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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Richland County
Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GERALD BERNARD HALTIWANGER, JR.

APPELLANT

Appellate Case No. 2013-002460

RECORD ON APPEAL

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INDEX

Index	i
PRE-TRIAL MOTIONS	
CHRIS LINDLER	
Direct by Ms. Campbell	18
Cross by Mr. Sawyer	19
TAIMA JORDAN	
Direct by Ms. Campbell	23
Cross by Mr. Sawyer	31
DAVID WILSON	
Direct by Ms. Campbell	32
Cross by Mr. Sawyer	37
<u>DENNO</u> HEARING ARGUMENT	39
OPENING STATEMENT BY MS. VRIESINGA	41
TESTIMONY	
ZACHERY BRUNSON	
Direct by Ms. Vriesinga	48
YVONNE WOODS	
Direct by Ms. Campbell	55
MARQUITA MOBLEY	
Direct by Ms. Walker	64
Cross by Mr. Sharpe	75
LAMAR RAY	
Direct by Ms. Campbell	79
Cross by Mr. Sawyer	98
TAIMA JOHNSON	
Direct by Ms. Walker	105
Cross by Mr. Sawyer	133
DR. BRADLEY MARCUS	
Direct by Ms. Walker	137

ILA SIMMONS	
Direct by Ms. Vriesing	142
ZONDRA GILYARD	
Direct by Ms. Walker	152
Re-direct by Ms. Walker.....	167
BRANDON RAST	
Direct by Ms. Vriesinga	170
Cross by Mr. Sawyer	173
KRISTINA NUTTRY	
Direct by Ms. Campbell	174
Cross by Ms. Dyar	189
DAVID WILSON	
Direct by Ms. Walker	195
HAROLD BOUKNIGHT	
Direct by Ms. Campbell	224
CHRIS LINDLER	
Direct by Ms. Campbell	235
Cross by Mr. Sawyer	291
Redirect by Ms. Campbell	300
GERALD HALTIWANGER	
Direct by Mr. Sawyer	305
Cross by Ms. Campbell.....	339
Redirect by Mr. Sawyer	395
PATRICIA LABBE	
Direct by Ms. Walker	397
Cross by Mr. Sawyer	398
CLOSING BY MR. SAWYER	400
CLOSING BY MS. WALKER	422
STATE'S EXHIBIT 1 (Advice of Rights Form, August 29, 2012)	445
STATE'S EXHIBIT 2 (Haltiwanger's Statement, August 29, 2012)	446
STATE'S EXHIBIT 3 (Advice of Rights Form, August 31, 2012)	450
STATE'S EXHIBIT 4 (Haltiwanger's Statement, August 31, 2012)	451

1 MS. CAMPBELL - Thank you, Your Honor. State
2 calls Sergeant Chris Lindler.

3 CHRIS LINDLER, AFTER BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS -

5 DEPUTY CLERK - Thank you. Please have a seat in
6 the witness stand and state your full name for the record.

7 MR. LINDLER - Chris Lindler.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL -

10 Q Sergeant Lindler, where are you employed?

11 A The Richland County Sheriff's Department.

12 Q And what do you do there, sir?

13 A I'm the sergeant over the major crimes unit and
14 assault division..

15 Q I want to turn your attention to August of last year.

16 Did you become involved in the investigation of a murder at
17 the El Toro Club?

18 A I did.

19 Q And when did you become involved?

20 A I was notified around 1:30 a.m. on the morning of the
21 25th.

22 Q And is that the date that the actual murder occurred?

23 A It was.

1 A His initial arrest location, which was at C-7 Allen
2 Benedict Court, and then when he was succinctly arrested
3 and brought back to headquarters on Two Notch.

4 Q So at that point did you already have an arrest
5 warrant for him?

6 A We did.

7 Q And once you made the arrest, you mentioned that he
8 was transported back to headquarters?

9 A He was.

10 Q And who was with you that day?

11 A It was myself and Investigator Tai Jordan.

12 Q And Investigator Jordan is sitting right there behind
13 our table?

14 A Yes, ma'am.

15 Q And once you made contact with him and transported him
16 back to headquarters, at any time while you're transporting
17 him, did you start the questioning in any way?

18 A We had advised him verbally of his rights.

19 Q And where did that take place?

20 A At -- there at Allen Benedict Court once he was
21 arrested and handcuffs were placed on him, and we started
22 asking questions there and then we transported him back to
23 headquarters.

24 Q You mentioned that he was verbally advised of his
25 rights. Who actually did that advice of rights that day?

1 A I did.

2 Q And so prior to taking him back to headquarters and
3 getting the actual written Advice of Rights, what rights
4 did you advise him of?

5 A I told him that before we ask him any questions, he
6 must understand his rights and he has the right to remain
7 silent and he has any -- that anything he can say can be
8 used against him in Court, and that he had the right to
9 talk to an attorney for advice before we ask him any
10 questioning and he could have one with him during any
11 questioning, and if he couldn't afford one, one would be
12 appointed to him, and I asked him if he understood that,
13 and he did.

14 Q What did he indicate?

15 A He did.

16 Q Once he indicated that he understood -- let me ask you
17 this. Did he appear to be coherent that day?

18 A He was.

19 Q Did he respond appropriately to your questions?

20 A He did.

21 Q And did he appear to be under the influence of any
22 intoxicating liquors or drugs?

23 A No, no, ma'am.

24 Q Did you promise him anything to make him talk to you?

25 A I did not.

1 Q Did you threaten him in any way?

2 A I did not.

3 Q Was any coercion used?

4 A No, ma'am.

5 Q Any type of force of any manner used to make him talk
6 to you?

7 A No, ma'am.

8 Q In your opinion as an investigator, was he talking to
9 you voluntarily?

10 A He was.

11 Q Did you deprive him of any creature comfort such as
12 going to the bathroom or anything he might request as far
13 as to eat or drink?

14 A No, we did not. When we got back to headquarters, I
15 believe we bought him a soft drink out of the canteen and
16 gave him some water and let him use the bathroom.

17 Q There at the scene where you transported him, did you
18 start asking any questions?

19 A We did, just a few, where he was at on the night -- on
20 that Saturday night, the 25th, just some initial questions,
21 yes.

22 Q And who actually participated in the transporting of
23 him back to headquarters?

24 A That would've been myself and Investigator -- excuse
25 me, that would be myself and Chief David Wilson.

1 Q Once he was taken back to headquarters, did you again
2 advice him of his rights?

3 A We did.

4 Q And who was present for that, sir?

5 A That was myself and Investigator Tai Jordan.

6 Q Where did that take place?

7 A That took place at an office at 5623 Two Notch Road.

8 Q And there was no doubt he was in custody at this
9 point.

10 A Correct.

11 Q Once you got back to your office at headquarters, who
12 all was in the room when you advised him of his rights for
13 the second time?

14 A I was in the room; Investigator Tai Jordan was in the
15 room, and Mr. Haltiwanger was in the room.

16 Q And again, I show you what's been marked as State's
17 Exhibit Number 1. Do you recognize that?

18 A I do.

19 Q And what is that, sir?

20 A It's a written Advice of Rights form.

21 Q And I notice there is some handwriting at the top
22 indicating the name, the officer, the date, things of that
23 nature.

24 A Yes, ma'am.

25 Q And who filled out that part?

1 A I did.

2 Q And tell the Judge using State's Exhibit Number 1
3 exactly how you advised him of his rights once he had been
4 transported back to headquarters.

5 A Once we advise them of their rights, fill out their
6 name on the top, the place where it's done, the officers
7 that are present, the date and time that he was advised of
8 those rights, I -- I as a practice turn that Advice around
9 -- Advice of Rights around towards them and I mark off each
10 of those sentences as I read it to him.

11 Q And was that done in this case?

12 A It was.

13 Q And is that indicated on the piece of paper you're
14 holding?

15 A It is.

16 Q And for the record, what Advice of Rights did you give
17 him this second time at headquarters?

18 A We read through the complete statement of his rights,
19 before we ask you any questions, you must understand your
20 rights; you have the right to remain silent; anything you
21 say can be used against you in Court; you have the right to
22 talk to a lawyer for advice before we ask ---

23 THE COURT - Oop, oop, slow.

24 A You have the right to talk to a lawyer for advice
25 before we ask you any questions and to have a lawyer with

1 you during any questioning. If you cannot afford a lawyer,
2 one will be appointed for you before any questioning if you
3 wish. If you decide to answer questions now without a
4 lawyer present, you still have a right to stop answering at
5 any time. You also have the right to stop answering at any
6 time until you talk to an -- to a lawyer. And he signed
7 that he understood his rights.

8 Q And did you actually witness his signature that day?

9 A I did.

10 Q And who else was present when he signed off
11 acknowledging his rights?

12 A Investigator Tai Jordan.

13 Q Once he acknowledged understanding his rights, did you
14 go a step further?

15 A I do.

16 Q What was that?

17 A I read him a Waiver of his rights and that Waiver
18 reads as follows: I have read this statement of my rights
19 and understand what my rights are; I'm willing to talk and
20 answer questions; I understand and know what I'm doing; no
21 promises have been made to me and no pressure or coercion
22 of any kind has been used against me. And I also
23 underlined promises, pressure and coercion whenever I read
24 that to them.

1 Q Did you explain any further about promises, pressure
2 or coercion?

3 A Asked him if he understood what all three of those
4 meant, that nobody was holding a gun to his head, nobody
5 was -- was using any force, and we weren't trying to coerce
6 him into telling anything and I asked him if understood
7 what coercion meant. He said he did.

8 Q And at that point did he indicate to you that he
9 understood and wanted to waive his rights?

10 A He did. He signed it with his signature.

11 Q So he signed it with his signature?

12 A Yes, ma'am.

13 Q And again who witnessed that?

14 A Myself and Investigator Tai Jordan.

15 Q At that point -- again, during this entire time, has
16 anyone promised him anything?

17 A No, ma'am.

18 Q Threatened him in anyway?

19 A No, ma'am.

20 Q Used any force or threats of force?

21 A No.

22 Q Did you promise him any kind of leniency or anything
23 to get him to talk to you?

24 A We did not.

25 Q Did you deprive him of any creature comforts?

1 A None.

2 Q And in your opinion, was he talking to you
3 voluntarily?

4 A He was.

5 Q And did he appear to understand what was going on?

6 A He did. He understood what was going on.

7 Q And at that point did he choose to talk to you?

8 A He did.

9 Q At any time when you were talking to him that day, did
10 he invoke any of his rights?

11 A He did not.

12 Q Did he ever tell you he didn't want to talk anymore?

13 A No, ma'am.

14 Q Did he ever ask for his lawyer?

15 A He did not.

16 Q And, in fact, did he talk to you?

17 A He did.

18 Q And I believe the time on the interrogation Advice of
19 Rights is what time?

20 A 1755 hours.

21 Q Which is what time?

22 A That would be 5:55 p.m.

23 Q And was a statement taken and reduced to write - a
24 typewritten form actually?

25 A It was.

1 Q And I show you State's Exhibit Number 2. Is that that
2 typewritten statement that you took on that day?

3 A It is.

4 Q And what time does it indicate that you started taking
5 that statement?

6 A At 1900 hours, which is 7:00 p.m.

7 Q And what's the difference in the proximate hour in
8 between the two?

9 A We -- basically when we start talking to someone, we
10 want to make sure we get as much information as possible
11 when we're asking them the questions, and then we go back
12 and put those questions down in written form on a statement
13 form.

14 Q So basically he gives you a version of events.

15 A (Indicating yes)

16 Q And then you go and reduce it to writing ---

17 A Right, we let him ---

18 Q -- into typewriting ---

19 A We let him carry us through his version through the
20 questions that we're asking.

21 Q Okay. Once you were able to get through his version
22 and then started typing it out, who's um -- who's actually
23 doing the typing in this case?

24 A That would be me.

25 Q And I notice here in bold it says, Q equals who?

1 A C. Lindler/Tai Jordon, T. Jordan.

2 Q Those were you and Investigator Jordan?

3 A Correct, and Jordan and I were both kind of asking
4 questions back and forth, but I was -- I was typing.

5 Q And then the answers are indicated by -- from whom?

6 A By the letter A and Gerald Bernard Haltiwanger.

7 Q Were you able to type out of his version of what he
8 wanted to tell you that day?

9 A I was.

10 Q And is that what's reflected in State's Exhibit Number
11 2.

12 A It is.

13 Q Once you typed out his version of what he told you
14 that day, the questions and the answers, was he allowed to
15 review it?

