I had a GSR kit from Pratt.

16 Q And what were the results from that kit?

17 A The right palm, one round particle consistent
18 with gunshot residue was found. On the right back and
19 the left palm, no gunshot residue was found, and on
20 the left back, one round particle consistent with
21 gunshot residue was found.

22 Q And again on page three of those results, could
23 you read the rest of that after, "One round particle
24 was found..." Could you read the rest of that
25 paragraph?

1 A Okay. "One round particle consistent with
2 gunshot residue is found. This particle is found in
3 gunshot residue, but may originate from additional
4 sources. Thus, the possibility that the individual
5 discharged the firearm was in the vicinity to the
6 discharge of a firearm or came into contact with a
7 surface that had gunshot residue on it cannot be
8 eliminated."

9 Q So that's not saying that an individual has to
10 shoot the gun to have gunshot residue?

11 A That's correct.

12 Q Now, could we move on to item three, which is on
13 page four?

14 A Okay.

15 Q That's one GSR kit from Athell Johnson. What
16 were the results from that?

17 A On the right palm, one round particle consistent
18 with gunshot residue was found. On the right back,
19 round particles consistent the gunshot residue were
20 found. On the left palm, round particles consistent
21 with gunshot residue were found, and on the left back,
22 no gunshot residue was found.

23 Q And again, the same as item number two under
24 prep, doesn't have to fire a gun for there to be GSR
25 on them?

1 A No.

2 MR. COBLE: Thank you. Nothing further.

3 THE COURT: Cross-examination?

4 MS. HINES: Thank you, Judge.

5 CROSS-EXAMINATION:

6 BY MS. HINES:

7 Q How are you doing?

8 A Good. How are you?

9 Q I'm good. Okay. Let's go back to the --- start
10 off with that --- Mr. Coble had you read what was
11 under William Wallace?

12 A Uh-huh.

13 Q Can you read the first sentence of that
14 paragraph. You read the rest of the paragraph, but
15 can you go ahead and read the first sentence of that
16 paragraph?

17 A "The absence of gunshot residue on the hands is
18 consistent with an individual not having discharged a
19 firearm."

20 Q Now, and then what you read from Mr. Coble is the
21 rest of the paragraph?

22 A Yes, ma'am.

23 Q And these paragraphs --- and you have a paragraph
24 as to each on your report, it's as to each one whether
25 it was found or not found and you've now read to the

1 jury all of it, right?

2 A Yes, ma'am.

3 Q The reason at that you put these paragraphs in
4 your report is because of the testing that's been done
5 on GSR scientifically to adapt for the probabilities
6 certainties that is you can't say with 100 percent
7 certainty that this person fired a firearm, right?

8 A Due to the timeframe issue with the four to six
9 hours of activity, that would be a correct statement.
10 We cannot say for certain whether or not someone fired
11 a gun.

12 Q And all you can really say generally --- just
13 generally, not specific to this case, but the
14 scientific principles that under light your science,
15 all you can really say is this is consistent with
16 having gunshot residue. It's --- you found the molten
17 particles right; which are consistent with having ---
18 I mean, you used word consistent?

19 A Yes, ma'am. In this case, when we look for GSR,
20 we're looking for a three component particles that's
21 molten, so we're looking for the lead barium and the
22 antimonium, all together, fused together, one pretty
23 little particle that's molten. In this case, we did
24 not find any particles that contained all three
25 elements. We found rounds particles, which we call

1 consistent because they are round and they don't
2 contain all of the elements. In this case, I found
3 round barium aluminum particles. Barium aluminum is
4 considered consistent with gunshot residue because it
5 can come from gunshot residue, but as in the paragraph
6 I read, it can also come from other sources.

7 Q Right. And so the reason that you put this
8 paragraph in here is to clarify the degree to which
9 your opinion --- as far as you can go. You can't go
10 farther than to say that it's found in gunshot residue
11 but it may originate from other sources, correct?

12 A Correct.

13 Q So to --- what you're trying to do there is
14 just --- you're not trying to extend the science
15 beyond what it is, correct?

16 A Correct.

17 Q And again you found particles consistent with
18 gunshot residue on the right palm and left back of
19 Jamal Pratt?

20 A Yes.

21 Q And then on the right palm, right back and left
22 palm of Athell Johnson, correct?

23 A Yes.

24 Q And you found nothing on William Wallace?

25 A Correct.

1 MS. HINES: No further questions.

2 MR. COBLE: Just very briefly, Your Honor.

3 REDIRECT EXAMINATION:

4 BY MR. COBLE:

5 Q Ms. Hines just asked you if you found one
6 particle on Jamal Pratt?

7 A I found --- as far as the actual count, I found
8 one particle on the right palm and I found one more
9 particle on the left back.

10 Q And those particles could have come from being
11 fired at?

12 A They could have come from being in the vicinity
13 of the discharge of the firearm.

14 MR. COBLE: Thank you very much.

15 MS. HINES: No further questions.

16 THE COURT: Okay. Thank you, ma'am. Have a nice
17 day.

18 All right. I have to swear in two people as a
19 function of chief administrative judge. If you will
20 just go right to your jury room. Do not discuss the
21 case. Keep an open mind. I promise you it will be
22 less than three minutes.

23 Get your next witness ready to go. No one needs
24 to leave. I'll be right back here.

25 (WHEREUPON, the jury left the courtroom at 2:08

1 P.M.)

2 THE COURT: Get ready to call your next witness.

3 Wait until the jury comes back in.

4 (WHEREUPON, the jury entered the courtroom at
5 2:09 P.M.)

6 (WHEREUPON, Court's Exhibit Numbers 11 and 12
7 were marked for identification only.)

8 THE BAILIFF: The jurors are all present.

9 THE COURT: Thank you, Mr. Hollis.

10 Ms. Sampson, you may call your next witness.

11 MS. SAMPSON: Thank you, Your Honor. The State
12 calls David Collins.

13 THE BAILIFF: Place your left hand on the Bible,
14 raise your right hand.

15 DAVID COLLINS,
16 after being duly sworn, testified as follows:

17 THE CLERK: Have a seat at the witness box.

18 MS. HINES: Judge, may we approach.

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, a bench conference was held in the
21 presence, but not within the hearing of the
22 jury.)

23 THE WITNESS: David Collins, C-O-L-L-I-N-S.

24 DIRECT EXAMINATION:

25 BY MS. SAMPSON:

1 Q All right. What is your title?

2 A I am a firearms and tool marks examiners with the
3 forensic sciences laboratory of the Richland County
4 Sheriff's Department.

5 Q How long have you been with the sheriff's
6 department?

7 A I've been with the Richland County Sheriff's
8 Department in that capacity since 2002.

9 Q What is your education?

10 A I received a bachelor's degree from the Citadel
11 in 1984. Following a different career path until
12 1990, I was employed by the State Law Enforcement
13 Division, commonly referred to as SLED, where I
14 entered a training program there in firearms and tool
15 marks examination. This program lasted for
16 approximately three years. Upon completion of that
17 program, I was certified by SLED as a firearms
18 examiner. I'm also a graduate of the South Carolina
19 Criminal Justice Academy.

20 Q When did you become certified as a firearms
21 examiner?

22 A 1993.

23 Q Do you have to continue to be certified?

24 A It's a continuing --- we are not individually
25 certified by our professional association, but my

1 certification continues from that point. You just
2 have to go through continuing education and training
3 in our field to stay current.

4 Q How often do you have to do that?

5 A As often as we can obtain funding to do so. I
6 attend training that is provided by our professional
7 association, which is the Association of Firearms and
8 Toolmarks Examiners, or AFTE. That training comes in
9 the form of an annual training seminar, which we
10 attend as often as possible. It's held in a different
11 location in the country every year. I also attend
12 specialized schools as they become available. I've
13 attended schools in shooting scene reconstruction,
14 muzzle target and distance determination, and firearms
15 --- certain specialized firearms repair courses.

16 Q And do you --- these trainings that you go to, I
17 think you said they are annual, so you do them at
18 least once a year?

19 A We try to do something once a year, but sometimes
20 funding isn't available. We attend as frequently as
21 possible.

22 Q Do you ever instruct?

23 A I do provide some instruction on the college
24 level. I do some teaching at the University of South
25 Carolina in a forensics course that is for

1 undergraduates. I do a short presentation there
2 regarding firearms and tool marks examination.

3 Q And have you ever done any publications?

4 A I have not.

5 Q How --- have you been certified as an expert in
6 firearms?

7 A I'm been qualified as an expert in firearms
8 examination and identification in the circuit courts
9 of South Carolina in excess of 200 times. I've also
10 been certified in the State courts of Georgia and
11 North Carolina. I've been certified in the federal
12 court system and in the military court system.

13 MS. SAMPSON: Your Honor, at this time I'd ask
14 that Mr. Collins be qualified as an expert in the
15 field of firearms examination.

16 THE COURT: And identification or just
17 examination?

18 MS. SAMPSON: Examination and identification.
19 I'm sorry.

20 THE COURT: Okay.

21 MS. HINES: Thank you.

22 THE COURT: Objection?

23 MS. HINES: Can I ask him questions?

24 THE COURT: Oh, yes, ma'am.

25 MS. HINES: I just wanted to clarify, you're not

1 required to have the continuing education training.

2 You do that as often as possible?

3 THE WITNESS: As often as possible, yes, ma'am.

4 MS. HINES: But there is no requirement of
5 continued education?

6 THE WITNESS: Not in our current level of
7 certification, no.

8 MS. HINES: Okay. Nothing further. No
9 objection.

10 THE COURT: Ladies and gentlemen, this witness
11 will be qualified as an expert in the area of firearm
12 identification and examination. He will be allowed to
13 give opinion testimony in that area. That does not
14 mean that you must accept the opinion, but it is
15 evidence for you to use in any way that you see fit to
16 give it the weight and credibility you believe is
17 appropriate as you are required to do with each and
18 every witness that appears before you.

19 Ms. Sampson, you may continue.

20 MS. SAMPSON: Thank you, Your Honor.

21 BY MS. SAMPSON:

22 Q All right. Mr. Collins, can you explain to the
23 jury what exactly a firearms examiner does?

24 A The primary function of a firearms examiner is to
25 examine any type of firearms related evidence that is

1 submitted to the laboratory. This may be in the form
2 of a firearm itself or fired ammunition components,
3 such as fired bullets or other projectiles, bullet
4 fragments, fired cartridge casings, unfired
5 ammunition. It can go down to even to firearms
6 accessories, such as holsters or other items to try to
7 identify them, try to classify them and in the case of
8 fired components, such as cartridge cases and
9 ammunition, such as bullets specifically, to try to
10 determine whether they came from --- were fired by a
11 suspect firearm that was submitted or if no firearm
12 was submitted to try to determine if they had a common
13 origin, whether they came from one gun. That is
14 pretty much what we call our bread and butter work
15 that we do most of.

16 We can also, in the case of fired bullets that we
17 receive from scenes where we don't have firearms
18 submitted, often determine what type of weapon was
19 involved based on our examination of markings left on
20 the bullet by the firearm that fired it. Additional,
21 we can perform multiple target distance determinations
22 in some cases. We can restore serial numbers to a
23 legible condition if they have been altered in some
24 way or obliterated. We do examination on other types
25 of toolmarks, such as marks that might be left by a

1 pair of bolt cutters on a padlock shackle, for
2 instance. You just try to use the same principle
3 that we use with firearms and bullets to identify that
4 tool back to that cut item.