16 A He was.

17 Q And how did that take place?

18 A He was -- we read it back to him, and he's also given
19 a -- given a copy of it.

20 Q Would he be allowed to make any changes?

21 A He was. It was up on a computer and any changes that
22 needed to be made, he would've told us to make them and we
23 would've done it.

24 Q Once you got the version with changes that he made,
25 did you then print out that copy of it?

1 A We did.

2 Q And at that point did he acknowledge that that was his
3 statement in any way?

4 A He did acknowledge that that was his statement?

5 Q And did you have him memorialize that?

6 A I did. He memorialized it twice on each page, once
7 stating that he had made the foregoing statement freely and
8 voluntarily without fear, threat, promise or reward or hope
9 of reward of any kind, and again just below that certifying
10 that he had read or had read to him that same statement and
11 he signed that and he was given a copy of that statement.

12 Q And then again, these were State's Exhibits 1 and 2
13 for ID purposes ---

14 A Yes, ma'am.

15 Q --- is what happened that day on the 29th.

16 A Yes, ma'am.

17 Q At that point ---

18 MS. CAMPBELL - Your Honor, may I approach?

19 THE COURT - Yes.

20 Q After that, was the defendant then transported to
21 jail?

22 A He was.

23 Q At any time when you were with him that evening, prior
24 to taking the statement, during the statement or after the
25 statement, did he ever invoke any rights?

1 A He did not.

2 Q I want to turn your attention to August the 31st. Had
3 there been new developments that y'all thought it would be
4 prudent to go back and talk to the defendant again?

5 A There were.

6 Q And just briefly what -- what had been reviewed?

7 A Over the last day and half since his initial arrest,
8 we had been able to locate his brothers and obtained
9 statements from all those brothers implicating Mr.
10 Haltiwanger further in the actual incident.

11 Q And, in fact, had you also reviewed some phone calls?

12 A We did.

13 Q After that, did y'all decide to go and get Mr.
14 Haltiwanger again and talk to him -- for the purpose of
15 talking to him?

16 A We did.

17 Q And where was he when you went and got him on the 31st?

18 A He was located at Alvin S. Glenn down at the county
19 jail and Investigator Jordan went down to pick him up.

20 Q And, in fact, was he transported back to headquarters
21 again?

22 A He was.

23 Q And I show you what's been marked as State's Exhibit
24 Number 3. Do you recognize that?

1 A I do. It's another written statement of his rights
2 and it's my handwriting on the top filled out with Mr.
3 Haltiwanger's name, the place in which it was given, which
4 was 5623 Two Notch Road, myself and Investigator Jordan
5 being present, and it was dated August 31st, 2012, and it
6 was done at 10:00 a.m.

7 Q And that day when you re-advised him of his rights
8 again, who was present for the Advice of Rights?

9 A It was myself and Investigator Jordan again.

10 Q And going through, just as you explained to the Judge
11 before, just briefly go through how you advised him of
12 rights and what ---

13 A I read him verbatim from the sheet, his Advice of
14 Rights, turned it toward him so he could watch me check off
15 each of those as I read them. He signed that he understood
16 his rights. Went one step further, read him his Waiver of
17 his rights again, at which time I also underlined the word
18 promises, pressure and coercion again, and he signed those
19 with his signature stating that he understood those and
20 waived them as well.

21 Q And, again, did he sign in both places?

22 A He did.

23 Q And, again for the record, did you promise him
24 anything?

25 A I did not.

1 Q Did you make any threats?

2 A We did not.

3 Q Did you deprive him of any creature comforts on the
4 31st?

5 A We did not.

6 Q Did you use any force or threats of force against him?

7 A We did not.

8 Q And at any time did he invoke any of his rights?

9 A He did not.

10 Q Did he ever tell you he didn't want to talk anymore?

11 A He did not.

12 Q Did he ever tell you wanted a lawyer?

13 A He did not.

14 Q And, in fact, did he acknowledge that he wanted to
15 talk to you?

16 A He did.

17 Q And that's reflected in State's Exhibit Number 3?

18 A Yes, ma'am.

19 Q Then was Mr. Haltiwanger again questioned about his
20 role in this murder?

21 A He was. Um, we took this statement from him at 10:30
22 a.m. that morning. It would've been myself and my Deputy
23 Chief David Wilson.

24 Q And why was there a switch between Investigator Jordan
25 and Chief Wilson?

1 A Investigator Jordan had to leave to go out of town.

2 Q And at that point Investigator Wilson was present when
3 this statement was made?

4 A He was.

5 Q Chief Wilson?

6 A He was. He was.

7 Q And State's Exhibit Number 4, is that the statement
8 that was taken from him that day?

9 A It was, on August 31st of 2012.

10 Q And again, how was that statement reduced into a typed
11 form?

12 A We went through his initial version of the events, let
13 him tell it to us without interrupting him, and then
14 everything was put down on paper.

15 Q Did he have an opportunity to review it prior to
16 signing off on it?

17 A He did.

18 Q And were any changes made?

19 A None.

20 Q I note up here there's a handwritten spot about the
21 date.

22 A There is.

23 Q Who did that?

24 A I did that and those are my initials and my
25 handwriting, the -- on the -- I was using a different

1 computer than I had used the night prior and the date on
2 the statement form was August, 2010. I struck through 2010
3 and put 2012 above it, and those are my initials beside the
4 year 2012.

5 Q And where was this interview being -- taking place?

6 A 5623 Two Notch Road.

7 Q And what office? Do you remember?

8 A It was in Kevin Isenhoward's office.

9 Q Okay. Once he had reviewed the statement and made any
10 changes he wanted, did he, in fact, sign off on this?

11 A He did.

12 Q And did he sign off on all three pages?

13 A He did.

14 Q In the same manner as you've described before.

15 A He did.

16 Q And at any time did he ever tell you he didn't want to
17 talk anymore?

18 A He did not.

19 Q At any time did he tell you he wanted to talk to his
20 lawyer before completing the statement?

21 A He did not.

22 MS. CAMPBELL - Your Honor, may I approach?

23 THE COURT - You may.

24 Q Once you had completed the statement on the 31st, was
25 he then returned to the Allen S. Glenn Detention Center?

1 A He was.

2 Q The person that you knew as Gerald Bernard Haltiwanger
3 and the person you took the statements from, do you see him
4 here in the courtroom?

5 A I do.

6 Q And can you point him out for the Judge?

7 A He's seated over at the defense table in a gray shirt.

8 Q In the gray shirt?

9 A Yes, ma'am.

10 MS. CAMPBELL - Your Honor, may the record reflect
11 he's identified the defendant.

12 THE COURT - All right.

13 MS. CAMPBELL - I have nothing further.

14 THE COURT - Cross examination?

15 MR. SAWYER - Thank you, Judge. May it please the
16 Court.

17 THE COURT - Yes, sir.

18 MR. SAWYER - Are those exhibits up there? Do you
19 still have the exhibits?

20 THE COURT - I've got them here.

21 MR. SAWYER - It's all right; I've got mine.

22 CROSS EXAMINATION

23 BY MR. SAWYER -

1 Q Investigator Lindler, with that statement, the first
2 date, I was just trying to find out right at the bottom
3 here, what does that say about the polygraph?

4 A He uh -- he asked if he was -- we asked him if he was
5 willing to take a polygraph as it pertains to this
6 statement, and he said, no, due to lawyer issues and that
7 was his words directly out of his mouth.

8 Q Okay, so he actually said lawyer issues?

9 A Correct.

10 Q Okay. He never asked for a lawyer before that point?

11 A He never asked for an attorney.

12 Q Okay. And the second time around, you said even after
13 he said about lawyers for the first time, he never asked
14 for attorney the second time around?

15 A Correct.

16 Q Okay. When you say they get to review their statement
17 and make changes to their statements, are they allowed to
18 sit at the computer to make those changes themselves?

19 A They are not.

20 Q Are they allowed to write down their own statement?

21 A They can -- no, we typewrite their statement out.

22 Q Okay. Do you audio record those statements?

23 A I'm sorry.

24 Q Do you audio record those statements at all?

25 A No, we do not.

1 Q Why don't you do that?

2 A Because it's not in our policy and procedure to audio
3 or videotape any interviews.

4 Q Okay. So your procedure is flat no audio, no video
5 for any confessions, any interviews.

6 A Correct.

7 Q Okay. And when you say they get an opportunity to
8 review them, do you have them read them out loud to you?

9 A We usually read them and turn to them and also provide
10 them a copy for them to read through before I let them sign
11 them.

12 Q Okay. And did he ask to make any changes to this at
13 all?

14 A Not that I can remember, no, sir.

15 Q Okay. Now, I believe Bernard was rather upset the
16 second time. Is that correct?

17 A He was.

18 Q Okay. He was crying, wasn't he?

19 A He was.

20 Q Okay. He was -- I mean the all the -- just balling as
21 far as what you put in there.

22 A He was -- he was crying, yes.

23 Q Okay. So when you handed him his statement, did he
24 take any time to read it or did he just sign it?

1 A He took some time to read it. He read over it. We
2 read it to him, myself and Chief Wilson, and we handed him
3 his statement for him to read over it, ---

4 Q Okay.

5 A --- and he told us he needed a pen so he could sign
6 it.

7 Q Okay. And this statement reflects everything that
8 y'all talked about to the letter, from the minute he sat
9 down to the minute that he signed the statement.

10 A Pretty much.

11 Q Okay, but there's chunks of this that are missing.
12 Correct?

13 A (Indicating no)

14 Q No?

15 A Not that I no know.

16 Q So this is everything in thirty some odd minutes the
17 first time around and everything in -- I'm sorry,
18 Investigator Lindler -- your handwriting's just like mine.
19 Is that 1755 right there?

20 A 1755, yes, sir.

21 Q Okay. Looks like one of my nine's so. So between
22 1755 and 1900 hours, so an hour and five minutes, that's
23 everything that y'all talked about on that one, too.

24 Correct?

25 A Pretty much.

1 Q Okay. And Investigator Jordan didn't participate at
2 all?

3 A He did.

4 Q He didn't have any questions?

5 A He did.

6 Q But his questions aren't put into any of these, are
7 they?

8 A I typewrote all of the -- I was sitting at the
9 computer. I was typing the questions, and Investigator
10 Jordan and I were asking questions.

11 Q Okay.

12 A If there was anything I missed, Investigator Jordan
13 would've interjected.

14 Q Okay. Now, going back to the issue of Marquita Mobley
15 -- bear with me again. You actually talked to her twice,
16 didn't you?

17 A I did.

18 Q Now, did you talk to her both times?

19 A I did talk to her both times.

20 Q Okay. Why did you talk to her twice?

21 A The first time was when we initially found her at the
22 hotel, The Red Roof Inn, over off of St. Andrews Road. I
23 brought them there to get their initial witness statements
24 as to what they had saw that night, any characteristics
25 about the individuals that approached them at the car, any

1 MS. CAMPBELL - State would call Investigator
2 Jordan.

3 TAIMA JORDAN, AFTER BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS -

5 DEPUTY CLERK - Thank you. Please have a seat in
6 the witness stand and state your full name for the record.

7 MR. JORDAN - Taima Jordan.

8 THE COURT - Your Witness.

9 MS. CAMPBELL - Thank you.

10 DIRECT EXAMINATION

11 BY MS. CAMPBELL -

12 Q Investigator Jordan, where are you employed?

13 A Richland County Sheriff's Department.

14 Q And what do you do there, sir?

15 A I'm an investigator in the drug unit.

16 Q I'm going to turn your attention back to August the
17 25th of last year, did you become involved in the subsequent
18 investigation in the El Toro murder?

19 A I did.

20 Q And when did your involvement begin, sir?

21 A About 9:00 o'clock that morning.

22 Q And who was the lead investigator along with you that
23 day?

24 A Sergeant Lindler.

25 Q Sergeant Lindler?

- 1 A Yes.
- 2 Q Okay. Over the course of the next several days, did
- 3 y'all develop a suspect in the case?
- 4 A We did.
- 5 Q And who did you develop as a suspect?
- 6 A Gerald Haltiwanger, Jr.
- 7 Q I want to turn your attention to the 29th of August.
- 8 Were y'all able to make contact with Mr. Haltiwanger?
- 9 A Yes.
- 10 Q And at that point was there a warrant for his arrest?
- 11 A It was.
- 12 Q Tell the Judge how y'all found Mr. Haltiwanger that
- 13 day?
- 14 A Once we developed him as a suspect I was tasked with
- 15 going to a particular location to scout it out for a search
- 16 warrant, and in doing so, I observed Mr. Haltiwanger out in
- 17 the courtyard with some other gentlemen. I notified
- 18 Sergeant Lindler that I believe I see him out in the
- 19 courtyard. I stayed and conducted surveillance until other
- 20 units came.
- 21 Q Once other units came, did y'all make contact with Mr.
- 22 Haltiwanger?
- 23 A We did.
- 24 Q And, in fact, was he under arrest at that point or was
- 25 an arrest made or what happened?

1 A Yes, he was taken into custody and everybody else was
2 detained and at that time he was placed under arrest.

3 Q And were you out there that day when Investigator
4 Lindler advised him of his rights verbally out there at the
5 scene?

6 A I was.

7 Q How did Mr. Haltiwanger get transported back to
8 headquarters?

9 A I believe Sergeant Lindler and Chief Wilson took him
10 back.

11 Q And once he got back to headquarters, where did you go
12 or where were you?

13 A I met Sergeant Lindler there and he went into Sergeant
14 Strange's office.

15 Q And once you went into that office, what, if anything,
16 happened?

17 A We read -- well, Sergeant Lindler read his Miranda
18 Rights, which I witnessed.

19 Q Okay. And the Advice of Right's form that we've
20 referred to earlier, I believe it's State's Exhibit 1 for
21 ID purposes, was that the form that was used that day?

22 A It was.

23 Q And were you there when the rights were explained to
24 him?

25 A Yes, I was.

- 1 Q Were you there when he acknowledged his rights?
- 2 A Yes, I was.
- 3 Q Were you there when he waived his rights?
- 4 A I was.
- 5 Q Without going through the whole litany again, at any
- 6 point did he ever invoke any of his rights?
- 7 A He did not.
- 8 Q And did he agree to talk to y'all?
- 9 A He did.
- 10 Q And in your opinion, was he understanding his rights
- 11 and agreed to talk to you voluntarily?
- 12 A Yes.
- 13 Q While you were present with him on that day on the
- 14 29th, at any point did anyone ever threaten him?
- 15 A No.
- 16 Q Did anyone ever promise him anything?
- 17 A No.
- 18 Q Were there any -- any type of force used to make him
- 19 talk?
- 20 A No.
- 21 Q Did you deprive him of any creature comforts?
- 22 A No, ma'am.
- 23 Q And in your opinion, was he talking to you
- 24 voluntarily?
- 25 A Yes.

1 Q And at that point, tell -- tell the Judge just briefly
2 how y'all went about taking the statement.

3 A The question and answer, Sergeant Lindler was actually
4 typing and he would ask a question and whatever I thought
5 he may have missed, I may have interjected and asked them.

6 Q Prior to actually reducing the statement into a
7 typewritten form, was there a period of time where y'all
8 just asked some questions and generally got information?

9 A Yes.

10 Q And then did y'all then go back and reduce the
11 pertinent information into writing?

12 A Correct.

13 Q Once the statement had been reduced to a typewritten
14 form, was the defendant allowed to review it prior to
15 signing it?

16 A He was.

17 Q And, in fact, was it read to him?

18 A Yes.

19 Q And, in fact, if he wanted to, he could make any
20 changes?

21 A Yes.

22 Q And at some point was a written or paper form printed
23 out for him to review?

24 A Yes, it was.

25 Q And did he acknowledge that was his statement?

- 1 A He did.
- 2 Q And how did he acknowledge that?
- 3 A He signed his name.
- 4 Q On each page?
- 5 A He did.
- 6 Q And were you there when that occurred?
- 7 A I was.
- 8 Q After the statement was taken, was he then transported
- 9 to the Alvin S. Glenn Detention Center?
- 10 A Yes, he was.
- 11 Q And did you have any further contact with him that
- 12 day?
- 13 A I did not.
- 14 Q I want to turn your attention to two days later on
- 15 August the 31st. Did y'all become aware of some information
- 16 that y'all wanted to talk to the defendant about?
- 17 A We did.
- 18 Q And what type of information was that, sir?
- 19 A Information in regards to the homicide where some
- 20 phone calls were listened to and information that we
- 21 believe that helped develop the case even more and we
- 22 needed to speak to him to get information.
- 23 Q To get his version of this?
- 24 A Yes.

1 Q And at that point did you try to make contact with the
2 defendant that day?

3 A I did.

4 Q And where did you make contact with him?

5 A At the county jail.

6 Q And what did you do with him?

7 A Picked him up and drove him to 5623 Two Notch Road,
8 sheriff's department.

9 Q And during the course of driving him from the county
10 jail to the sheriff's department, did you question him in
11 any detail about what was going on?

12 A I did not.

13 Q Once you got him to headquarters, what, if anything
14 happened?

15 A I met with Sergeant Lindler and Chief Wilson. At that
16 point I had to go out -- out of town for a personal --
17 personal leave, so I left at that time.

18 Q Prior to you leaving -- you weren't there for the
19 statement, but prior to you leaving, did you actually
20 witness anything coming on that day?

21 A Sergeant Lindler actually read him his Miranda Rights
22 again before questioning.

23 Q Before questioning?

24 A Yes.

25 Q And were you there for that?

- 1 A I was.
- 2 Q And at any time while you were there, did anyone
- 3 promise him anything or threaten him in any way?
- 4 A No, ma'am.
- 5 Q Did anyone deprive him of any creature comforts?
- 6 A No, ma'am.
- 7 Q Did he appear to voluntarily want to talk?
- 8 A He did.
- 9 Q And did he actually acknowledge that by his signature?
- 10 A He did.
- 11 Q In the same manner he had before?
- 12 A Yes, ma'am.
- 13 Q And then as a statement was being taken, you left and
- 14 Chief Wilson came in?
- 15 A Yes, ma'am.
- 16 Q Because you had to leave town.
- 17 A Yes, ma'am.
- 18 Q The person that you took the statement from on the 29th
- 19 and that you witnessed the Advice of Rights on the 31st, do
- 20 you see him in the courtroom?
- 21 A I do.
- 22 Q Could you point him out for the Judge?
- 23 A In the middle, the young black male.
- 24 Q Seated between his attorneys?
- 25 A Yes.

1 MS. CAMPBELL - Your Honor, may the record reflect
2 he's identified the defendant. Thank you, sir.

3 THE COURT - Very well. Cross examination?

4 MR. SAWYER - Thank you, Your Honor. May it
5 please the Court.

6 THE COURT - Okay.

7 CROSS EXAMINATION

8 BY MR. SAWYER -

9 Q Just briefly, Investigator Jordan. Again, when you
10 take these statements, it's your policy not to audio record
11 them. Correct?

12 A Right. We do not record or videotape.

13 Q Okay, and it's your testimony that from 755 (sic)
14 until 1900 hours -- 1755 to 1900 hours, the entirety of
15 that statement from the first moments everything was talked
16 about.

17 A Pertinent to the case, yes.

18 Q Okay. So there was information that was not added
19 into that statement that you felt was inappropriate to the
20 case.

21 A Like his, maybe his age, where he lives, stuff like
22 that, yes, but nothing else.

23 Q But there are items that are missing from what you
24 talked about. Right?

25 A Not pertinent to the case, no.

1

2

3

4

(WHEREUPON, EX PARTE HEARING IS CONCLUDED)

5

(WHEREUPON, THE PROSECUTION AND OTHER PARTIES

6

ENTER THE COURTROOM)

7

THE COURT - We have someone here. I have a

8

suspicion that it might be Investigator Wilson. All right,

9

call your next witness.

10

MS. CAMPBELL - State calls Chief Wilson.

11

THE COURT - I meant Chief Wilson. I'm sorry.

12

DAVID WILSON, AFTER BEING FIRST DULY SWORN,

13

TESTIFIES AS FOLLOWS -

14

DEPUTY CLERK - Thank you. Please have a seat in

15

the witness stand, and state your full name for the record.

16

THE COURT - Were you able to switch your files

17

out, because I understand you're having a busy afternoon.

18

MR. WILSON - Just got off the stand, ma'am.

19

THE COURT - Your witness.

20

MS. CAMPBELL - Thank you, Your Honor.

21

DIRECT EXAMINATION

22

BY MS. CAMPBELL -

23

Q Chief Wilson, where are you employed?

24

A The Richland County Sheriff's Department.

25

Q What do you do there, sir?

1 A I'm the Deputy Chief over investigations.

2 Q Did you become involved in the investigation of the
3 murder at the El Toro ---

4 A I did.

5 Q --- back in I believe it was August of last year?

6 A Yes, ma'am.

7 Q And I want to just talk about some specific things you
8 did. On August the 28th of 2012, I want to show you what's
9 been marked as State's Exhibit Number 6 for ID purposes.
10 Do you recognize that?

11 A Yes, ma'am.

12 Q And is that a photo line-up that you actually showed
13 that day?

14 A That is correct.

15 Q And who did you show that line-up to, sir?

16 A To Mr. Ray.

17 Q And do you remember where that took place?

18 A It took place at a location over in West Columbia,
19 Casey. The -- I believe his son had a ball practice there,
20 and we met in my car there at the ball field.

21 Q And that day when you showed him the line-up, can you
22 tell the Judge basically how you presented the line-up?

23 A I handed him the line-up and asked him if he
24 recognized anybody that was involved in the case at the El
25 Toro Club.

- 1 Q Do you know where they took him that morning?
- 2 A They took him to Sergeant Isenhoward's office.
- 3 Q There at headquarters?
- 4 A Yes.
- 5 Q And were you there for the actual Advice of Rights?
- 6 A No, I was not.
- 7 Q However, did you become involved in the taking of the
- 8 statement that day?
- 9 A I did. Investigator Jordan had to leave for a family
- 10 situation, so I stepped into the room and assisted Sergeant
- 11 Lindler.
- 12 Q And at that point were you aware he'd already been
- 13 advised of his rights?
- 14 A Yes.
- 15 Q Were you aware that he had waived his rights?
- 16 A Yes.
- 17 Q And was cooperative.
- 18 A Yes.
- 19 Q During the time period when you were in there, at any
- 20 point did he invoke any of his rights?
- 21 A No.
- 22 Q Did anyone threaten him?
- 23 A No.
- 24 Q Promise him anything?
- 25 A Not at all.

1 Q Was he coerced in any manner?

2 A No, ma'am.

3 Q And did he appear to be talking to you voluntarily
4 that day?

5 A Absolutely.

6 Q And eventually was that statement on the 31st reduced
7 into a typewritten form?

8 A It was.

9 Q And was he allowed to review it?

10 A Yes.

11 Q And sign off on it.

12 A Yes.

13 Q And I show you what's been marked as State's Exhibit
14 Number 4. Do you recognize that?

15 A I do.

16 Q And is that, in fact, the typewritten statement that
17 was ultimately taken after speaking to the defendant that
18 day?

19 A That is correct.

20 Q And whose signature is that on the bottom of each
21 page?

22 A It is the defendant's; Sergeant Lindler notarized it
23 and I signed it as a witness on each page.

24 Q And does that contain the actual information he gave
25 you?

1 A That is correct.

2 Q And at any point during that period of time did he
3 invoke any of his rights, ask for an attorney, tell you he
4 didn't want to talk or anything of that nature?

5 A No.

6 Q And, in fact, what was his demeanor like that day? Do
7 you recall?

8 A He was cooperative.

9 MS. CAMPBELL - Beg the Court's indulgence.

10 THE COURT - All right.

11 Q The person that you took the statement from, do you
12 see him here in the courtroom?

13 A Yes.

14 Q And can you just identify him for the Judge?

15 A He's sitting at the defense table with a gray shirt
16 on.

17 Q With a gray shirt on?

18 A (No response)

19 MS. CAMPBELL - Your Honor, ---

20 THE COURT - Yes.

21 MS. CAMPBELL - --- I don't have anything further
22 for purposes of this hearing, Your Honor.

23 THE COURT - Cross examination?

24 MR. SAWYER - Thank you, Your Honor. May it
25 please the Court.

1 THE COURT - Yes, sir.

2 MR. SAWYER - Just be briefly.

3 CROSS EXAMINATION

4 BY MR. SAWYER -

5 Q Captain? Chief?

6 A Deputy Chief.

7 Q Deputy Chief? Chief Wilson, just going back to
8 Bernard's statement, he had no opportunity to use the
9 computer himself to type it up. Correct?