5 The way that we can do this is that when a
6 firearm or a tool is manufactured, the process leaves
7 behind microscopic defects on the working surfaces of
8 that firearm or tool, that in turn are transferred on
9 to whatever it cuts or comes into contact with that is
10 softer.

11 A firearm, when it is fired, if the bullet passes
12 through the barrel for instance, and the bullet is
13 marked by the barrel by those defects in a way that is
14 potentially unique to that particular firearm. A
15 tool, such as a bolt cutters, the same process
16 applies. If a pair of bolt cutters is used to cut a
17 padlock shackle, then the cutting edge of the bolt
18 cutter is going to have microscopic defects on it from
19 the sharpening process that is unique to that
20 particular pair of bolt cutters and would then be
21 transferred to the padlock shackle. We can
22 potentially make that match.

23 Q I'm going to ask you, this jury has heard some
24 things about gunshot residue. That's not what you're
25 examining, like for example, a gunshot residue kit

1 from a person?

2 A No. We do not do that examination in our
3 laboratory.

4 Q So I want to bring you to this particular case.
5 Were you involved in the examination of --- I'm going
6 to be specific, so just for now, with the firearms in
7 this case? Were you involved in looking at some
8 firearms in this case?

9 A There is one firearm submitted to me in this
10 case.

11 Q One firearm. Okay. Would referring to your
12 notes help refresh your memory as to what you did?

13 A Yes.

14 Q Okay. I want to start with --- there were a lot
15 of things submitted to you, so I'm just going to go to
16 some specific ones, if that's okay with you?

17 A That's fine.

18 MS. SAMPSON: Beg the Court's indulgence.

19 BY MS. SAMPSON:

20 Q One of the swabs that was submitted to you or,
21 excuse me, one of the cartridges that was submitted to
22 you, I believe is listed as (15) on here, number (15)
23 and it says it came from an envelope labeled ---

24 MS. HINES: Objection.

25 THE COURT: What's the objection?

1 MS. HINES: Relevance.

2 THE COURT: Approach.

3 (WHEREUPON, a bench conference was held in the
4 presence, but not within the hearing of the
5 jury.)

6 THE COURT: Mr. Collins, when Ms. Sampson asks
7 you these questions, stick to her questions
8 specifically.

9 THE WITNESS: Yes, sir.

10 BY MS. SAMPSON:

11 Q That's my bad. I meant number (5). You received
12 a fired nine millimeter Luger?

13 A Yes, I did.

14 Q Okay. I'm not so great with guns. What's a
15 Luger?

16 A A nine millimeter Luger in this case just refers
17 to the name of the caliber that the ammunition is
18 designed to fit. I mean, it's --- each firearm has a
19 chamber in it that is designed to accept a specific
20 size and shape of cartridge. In this case, nine
21 millimeter Luger describes a cartridge that is
22 designed to fit into the chamber of a firearm that is
23 --- to take that type of ammunition only. Ammunition
24 is typically not interchangeable. The shape of the
25 cartridge must fit the chamber of the firearm. Nine

1 millimeter refers to the approximate diameter of the
2 bullet, the projectile in this case, and also the
3 approximate diameter of the barrel. There is a slight
4 difference. What you're looking at is a cartridge of
5 that is of nine millimeter approximate in diameter.

6 Luger is the name that was given to it when it was
7 initially designed really back around the turn of 1900
8 when the cartridge was initially designed. That name
9 has stuck with the cartridge ever since. It was
10 initially designed for use in Luger type pistols.

11 Q Okay. Then there was also --- you were given
12 Item (28), a fired nine millimeter Luger caliber that
13 was found in the back bedroom. Was that --- is that
14 correct?

15 A Yes, I also received that item.

16 Q And you also received a fired bullet from autopsy
17 number (50)?

18 A I did.

19 Q And that's from the autopsy of Jamal Pratt?

20 A That is what my records indicate.

21 Q You also received number (52), a fired bullet
22 jacket from Athell Johnson, the autopsy of Athell
23 Johnson?

24 A Yes, I received a nine millimeter that matches
25 that description.

1 Q I'm going to ask you to look at State's Exhibits
2 128 and 127 and ask if you recognize those. Don't
3 show them to the jury, but you can take them out.

4 A Yes, I have examined these items. There are
5 markings that I placed on these containers.

6 Q I'm going to break it down so that we talk about
7 that.

8 A Yes.

9 Q You received this information, the items from
10 evidence from your evidence property place?

11 A Yes, all of these items I received from the
12 evidence property section.

13 Q And how do you --- what condition are they in,
14 when you receive them? Are they sealed or how does
15 that work?

16 A They are all sealed --- these were all received
17 in sealed containers.

18 Q If it wasn't sealed, what would you do?

19 A If it wasn't sealed, I would stop the procedure
20 and then determine why it wasn't sealed and
21 potentially not accept the evidence.

22 Q Would you note that somewhere?

23 A Yes.

24 Q In this case, was it sealed when you received it?

25 A Yes.

1 Q Okay. Upon receiving the two exhibits, what did
2 you do?

3 A In this --- all of these exhibits --- all the
4 items represented in these exhibits, I would have
5 taken into the laboratory. I would have physically
6 examined them. I would have taken notes as to their
7 condition as they were received and depending on their
8 suitability for such procedures, I would have then
9 moved on to comparison microscopy of these items with
10 other.

11 Q Based upon looking at them now, do they look to
12 be in the same condition as when you received them
13 back in 2012?

14 A Yes.

15 Q Did you do anything to them to change them or
16 anything like that other than --- besides testing
17 them, before you received them when you first received
18 them?

19 A The only changes I would have done to these items
20 is they would have been cleaned to remove any
21 potential biohazardous materials, so I could handle
22 them safely and they would have been scribed by me for
23 future identification purposes in an area that would
24 not hinder future examinations.

25 Q But that was after you received them?

1 A Yes.

2 MS. SAMPSON: At this time I would ask to
3 introduce State's Exhibit Numbers 128 and 127 into
4 evidence, the chain of custody has been established.

5 MS. HINES: No objection. I'm not sure which one
6 is which though.

7 MS. SAMPSON: I'll go through that.

8 THE COURT: 127, 128 without objection.

9 (WHEREUPON, State's Exhibits 127 and 128 were
10 admitted into evidence.)

11 BY MS. SAMPSON:

12 Q Okay. I'm going to go one at a time. I'm going
13 to say what each one is. Let's start with 127. It is
14 --- this says it's the projectile from Mr. Pratt, is
15 127.

16 A Yes, that is what's written on the envelope.

17 Q Okay, now we'll go to --- when you receive that,
18 what do you do first do with it?

19 A The first thing I do with any type of evidence
20 that I receive in the laboratory, when I open the
21 package, I make note of its condition. In the case of
22 a projectile or a projectile fragment, I will take any
23 measurements that I can, depending on the damage or
24 lack of damage present. I will weigh the item, and
25 will attempt to determine what caliber it is. This

1 can often be done simply through a physical
2 examination and some measurements and weights.

3 I will then, depending on where it was recovered
4 and the nature of the case, I may even clean the item
5 again to remove any biohazardous materials so that I
6 can handle it safely. We try to get this evidence to
7 a point that we can handle it with ungloved hands
8 because the likelihood of dropping something wearing
9 gloves when it's very small is increased.

10 Once I've cleaned it and examined it and made
11 notes of it, if it is suitable for additional
12 examination, I may move forward into what we call
13 comparison microscopy, which is where I'll examine,
14 for instance, if there are two fired bullets or
15 similar times. I'll compare them side by side under a
16 comparison microscope to try to determine if they come
17 from one firearm or two firearms.

18 MS. SAMPSON: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. SAMPSON:

21 Q And did you do that with this particular item?

22 A I did.

23 Q And I'm going to ask you, you also received an
24 Item (51) that was a bullet core fragment. It's not
25 sitting up there for you, but it also came from Athell

1 Johnson, correct?

2 A Actually that item is up here.

3 Q Is it up there, as well?

4 A Yes.

5 Q Okay.

6 A And I did receive that item.

7 Q You received another bullet jacket from the same
8 autopsy, correct, of Athell Johnson. That would be
9 (52)?

10 A Yes.

11 Q Okay.

12 A Those items that you're referring to, (51) and
13 (52) are State's Exhibit 120.

14 Q They're both in there. Okay. Now, can you tell
15 the jury the difference between the two items that are
16 in 128?

17 A State's Exhibit 128 contains two different items,
18 one of which is listed in my report as a fired core,
19 bullet core fragment. That would be the internal part
20 of the bullet that when fired is covered by a copper
21 or some other similar bullet jacketing material. The
22 internal material is lead or lead alloy. That's not
23 uncommon that, upon impact, the jacketed material will
24 be stripped away and you're left with an intact or a
25 fragment of that core material. That is what we're

1 dealing with here with my Item (51), which is in
2 State's Exhibit 128. It is a fragment of the core or
3 interior of the bullet. My Item (52) is the jacket
4 from a fired bullet that is stripped away again from
5 the core. This is the outer sheathing which is
6 typically, appears in this case, to be a copper based
7 alloy material.

8 Q Are you able to test the four items that I'm
9 going to ask you about, (5), (28), (50), (51) and
10 (52), actually five items, can you test those in
11 general? Can you test those to see if they match a
12 particular gun?

13 A If I have a firearm submitted to the laboratory,
14 then, yes, we can do certain procedures to determine
15 if those items are fired by a particular gun. The
16 bullet core, in this case, was not suitable for such
17 an examination. To be suitable for such an
18 examination, that item has to come in contact with the
19 barrel of the firearm because it was protected inside
20 the sheathing of the bullet. It never came into such
21 contact, therefore it didn't take any markings from
22 the gun. It was unsuitable for identification
23 purposes.

24 Q And that bullet core would be Item (51)?

25 A My Item (51) on my report as shown in State's

1 Exhibit 128.

2 Q I'm going to show you what's already been
3 introduced as State's Exhibit Number 25. Did you
4 receive this item, as well?

5 A Yes, I did.

6 THE COURT: Mr. Collins, is that firearm secure?

7 THE WITNESS: This firearm is secure, sir. There
8 is a cable tie through the bore rendering the firearm
9 safe.

10 THE COURT: Thank you very much.

11 BY MS. SAMPSON:

12 Q I believe you said you did receive that?

13 A Yes.

14 Q Were you able to test that gun as well?

15 A I was.

16 Q Was it in working condition?

17 A Yes.

18 Q And based on your tests --- based on your
19 testing, what were your conclusions about Items (5),
20 (28), (50) and (52)?

21 A My testing, to be brief, just in summary was that
22 based on my comparison of test bullets and test
23 cartridge cases that I fired from this firearm with
24 these particular items is that my Items (5), (28), and
25 what was the other one?

1 Q (50).

2 A (50), that those items ---

3 Q And (52).

4 A And (52), that those items were all fired by that
5 gun.

6 Q And (50) in particular, that is from Jamal Pratt,
7 the bullet that came from Jamal Pratt's head and (52)
8 is the jacket that came from Athell Johnson's head,
9 correct?