10 A No, we don't do that.

11 Q Okay. And he had no opportunity to hand-write it
12 himself. Correct?

13 A No.

14 Q Okay. And you guy's as a policy don't audio record or
15 video record any person's statement. Correct?

16 A That is correct.

17 Q Okay. And you are above Sergeant Lindler and
18 Investigator Jordan?

19 A I am.

20 Q Could you make the decision to audio or video record
21 or is that policy higher up from you?

22 A It's policy higher up than me.

23 Q Okay.

24 A Discussed it with the sheriff many times.

25 Q I'm sorry?

1 A I've discussed it with my boss many times.

2 Q Sheriff Lott?

3 A Yes.

4 Q Okay. Let me if I could -- do you have your report in
5 front of you? I know you've been between two courtrooms.

6 I ---

7 A I do.

8 Q Okay. Page 2, do you remember talking with Lamar Ray
9 when you showed him that photo line-up?

10 A Yes.

11 Q Okay. Do you remember if that could help you out or
12 just from your memory for what purpose he picked Bernard as
13 that day -- what he said he had done at the club?

14 A I don't remember exactly what he said he'd done. He
15 picked him out as the man wearing the red shirt and being
16 involved in the fight and so.

17 Q All right. You don't remember him picking him out as
18 the shooter?

19 A No, I don't.

20 MR. SAWYER - Thank you, Your Honor. Nothing
21 further.

22 THE COURT - Re-direct?

23 MS. CAMPBELL - Nothing. We're good.

24 THE COURT - Very well. Thank you. All right.

25 Any other witnesses?

1 I thought this gentleman was a member of that gang. Now,
2 having said that, he said I put on parties with these
3 people before and I was concerned for my safety, and
4 whatever else was testified to. Okay. Now, what else?

5 MR. SAWYER - Sorry, Your Honor, just briefly with
6 the Denno hearing. Obviously, you heard me get into that
7 and I just -- I believe they said the proper words to get
8 the Denno hearing in. Judge, you know, I just -- I have a
9 problem in 2013 that they're going to be able to enter in
10 his statement into evidence saying that this is Bernard
11 Haltiwanger's words, and I've got a cell phone in my pocket
12 that were his words. I think that it's misleading to the
13 jury to be able be -- to say that you are going to rule
14 that these are his words.

15 THE COURT - And here's what's going to happen at
16 some point. Don't know when, Mr. Sawyer, and it may be
17 this case, but what's going to happen is that the jury
18 because of the development of technology is going to walk
19 that path with you, but again that does go to the weight
20 rather than to the admissibility and it will happen one
21 day. I have no question in my mind.

22 MR. SAWYER - Judge, it can be the jurist to bring
23 that to the Supreme Court for the first time ---

24 THE COURT - Thank you so much for that
25 opportunity. You know, I am such a stare decisis kind of

1 girl. I would respectfully not walk down that path, but I
2 do -- I genuinely mean what I say. I do think that
3 ultimately because of the development and technology, Mr.
4 Sawyer, because it does go to the weight, at some point
5 that's going to happen because juries are going to become
6 suspect, but it doesn't go to the -- again, it doesn't go
7 to the admissibility; it goes to the weight, I think.

8 MR. SAWYER - Thank you, Your Honor.

9 THE COURT - Yes. All right. All right, now --
10 so I think -- we've done Jackson v. Denno; we've done
11 Biggers. We've got Mauldin coming. We've got records that
12 are going to be shown. I think that's it. What else we
13 got? We've got sequestration we dealt with. I think
14 that's everything. And one thing I do want to do before we
15 end today, is that -- let me tell you what I know. What I
16 know is that obviously a case of this magnitude is
17 heartbreaking. It is absolutely heartbreaking for family,
18 and I'm well aware of that. And counsel, I know that we
19 have several family members who are present, and I know
20 you'll passed onto Mr. Haltiwanger's family as well,
21 counsel, but this -- this is -- this is sort of if-you-will
22 what I'm going to ask for cooperation, and I want to
23 explain why. Particularly during openings and closings and
24 most assuredly during the charge, I don't like for people
25 to be moving around. And the reason for that is that I

1 MR. SAWYER - None, Your Honor.

2 THE COURT - Ladies and gentlemen, at this time I
3 ask that you please draw close as we listen to the opening
4 statements. Yes?

5 MS. VRIESINGA - May it please the Court.

6 THE COURT - Yes.

7 MS. VRIESINGA - Good morning. Jimmy Moti was a
8 licensed security guard. Jimmy Moti was working to provide
9 a living for his family, and Jimmy Moti was killed on
10 August 25th, 2012 while he was doing his job. We are here
11 today, because the Defendant, Mr. Gerald Haltiwanger, is
12 charged with his murder. On the night of August 25th, the
13 defendant his brothers decided to go out. They decided to
14 go to the El Toro Restaurant and Bar, which is where Jimmy
15 was working that evening. They attempted to get into the
16 bar using a false ID. Jimmy, doing what he was hired to
17 do, denied them entrance to the bar, and they were angry.
18 They were very angry that they were not allowed in. Jimmy
19 asked them to leave the property. He actually escorted
20 them to the edge of the property, and Jimmy, who had the
21 authority of law to do anything that a uniformed officer
22 would do to protect the property, maced the defendant in
23 the back of the head when they got to the edge of the
24 property, and in response, the defendant's brother hit
25 Jimmy in the head. Now, the altercation didn't end there.

1 The defendant and his brothers went next door to a gas
2 station, and while there, they warned the people at the gas
3 station. The defendant noted that something was about to
4 go down next door, said he was going to shoot rounds. He
5 and his brothers got into their cars after that and as they
6 were driving out front past the El Toro Restaurant, he got
7 out his gun, rolled down the window and the defendant shot
8 Jimmy square in the chest. Jimmy died on the operating
9 table less than an hour later. Ladies and gentlemen, my
10 name is Sandra Vriesinga, and along with Meghan Walker and
11 Luck Campbell, we represent the State of South Carolina for
12 the Fifth Judicial Circuit and the people of Richland
13 County and Kershaw County. It's our job to prosecute
14 crimes, and as I said, we're here today because the
15 defendant was charged with the murder of Jimmy Moti.
16 Murder is defined as the unlawful killing of a human being
17 with malice aforethought whether express or implied, and in
18 this case we have both. Malice is defined as ill will,
19 hatred, and in South Carolina malice aforethought can be
20 found in the moment the trigger is pulled. As the State we
21 carry the burden. We carry the burden of proving each and
22 every element of the crime beyond a reasonable doubt.
23 Doesn't mean beyond any doubt or beyond all doubt, just
24 means a reasonable amount of doubt, proof that leaves you
25 firmly convinced of the defendant's guilt, and we welcome

1 that burden. Your job today is to listen to the facts. I
2 know when you came in here this morning, no one sat you
3 down and gave you an instruction manual on how to be a
4 juror, and that's because you have, each and every one of
5 you already has all the skills that you need to judge
6 people's character, and that's what you're going to be
7 doing this week. You're going to be listening to the
8 testimony of witnesses that take this stand, and use your
9 common sense. Judge people as you would outside of the
10 courtroom. Judge them for their credibility, their
11 credibility and their believability. It's your job to
12 determine who is telling the truth, and when you do that,
13 keep in mind what they have at stake, why they're here, why
14 they're coming in to testify, and at the end of the trial
15 we'll ask you to apply, to analyze that evidence and apply
16 it to the facts of the case in order to find a verdict.
17 Now, throughout the trial we're going to hear a lot of
18 testimony. You're going to hear evidence in two different
19 forms, direct and circumstantial. Direct is eyewitness
20 testimony, anyone who has first-hand knowledge of the
21 incident. And circumstantial is anything else that leads
22 you to a conclusion. During the course of this trial
23 you're going to hear from many different witnesses. You're
24 going to hear from Deputy Brunson who was the first
25 responding officer on the scene; he was actually the first

1 person there. He's going to tell you what he heard, what
2 he saw and how he secured the scene. You're also going to
3 hear from the EMS worker that drove Jimmy to the hospital.
4 You're going to hear from Investigator Woods who
5 photographed the scene. You're going to hear also from
6 Lamar Ray who was actually a security guard there that
7 night and he witnessed the defendant trying to get in using
8 a false ID. You're also going to hear from Marquita Mobley
9 who was at the gas station that evening. She saw what was
10 going down across the street. She heard the defendant
11 warning people that something was about to go down. But
12 you're not just going to hear from people that were there
13 at the scene at the time of the incident. You're going to
14 hear from people that analyzed the scene from a forensic
15 perspective. What I mean by that is you're going to hear
16 from people that studied DNA, studied gunshot residue for a
17 living. You're going to hear from people like John Barron
18 who analyzed the DNA on the ID card and actually found the
19 defendant's -- his DNA on that card. You're also going to
20 hear from Dr. Marcus, the Chief Medical Examiner for
21 Richland County. He's going to tell you about the bullet
22 that hit Jimmy and how it killed him. Finally, you're
23 going to hear from Sergeant Lindler, Investigator Jordan
24 and Chief Wilson. They're going to tell you about their
25 investigation from beginning to end. They're going to tell

1 you about how they first brought the defendant in and he
2 denied everything. And then they're going to tell you
3 about how they learned that he was trying to hide the gun.
4 And you're going to hear that when the defendant was
5 confronted with the overwhelming evidence against him, how
6 he ended up confessing. Ladies and gentlemen, this case
7 may sound fairly straightforward, fairly simple, but let me
8 remind you that this case is still important. This case is
9 important to us; this case is important to Jimmy's family;
10 this case is important to the defense; this case is
11 important to the State of South Carolina. Ultimately, it's
12 your job as the jurors, it's your job to decide who to
13 believe and what to believe. We'll come back before you at
14 the end of this trial and we're going to ask you to hold
15 the defendant responsible for his actions and for the only
16 verdict that speaks the truth in this case, a verdict of
17 guilty for the murder of Jimmy Moti. Thank you.

18 THE COURT - Thank you. Mr. Sharpe?

19 MR. SHARPE - Thank you, Your Honor. May it
20 please the Court.

21 THE COURT - Yes, sir.

22 MR. SHARPE - Good morning, ladies and gentlemen.
23 Before I introduce myself and my co-counsel, I just want to
24 go ahead and try to save everyone some time and let the cat
25 out of the bag. On August 25th, 2012, Bernard Haltiwanger

1 shot Jimmy Moti. That's just a fact. Now, ladies and
2 gentlemen, my name's Pat Sharpe. It's a pleasure to be in
3 front on you and to defend Bernard. My co-counsel, Alicia
4 Dyar, Mark Sawyer and, of course, Bernard Haltiwanger.
5 Now, ladies and gentlemen, Bernard is very nervous over
6 there. He understands the seriousness of what's going on
7 here. And I'd be lying if I told you that he was the only
8 one that's nervous over there. This is my first trial; I'm
9 pretty nervous. But what I would ask you is to, please,
10 don't hold my inexperience against Bernard, because Bernard
11 is not guilty of murder. Now, Ms. Campbell, she's been
12 doing this for over 25 years. She's great. Now, I've
13 heard that she's got a bunch of tricks up her sleeve. I've
14 never seen these tricks.

15 MS. VRIESINGA - Objection, Your Honor.

16 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
17 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
18 WHICH WAS NOT REPORTED.)

19 THE COURT - Overruled. You may proceed.

20 MR. SHARPE - So anyway like I was saying, Ms.
21 Campbell's been doing this for 25 years and I've heard that
22 she has a lot of tricks up her sleeve. I've never seen
23 these tricks, but I've heard about them. What I ask you is
24 is to don't fall for these tricks. This is a -- you heard
25 Ms. Vriesinga say that they have the burden of proof.

1 Well, they say they welcome that burden of proof, but we
2 ask you to please hold them to that. We don't think that
3 they can meet that burden. You know, in the morning you
4 might wake up, turn on the tv, turn on the coffee, watch a
5 little morning news, you know, there might be some crime
6 that has been committed that everyone's, you know, on edge
7 waiting for the perpetrated to be arrested. Well, you see
8 that and, you know, you feel good about it, and that's
9 normal. Ordinary citizen, feel good about that. But today
10 you took an oath that you're a juror, and that oath means
11 that you're not an ordinary citizen anymore. You took that
12 oath that says you're going to follow the law. The law
13 says that Bernard is innocent until proven guilty beyond a
14 reasonable doubt. What that means is is that you're
15 supposed to assume that they've made a mistake; they have
16 the wrong person here. We ask you if you can't look over
17 at Bernard and look at him as an innocent man, then you're
18 not doing what you've been sworn in to do. Now, the
19 State's going to bring up witnesses and put them on the
20 stand to try to convince you of what happened. Well, I'll
21 just ask you to listen intently, because none of the
22 witnesses that they're going to put up saw everything that
23 happened that night from the beginning until the end, and I
24 -- so what I ask you to do is just listen intently, because
25 you're going to have to piece this story together, and at

1 the end of this Mr. Sawyer's going to get up here and he's
2 going to wrap it all up and piece it together, and he's
3 going to present it to you and we believe that that's going
4 to enable you to put not guilty on the verdict form. Now,
5 we thank you and we look forward to presenting our case.