10 A That is what is indicated on my notes, yes.

11 Q And so it is your expert opinion those two
12 bullets were fired from that gun?

13 A Yes, it is my opinion that those bullets were
14 fired from that gun.

15 Q What do you base that on?

16 MS. HINES: Objection, Judge, pursuant to my
17 previous objection.

18 THE COURT: Overruled.

19 BY MS. SAMPSON:

20 Q What do you base this opinion on?

21 A Going back to the way that a firearm is
22 manufactured, there are various machining processes
23 that are employed that will form the metal of the gun,
24 produce the pieces of the gun. In the case of the
25 barrel, there is a process called rifling that is used

1 to place grooves in the barrel of the gun. The
2 purpose of these grooves to cause a bullet, when it
3 passes through the barrel, to spin in much the same
4 way that a quarter back attempts to put a spiral on a
5 passed football. That process will leave behind
6 microscopic defects in the surface of the barrel as
7 the tool that's being used to do this is continuously
8 wearing as it passes through the bore.

9 When a bullet passes down the barrel it is marked
10 by the barrel in a way that appears as a series of
11 scratches or what we call striations on the surface of
12 the bullet. Due to the random nature of the creation
13 of those defects, the pattern of those scratch marks
14 will be potentially unique to each individual firearm.
15 I say potentially because some firearms may or may not
16 actually leave many striations on the surface of a
17 bullet depending on how finished or polished the
18 barrel is, but whatever markings of that nature are
19 there are going to be unique to the gun.

20 There are other markings left on the surface of
21 the bullet. There are larger characteristics, what we
22 call class characteristics, that is the actual
23 impression of the rifling grooves that you could see
24 with the naked eye and you could take measurements of
25 and you could use those potentially to exclude a gun

1 before you get to microscopic analysis.

2 Different manufactures use different numbers of
3 rifling grooves in their barrels. For instance if a
4 bullet that you're examining has the impressions of
5 six rifling grooves on it and the gun that you are
6 submitted has five grooves in the barrel, then you can
7 automatically exclude that before you even move to a
8 microscopic comparison.

9 In this case, looking at the bullets, I was able
10 to conclude, first off that they all had the same
11 number of rifling grooves with the same direction of
12 twists. That was nine grooves with a left-hand twist.
13 This was somewhat important at this point because that
14 type of rifling is lended to Hi-Point brand firearms.
15 So we have already filtered this down to one time of
16 firearm.

17 Additional microscopic analysis of a comparison
18 of my test fires from the suspect firearm with the
19 evidence projectiles, I was able to find matching
20 marks left by the rifling microscopically that were
21 unique to that particular firearm. In other words, I
22 was able to determine that those individual marks,
23 those unique marks, on the surfaces of that bullet and
24 that bullet jacket were the same as those found on
25 test bullets fired on the gun, therefore, I concluded

1 that those two items had been fired by that gun.

2 In the case of cartridge casings, we're looking
3 at markings left by a different part of the gun. They
4 can be left by the firing pin or the breech base,
5 which is the back of the bolt or the face of the bolt
6 through which the firing pin protrudes. They can come
7 from the extractor or the ejector or various other
8 parts of the gun that come into contact with the
9 cartridge case during the firing process.

10 As a result of my test firing of this gun and
11 then my comparison with the test fires with these two
12 fired cartridge casings, which are my Item (5) and my
13 Item (28) in my report, I was also able to conclude
14 that those two cartridge casings were also fired by
15 this particular firearm.

16 Q And do you feel like any other testing was needed
17 in order for you to come to this conclusion?

18 A Once I found what I considered to be sufficient
19 matching characteristics, I stopped at that point.
20 Once you reach that point, there is no need to go
21 further.

22 MS. SAMPSON: Thank you. Beg the Court's
23 indulgence.

24 (Pause.)

25 Thank you. No further questions.

1 THE COURT: Cross?

2 MS. HINES: Thank you, Judge.

3 CROSS-EXAMINATION:

4 BY MS. HINES:

5 Q Hello, Mr. Collins, how are you doing?

6 A I'm doing well, ma'am. How are you?

7 Q I'm good. Now, you talked about on --- just a
8 few moments ago, on direct examination you talked
9 about class characteristics?

10 A Yes, ma'am.

11 Q And those are characteristics that are unique to
12 a type of firearm in most cases. Like, for example,
13 in this case Hi-Point nine millimeter is going to have
14 nine grooves with a left twist?

15 A This particular series.

16 Q This particular, yes. And so the class
17 characteristics are of a certain make and manufacture
18 of a firearm?

19 A Yes. They can ---

20 Q Or ---

21 A They can be --- actually different manufacturers
22 can all use the same class characteristics in some
23 cases. This is one of the rare cases where the nine
24 left rifling is unique to one particular type of
25 firearm.

1 Q Right.

2 A But yes, it describes markings that could be left
3 by a larger set of firearms.

4 Q Okay. So that's --- I mean, you could have six
5 grooves with a right twist or three grooves with a
6 left twist. It just depends on what the manufacturer
7 decided to put in there?

8 A That's correct.

9 Q Right. Okay. And then you mentioned the
10 individual characteristics, which are the --- as you
11 described them, the striations left by the tool that
12 made that particular barrel. If you could describe
13 the individual characteristics?

14 A The best way to think of striations, striations
15 are essentially scratch marks that are left by the
16 surface of the barrel on the bullet as the bullet
17 passes through the barrel. If you were to take your
18 thumbnail and drag it cross a bar of soap and you look
19 at it closely, you'll see a series of ridges or
20 imperfections in that scratch mark that are --- those
21 are a type of striation.

22 Q Okay. There is actually another type of
23 characteristic in firearms that's been recognized,
24 correct?

25 A There is.

1 Q Can you explain to the jury the sub class
2 characteristics?

3 A Yeah, sub class characteristics are
4 characteristics that are left on a smaller set of
5 firearms than would be, for instance, class
6 characteristics.

7 Some class characteristics may be a defect left
8 in the barrel by a tool that develops, for instance,
9 some damage, a cutting instrument that may develop a
10 chip in that tool and that characteristic may be
11 passed on to several different barrels that are
12 manufactured consecutively. As firearms examiners, we
13 are trained to be able to recognize what represents a
14 sub class characteristic versus what is actually an
15 individual characteristic.

16 Q Okay. And a sub class characteristic could
17 affect a handful of firearms or an entire lot of
18 firearms that were manufactured with that tool?

19 A It's typically a fairly short lived defect that
20 can obviously impact more than one firearm. It
21 impacts a smaller set.

22 Q A smaller set than all, but it could impact ---
23 it could potentially impact every firearm made by that
24 tool?

25 A By that particular tool, yes, until it's replaced

1 or repaired.

2 Q Right. In your training, how do you distinguish
3 between sub class and individual?

4 A Well, one of the important things to understand
5 when you're looking at the marks left on a bullet or
6 cartridge case is the manufacturing process itself
7 that was involved in the production of that mark.
8 What did the manufacturer do to make that part and how
9 does that impact the possibility for sub class
10 characteristics? Looking at the barrel, there are
11 various processes that can be used to manufacture a
12 barrel.

13 Some of the more common ones that were used have
14 been what we call cut-rifling where a cutting tool is
15 pulled through the barrel and it actually cuts the
16 grooves into the barrel. Each one --- each cutting
17 instrument has a series of gradually deeper cutting
18 blades on it so as it comes through it removes a
19 little more metal with each blade and leaves a cut
20 impression.

21 Another method that is often used is what we call
22 button rifling. That is where an item that has a
23 negative impression, if you will, of the rifling is
24 actually pressed through the barrel under pressure and
25 it forms or molds the rifling into the barrel, if you

1 will, as it passes through. Between those two, cut
2 rifling, because it's using a cutting process, has the
3 greater likelihood of leaving behind sub class
4 characteristics, so when we're looking at a barrel, we
5 are focusing on --- if we have one that's manufactured
6 by a cut rifling process, we look really carefully to
7 make sure that we're not dealing with a sub class. A
8 mark that goes the full length of the bullet would be
9 suspect. Any mark left in the groove impression or
10 the actual area that is cut by the tool as opposed to
11 the areas between the grooves would be more suspect.

12 In the case of Hi-Point firearms, which are
13 manufactured with the button rifling process, there is
14 less of a likelihood of encountering sub class
15 characteristics. In the case of cartridge cases, we
16 have to look at what process is used to manufacture
17 whatever characteristic left the mark that you're
18 using. In the case of my examination, I base my
19 comparisons and identifications on breech face
20 impressions. The breech face can be formed by, again,
21 cutting operations or milling operations. In this
22 particular case with Hi-Point firearms, there is a
23 final process in the production line where the breech
24 face is actually hit with essentially belt sand to
25 finish it off to put the last bit of processing on the

1 breech face. Because of the process of the belt
2 continually wearing, the likelihood of getting sub
3 class is virtually zero, and that process is actually
4 done by the manufacturer for firearms examiners
5 settings so that we would have the potential for more
6 and higher quality unique characteristics to be left
7 on the cartridge casing.

8 Q And --- but, while you're trained to try to
9 distinguish between sub class and individual, there is
10 no --- in the field of firearms and tool marks, there
11 is no guidance as to what would be definitely a sub
12 class characteristic mark and definitely an individual
13 characteristic, right?

14 A As part of your training and part of your
15 exposure to the manufacturing process, you would be
16 able to tell an individual mark from a sub class mark.
17 If you suspect that something might be sub class you
18 would go to a different level of testing. For
19 instance, if you have something that --- in the
20 rifling that --- a mark that extends the full length
21 of the barreling surface of the bullet, you would then
22 potentially make a cast of the inside of the rifle
23 barrel in silicon and exam that actual rifling for the
24 presence of a defect that goes the entire length of
25 that rifling groove.

1 In the absence of that, it would fall back to
2 being an individual characteristic. Anytime that we
3 have a mark that goes the entire length of the
4 barreling surface, I tend to look at that a little
5 more suspiciously. In the case of markings that are
6 just there on the base portion, those tend to be more
7 consistent with marks that are left by really the last
8 bit of the barrel before it exits, which is going to
9 be a unique characteristic as opposed to a sub class
10 characteristic which would be caused by the entire
11 length of the barrel.

12 Q But in the literature, the literature does say
13 that there are situations where a sub class
14 characteristic is indistinguishable from an individual
15 characteristic in its appearance, correct?

16 A There are some cases where, in some manufacturing
17 techniques in some firearms yes, it could be mistaken
18 for individual characteristics.

19 Q In fact, sub class characteristics weren't
20 recognized by the firearms community until the '90s,
21 was it?

22 A I'm not exactly sure when that was more
23 identified. Probably earlier than the '90s, but it
24 has become something more of a focus of our studies in
25 our validation processes in more recent years, but

1 yes, it is something that we are very aware of in our
2 examination processes.

3 Q Okay. Now you mentioned, your studies. There's
4 actually recently been quite a number of studies of
5 the field itself of firearms. There's been several
6 studies recently. You're aware of the 2008 Ballistic
7 Imaging Report, correct?

8 A Yes, I am.

9 Q Okay. And what that report was, it was a --- the
10 National Institute of Justice of the US Department of
11 Justice requested that the National Research Council
12 appoint a committee of experts through the National
13 Academy of Science to address issues of computerized
14 imaging of ballistics technology, correct?

15 A That's correct.

16 Q And what that is, is they were looking at the
17 feasibility of having a database that has these ---
18 where you can enter the bullets in or enter the
19 characteristics that you see, in and have it compared
20 --- have a national database at least, for cartridges
21 and casings, correct?

22 A Yes, that's actually a very good description of
23 what they're trying to do. They're trying to
24 determine the feasibility of using a database where
25 images of cartridge case markings left by the firearm

1 and bullets --- and marking of bullets and firearms
2 are entered into a database for use in future
3 comparisons for, perhaps if the gun is used in a
4 crime, would it be able to determine or find that
5 match, essentially.

6 Q That's what they're trying to do, but as part of
7 that, they had to look at the underlying science used
8 by firearms examiners, correct?

9 A They attempted to.

10 Q And that committee found that the validity of the
11 fundamental assumptions of uniqueness and
12 reproducibility of firearms related tool marks has not
13 been fully demonstrated, correct?

14 A That was a remark that was made in their paper,
15 yes.

16 Q Yes. And what they mean by that, when you're
17 looking at firearms, you have two basic assumptions
18 that you make, which is that the marks are unique and
19 that they're reproducible, correct?

20 A Yeah. The marks are unique and reproducible and
21 there was some confusion there as to whether they were
22 trying to --- what level of uniqueness is trying to be
23 breeched.

24 Q Right. And what that committee found was that a
25 significant amount of research would be needed to

1 scientifically determine the degree to which firearms
2 related tool marks are unique or even to
3 quantitatively characterize the probability of the
4 uniqueness, correct?

5 A That was their finding, yes.

6 Q Yes. And basically what they were saying is that
7 there haven't been enough studies and they were very
8 critical of the studies that had been done to validate
9 the underlying assumptions that you make in your field
10 of study, correct?

11 A Actually, I would not characterize that as being
12 the content of the report. They were critical of the
13 validation or the science, as it were, based on what
14 they could see. However, there is absolutely no
15 indication that they reviewed any of the reams of
16 validation material that went back some fifty years in
17 our professional association.

18 Q Okay. And as part of their study, they requested
19 both information and submissions from the major
20 organizations in your field and from firearms
21 examiners, correct?

22 A Actually, my records indicate that a group of
23 qualified firearms examiners from our professional
24 association was offered to them, yet they declined to
25 use them.

1 Q Okay. Now, the --- there it is a scientific
2 working group for firearms examiners. SWGGUN is the
3 acronym used, correct?

4 A That is correct.

5 Q Okay. And they responded, correct? They are an
6 organization that looks at the scientific issues in
7 your field, correct?

8 MS. SAMPSON: Your Honor, I've not said anything,
9 but we're going on about a report and we have yet to
10 get to this particular analysis of this particular
11 gun.

12 THE COURT: This is permitted under the rules.
13 Keep going.

14 BY MS. HINES:

15 Q Is that correct?

16 A Yes, we have monitors, challenges to our field
17 that monitors the court findings as --- that occur ---

18 Q Uh-huh.

19 A --- nationwide in our field and they are
20 responsible for establishing guidelines for our
21 practices or recommending guidelines for our practices
22 and other guidance to our field.

23 Q Right. Now, before we get to that, I talked
24 about the Ballistics Imaging report from 2008 from the
25 National Academy of Science. There was also a second

1 report in 2009 Strengthening Forensic Science in the
2 United States, A Path Forward. That was also
3 commissioned by the National Institute of Justice for
4 the National Research Council and National Academy of
5 Science, correct?

6 A That is correct.

7 Q And what that report said --- and it was more in
8 that it did not just exam firearms. That examined
9 forensic science across the board?

10 A Correct.

11 Q And one of their findings was forensic evidence
12 is --- with the exception of nuclear DNA analysis, no
13 forensic method has been rigorously shown to have the
14 capacity to consistently and with a high degree of
15 certainty demonstrate a connection between evidence
16 and a specific individual or source, correct?

17 A They challenged the ability --- we don't have the
18 ability to place a statistical or likelihood ratio to
19 an identification made between two items ---

20 Q Right.

21 A --- in the same way that DNA does.

22 Q And that's because the validation studies have
23 not --- there have been too few and the validation
24 studies that have been done have had too few --- the
25 pool of examples was too small?

1 A Actually, I would argue that the issue isn't the
2 lack of studies, it's just that there are fewer ---
3 you're comparing apples and oranges to a large extent
4 when you look at firearms identification versus DNA.
5 DNA is dealing with a very small set of what is
6 essentially sub class characteristics and the
7 likelihood of finding those in a population set,
8 whereas firearms deals with individual characteristics
9 which are not something that DNA would have to deal
10 with.

11 There are --- we have a far wide array of random
12 locations that we're dealing with. So trying to
13 statistically place a number on something that you
14 have to be able to put a --- an actual number to what
15 you're trying to statistically analyze. We don't know
16 how many defects might be present on a particular
17 bullet. It varies from bullet to bullet. It varies
18 based on the nature of the bullet and the array of
19 striae that we might find on a bullet cannot be
20 statistically determined at this time, although we
21 are, as a science, working on ways to do that. What
22 it is now, our analysis is based on a subjective
23 analysis of our objective observations of those striae
24 that we find on the bullet.

25 Q Okay. That's just what I was --- this is a

1 subjective analysis?

2 A It's a subject +opinion based on an objective
3 observation.

4 Q Okay. So when you're looking at a bullet for
5 comparison, you're looking through a comparison
6 microscope?

7 A That's correct.

8 Q And the comparison microscope throws half of the
9 known standard up and the half --- the unknown
10 standard, so they're side by side?

11 A Yes, they're side by side. Excuse me, I didn't
12 mean to interrupt. They're side by side in the same
13 field of view. You rotate them and turn the bullets
14 independently of each other looking for areas of the
15 same pattern of marks that might appear. What we are
16 doing is a form of pattern recognition. We're looking
17 for essentially, if you --- a good way to think of it
18 is looking for the same bar codes of scratch marks on
19 both bullets. If you can find sufficient agreement of
20 those line marks, then you can conclude they came from
21 the same gun. If you can't, due to either damage or
22 other factors that might be at play, then you will
23 not --- possibly will not be able to make an
24 identification.

25 Q Okay. Now, the --- I mentioned a moment ago

1 the --- you just mentioned sufficient agreement. Can
2 you define sufficient agreement?

3 A Sufficient agreement in our case, means what
4 you're looking at, if you find matching striae, it
5 exceeds anything that you would find on two bullets
6 fired by two different guns but is equal to or more
7 than what you would find on two bullets fired by the
8 same gun. The way you make that determination goes
9 back to your training. You look at, during the
10 training process, literally thousands of bullets fired
11 by different guns and many bullets fired by the same
12 gun.

13 In the course of validation studies that we look
14 at, you know, we have the opportunity to look at many
15 bullets during these validation studies that were
16 fired through consecutively manufactured barrels.
17 This is where you would expect to find the most chance
18 of sub class problems or similar markings. So by
19 doing that and being able to differentiate blindly
20 without knowing which bullet came from which barrel,
21 and make those associations back to the correct
22 barrels, we have validated over time and over repeated
23 studies that this is possible and that the error rate
24 in those studies is virtually zero on the validation
25 studies.

1 Q Okay. So for sufficient agreement, you look back
2 to the closest match on two different guns? If it's
3 more than that and ---

4 A There's a significant gap between what you would
5 expect to find on two bullets with similar markings.
6 They may have similar appearance from two different
7 guns. You may fire two bullets, for instance, some of
8 the markings may match but there will be others that
9 do not. The level of similarity between those bullets
10 and the most favorable situation to make a match under
11 those circumstances versus what you find on two
12 bullets fired by the same gun --- it's not like those
13 two sets are close together. Those two sets have been
14 shown to be wide and separated. There is a large area
15 in between where we have --- there simply is no way
16 that you would expect to find --- if you render an
17 identification or a match, those markings that you're
18 looking at, you are convinced are unique to that
19 particular firearm in your mind.

20 What you're doing as you look at these markings
21 on the surface of the bullet, you're learning
22 basically the face of the bullet. You're learning how
23 that bullet marks --- it's marked by. You look at
24 each individual impression left on the bullet and then
25 when you find that same marking on another particular

1 bullet, there is --- yes, it is a subjective analysis,
2 but I like to equate it to looking at a crowd of
3 people. If you see your wife's face in a crowd of
4 people, you can instantly identify her. That's what
5 happens here. You can identify that particular bullet
6 to that level of certainty in your mind, so yes, it is
7 something --- it goes back to your training, the
8 thousands of bullets that you look at in training,
9 looking at the validation studies that have been where
10 you have subsequently manufactured barrels, where in
11 every case examiners have been able to identify which
12 bullet went with which barrel. Those barrels from the
13 sequentially manufactured, of the same make, same
14 model, same manufacture, all coming off the same line
15 one after the other.

16 Q Okay. Let's talk about these validation studies.
17 One of the criticisms in the reports from the National
18 Academy of Science was that the sample size was too
19 small on the validation studies, correct?

20 A There has been some criticism over the size of
21 the validation studies. Part of that is because we
22 didn't --- firearms manufacturers may not want to give
23 up 100 barrels from their factory, but they will
24 provide perhaps ten or twenty, ten being the usual
25 number that we have dealt with, barrels or slides, for

1 the studies.

2 Q So most of these validation studies that you're
3 talking about are ten gun studies?

4 A Yes.

5 Q So they're looking at ten guns and the criticism
6 was that in order to have a degree of reliability,
7 that you would need to look at more than that?

8 A That was their criticism. That is not --- our
9 professional association has issued a response to that
10 study, which in our opinion we are convinced that our
11 multiple validation studies over time using the same
12 process blindly going --- validation studies going
13 back decades have added what ---

14 Q And SWGGUN, that we talked about earlier, has
15 issued a response to that report, correct?

16 A I believe they have. I don't know that I have
17 that response with me.

18 Q What they said, the SWGGUN has been aware of the
19 scientific and systematic issues identified in this
20 report for some time and has been working diligently
21 to address them. SWGGUN has also been aware of the
22 disparity or fragmentation that presently exists in
23 the application of forensic science in general and
24 within the discipline of tool marks, firearm and tool
25 mark identification specifically, so they recognize

1 that the issues have existed. They have been aware of
2 those issues for some time, correct?

3 A It's always --- it's been recognized in virtually
4 every field of forensic science that there's always a
5 means to improve what you're doing. In any job there
6 is always a way to do what you're doing better. Yes,
7 we are working to improve our statistical basis of our
8 findings or be able to provide a statistical basis for
9 our findings.

10 What we are confident of is the accuracy of
11 findings thus far. What we are trying to do now is
12 merely strengthen it. There are ongoing validation
13 studies that are sent out virtually every year by our
14 professional association or members of it to further
15 strengthen the field.

16 Q Now. There are no statistical foundations in
17 firearms, correct?

18 A There have been studies performed that are
19 attempting to apply statistical numbers to what a
20 match is, going down to how many possible lines could
21 you have, for instance, that match in a given land
22 impression. What we're dealing with is theoretical
23 statistics, and it does --- even those studies, as
24 limited as they are, if you extrapolate them out to
25 actual case work validating that what we are doing, is

1 showing a practical level of uniqueness.

2 Q A practical level of uniqueness?

3 A Yes.

4 Q How do you define that?

5 A The practical level extends to --- we're not ---
6 what this is, is not a determination of absolute
7 uniqueness. There is no determination of absolute
8 uniqueness in anything, including DNA analysis. There
9 is always a probability associated with DNA. They may
10 say the likelihood of finding the same DNA that you
11 find on this sample in another person other than the
12 one you have identified may be one in ten quadrillion,
13 which is obviously greater than the population of the
14 earth. Based on that, they will determine that that
15 person that left that sample is the only person that
16 could have done that, but there's still that chance.

17 There is a --- there is no means that I can say
18 to a 100 percent fail safe certainty that an item,
19 that a bullet, was fired by a gun, but I can state
20 that, based on my opinion, based on my observations of
21 the markings left on that bullet, I can state to a
22 practical degree of certainty that the bullet is ---
23 that the marks are unique to that particular firearm.
24 Practical degree means that the likelihood of finding
25 another bullet fired by another gun that matches that

1 --- another gun, is so remote it has to be a practical
2 impossibility and that is, again, based on repeated
3 observation studies.