6 THE COURT - Thank you, Mr. Sharpe. If you'd call
7 your first witness, please.

8 MS. VRIESINGA - Yes, Your Honor. Deputy Brunson.

9 DEPUTY ZACHERY BRUNSON, AFTER BEING FIRST DULY
10 SWORN, TESTIFIES AS FOLLOWS -

11 DEPUTY CLERK - Thank you. Please have a seat in
12 the witness stand and state your full name for the record.

13 DEPUTY BRUNSON - Deputy Zach Brunson.

14 THE COURT - And how do you spell Zach?

15 DEPUTY BRUNSON - Z-a-c-h.

16 THE COURT - Your witness.

17 MS. VRIESINGA - Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. VRIESINGA -

20 Q Deputy Brunson, will you please state your name for
21 the jury?

22 A Zach Brunson.

23 Q And can you please tell the Court what you do for a
24 living?

1 A I work for the Richland County Sheriff's Department;
2 I'm assigned to the Uniform Division, patrol; my area that
3 I'm assigned to what's Region 4, which is Broad River Road,
4 Dutch Fork, Irmo area. My main responsibilities are to
5 patrol and respond to calls of distress such as alarms,
6 assaults, thefts, things of that nature.

7 Q How long have you been working for Richland County?

8 A Approximately three and a half years.

9 Q Okay. What did you do before that?

10 A Before that I was in school at the University of South
11 Carolina, Criminal Justice major. I also worked at SLED
12 for a year while in college.

13 Q So you were employed by Richland County in August of
14 2012?

15 A Yes, ma'am.

16 Q Okay. I'm going to turn your attention back to August
17 25th of 2012. Did you receive a call that evening?

18 A I did.

19 Q Okay. What was that call for?

20 A The initial call was for a civil disturbance in
21 progress at the El Toro Bar and Grill which was located at
22 806 St. Andrews Road.

23 Q Okay. Is that in Richland County?

24 A Yes, ma'am, it is.

25 Q Okay. Was that call ever upgraded?

1 A Yes, as I was responding to the call, as I was en
2 route, it was updated to a shooting incident with a
3 security guard that was possibly hit and shot.

4 Q Okay. Were you the first responder on the scene?

5 A I was.

6 Q And what did you see when you got that there?

7 A When I first arrived ---

8 MS. DYAR - Objection, Your Honor.

9 MS. VRIESINGA - And he's using -- he's using his
10 report as extrinsic evidence to testify.

11 THE COURT - Lay a proper foundation.

12 MS. VRIESINGA - Yes, Your Honor.

13 THE COURT - All right.

14 Q Deputy, if I show you a copy of your report, would
15 that help refresh your memory?

16 A Yes, ma'am.

17 MS. VRIESINGA - Your Honor, may I approach the
18 witness?

19 THE COURT - You may. Now, let's mark it for
20 identification purposes, please.

21 MS. VRIESINGA - Okay. Your Honor, what I'm
22 showing the deputy is his incident report.

23 Q If you'd just tell us what that is exactly.

24 A This is the Richland County Sheriff's Department
25 incident report that I wrote on the night of the incident.

1 THE COURT - Okay. Have it marked, please, for
2 identification purposes.

3 (Whereupon, document is marked for identification
4 as State's Exhibit Number 70.)

5 MS. VRIESINGA - And Your Honor, for the record
6 I'm showing the witness what's been previously marked as
7 State's Exhibit 70 for identification purposes only.

8 THE COURT - Very well.

9 Q Deputy Brunson, if you would just tell us what you saw
10 when you arrived on the scene.

11 A When I first arrived on scene I observed the victim,
12 Mr. Moti, the security guard, lying on the ground at the
13 front of the steps leading up to the front of the entrance.
14 He appeared to have a bullet wound in his abdomen area. I
15 was trying to question him. He wouldn't -- he wasn't able
16 to answer any of my questions at the time.

17 Q What was the atmosphere like?

18 A It was pretty chaotic atmosphere. There was people --
19 there was an outside deck. There was some people on the
20 outside deck, couple of other security guards around,
21 pretty chaotic. It was a pretty busy night at the club, so
22 ---

23 Q Okay. Roughly how many people were out front at the
24 club?

1 A I would say approximately 20 people including patrons
2 on the deck.

3 Q Did you have a chance to speak to anyone?

4 A Yes, I spoke with a couple of people on the scene.

5 Q Okay. What did you learn?

6 A I learned that there was three subjects who were
7 attempting to gain entry into the club. I learned that
8 they were denied because they were trying to use someone
9 else's identification. After they couldn't gain access in
10 the club, I learned that Mr. Moti attempted to escort them
11 to their vehicle and advised them to leave the property. I
12 also learned that there was a physical altercation that
13 occurred near their vehicles where Mr. Moti was struck in
14 the back of the head. At that time I learned that there
15 was a vehicle that was leaving the area and there was shots
16 fired and that a black older marquis vehicle was possibly
17 involved and it was traveling on St. Andrews towards Broad
18 River Road.

19 Q Okay. I'm going to take you back to when you first
20 arrived on the scene. What are your typical duties when
21 you first arrive?

22 A When I initially arrive on a call like this where
23 someone is possibly been shot, first responsibility is to
24 secure the scene, make sure no one else is in danger, get
25 aid to the person who's been injured. After that try to

1 gain information on what had happened from witnesses or
2 people who had seen what happened, then secure the crime
3 scene, put up crime scene tape, try to secure evidence.

4 Q Did you do all those things?

5 A I did, yes, ma'am.

6 Q Okay. Did any other deputies arrive on the scene
7 while you were there?

8 A There were other deputies that arrived on scene, yes,
9 ma'am.

10 Q Okay. And did you start a crime scene log while you
11 were there?

12 A I did.

13 Q Did you pick up any of the potential evidence that was
14 at the scene?

15 A I did.

16 Q Okay. Can you tell us about that?

17 A The tactical vest that Mr. Moti was wearing.

18 Q Okay. And was there anything else? Any other objects
19 laying around the scene?

20 A Nothing that I recall other than the stuff that was in
21 his tactical vest.

22 Q Okay, what -- what was the stuff in his tactical vest?

23 A I believe his gun and some other items that he would
24 use for his job.

25 Q Flashlight ---

1 A Yes, flashlight, handcuffs, maybe.

2 Q Okay. All right. Did he have any weapons?

3 A I believe he did have a gun, yes, ma'am.

4 Q Do you remember what kind of gun it was?

5 A No, I don't. It was a -- it was a handgun. I don't
6 know model or make.

7 Q Okay. And what did you do with those items?

8 A I turned them over to Investigator Woods when she
9 arrived on scene.

10 Q Okay, who is Investigator Woods?

11 A She is a crime scene investigator with Richland
12 County.

13 Q Okay, so that's protocol.

14 A Yes, ma'am.

15 MS. VRIESINGA - Beg the Court's indulgence.

16 THE COURT - All right.

17 MS. VRIESINGA - No further questions. Please
18 answer any questions the defense has.

19 THE COURT - Cross examination?

20 MS. DYAR - Thank you, Your Honor. May it please
21 the Court.

22 THE COURT - Yes.

23 CROSS EXAMINATION

24 BY MS. DYAR -

1 MS. DYAR - No further questions.

2 THE COURT - Re-direct?

3 MS. WALKER - None, Your Honor.

4 THE COURT - All right, is this witness free to
5 leave?

6 MS. WALKER - Yes, Your Honor.

7 THE COURT - Any objection?

8 MS. DYAR - None.

9 THE COURT - Very well. You are free to go. Call
10 your next witness, please.

11 MS. CAMPBELL - State would call Yvonne Woods.

12 YVONNE WOODS, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 DEPUTY CLERK - Thank you. Please have a seat in
15 the witness and state your full name for the record and
16 please spell your first name.

17 MS. WOODS - Yvonne Woods. Y-v-o-n-n-e.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL -

20 Q Investigator, where are you employed?

21 A Richland County Sheriff's Department.

22 Q What do you do there, ma'am?

23 A Crime Scene Investigator.

24 Q And as a crime scene investigator for the Richland
25 County Sheriff's Department, what do your duties include?

1 A We search and identify physical evidence and collect
2 and preserve it.

3 Q Can you tell this jury a little bit about your
4 education and your training as a crime scene investigator?

5 A Yes, and I'm going to have to refer to my book on
6 this. I -- we have a 24 in-house training -- 24-hour in-
7 house training that we do, but also I also have other
8 education, interview techniques, basic blood pattern
9 analysis, crime scene investigation, latent prints
10 development, photography, tracking evidence, enhancement of
11 footwear recovery of track evidence, history of
12 introduction of blood stain patterns, interpretation of
13 blood stain patterns, photography, crime scene
14 reconstruction.

15 Q Have you been qualified before as an expert in crime
16 scene investigation?

17 A Yes.

18 MS. CAMPBELL - Your Honor, at this time we'd
19 offer her as an expert in crime scene investigation.

20 THE COURT - Any voir dire?

21 MR. SAWYER - None, Your Honor.

22 THE COURT - Any objection?

23 MR. SAWYER - None, Your Honor.

24 THE COURT - Ladies and gentlemen, let me explain
25 to you what has just occurred. Normally, under our rules

1 A I collected the fired shell casings in the roadway,
2 the projectile on the deck, the t-shirt and items from
3 Brunson through a chain of custody.

4 Q And specifically what items did you get from Deputy
5 Brunson that day?

6 A A security vest with a flashlight, badge, magazines
7 with 11 unfired .40 caliber cartridges, baton, knife,
8 marker, handcuff and keys, note pad and pen, gloves, taser,
9 Beretta firearm .40 caliber and ID card.

10 Q Okay. Did you also collect the shirt there at the
11 scene?

12 A Yes, ma'am.

13 Q I'm going to show you what's been marked as State's
14 Exhibit 63. Do you recognize that?

15 A Yes, ma'am.

16 Q And what is that, ma'am?

17 A That is the button down shirt that was at the steps,
18 the black shirt that was at the steps.

19 Q That would be the item that was on the front steps
20 there in the photographs we just showed the jury?

21 A Yes, ma'am.

22 Q And you collected that that night properly?

23 A Yes, ma'am.

1 Q And what measures do you take -- when you collect
2 evidence, what do you do to insure the integrity if it's
3 later tested?

4 A I take it and I actually fold it in brown paper and to
5 carry it back to the lab.

6 Q And did you do that in this case?

7 A Yes, ma'am.

8 MS. CAMPBELL - Your Honor, at this time we'd
9 offer State's Exhibit 63 into evidence.

10 MR. SAWYER - Your Honor, I think we need to --
11 more than just in a cardboard box in evidence. I think we
12 need to see what's inside.

13 MS. CAMPBELL - Your Honor, he told me that he
14 reviewed all the evidence and is good with it.

15 MR. SAWYER - I did, but we just ---

16 THE COURT - You want to open it and take a look
17 at it -- you know what? This is a great time for our
18 morning break while you do that. Ladies and gentlemen,
19 we'll now take our morning break. Please remember, do not
20 discuss this matter. That means amongst yourselves. Do
21 you not discuss this matter or allow anyone to discuss it
22 with you. We will take about, oh, probably closer to 20
23 minute break, just to -- noting a number of folks that we
24 have that need to take a comfort break. If you'll please

1 Q And in included with that vest was there also a gun
2 collected?

3 A Yes, ma'am.

4 Q And I'm going to show you State's Exhibit 52 and ask
5 if you recognize that?

6 A Yes, ma'am.

7 MS. CAMPBELL - Your Honor, at this time we'd
8 offer State's Exhibits 62 and 52 into evidence.

9 THE COURT - Any objection?

10 MR. SAWYER - Without objection.

11 THE COURT - 62 AND 52 in evidence without
12 objection.

13 MS. CAMPBELL - And, Your Honor, I would note that
14 there is a gun lock properly on the gun.

15 THE COURT - Thank you very much, because I had
16 one if you needed one.

17 MS. CAMPBELL - Yes, I got one. Okay. Just for
18 the Court's ---

19 THE COURT - Thank you.

20 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
21 EXHIBITS 62 AND 52.)