4 Q Okay. Now, you say so remote as to be a
5 practical impossibility, but there is no statistical
6 basis for that statement?

7 A Not for firearms yet, no.

8 Q Okay. And, in fact, the American --- the AFTE,
9 can you tell the jury what that acronym stands for?

10 A AFTE is the Association of Firearms and Tool
11 marks Examiners. That is our professional association
12 that represents us and provides us with additional
13 training.

14 Q And they have defined practical certainty. You
15 mentioned a practical degree of certainty. They have
16 defined a practical certainty as: "Sureness related to
17 or manifested in action, practice or action. In the
18 context of a scientific conclusion, practical
19 certainty occurs when an examiner can affirm all of
20 the following necessary conditions. He or she
21 believes the conclusion to be true and accurate.

22 "He or she has rational grounds for believing the
23 conclusion is true and accurate, and he or she
24 acknowledges that in the abstract it is not possible
25 to achieve absolute certainty for results flowing from

1 a scientific theory or technique."

2 A Yes, that is a direct quote from our response.

3 Q Yes. So when you say a practical degree of
4 certainly, that's what you mean?

5 A Yes.

6 Q So the conditions for that practical degree of
7 certainty is your belief that it's true?

8 A Correct.

9 Q Rational grounds for believing that it's true?

10 A Correct.

11 Q And an acknowledgment that at least in the
12 abstract it's not possible to achieve absolute
13 certainly for results flowing from a scientific theory
14 or technique?

15 A That is true.

16 Q Okay. Now, you said earlier that the error rate
17 a virtually zero?

18 A In the studies performed on consecutively
19 manufactured barrels. There have been some slightly
20 higher error rates approaching 1.7 percent in some
21 studies with consecutively manufactured extractors,
22 which are manufactured with a different process.

23 Q Now, there's --- when you're looking at --- let
24 me just --- when you're looking at these striations,
25 there are studies that say that there are a certain

1 percentage of striations are going to match on
2 different bullets fired from different guns?

3 A I have not seen a study that says a certain, that
4 fixed a percentage number on that, but I have seen
5 striae fired by --- bullets fired by different guns
6 that do in some areas match.

7 Q Okay. And the striations fired from the same gun
8 are not necessarily always going to match?

9 A That is true. The bullet may form up differently
10 or move down the barrel slightly differently from shot
11 to shot. You may get some differences from bullet to
12 bullet.

13 Q So let's go back to sufficient agreement. Can
14 you define that again?

15 A It's when, in my mind, when I'm looking at --- on
16 these two bullets, is equal to or greater than any
17 agreement I have found on bullets on previously
18 examined bullets from other training, other casework,
19 validation studies that are fired by the same gun and
20 are known to have been fired by the same gun. That
21 agreement is far greater in my mind than anything that
22 I've seen on two bullets fired by different guns.
23 That's as simple as I can put it.

24 Q Okay. How do you define far greater?

25 A It's all again based on your training and

1 experience and what you --- what you have been trained
2 to see and not see. We look at a lot of bullets fired
3 by different guns, again, during our training process.
4 So many that you would become familiar with what is
5 unique to a gun versus what is a similarity between
6 two different guns.

7 Q Okay. The AFTE, has standards for how to do
8 these firearm identifications?

9 A There are standardized procedures that are used
10 bilaterally across the country. Everybody does this
11 essentially the same way. The way they analyze the
12 data in some agencies is a little different in that
13 they use a slightly different procedure than most of
14 the rest of the country.

15 Q But there is no standard for how many striations
16 need to match or the quality of the marks needed to
17 declare that this did come from this gun, are there?

18 A In most laboratories they use what is called
19 traditional pattern matching, and our laboratory is
20 one of those laboratories. There is no set standard
21 as to how many matching striae you need.

22 You have --- what you have on a bullet will be
23 greatly impacted by its condition, how well it was
24 impacted by the barrel, passing through the barrel.
25 We don't have a set number of points of identification

1 that we have to have. There are some, a much smaller
2 set of laboratories using what is called consecutive
3 matching striae where they're actually counting or
4 quantifying the set of --- the number of matching
5 lines they have in one set, for instance, to try to
6 quantify what indicates a match and what does not.
7 What they are simply quantifying is what we are
8 objectively coming to the same conclusions with our
9 observations and it's been shown to be virtually no
10 difference in the results between the two sets.

11 Q Now, you said you were objectively coming to that
12 or subjectively?

13 A Excuse me, I'm coming to a subjective opinion
14 based on my objective observation. My objective
15 observation is that these markings match and my
16 subjective interpretation of that is what I put on the
17 report and the conclusion I come to as a basis of
18 that.

19 It can be enough in that indication or fall
20 short, in which case I would render an inconclusive
21 result.

22 Q Okay. So in making this subjective
23 identification through your training and experience,
24 you know it when you see it?

25 A That is one way of putting it. There is some

1 degree of subjectiveness in many different areas of
2 forensics. For instance, if a drug chemist is looking
3 at a print out from an infrared instrument to give us
4 a peak type analysis, it probably will not match their
5 exact standard that they use, but they can use that to
6 still render that conclusion that the substance is
7 blank for instance.

8 My opinion is subjective to the point that I am
9 saying that --- I am confident that that particular
10 bullet was fired by that gun based on my objective
11 observation of matching striae.

12 Q Just a moment.

13 (Pause.)

14 Okay. If you fired a certain number of rounds,
15 say ten rounds through the same gun, on each one you
16 would see certain differences?

17 A You may see some differences between each round,
18 yes.

19 Q And part of your analysis is to figure out which
20 marks to count and which ones to ignore?

21 A That is correct.

22 Q Okay. Marks that are produced by an individual
23 firearm can change over time, too, can't they?

24 A Yes, they tend to change slowly over time or they
25 can change more rapidly if someone does something

1 specific to alter the conditions.

2 Q And there can be similarities between marks on
3 cartridges or bullets, jackets, that are produced by
4 different guns?

5 A There have been some similarities noted, yes.

6 Q And you mentioned going to firearms manufacturers
7 and touring. They --- over the years, they --- the
8 firearms manufacturers have been trying to improve the
9 efficiency of what they do?

10 A Oh, yes.

11 Q Of how to make --- how they're making their
12 firearms and things that are --- so there's more ---
13 one of the more modern cutting tools don't wear down
14 as rapidly as the older tools?

15 A They may not. The cutting of rifle barrels ---
16 very few people are using the cutting process anymore.

17 Q Right.

18 A It is becoming more common to find hammer forged
19 or button rifle barrels in the industry. When it
20 comes to the actual machining process, yes, it's
21 always going to be in their best interests to have a
22 cutting instrument that might be formed in different
23 parts of the gun that would dull slower so they don't
24 have to replace it as often.

25 Q Now, in this particular case, as to the firearm,

1 number 94, that you examined ---

2 A Yes, ma'am.

3 Q --- that's the only gun you examined, correct?

4 A That is correct.

5 Q You didn't compare any of these casings or the
6 fragment or the bullet or jacket cartridge, any of
7 that to any other Hi-Point?

8 A None was submitted to me in this case other than
9 this one.

10 Q And you said that there may be corrosion residue?

11 A Yes.

12 Q Test fired bullets didn't engage well unless a
13 larger grain was used?

14 A Yes.

15 Q Okay. Even then engagement was not reliably
16 complete.

17 A Correct.

18 Q When you say engagement was not reliably
19 complete, what does that mean?

20 A What happens sometimes when a bullet is fired
21 down a barrel is that it doesn't completely swell or
22 engage into all the rifling in the barrel. There may
23 be some gaps as it moves down the barrel unevenly.
24 The Hi-Points are not the highest quality of firearm.
25 So the tolerances in the barrel may be slightly

1 different. What you end up with sometimes is poor
2 engagement. The rifle barrel doesn't mark the bullet
3 completely all the way around when it is fired. What
4 you end up with is a lower quality of markings. There
5 may be markings present, but they may not be as
6 complete as you would find perhaps on a higher quality
7 gun that has a better barrel.

8 Q Just writing that down, the Hi-Point is not high
9 quality weapon?

10 A I don't consider it to be a high quality weapon,
11 no.

12 Q And you saw lower quality markings in this case
13 than you have seen in other cases?

14 A Well, we had two things going against us in this
15 particular case. First, there was a problem with the
16 engagement of the bullet in the barrel of the firearm
17 and then there was corrosion issues on the actual
18 evidence bullets and cartridge cases that were
19 recovered. Those --- in other words, there was some
20 damage to the evidence that slightly obscured, if you
21 will, some of the individual markings. This made the
22 comparisons relatively difficult compared --- on the
23 scale of what we normally see to fire a bullet and the
24 bullet comparisons, these were not very easy
25 comparisons.

1 Q Okay. And as you just said in your report, you
2 also say that these conditions that you're talking
3 about made identification with Items (50) and (52)
4 very difficult?

5 A Yes.

6 Q And you described it as very difficult?

7 A It was very difficult.

8 Q You also described the markings as faint
9 markings?

10 A Yes, part of that, again, goes back to the
11 corrosion issue and the lack of engagement.

12 Q And as to Item number (50), what you said was due
13 to poor rifling engagement, these comparisons are very
14 difficult. Faint markings, photography efforts were
15 largely unsuccessful although some areas were
16 captured.

17 A That's correct.

18 Q When you say the photography efforts were largely
19 unsuccessful when you find your match, you photograph
20 it?

21 A To the extent that we can. We're taking the
22 photograph to essentially capture an image of what we
23 were looking at to remind us later when we go to court
24 and what we're basing our examination on. It may be a
25 year, two years or more before our case goes to court.

1 When I initially started my training, we would do
2 this with hand drawn sketches, so obviously a
3 photograph could be of more value. The problem that
4 we encounter is that the camera does not have the same
5 resolution as my eye, so I might be able to see faint
6 markings that, specific to the camera, the resolution
7 cannot pick up, and that's what was encountered here
8 is that the photogenic quality, if you will, of the
9 markings was very low. We do not take a picture of
10 every marking we use to make an identification.

11 Typically we only take a photograph of perhaps the
12 best example for whatever is going to be most easily
13 photographed as opposed to what it might be. The best
14 marking might not be photographic. It simply just may
15 not be captured by the resolution of the camera.

16 Q Okay. And in this case when you say that
17 photography efforts were largely unsuccessful, you
18 weren't able to capture by the camera the striations
19 that you looked at to make your subjective
20 determination?

21 A Not all of them.

22 Q And that was to Item number (50). As to Item
23 number (52), which is the jacket, the bullet jacket
24 from Mr. Johnson?

25 A Correct.

1 (a cell phone goes off.)

2 THE BAILIFF: Give me that phone.

3 BY MS. HINES:

4 Q Again, due to poor rifling engagement, these
5 comparisons were difficult, and faint markings,
6 photography efforts were largely unsuccessful,
7 although some areas were captured.

8 A Yes.

9 Q And you marked off in the general rifling
10 characteristics that visible rifling characteristics
11 were poorly engaged?

12 A That is correct.

13 Q So there were some difficulties here?

14 A It was not an easy examination on the bullets.
15 The cartridge casings were very easy.

16 Q Okay. And you did describe the cartridge
17 casings, as well marked, correct?

18 A I believe I did, yes.

19 Q This is your subjective opinion?

20 A This is my subjective opinion, and it also has
21 our internal quality control measures, yes.

22 Q And can you explain your internal quality control
23 measures?

24 A Any time we make an observation from the
25 microscope or come to a conclusion, whether it's an

1 identification or a match, an inconclusive result or
2 elimination, or even if we're saying that the item,
3 such as the bullet core, is unsuitable for comparison
4 purposes, all of those observations are checked by
5 another qualified examiner after us, and we --- to the
6 extent possible, we do this blindly. In other words,
7 we give them the evidence. We do not tell them what
8 our answer is, what our result is, and they come to
9 their own conclusion regarding that evidence. That is
10 our quality check to make sure that somebody else is
11 seeing the same thing that I'm seeing and they're
12 coming to the same opinion that I came to, and that
13 happened in this case.

14 Q And who did the quality check in this case?

15 A Terry Gleason, an examiner in our laboratory.

16 Q And how long has Terry Gleason been a firearms
17 examiner?

18 A I believe since about 2000, about 14 years.

19 Q And what is your position in your laboratory?

20 A Well, until about a month ago, I was a
21 supervisor.

22 Q Uh-huh?

23 A From 2002 until last months, I was the --- I
24 established the section when it first opened and when
25 I came over from SLED, and last month I handed the

1 reins over to Terry, to let her be the supervisor.

2 Q But at the time of this report, you were her
3 supervisor?

4 A That's correct. If I could clarify, at the time
5 of this report, she was the only other employee at the
6 laboratory, so there were only two of us there.

7 Q Okay. And the AFTE, the Association of Firearms
8 and Tool Marks Examiners, you call it AFTE?

9 A AFTE, yes.

10 Q AFTE, okay. They have a code of ethics, correct?

11 A Yes, they do.

12 Q And under Section 4(B.) of their code of ethics,
13 it addresses having another examiner look at your
14 work, correct?

15 A I don't have a copy of the code of ethics in
16 front of me, but if that's what it says, yes.

17 Q Okay. It says, "It shall be regarded as ethical
18 for one examiner to re-examine evidence material
19 previously submitted to and examined by another.

20 Where a difference of opinion arises, however, as to
21 the significance of the evidence or to the test
22 results, it is in the interest of the profession to
23 make --- that every effort be made by both examiners
24 to resolve their conflict before the case goes to
25 trial. However, work product and trial strategy may

1 require consent of counsel."

2 A That sounds accurate, yes.

3 Q That sounds accurate, so you have the quality
4 control, but in the event that y'all disagree, your
5 code of ethics says that you should try to resolve
6 that disagreement before the case goes to trial?

7 A That's what it says, yes.

8 Q Okay. And if there was disagreement, would that
9 be noted in your report?

10 A Yes, it would be, and we have a process in our
11 protocol manual on how to address differences of
12 opinion that could involve the bringing of another
13 qualified examiner to examine the items in addition to
14 those that are having the disagreement.

15 Q Okay.

16 A It falls back on the section supervisor as to
17 what course of action to take, and at that time, it
18 would have been me.

19 Q Uh-huh.

20 A In this particular case, there was no
21 disagreement with the results.

22 And if I could expand on that. The other source
23 of qualified examiners that could be tapped into
24 locally would be those at the SLED lab if they're
25 willing to do so.

1 Q Right. So just to sum up, what we have here is
2 your subjective opinion?

3 A That is correct.

4 Q In a field with no statistics underlying that
5 opinion?

6 A There are no numerical statistics underlying my
7 opinion as I presented it to you today.

8 Q And there's disagreement within the broader
9 scientific community, specifically the National
10 Academy of Science, the National Research Council, as
11 to the underlying assumptions that you made in coming
12 to your subjective opinion?

13 A They have issued reports indicating that they do
14 have problems with the nature of what we were trying
15 say, but they also offer no indications of having
16 reviewed any of our literature, nor have they
17 consulted with any of our experts or any of our
18 council staff.

19 Q And according to the National Academy of Science,
20 the validity of the fundamental assumptions of
21 uniqueness and reproducibility of firearms related
22 tool marks has not been fully demonstrated.

23 A That is their opinion, yes.

24 Q And SWGGUN has issued a response that they are
25 aware of those criticisms?

1 A They're aware of the criticisms, yes.

2 Q And they're aware of the problems in the field?

3 A We're all aware of ways that these could be made,
4 in any situation, strengthened but we are also still
5 confident in our results.

6 Q Confident to a degree of practical certainty?

7 A Yes.

8 Q Because you believe your conclusion to be true?

9 A Yes.

10 Q You have rational grounds for believing your
11 conclusion is true?

12 A Correct.

13 Q And you acknowledge in the abstract that it is
14 not possible to achieve absolute certainty for results
15 flowing from a scientific theory or technique?

16 A That is correct.

17 MS. HINES: Beg the court's indulgence just a
18 moment.

19 (Pause.)

20 MS. HINES: No further questions.

21 THE COURT: Redirect?

22 If you have some, then we're going to take a
23 break.

24 All right. Return to your jury room. We're
25 going to take about a ten or fifteen minute break.

1 Keep an open mind. Do not discuss the case.

2 (WHEREUPON, the jury left the courtroom at 3:31
3 P.M.)

4 THE COURT: Mr. Collins, you are allowed to step
5 down. You are not allowed to discuss the case with
6 anybody in any way, shape or form. Do you understand
7 that?

8 THE WITNESS: Yes, Your Honor. I'm comfortable
9 sitting right here.

10 THE COURT: Okay. That's perfectly fine. We'll
11 start back about 3:40.

12 (WHEREUPON, a short break was taken.)

13 (WHEREUPON, Court's Exhibit Number 13 was marked
14 for identification only.)

15 THE COURT: All right. Mr. Wallace, nothing
16 happened when you weren't in here. They just brought
17 you in. Nothing happened on the record at all, okay?

18 THE DEFENDANT: Okay.

19 THE COURT: I received another note from the
20 jury, which is --- what's the next number?

21 THE COURT REPORTER: Thirteen.

22 THE COURT: Court's Exhibit Number 13. They
23 inquired about the phone that was taken and whether or
24 not their picture had been taken. I'm going to inform
25 them that nobody in the room is allowed to take

1 pictures. The only pictures that are authorized are
2 by the local media who have sent in a proper request
3 and even then, they are not allowed to photograph the
4 jurors at all.

5 All right. Bring them in.

6 MS. SAMPSON: Your Honor, Mr. --- never mind.
7 Never mind.

8 (WHEREUPON, the jury entered the courtroom at
9 3:45 P.M.)

10 THE BAILIFF: The jurors are all present, Your
11 Honor.

12 THE COURT: Thank you, Mr. Hollis.

13 Ladies and gentlemen, I got your note about
14 photographs. Nobody is allowed to take your
15 photograph at all in here. The only --- at this point
16 in time the only one person who is allowed to even
17 take photos in here is a member of the news media, who
18 has submitted a proper request, which was filed
19 correctly under the South Carolina rules of court.
20 Even --- pursuant to that request even if the news
21 media were in here or video camera were in here,
22 nobody would ever be allowed to show your picture or
23 take your picture in any way, shape, or form so that
24 will not be happening.

25 All right. Redirect?

1 MS. SAMPSON: Thank you, Your Honor. May it
2 please the Court.

3 REDIRECT EXAMINATION:

4 BY MS. SAMPSON:

5 Q Just briefly. So in all that we just heard, you
6 talked about starting test and you received the items
7 that we've already discussed at some point, correct?

8 A That's correct.

9 Q And you received them on different days?

10 A Yes.

11 Q And I want to turn your attention to page nine of
12 your bench notes.

13 A Correct.

14 Q And it talks about how (5), which is one of the
15 cartridges we've been talking about was looked at on
16 July 2nd; is that correct?

17 A Yes.

18 Q And it also talks about how Item (50), which we
19 have already talked about was looked at on July 2nd,
20 on the next page?

21 A Yes.

22 Q And at that time on July 2nd, it was determined
23 that those came from the same gun, correct?

24 A It was determined before we received the firearm
25 that was submitted that those two had been fired by

1 one gun.

2 Q Correct. So before you even had a gun to compare
3 to, you had already determined that two of those items
4 that we are talking about came from the same gun?

5 A That's correct.

6 Q Then she asked you did you look at any other guns
7 besides the ones that were submitted to you. Did you
8 need to look at any other guns?

9 A No, I did not.

10 Q She was talking to you about all of these other
11 reports and what they mean, have any of those reports
12 said you should not come to court and not talk about
13 your findings?

14 A No.

15 Q Have any of them came in there and told you that
16 your findings are incorrect?

17 A No.

18 Q And your findings are that the four items we
19 talked about, (50), (28), the one that came from
20 Athell Johnson's head and the one that came from Jamal
21 Pratt all came from the gun that we have in evidence,
22 correct?

23 A That is my opinion, yes.

24 MS. SAMPSON: Thank you. No further questions.

25 THE COURT: Recross?

1 MS. HINES: Briefly.

2 RECROSS-EXAMINATION:

3 BY MS. HINES:

4 Q Your opinion is subjective?

5 A Correct.

6 MS. HINES: No further questions.

7 THE COURT: Thank you very much. Have a nice
8 day. You're excused from your subpoena today;
9 Mr. Collins.

10 Call your next witness.

11 MS. SAMPSON: Thank you, Your Honor. At this
12 time, the State calls Raquel Weston.

13 THE COURT: All right.

14 THE BAILIFF: Place your left hand on the Bible,
15 raise your right hand.

16 RAQUEL WESTON,
17 after being duly sworn, testified as follows:

18 THE CLERK: Please have a seat there and state
19 your full name.

20 THE WITNESS: Raquel Weston.

21 DIRECT EXAMINATION:

22 BY MS. SAMPSON:

23 Q Good afternoon, Ms. Weston.

24 A Hello.

25 Q I'm going to need you to speak up. You speak

1 real quiet. Either scoot up further or speak louder
2 for me. How are you doing?

3 A Good.

4 Q Are you a little nervous?

5 A (The witness nods in the affirmative.)

6 Q I need you to say or no.

7 A Yes.

8 Q Where did you grow up?

9 A Here in Columbia.

10 Q So you're from Columbia?

11 A Yes.

12 Q How old are you?

13 A Twenty-four.

14 Q Twenty-four. What do you currently do?

15 A I work in the health field, and I'm going to
16 school to be a nurse.

17 Q To be a nurse?

18 A (Nods in the affirmative.)

19 Q Back in 2012, were you in school?

20 A Yes.

21 Q Where were you at school?

22 A We just graduated from USC, and I was going to
23 Midlands Tech to start nursing.

24 Q To start nursing?

25 A Uh-huh.

- 1 Q Were you working at that time?
- 2 A Yes.
- 3 Q What were you doing at that time?
- 4 A I was working in a hospital and a nursing home.
- 5 Q A nursing home. What did you do there?
- 6 A I was a certified nurse's assistant.
- 7 Q A nurse's assistant?
- 8 A (Nods in the affirmative.)
- 9 Q Okay. Now, did you know --- how did you know
- 10 Athell Johnson?
- 11 A Well, we had been dating for three years.
- 12 Q At the time?
- 13 A Yes, ma'am.
- 14 Q Did you guys live together?
- 15 A Yeah.
- 16 Q And did you have two apartments in your name at
- 17 that time?
- 18 A Yes, ma'am.
- 19 Q And was one of those apartments at 8100 Garner
- 20 Ferry?
- 21 A Yes.
- 22 Q Who else lived with you?
- 23 A Athell was there.
- 24 Q And you knew Athell very well?
- 25 A Yes.