22 Q State's Exhibit Number 62 -- there were several other
23 items you mentioned that you received from Deputy Brunson.
24 Were those all included in this?

25 A Yes, ma'am.

1 Q And you mentioned certain items. What types of items
2 were those?

3 A There was a badge, the magazines with the 11 unfired
4 .40 caliber cartridges, knives, marker, handcuff and key, a
5 taser.

6 Q And I show you one of the items that was attached. Is
7 this the taser you're talking about?

8 A Yes, ma'am, that's the taser.

9 Q And this is what that looked like? And this was
10 included in what was turned over to you?

11 A Yes, ma'am.

12 Q And on the front of the vest, is there a badge?

13 A Yes, ma'am.

14 Q And what does that badge say on it?

15 A Security Officer.

16 Q State's Exhibit Number 52, what's included in this
17 box?

18 A It's the weapon and the magazine and the unfired
19 cartridge casings.

20 Q So the ---

21 A Cartridge.

22 Q --- would've been the ammunition within the gun?

23 A Yes, ma'am.

24 Q And those were also turned over to you at the time.

25 A Yes, ma'am.

1 Q I want to show you what's been marked as State's
2 Exhibit Number 56. Do you recognize that?

3 A Yes, ma'am.

4 Q What is that?

5 A That's a ID card or a driver's license identification
6 purpose only.

7 Q And did you also receive that from Deputy Brunson?

8 A Yes, I did.

9 MS. CAMPBELL - Your Honor, at this time we'd
10 offer State's Exhibit Number 56 into evidence.

11 THE COURT - And if you'd show it to counsel,
12 please. Any objection?

13 MR. SAWYER - No. Without objection.

14 THE COURT - Oh, okay. All right, 56 in evidence
15 without objection.

16 MS. CAMPBELL - Your Honor, I believe he's had an
17 opportunity to view all the evidence that we're talking
18 about right now.

19 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
20 EXHIBIT NUMBER 56.)

21 Q As far as this item -- can you open it and take it out
22 of the actual wrapper, please?

23 A Yes, ma'am.

24 Q And is that -- what type of ID is that?

25 A South Carolina ID.

- 1 Q And what information is on the front of this ID?
- 2 A His name, address, height, weight.
- 3 Q And whose name is on this?
- 4 A Carlos Brown.
- 5 Q And what address does it show?
- 6 A 218 Rodney Street.
- 7 Q In what city?
- 8 A Rock Hill, South Carolina.
- 9 Q And that was turned over to you there at the scene
- 10 that day.
- 11 A Yes, ma'am.
- 12 Q When you collected this, what, if -- how did you
- 13 collect it and what did you do with it?
- 14 A I collected it, carried it back to the lab and took a
- 15 swab.
- 16 Q And I'll get back to that in a minute. You also, as
- 17 you previously testified, photographed some shell casings
- 18 that were collected.
- 19 A Yes, ma'am.
- 20 Q I show you what's been marked for ID purposes as
- 21 State's Exhibits 71 and 72. Do you recognize those?
- 22 A Yes, ma'am.
- 23 Q And are those the two shell casings you collected that
- 24 night?
- 25 A Yes, ma'am.

1 Q And on the front I note that there are two different
2 numbers on the front, 2 and 3?

3 A Yes, ma'am.

4 Q And what does that designate?

5 A The casings that were in the roadway that was marked.

6 Q And -- that were marked?

7 A Yes, ma'am.

8 Q With those numbers.

9 A Yes, ma'am.

10 MS. CAMPBELL - Your Honor, at this time we'd
11 offer State's Exhibits 71 and 72 into evidence.

12 MR. SAWYER - No objection.

13 THE COURT - Very well.

14 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
15 EXHIBITS 71 AND 72.)

16 Q Just using State's Exhibit 72 -- if I can make it come
17 out of here -- is that one of the shell casings?

18 A Yes, ma'am.

19 Q And again, that was found where?

20 A In the roadway.

21 Q And there at the scene, State's Exhibit 73 and 74, do
22 you recognize those?

23 A Yes, ma'am.

24 Q What are those, ma'am?

1 MR. SAWYER - Beg the Court's indulgence briefly.

2 THE COURT - All right.

3 MR. SAWYER - Nothing further.

4 THE COURT - Re-direct?

5 MS. CAMPBELL - No, Your Honor.

6 THE COURT - And is this witness free to leave?

7 MS. CAMPBELL - Thank you, Your Honor.

8 THE COURT - Any objection?

9 MR. SAWYER - None, Your Honor.

10 THE COURT - You are free to go. Call your next
11 witness, please.

12 MS. WALKER - Your Honor, the State calls Marquita
13 Mobley.

14 MARQUITA MOBLEY, AFTER BEING FIRST DULY SWORN,
15 TESTIFIES AS FOLLOWS -

16 DEPUTY CLERK - Thank you. Please have a seat in
17 the witness stand and state your full name for the record
18 and please spell your first name.

19 MS. MOBLEY - Okay. It's M-a-r-q-u-i-t-a,
20 Marquita.

21 THE COURT - Your witness.

22 MS. WALKER - Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. WALKER -

25 Q Ms. Mobley ---

1 A (Indicating yes)

2 Q --- where do you -- just say yes or no when I ask you
3 a question. Okay?

4 A Okay.

5 Q So the court reporter will be able to take down your
6 answers.

7 A Okay.

8 Q Where do you live now?

9 A Garner's Ferry Road.

10 Q Is that here in Columbia?

11 A (Indicating yes)

12 THE COURT - Is that a yes?

13 A Yes, ma'am.

14 Q And how long have you lived here in Columbia?

15 A Five years.

16 Q Do you work now?

17 A No, ma'am.

18 Q I want to talk to you about last August, August of
19 2012.

20 A Yes, ma'am.

21 Q Did you go to the El Toro nightclub?

22 A Yes, ma'am.

23 Q Do you remember who you went with?

24 A Yes, ma'am.

25 Q And who was that?

- 1 A Kristina.
- 2 Q Kristina? Do you know her last name?
- 3 A Yes, ma'am, Payne.
- 4 Q And how did you know Kristina?
- 5 A She's my best friend.
- 6 Q And where were you living at that time?
- 7 A At the hotel.
- 8 Q What hotel?
- 9 A Red Roof.
- 10 Q The Red Roof Inn?
- 11 A Off St. Andrews Road.
- 12 Q And how did you and Kristina get to the club that
- 13 night?
- 14 A Walk.
- 15 Q Did y'all walk down St. Andrews Road?
- 16 A Yes, ma'am.
- 17 Q Did y'all actually go inside the club?
- 18 A No, ma'am, they wouldn't let us get in, because she
- 19 didn't have an ID.
- 20 Q She didn't have an ID and so they wouldn't let y'all
- 21 in.
- 22 A Yes, ma'am.
- 23 Q Do you remember who you talked to?
- 24 A The security officer that got shot.
- 25 Q You talked to him that night?

1 A (Indicating yes)

2 THE COURT - That is a yes?

3 A Yes, ma'am.

4 Q When he told you that he wouldn't let you in, was he
5 rude?

6 A No, ma'am, not at all.

7 Q And that's because someone didn't have an ID.

8 A Yes, ma'am.

9 Q What did y'all do once y'all got denied entry to the
10 club?

11 A Walked back down St. Andrews Road going towards the
12 room.

13 Q The Red Roof Inn?

14 A Yes, ma'am.

15 Q Did y'all make it to the Red Roof Inn?

16 A Yes, ma'am.

17 Q How did y'all get there?

18 A A guy gave us a ride.

19 Q While y'all were walking down the street?

20 A Yes, ma'am.

21 Q Did you know his guy?

22 A No, ma'am.

23 Q Did Kristina know him?

24 A No, ma'am.

25 Q But he gave y'all a ride.

1 A (Indicating yes)

2 THE COURT - Is that a yes?

3 A Yes, ma'am.

4 Q And like I said the only -- the only reason is so that
5 she can take down yes or no, because uh hum can get kind of
6 confusing. Okay?

7 A Okay.

8 Q And when y'all got to the hotel room, was the guy
9 still with y'all that gave y'all a ride?

10 A Yes, ma'am.

11 Q And how long did y'all stay there?

12 A To the room? For like 15 minutes and went straight
13 back to the store.

14 Q What store did y'all go to?

15 A The Gazbah next to the club, the bar.

16 Q Was that still on St. Andrews Road?

17 A Yes, ma'am.

18 Q So how close are the El Toro that you tried to go to
19 and the gas station that you ended up going to?

20 A It was like right next to it.

21 Q Next door to each other?

22 A Yes, ma'am.

23 Q And how long -- how long were y'all -- what did you do
24 when you got to the gas station?

1 A The guy who we was with, he went inside the store to
2 purchase some beers and cigarettes.

3 Q Did you notice anything while he was inside the store?

4 A Yes, ma'am.

5 Q And what was that?

6 A It was commotion going on with the security officer
7 and some other guys.

8 Q Where was that commotion?

9 A At the club.

10 Q And could you see this?

11 A (Indicating yes) Yes, ma'am. I'm sorry.

12 Q That's okay. Are you nervous?

13 A Yes.

14 Q All right. You need some water?

15 A Yes, that'll be fine.

16 Q Okay. Let me get you some water. Just take a deep
17 breath. Okay?

18 A Okay. And a napkin. Thank you.

19 Q Here you go.

20 A Thank you.

21 Q You said you were at a gas station and you saw a
22 disturbance.

23 A Yes, ma'am.

24 Q Will you describe that for me?

1 A I was sitting in the car and the guy that who we was
2 with, he went inside the store, and while we was sitting in
3 the car, Kristina Payne called that young gentleman to the
4 car while we was sitting outside.

5 Q When you say the young gentleman, what young
6 gentleman?

7 A That's sitting over there.

8 Q Okay. But the young gentleman, where was he before he
9 got called over?

10 A Arguing with -- arguing with the security officer.

11 Q Okay. And then what happened when he got called over
12 to the car?

13 A They was talking and he stated he was going to --
14 somebody got maced and ---

15 Q Did he say who got maced?

16 A I guess it was him. Or I think it was the other guy.

17 Q So somebody got maced.

18 A (Indicating yes)

19 Q And then what did he say?

20 A We need to get out of the way. He was telling us we
21 needed to get out of the way, because he about to, I guess,
22 shoot the place up.

23 Q What were his exact words, Marquita?

24 A That he about to let rounds go and we need to go ---

25 Q He said ---

- 1 A Yes.
- 2 Q You need to go, because I'm about to let rounds go.
- 3 A Yes, ma'am.
- 4 Q What did that mean to you?
- 5 A Shoot.
- 6 Q Did you say anything to him about him shooting up the
- 7 club?
- 8 A Yes, I said I got a child, so I was like, I'm about to
- 9 go in here and get the guy who we rode to the store with.
- 10 Q Because you didn't want to get caught in his fight.
- 11 A Yes, ma'am.
- 12 Q What did he say about that?
- 13 A Once I told him I had a child, he said he got three
- 14 kids and ---
- 15 Q And he was going to shoot the club up.
- 16 A Yes. Yes, ma'am.
- 17 Q Did you go inside and get the guy?
- 18 A Yes, ma'am.
- 19 Q And did the guy come back out to the car?
- 20 A Yes, ma'am.
- 21 Q What happened next?
- 22 A We drove off. The guy that we drove with, he had a
- 23 couple of words with him. It was like it ain't worth it to
- 24 the defendant over there.
- 25 Q They were telling him it's not worth in the ---

1 A (Indicating yes) Yes, ma'am.

2 Q Keep going.

3 A And so we was getting -- getting ready to pull off, so
4 they had done pulled their cars to the entrance where they
5 can go.

6 Q When you say they, who are you talking about?

7 A It was like a couple of more guys and him.

8 Q And they were at -- what entrance were they at?

9 A Like getting ready to go out of the club. They got
10 like two entrance, so they parked their cars right there,
11 told him to get in the car, so he went in the car and got a
12 gun and started shooting out the window.

13 Q And you saw that?

14 A (Indicating yes) because we was driving off at the
15 time.

16 Q And what did you do when they started shooting?

17 A We left.

18 Q I understand. Did you talk to the police about this?
19 Did you talk to the investigators of the sheriff's
20 department about this?