1 A Yes.

2 Q Could he walk?

3 A No.

4 Q How long had he been in a wheelchair?

5 A Since April 2010.

6 Q So he was --- was he a quadriplegic or a
7 paraplegic?

8 A He was just paralyzed from the waist down.

9 Q Just from the waist down? So his arms were okay?

10 A Yes, ma'am.

11 Q And did you have to help take care of him?

12 A Yes, ma'am.

13 Q What did you have to do for him?

14 A I had to help him use the bathroom, wash him,
15 cook for him, take him to therapy appointments, doctor
16 appointments. I would stay with him when he was in
17 the hospital. He had multiple surgeries because of
18 complications with his injury.

19 Q Now, back in 2012, and I said --- you said you
20 had dated him for about three years, so you started
21 dating in 2009?

22 A Yes, ma'am.

23 Q Roughly. Did you know Jamal Pratt?

24 A Yes.

25 Q How did you know him?

1 A I met him through Athell. They were friends
2 before I even met Athell.

3 Q Would you say they were good friends or how would
4 you say ---

5 A Yes, ma'am.

6 Q Were they together a lot?

7 A I think Jamal had went to jail, but then when he
8 got out, him and Athell had hooked back up. They
9 started to hang out again.

10 Q So they were --- but they were close?

11 A Yes, ma'am.

12 Q Now, when you --- I'm going to try to do this
13 delicately. Did you know what Athell did for a
14 living?

15 A Yes, ma'am.

16 Q What did he do?

17 A He sold drugs.

18 Q He sold drugs?

19 A Yes, ma'am.

20 Q And you knew that?

21 A He told me.

22 Q He told you. Did you ever see him do it?

23 A No.

24 Q And did he ever ask you to hold any money?

25 A Yes.

1 Q How often would he do that?

2 A Every so often when he got it, he would just ask
3 me to put it up for him.

4 Q He could would ask you to put it up for him?

5 A Yes, ma'am.

6 Q Where would you put it?

7 A I kept it in a backpack that I had, a small
8 backpack.

9 Q Did you keep it at your Garners Ferry apartment
10 or at the other apartment?

11 A The other one.

12 Q So when he asked you to hold the money, what
13 would you do with it?

14 A I would put it in a backpack and put it in a
15 closet.

16 Q In a closet?

17 A Yes, ma'am.

18 Q And how would you get it back to him?

19 A I bring it back to him.

20 Q Would he ask you or you just knew to bring it?

21 A He would ask me.

22 Q Would he call or would he ---

23 A Yeah.

24 Q So he would call you and ask you?

25 A Yes, ma'am.

1 Q So take you back to June 28th of 2012, you said
2 you were working as a nurse's aid --- I'm sorry. Is
3 that what it was, a nurse's aid?

4 A Yes, ma'am.

5 Q At a nursing home?

6 A I was working at the hospital that night.

7 Q That night. Did you work --- you said that
8 night. What time did you go in and what time did you
9 get off?

10 A 7:00 P.M. to 7:00 A.M.

11 Q Seven P.M.

12 A Yes, ma'am.

13 Q So you went in at 7:00 P.M. and got off on the
14 28th at 7:00 A.M.?

15 A Yes, ma'am.

16 Q All right. And what did you do when you got off
17 work?

18 A I went to my student apartment because I was
19 tired, and I was sleepy so I just went there to go to
20 sleep.

21 Q That's not the one at Garners Ferry Road,
22 correct?

23 A No.

24 Q So when you got to your apartment, did you put
25 pajamas on, or what did you do?

1 A I just went to bed.

2 Q You have your hair in braids. Was it in braids
3 back then?

4 A No.

5 Q How was it?

6 A I had long hair. It was about here. It was
7 down.

8 Q Was it straight or curly?

9 A Straight.

10 Q Did you have to do anything at night to it?

11 A I just wrapped it up with my wrap.

12 Q Did you do that that day?

13 A Honestly, I don't remember, but I probably did.

14 Q Was it a habit that you had?

15 A Yes, ma'am.

16 Q So what happened to wake you up that day or that
17 morning?

18 A Athell called me.

19 Q Do you know what time it was?

20 A It was around 10:00 or 10:30 in the morning.

21 Q Were you asleep?

22 A Yes.

23 Q And that woke you up?

24 A Yes.

25 Q So what did you do when you got the call? What

1 happened during the call?

2 A He called me and he just said bring --- bring the
3 money and hurry up.

4 Q Bring the money and hurry up?

5 A Yes.

6 Q Did that seem unusual to you?

7 A At the time no, because I was just waking up, but
8 now that I think back on it, yes, it did.

9 Q Had he ever told you to hurry up like that
10 before?

11 A No.

12 Q No? Okay. So did you?

13 A Yes.

14 (WHEREUPON, State's Exhibit Numbers 134 through
15 138 were marked for identification only.)

16 BY MS. SAMPSON:

17 Q For now I'm just going to show you what's being
18 marked as State's Exhibit Number 134 and ask you do
19 you recognize that?

20 A Yes, ma'am.

21 Q Do you recognize that?

22 A My car.

23 Q Does this picture accurately reflect what your
24 car looked like back in June of 2012?

25 A Yes, ma'am.

1 MS. SAMPSON: At this time, Your Honor, I'd ask
2 to introduce State's Exhibit Number 134 into evidence.

3 MR. EATON: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit Number 134 was
6 admitted into evidence.)

7 BY MS. SAMPSON:

8 Q So this is car that you owned back then?

9 A Yes, ma'am.

10 Q And that's car your went over to 8100 Garners
11 Ferry Road in?

12 A No, ma'am.

13 Q You didn't? What car did you go over there in?

14 A I had a Chrysler. I was driving his car.

15 Q But that car was at the apartment that day?

16 A Yes, ma'am.

17 Q All right. So once you get to the apartment,
18 what happened? I'm sorry, I skipped a step. Did you
19 get the money?

20 A Yes, ma'am.

21 Q How much money was it?

22 A It was around \$10,000.

23 Q \$10,000, okay. I'm going to need you to speak
24 up.

25 A I'm sorry.

1 Q Okay. Let me scoot this up a little bit. You
2 said it was around \$10,000?

3 A Yes, ma'am.

4 Q Did you count it?

5 A No.

6 Q Did he tell you how much it was?

7 A No.

8 Q Then how do you know how much it was?

9 A Well, yeah, he told me. I didn't count it. I
10 just knew it was in there.

11 Q Whatever he told you is what you knew?

12 A (Nods in the affirmative.)

13 Q So he told you it was \$10,000?

14 A Yes, ma'am.

15 Q At some point.

16 A Yes, ma'am.

17 Q Okay. So you take the money. Is it in your bag
18 or where is it?

19 A It's in the backpack.

20 Q So you get your backpack, right?

21 A Yes, ma'am.

22 Q And you get in the car?

23 A Yes, ma'am.

24 Q And you drive up there?

25 A Yes, ma'am.

1 Q Does he call you in between there?

2 A No, ma'am.

3 Q So what happens when you get there?

4 A When I get there, I used my key to open up the
5 door.

6 Q Okay. So I'm going break it up for you little
7 bit. The door was locked?

8 A Locked.

9 Q Was the bolt locked or just the bottom lock?

10 A I think it had two locks on the door, but I
11 really can't remember.

12 Q Do you remember if the bolt was locked, the top
13 one was locked, or just the bottom one? If you don't
14 remember, that's okay.

15 A I opened the door with my key. When I opened the
16 door, I saw Athell laying on the right side of the
17 living room. His feet were tied up. His hands was
18 tied behind his back. His wheelchair was in the
19 corner and as soon as I opened the door, I stepped
20 back. but Wallace pulled me back in by his hands. He
21 kind of forced me in there.

22 Q I'm going to stop you, Raquel. You said he was
23 laying on --- was he on the floor or on the couch?

24 A On the floor.

25 Q And you said you started to step back, why?

1 A Because I saw him on the floor, and I saw
2 Wallace. When he opened up the door, he had a gun in
3 his hand, and I saw Diggs over where Athell was. I
4 had a big kitchen knife from where I used to cook and
5 he had that knife in his hand.

6 Q Now, did you know William Wallace?

7 A Yes.

8 Q How did you know William Wallace?

9 A I knew Wallace ---

10 Q Let me stop you. Did you know him to be friends
11 with Athell? That they had been together before?

12 A Yes.

13 Q So you had seen him before?

14 A Yes.

15 Q This was not the first time you had seen him?

16 A No.

17 Q How many times do you think you had seen him
18 before this occasion?

19 A Within the last two months of ---

20 Q Within the last two months, how many times before
21 that do you think you saw him?

22 A Him and Athell were together almost every day.

23 Q Almost every day, so you were used to seeing him?

24 A Yes, ma'am.

25 Q So you knew it was him?

1 A Yes, ma'am.

2 Q Is he in the courtroom today?

3 A Yes.

4 Q Where is he?

5 A He's right there. (indicating)

6 Q What does he have on?

7 A A burgundy shirt.

8 Q So that's who you saw that day?

9 A Yes, it is.

10 Q And what did he do?

11 A He --- when I opened up the door and I backed up,
12 he pulled me back in by my left hand and then he
13 closed the door and then I put all my stuff down. I
14 had the bag and my pocketbook. He told me to go sit
15 down on the couch.

16 Q Who told you that?

17 A Wallace.

18 Q Okay. And then what happened?

19 A And then he asked me where the money was and I
20 told him in the bag. He asked me where my phone was.
21 I gave it to him. He put it in my pocketbook.

22 Q Let me stop you. Where is Jamal Pratt?

23 A Jamal is --- I had a sectional in my apartment.
24 He is on the left side of that, of the sectional. I
25 didn't see him until he came around and sat down on

1 the coach.

2 Q Is he sitting there?

3 A He is tied up.

4 Q He is tied up, as well. Could you tell what they
5 were tied up with?

6 A I had trash bags that I would bring home from
7 work and they were tied up with those trash bags.

8 Q So he is sitting on one part of the sectional
9 and ---

10 A No, he is on the floor.

11 Q On the floor. So both of them are on the floor?

12 A Yes.

13 Q So you sit on the couch?

14 A Yes.

15 Q And then what happened?

16 A And then Wallace asked Athell if that was all the
17 money, and Athell said that's all I have. Then I
18 looked at Athell. He looked at me and shook his head,
19 and then I don't remember detail by detail. I just
20 remember the major points.

21 Q That's fine. What is the next thing you
22 remember?

23 A I remember Wallace walking back and forth, and he
24 walked back in the apartment, down the hallway. I'm
25 not sure if he went in the room or what, but then

1 Diggs was standing there with a knife, and I looked at
2 Athell. He had --- he used to wear briefs because he
3 had a condition where he was incontinent.

4 Q So by briefs, you don't mean underwear. You mean
5 like the Depends?

6 A Yes.

7 Q Okay.

8 A I noticed that he had a small like blood stain in
9 his brief. I'm not sure what could have happened
10 before I got there, but I noticed that. Then they had
11 my iron plugged up by the TV, and then DeAndre Diggs
12 got the iron. He said something to Athell. He took
13 the iron and he burned him on his leg, and I just
14 heard him screaming and he was screaming because he
15 put that iron on his face and then Diggs told me to be
16 quiet and he just kept screaming. (crying)

17 Q Do you need to take a break?

18 A (No response.)

19 Q Can you go on or do you need to take a break?

20 A And then Wallace told me to come back in the room
21 with him.

22 Q He told you to come in the back with him?

23 A In the bedroom with him, and then.

24 Q Right did they tie you up, or were you ---

25 A Not at that point. I walked back down the room

1 with Wallace. Then he told me --- he told me that
2 Athell was going to die, and I asked him why, and all
3 he would say was, "He violated me. He violated me."
4 I said, "Why? What did he do?" He was like, "He is
5 going to die." Then Jamal, he was crying. He was
6 crying down the hallway and he was saying, "Please,
7 please don't do this brother, please." (crying)

8 Q Can you continue? I know it's hard. If you need
9 to take a break, you let me know, okay?

10 (Pause.)

11 A And then Diggs --- after --- they had a trash bag
12 tied around Athell's mouth, too. He said something
13 about a trash bag. He was just pulling him and just
14 pulling him. He couldn't walk. He just pulled him
15 and he pulled him over to the room, and I said,
16 "Please don't do it in front of me. Please don't do it
17 in front of me. Don't do it in front of me."

18 Q Does he let you leave the room?

19 A I walked back to the couch and then Wallace tells
20 him to tie my hands up, and then they both go back in
21 the bedroom where Athell and Jamal are and Diggs grabs
22 a towel from the kitchen that I had on the stove, and
23 they were back there for awhile. I was there just on
24 the couch. I was just asking for Jesus to please save
25 us, to please save us, please don't let them hurt him.

1 Please don't let them hurt him. (crying)

2 Q And Raquel, when you're sitting in the living
3 room, did you --- were you tied up at that time?

4 A Yes.

5 Q Who tied you up?

6 A Diggs.

7 Q And what did he tie you up with?

8 A The trash bag.

9 Q So how long did they stay in the back?

10 A Probably about 15, 20 minutes and then Diggs ---
11 Diggs goes outside and he doesn't come back in the
12 apartment.

13 Q And you said Diggs goes outside. Did Wallace
14 ever go outside?

15 A He went outside and came back. He kept going
16 back and forth outside and he came back.

17 Q Did he ever take anything outside?

18 A I'm not sure who took the bags out, whether it
19 was Diggs or Wallace, but I just remember Wallace
20 walking back and forth with a gun in his hand and then
21 before --- before Diggs went outside, that big knife
22 he had in his hands, he cut the --- he cut the trash
23 bags off of me so he released my hands and then
24 Wallace went back there.

25 Q Where did Diggs go?

1 A He went outside. I don't know where he went. At
2 that time I didn't know where he was. He went
3 outside.

4 Q I'm sorry. Did he ever come back in?

5 A No.

6 Q So what happens after Diggs leaves for the last
7 time?

8 A Wallace walked back in the back room. I don't
9 know where they were, and I hear a gunshot and then I
10 hear another one. Then about 15 seconds, I heard two
11 more gunshots. Then he walked back in the living room
12 and he said, "Okay. Let's go." He told me that I was
13 going to drop him and Diggs off somewhere, and we
14 walked --- (crying)

15 Q I'm going to stop you for just a second. When
16 you hear those four gunshots in total, who were the
17 only people in the apartment?

18 A Myself, Wallace, Athell and Jamal.

19 Q Who were the only people that left after that?

20 A Can you say that one more time?

21 Q When you left the apartment after hearing those
22 four shots, who are the only people that left?

23 A Myself and Wallace.

24 Q So when you leave the apartment, where do you
25 guys go?

1 A We walked behind the apartment building and
2 Wallace had my hand and his hands is very sweaty. I
3 asked him to let my hand go. He said "No," and then
4 he --- he told me that he likes me more than I know.
5 He kissed me on the back of my hand, and then we
6 walked to this white car, this white old car. I think
7 it was a Buick, but I'm not sure. Diggs was in the
8 front seat. I don't know if he was in the front seat
9 at that time or the backseat, but some kind of way
10 Wallace ends up driving and I'm sitting right behind
11 him.

12 Q Do they still have their guns?

13 A Yes, they have everything and there was a big
14 shotgun in the passenger's seat.

15 Q In the backseat or the front seat?

16 A In the front seat.

17 Q There was a big one in the front seat?

18 A Yes, it was in a black bag.

19 Q In a black bag. Okay. Did they have handguns or
20 just that big gun?

21 A No, they both had handguns. Wallace had a
22 handgun in his hand that whole time we were in the
23 apartment.

24 Q Okay. So once your in the car, who drives?

25 A Wallace.

1 Q And where do you guys go?

2 A We get on Garners Ferry. We turn left at that
3 light and we go down there. I don't know the name of
4 that road. Then we turn on Shop Road and then they
5 turn left on some --- a back street that goes behind
6 Bible Way Church and then they get to the end of that
7 street and there's a --- that's Bluff Road and they
8 cross over into a wooded area, but at that time I
9 didn't know what it was called. Now, I know it's the
10 Beckham Swamp area.

11 Q Okay. Now, I'm going to stop you for just a
12 second. While you guys are in the car, are your
13 talking? Is anybody saying anything?

14 A No, we're not. I think when we crossed over
15 Bluff Road that's when I realized that we were going
16 into a wooded area, and I asked him where we were
17 going and I told him, "Please don't hurt me." They
18 both didn't say anything. Then they got --- kept
19 riding and they got to this area. There was trees on
20 this side --- there was trees on this side, but there
21 was a road right here and Wallace stopped the car and
22 he told Diggs to go throw in the lake. He told me to
23 get out with Diggs.

24 Q I'm going to stop you for just a second. I'm
25 going to show you what's been marked as State's

1 Exhibit Number 138. Do you recognize that?

2 A Yes.

3 Q What is it?

4 A It's the dirt road where they were on.

5 Q And does this fairly and accurately depict the
6 way it looked back in 2012?

7 A Yes.

8 MS. SAMPSON: Your Honor, at this time I'd move
9 State's Exhibit Number 138 into evidence.

10 MR. HAWKS: No objection.

11 THE COURT: All right, without objection.

12 (WHEREUPON, State's Exhibit Number 138 was
13 admitted into evidence.)

14 BY MS. SAMPSON:

15 Q Okay. So, Ms. Weston, is that the road that you
16 were on?

17 A That's the road that I was walking on when I got
18 out of the car.

19 Q Okay. So they had you get out of the car?

20 A Yes.

21 Q Who told you to get out of the car?

22 A Wallace.

23 Q What did he tell you to do once you were out of
24 the car?

25 A He told me to walk with Diggs.

1 Q Did he have a gun at that time or do you know?

2 A Did Wallace have a gun at that time? I'm not
3 sure.

4 Q Okay. What about Diggs?

5 A Yes. He had a gun.

6 Q So then what happened?

7 A I got out of the car and I asked --- I said,
8 "Please don't hurt me. Please don't hurt me." He
9 said, "I'm not going to hurt you."

10 Then I walked with Diggs down the road and we
11 stopped. He told me to walk in the woods, and I
12 hesitated and asked for what and then he pushed me. I
13 kind of started running, but I tripped. Then I fell.
14 Then he shot at me more than once. I'm not sure ---
15 two or three times. I'm not sure. Then I was laying
16 in the woods.

17 Q Did you know you had been hit?

18 A No.

19 Q Okay.

20 A Because my eyes were closed and I was laying in
21 the woods. Then I opened my eyes. It was real bright
22 outside. At that time, I didn't know whether I was
23 still alive or --- I just didn't know until I opened
24 my eyes. I saw my glasses on my face and my
25 right-hand was hurting really, really bad. I stayed

1 there for about 30 seconds just to make sure they were
2 gone. I could move my legs and stuff, so I got up.
3 Oh God. Oh God. Oh God. It's so hard. (crying)

4 Q Do you need to take a break, Raquel?

5 (Pause.)

6 A I walked out of the woods, and I saw a --- I
7 didn't see anything really. Then I saw a blue car, a
8 blue car going this way, but they didn't stop, and
9 then I saw a Jeep and a guy stopped, and I went
10 towards him. I said, "Can you please take me to the
11 hospital," and he asked what happened. I said,
12 "Somebody shot me. Can you take me to the hospital,"
13 and we got on Bluff Road and it just happened to be a
14 police car passing and he flagged him down. They
15 asked me what happened. I told him, and I said,
16 "Somebody shot me." I told him he shot me. I told
17 him that Wallace --- I didn't know Diggs name at the
18 time, but I told him --- (crying)

19 Q I'm going to stop you real quick right there. As
20 soon as the police get there, who did you tell them
21 shot you?

22 A I told him a guy shot me, but William Wallace ---
23 I knew William Wallace and it was two other guys that
24 were shot, and I didn't know how they were, but I gave
25 him the address to my apartment.

1 Q And how did you know that Pratt and Johnson were
2 shot?

3 A Because I heard them shot when I was at the
4 apartment. (crying)

5 Q All right. So once the police officer stops, he
6 calls 9-1-1 or emergency does show up?

7 A The EMS showed up. Then I go to the hospital.
8 (crying) I'm sorry, but I could have been dead. I
9 could have been in the woods. My mama and daddy
10 wouldn't know where I was and Jamal and them was left
11 in the apartment and nobody would have known nothing.
12 (crying)

13 Q Raquel, we're almost done. Would it be okay if I
14 asked you a couple more questions or do you need to
15 take a break?

16 (Pause.)

17 A (No response.)

18 Q Are you okay? You eventually found out that you
19 had been shot, correct?

20 A Yes.

21 Q Where were you shot?

22 A I had a bullet right here in my head and at the
23 time I didn't know it was a bullet in my arm, just my
24 arm was hurting so bad and my head was bleeding from
25 right here. (indicating)

1 Q And do you still have scars from that?

2 A I have a scar right here, a scar on my head right
3 here, and a scar right here.

4 Q Now, Raquel, is there any doubt in your mind that
5 William Wallace was the person involved in this?

6 A No, there is not a doubt. We was involved 100
7 percent.

8 Q Now, you spoke with police about this almost
9 immediately, correct?

10 A Yes.

11 Q Okay. And they showed you a photo lineup. Do
12 you remember that?

13 A I remember the photo lineup of Diggs.

14 (WHEREUPON, State's Exhibit Number 139 and 140
15 were marked for identification only.)

16 BY MS. SAMPSON:

17 Q I'm going to show you what's been marked as
18 State's Exhibit Number 139. Do you recognize that?

19 A Yes.

20 Q And what's that? Is this --- let me ask you
21 this. You signed this. Is that normally how you
22 sign?

23 A No. I had to write with my left hand.

24 Q And why is that?

25 A Because I was shot in my right hand.

1 Q And this --- they showed you this photo lineup?

2 A (Nods in the affirmative.)

3 (crying)

4 Q And I won't show it to you again. Did you pick
5 someone as being the shooter of you?

6 A Yes.

7 Q You did circle someone?

8 A Yes.

9 Q And that is who you circled?

10 A Yes.

11 Q Did they tell you who to circle? I won't make
12 you look at it. Is this a fair and accurate copy of
13 what you saw that day?

14 A Yes.

15 MS. SAMPSON: I'd like to introduce State's
16 Exhibit Number 39 into evidence.

17 THE COURT: No objection.

18 (WHEREUPON, State's Exhibit Number 139 was
19 admitted into evidence.)

20 THE COURT: Did she say 39 or 139?

21 MS. SAMPSON: 139.

22 THE COURT: Do you have it correctly, Ms.
23 Ambroziak?

24 THE COURT REPORTER: Yes.

25 MS. SAMPSON: I had it wrong.