21 A (Indicating yes) Yes, ma'am.

22 Q And did they show you a photo line-up of people?

23 A Yes, ma'am.

24 MS. WALKER - Your Honor, may I approach the
25 witness?

1 THE COURT - You may.

2 Q I want to show what's been marked as State's Exhibit
3 Number and ask you if you recognize this?

4 A Yes, ma'am.

5 Q And -- one moment -- and how do you recognize this?

6 A How do I recognize? Because he was right there to the
7 car.

8 Q No, the -- the actual document. Did you sign it?

9 A Yes, ma'am.

10 Q And when they showed you this photo line-up, did they
11 tell you who to pick out?

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

13 Q Did they suggest to you ---

14 A No, ma'am.

15 Q --- any of the pictures?

16 A No, ma'am.

17 Q Did you circle one of these?

18 A Yes, ma'am.

19 Q And which one was that?

20 A Number 5.

21 Q And why'd you circle number 5?

22 A Because it was him.

23 Q When you say it was him, what do you mean?

24 A It was him shooting outside the car.

1 MS. WALKER - Your Honor, at this point the State
2 seeks to admit Exhibit Number 5 in evidence.

3 MR. SAWYER - No objection.

4 THE COURT - Very well.

5 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
6 STATE'S EXHIBIT NUMBER 5.)

7 Q It was number 5 that was shooting outside the club?

8 A Yes, ma'am.

9 Q The person who you talked to and said that he was
10 going to bust some rounds ---

11 A (Indicating yes)

12 Q --- do you see him in the courtroom?

13 A Yes, ma'am.

14 Q The person who was told to calm down because it wasn't
15 worth it, do you see him in the courtroom?

16 A Yes, ma'am.

17 Q The person who fired the gun at El Toro, do you see
18 him in the courtroom?

19 A Yes, ma'am.

20 Q Can you point that person out?

21 A Right there.

22 MS. WALKER - Your Honor, may the record reflect
23 that the witness has identified the defendant. Which one
24 is he?

25 A The one at the end right here.

1 THE COURT - The one with the what?

2 MS. WALKER - She said the one at the end.

3 A The one at the end right there with the tie on.

4 MS. WALKER - Your Honor, may the record reflect
5 that the witness has identified the defendant.

6 THE COURT - Very well.

7 MS. WALKER - Your Honor, I don't have any further
8 questions.

9 THE COURT - Cross examination.

10 MR. SHARPE - Your Honor, may it please the Court.

11 CROSS EXAMINATION

12 BY MR. SHARPE -

13 Q Good morning, Ms. Mobley.

14 A Good morning.

15 Q Afternoon.

16 A Afternoon.

17 Q All right, now let me back up -- back you up a little
18 bit. So y'all originally went to the club ---

19 A (Indicating yes)

20 Q --- and you couldn't get in.

21 A Yes, sir.

22 Q And so then you're walking back to the hotel?

23 A (Indicating yes)

24 COURT REPORTER - Is that a yes?

25 A Yes, sir.

- 1 Q A gentleman picks you up.
- 2 A Yes, sir.
- 3 Q And you didn't know this gentleman?
- 4 A No, sir.
- 5 Q Why'd you get in the car with him?
- 6 A Because he tried to talk with one of us.
- 7 Q Oh, yes?
- 8 A (Indicating yes) Yes, sir.
- 9 Q And then where did you go?
- 10 A Back to the room.
- 11 Q Back to the room?
- 12 A Yes, sir.
- 13 Q How long do you think you were there for?
- 14 A Like 10 or 15 minutes.
- 15 Q And then -- and then what'd you after that?
- 16 A Went back to the store.
- 17 Q And what'd you do that for?
- 18 A We bought some beers, and that's when the incident
- 19 happened at the store, at the club.
- 20 Q Now, when you -- when you got to the gas station, what
- 21 -- what happened when y'all pulled in?
- 22 A When we pulled in, we noticed there was commotion at
- 23 the gas station.
- 24 Q And did you see -- did you see what was going on?
- 25 A (Indicating yes) Yes, sir.

1 Q You could see it all?

2 A Yes, sir.

3 Q And could you see the security officer?

4 A Yes, sir.

5 Q Now, can you kind of describe what -- what all you
6 said you saw? I mean you said there was two or three
7 people ---

8 A (Indicating yes) There was some ---

9 Q --- and the security officer ---

10 A Yes, sir. Because one of them even hit the security
11 guard in the face, punched him.

12 Q And which one was that?

13 A It was -- the one I guess got sprayed with the mace in
14 the back of the head.

15 Q The same -- the same one that got ---

16 A Yes, sir.

17 Q --- punched the officer?

18 A (Indicating yes) Yes, sir.

19 Q Now, was it like he -- he got maced and then he swung
20 at the officer?

21 A No, it was inside the club.

22 Q Inside the club?

23 A (Indicating yes)

24 Q So you were inside the club?

25 A No. They came out saying that that's what happened.

1 Q And this was a different person than the one who came
2 up to the car. Is that right?

3 A Yes, sir.

4 Q So what were the other guys doing while the gentleman
5 was talking to you at the car?

6 A Walking around -- they was walking around like just
7 spazzing out, like ---

8 Q Waiting -- waiting for to get the cars.

9 A (Indicating yes)

10 Q Could you ---

11 A They went and got the cars and parked them like they
12 was about to do something ---

13 Q They were ---

14 A --- and ready to go.

15 MS. WALKER - Objection, Your Honor. May the
16 witness be allowed to finish her answer?

17 THE COURT - Yes.

18 MR. SHARPE - I apologize, Your Honor. I'm sorry
19 about that.

20 A Um, they went and got the cars and parked them at the
21 entrance, both entrances so they could get ready to go, and
22 they had their lights off -- lights off also when they
23 pulled off.

24 Q Okay. And what kind of cars were they? Did you see
25 that?

1 DIRECT EXAMINATION2 BY MS. CAMPBELL -

3 Q Mr. Ray, how old are you?

4 A Thirty-seven.

5 Q Do you live here in the Columbia area?

6 A Yes, ma'am.

7 Q How long have you lived in the Columbia area?

8 A Eight years.

9 Q Back in August of last year, where were you working?

10 A El Toro.

11 Q And what did you do at the El Toro?

12 A We worked the front desk. We threw parties and event.

13 Q Okay, can you get a little closer to that microphone?

14 It's just hard to hear in here.

15 A We worked the front desk and we run parties and events
16 and I sometimes helped with security.

17 Q And sometimes help with security?

18 A Yes, ma'am.

19 Q And when you say we run parties and events, who did --
20 who was that?

21 A Me and my nephew.

22 Q And did y'all actually own the club?

23 A No, ma'am.

24 Q Y'all just helped run the club.

25 A No, we just threw events.

1 Q And I want to turn your attention back the evening of
2 the 25th, that evening. Were you working at El Toro?

3 A Yes, ma'am.

4 Q And what were your duties that night? What were you
5 doing?

6 A I be at the front door.

7 Q You were at the front door?

8 A Yes, ma'am.

9 Q Was anybody else working the front door with you?

10 A Yes.

11 Q And who was working the front door with you that
12 night?

13 A Jimmy.

14 Q And do you know Jimmy's whole name?

15 A Not by -- no.

16 Q Did you call Jimmy by something other than Jimmy?

17 A Jimbo.

18 Q Jimbo?

19 A Yes, ma'am.

20 Q So when you refer to Jimmy or Jimbo, that's the same
21 person?

22 A Yes.

23 Q And what was Jimbo's duties that night? What was he
24 doing?

25 A He was outside and searching and getting ID's.

- 1 Q And what kind of establishment is El Toro?
- 2 A El Toro's -- it was like a bar, sit down and eat.
- 3 Q Sit down and what?
- 4 A Sit down and eat.
- 5 Q You can eat?
- 6 A Yes, ma'am.
- 7 Q And can you get liquor there?
- 8 A Yes, ma'am.
- 9 Q Beer?
- 10 A Yes.
- 11 Q Wine?
- 12 A Yes.
- 13 Q Things of that nature?
- 14 A (No response)
- 15 Q That evening Jimbo was working the front door along
- 16 with you?
- 17 A He was outside; I was inside that particular time.
- 18 Q So what would his duties have been that night as the
- 19 outside door guy?
- 20 A Check ID's, search.
- 21 Q And when you say the outside door guy, would he have
- 22 been out in the parking lot or where outside would he have
- 23 been?
- 24 A Right on the porch.

1 Q I'm going to show you what's been marked as State's
2 Exhibit Number 20. Do you recognize that?

3 A Yes, ma'am.

4 Q And what does that show, sir?

5 A El Toro's front.

6 Q And where would Jimmy have been out there?

7 A On the porch.

8 Q Am I in the right place?

9 A Yes, ma'am.

10 Q Am I pointing at the right place?

11 A On the porch.

12 Q And what was (sic) his duties have been that night out
13 there on the porch?

14 A He was searching and get -- checking for ID's.

15 Q And when you say searching, what was he searching for?

16 A Weapons, anything illegal.

17 Q Anything illegal?

18 A Yes.

19 Q Is that standard procedure?

20 A Yes.

21 Q Before anybody could enter the establishment, is there
22 a requirement that they produce certain identification?

23 A You have to have a ID. You must be 21.

24 Q And what were your duties as the inside door guy?

1 A If it was a crowd I -- I help out with searching
2 people and collecting the money.

3 Q That night getting on towards midnight, did you
4 observe events as they took place out on that front porch?

5 A Yes, ma'am.

6 Q And can you tell the jury what first caught your
7 attention that evening?

8 A Well, it was a guy at the front door trying to get in
9 with a fake ID, and Jimbo wouldn't let him in, so he
10 started arguing with Jimbo about getting in, trying to pay
11 him an extra hundred dollars or whatever.

12 Q Trying to pay him an extra hundred dollars?

13 A Yes, and Jimbo still didn't let him in.

14 Q And was that what Jimbo was supposed to do?

15 A Yes, ma'am.

16 Q Where were you when you were observing this going on?

17 A I was at the front desk.

18 Q And how could you see what was going on out on the
19 porch?

20 A Because El Toro's got a window in the front door you
21 could -- I mean a door -- in the front door; you can see it
22 as you're looking out.

23 Q And that's the window that's shown in State's Exhibit
24 Number 20 again?

25 A Yes, ma'am.

1 Q So you were inside just inside there so you can see
2 out on the front?

3 A Yes.

4 Q And were you able to hear anything that was going on?

5 A Yes, ma'am.

6 Q And what exactly did you hear the man with the false
7 ID doing?

8 A Well, he was doing a lot of raising sand, man, I --
9 you know, we wanted to get in. He was doing a lot of
10 cussing and Jimbo was like, you know, telling him no you
11 can't get in with a fake ID, you know, you can leave. And
12 he was consistent (sic) on staying there arguing with Jimbo
13 trying to get in, trying to pay him.

14 Q Do you remember what type of clothing Jimbo had on
15 that night?

16 A He had on all black.

17 Q And do you remember whether or not he had no a vest
18 with certain ---

19 A He had on a vest - it looked like a vest to me.

20 Q Okay. What happened next that you remember?

21 A Um, -- well, uh, Jimbo starting escorting the guy off
22 and the guy turned around and, you know, Jimbo started
23 spraying mace.

24 Q Where did that take place?

25 A In the parking lot.

1 Q In which parking lot?

2 A El Toro.

3 Q And what part of the parking lot did that take place
4 in? Do you remember?

5 A It was right in the front.

6 Q I'm going to show you ---

7 MS. CAMPBELL - Beg the Court's indulgence while
8 I go through these pictures.

9 Q --- State's Exhibit Number 7. Does that show the
10 front?

11 A Yes.

12 Q Can you see the area where Jimbo pulled out his mace
13 or is it even on this one?

14 A I can see it better from the other one.

15 Q State's Exhibit 20?

16 A Yes. He started to walk down. It was a little path
17 right there. It was more by the cars.

18 Q More towards the cars?

19 A Yes, ma'am.

20 Q So further out in the parking lot.

21 A Further out in the parking lot. Okay.

22 Q Would that be right?

23 A I'll show you from there, because that one don't have
24 it.

25 COURT REPORTER - I'm having trouble hearing him;

1 I think he's kind of mumbling.

2 A I'll show you from here. It was like down in this
3 area here, but ---

4 Q Down in that area there?

5 A Yes, ma'am.

6 Q Where I'm pointing?

7 A It's not exactly right here, but it's over in this
8 area.

9 Q Over in this area of the parking lot.

10 A (No response)

11 Q And what was Jimbo doing when he pulled out the mace?
12 What was he trying to get the people to do?

13 A He was trying to escort the guy off.

14 Q And was Jimbo an actual security guard?

15 A Yes.

16 Q And part of his duties is if somebody gave him -- what
17 were his duties?

18 A His duties was to try to escort them off and he called
19 the police also.

20 Q When you saw him pull the mace out, what happened
21 next?

22 A I walked out and I stood on the porch and I watched to
23 make sure, you know, nobody's coming in without paying and
24 showing their ID.

1 Q Okay. And what happened next as far as where Jimmy
2 and -- and how many guys were around him at that point?

3 A It was just one guy at that point.

4 Q One guy at that point?

5 A Yes.

6 Q And do you remember what he looked like?

7 A He was tall, slender built.

8 Q What happened next?

9 A Then the guys started to come out.

10 Q When you say guys started to come out, what do you
11 mean?

12 A They just started coming out the club.

13 Q Which direction were they going in?

14 A One guy -- the guy with the dreads went towards the
15 car, then he came back around.

16 Q And what happened next?

17 A Then he swung on Jimbo from behind and I seen some
18 other guys coming, so I walk out and I say, no, ya'll not
19 going to jump on Jimbo, so I walked down there with him.

20 Q And at this point how many guys do you see around
21 Jimbo?

22 A By that point it was at least about three or four.
23 Like I said, it was -- people just was coming out, and then
24 that's -- another car pulled up on the parking lot of the

1 gas station and Jimbo pulled his gun on the guy and the guy
2 backed up and fell.

3 Q And fell?

4 A Yes.

5 Q And where was -- and what part of the parking lot did
6 that take place?

7 A That was at the end of the parking lot, but the guy
8 ended up crossing to the gas station.

9 Q And what gas station is next door to the El Toro?

10 A Oh, what is it.

11 Q If you don't know the name, that's all right.

12 A No, I ---

13 Q Is there a gas station next door?

14 A Yes.

15 Q And that's the parking lot you're now referring to as
16 gas station parking lot?

17 A Yes, ma'am.

18 Q What happened next?

19 A So um, Jimbo was on his phone with his gun out. I'm
20 telling Jimbo come on let's go, because I start seeing guys
21 going to their car popping their hoods and trunks and
22 stuff, so my instinct is they about to get their guns, so
23 I'm telling Jimbo to come on. He still on the phone. He
24 walked back up but he still on the phone calling the
25 police, so I walks in.

1 Q You walk in?

2 A I walk in. I go back to where I was standing at all
3 time watching, and um, the girl yell out, pow, somebody's
4 shooting. I looked; I seen who it was.

5 Q Let me back up for a minute. Are you just inside the
6 door?

7 A I'm right inside the door.

8 Q And then you hear somebody yell?

9 A Yes, the girl say, yes, they shooting, they shot the
10 security. I heard the gun shots as I walk in and I turned
11 around.

12 Q And what did you see?

13 A I seen a black crown vic.

14 Q Where was it?

15 A It was driving off.

16 Q And what road? Is there a road in front of the ---

17 A He was going out the parking lot.

18 Q In a black car?

19 A Black car.

20 Q What kind?

21 A And it was a white car had pulled up -- crown vic.

22 Q There was a separate white car?

23 A Yes.

24 Q But the shots you saw were coming from which car?

25 A Black car.

1 Q And could you see who was doing the shooting?

2 A Yes.

3 Q Was it somebody you'd seen earlier that night?

4 A Yes.

5 Q And tell the jury how you'd seen him earlier that
6 night.

7 A Well, I seen him earlier in that night because I
8 called him Ratchet.

9 Q What does that mean?

10 A That means he was -- he was real loud. I said he was
11 possessed with something so ---

12 Q And where had you seen him earlier in the night?

13 A In the line.

14 Q In the line?

15 A Yes.

16 Q And do you remember what he looked like?

17 A Yes.

18 Q What'd he look like?

19 A He had gold teeth. He was dark skinned.

20 Q Dark skin with gold teeth?

21 A Yes. He was shorter than me, so he was short to me.

22 Q And you say that when you looked up, you actually saw
23 the car where the shots came from?

24 A Yes, ma'am.

25 Q Did you actually see the shots or did you see the car?

1 A I seen both.

2 Q And what direction were the shots going?

3 A Towards the building, towards Jimbo.

4 Q Did anybody get hit?

5 A Yes.

6 Q Who got hit?

7 A Jimbo did.

8 Q Did you actually see that?

9 A I seen it and I seen the bullet wound and all.

10 Q And where was he when he got hit?

11 A He was like right on by the porch, porch area, because
12 he laid down.

13 Q State's Exhibit 20, where was he?

14 A Like right up in here.

15 Q (Indicating) Right in that area?

16 A Yes, ma'am.

17 Q And you say that he laid down?

18 A Yes, ma'am.

19 Q Was he up on the steps or on the ground or what?

20 A He was closer to the steps.

21 Q Which direction did the car go?

22 A I don't -- at that time I wasn't even paying

23 attention. I was asking -- trying to get out there and see

24 about Jimbo. He was laying on the ground, and I was asking

25 him did you need me to do something. He just told me to

1 move back and get his stuff and give it to Jesus and Jesus
2 was calling the ambulance, so they pulled his vest apart
3 and I got a chance to see the bullet wound and all.

4 Q What happened next?

5 A The ambulance came and, you know, -- I don't know.

6 Q Did they take Jimbo away?

7 A Yes.

8 Q Did you ever see him again?

9 A No.

10 Q Did the police come?

11 A Yes.

12 Q Did you talk to them that night?

13 A A little. I was upset, so I was really not trying to
14 even ---

15 Q Okay. Did they later come and take a statement from
16 you?

17 A Yes.

18 Q And did you tell them everything when you first talked
19 to them?

20 A No.

21 Q What part did you not tell them?

22 A I told them I didn't see the shooting. I was going to
23 say I didn't say anything, but -- and that was just for
24 safety reasons.

25 Q For your safety?

1 A Yes.

2 Q But did you describe to them all the people you saw
3 that night involved?

4 A Yes, I did.

5 Q And did that include the person that you actually knew
6 to be the shooter?

7 A Yes.

8 Q But you just didn't tell them you saw the shooter?

9 A No.

10 Q For your own safety.

11 A Yes.

12 Q And a couple days later did they come back and show
13 you some photographs?

14 A Yes, ma'am.

15 Q I'm going to show you what's been marked as State's
16 Exhibit Number 5. Excuse me. I've got the wrong one.
17 Excuse me.

18 MS. CAMPBELL - Beg the Court's indulgence.

19 Q Let me show you State's Exhibit 6. Do you recognize
20 that?

21 A Yes, ma'am.

22 Q Is that your signature on the first page?

23 A Yes, ma'am.

24 Q And on the second page, what does that show?

25 A A line-up and I got my initials on here.

1 Q When they showed you the line-up, did they tell you
2 who to pick?

3 A No, ma'am.

4 Q Did anyone ever indicate to you that you had to pick
5 anybody?

6 A No, ma'am.

7 Q And did you recognize someone out of these six photos?

8 A Yes, I did.

9 Q And which one did you recognize?

10 A Number 5.

11 Q And who did you recognize him to be?

12 A The shooter.

13 Q Did you tell them at the time it was the actual
14 shooter?

15 A No, I just told them that he was real racket, he was
16 one of the guys.

17 MS. CAMPBELL - Your Honor, at this time
18 I'd offer State's Exhibit 6 into evidence.

19 MR. SAWYER - Just renew our prior objection.

20 THE COURT - Very well. Yes, I understand.
21 Overruled.

22 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
23 STATE'S EXHIBIT NUMBER 6.)

24 Q When you saw State's Exhibit Number 6 out of these
25 guys, you recognized him?

1 A Number 6?

2 Q I'm sorry. State's Exhibit 6, the Exhibit Number 6,
3 but it's number 5 on the Exhibit. I'm sorry.

4 Q Okay. Yes, I recognized him.

5 Q And did you put your initials by it?

6 A Yes, ma'am.

7 Q Did anybody tell you who to pick?

8 A No, ma'am.

9 Q The other guys you saw that night, what did they look
10 like?

11 A I know the one with dreads, because he the one that
12 walked up behind Jimbo and hit him.

13 Q Okay. But that wasn't the one that was the shooter?

14 A No.

15 Q The one that was at the front door arguing, was that
16 the shooter?

17 A No.

18 Q Was that a different guy?

19 A Yes.

20 Q Were all those people together?

21 A I don't know.

22 Q You mentioned that you saw two cars out there that
23 night.

24 A Yes, ma'am.

25 Q And what were the two cars?

1 A A black crown vic and white crown vic.

2 Q And where were they located? Did you see?

3 A They was -- they was on the left-hand side of the club
4 backed in.

5 Q And which parking lot?

6 A In El Toro's parking lot.

7 Q In the back part?

8 A Yes.

9 Q And you didn't actually witness what happened at the
10 gas station, other than the guy fell?

11 A No, ma'am.

12 Q Did you see the guy fall?

13 A Yes, I was standing right there.

14 Q The person that you identified in the photo line-up --

15 -

16 A Yes, ma'am.

17 Q --- who was he?

18 A He was ---

19 MR. SAWYER - Objection. Asked several times now.

20 THE COURT - I understand. You may proceed.

21 Overruled.

22 Q What did he do that night?

23 A Say that -- say the question again.

24 Q The guy that you identified in the photo line-up, what
25 did he do that night?

1 A That was the guy that came in that I called Rachet;
2 that's the guy that I seen doing the shooting.

3 Q Do you see him here in the courtroom?

4 A Yes, ma'am.

5 Q Can you point him out for the jury?

6 A Yes, ma'am. Right there.

7 Q And what's he wearing?

8 A Grey shirt, white collar.

9 Q With a white collar?

10 A Yes, ma'am.

11 MS. CAMPBELL - Your Honor, may the record reflect
12 he's identified the defendant.

13 THE COURT - Yes, ma'am.

14 MR. CAMPBELL - Thank you, sir.

15 THE COURT - Cross examination.

16 MR. SAWYER - Your Honor, can we approach for a
17 second?

18 THE COURT - Sure.

19 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
21 WHICH WAS NOT REPORTED.)

22 THE COURT - Ladies, and gentlemen, we are going
23 to take lunch. It's about 1:00 o'clock. Yes. I look at
24 that clock and it's like, I need numbers. In any event,
25 we're going to take an hour and fifteen minutes for lunch,

1 A It's not tinted.

2 Q And you see how many people approach Jimmy initially
3 when this situation started?

4 A Um, when the situation started?

5 Q (Indicating yes)

6 A I only see him and Jimmy.

7 Q Okay. And him being Bernard?

8 A I don't know his name so -- the guy that had the ID,
9 that's who I seen.

10 Q Okay. Is that him?

11 A I can't recall if that was him or not. I know what I
12 seen on the inside of the club.

13 Q Okay.

14 A The guy I was talking about.

15 Q Okay, but you think -- what you're saying is the guy
16 who presented the ID, you're thinking that's not him.

17 A I -- I seen the guy and that's it. I mean -- I wasn't
18 really paying attention, like paying attention on details,
19 but I know what I seen.

20 Q Okay. All right, so when then did you actually see
21 Bernard for the first time?

22 A Um, coming in the club.

23 Q Coming in the club.

24 A Yes.

25 Q How was ---

1 A I -- when he came in the club, that's when I said the
2 guy is Ratchet.

3 Q So he came in the front door.

4 A Yes, he came in the front door.

5 Q He got into the interior of the club.

6 A No.

7 Q How far'd he get in?

8 A He -- when Jimmy is at the door, he's outside of the
9 door.

10 Q Okay.

11 A Jimmy's checking ID's.

12 Q Okay. All right, again I'm -- when did you actually
13 see him for the first time?

14 A I seen him in the car shooting. Okay?

15 Q I understand that. I'm trying to get back to where we
16 first began.

17 A When we first began, I -- I always said the guy at the
18 door was trying to get in with a fake ID.

19 Q Okay.

20 A I never said anything else, but the guy at the door
21 had a fake ID.

22 Q Okay. And that was him.

23 A That's who did the shooting.

24 Q All right. Let's try this again, Mr. Ray. Was

25 Bernard the person you saw trying to get in with a fake ID?

1 A I said Bernard -- if that's his name -- I don't know
2 his name.

3 Q Okay.

4 A The guy at the door with the fake ID -- I'm going to
5 say it how I said it.

6 Q Okay.

7 A I don't know his name. That's the guy that I seen.

8 Q Okay. The guy that you identified in the pictures.

9 A Yes.

10 Q Okay. Now, what guy were you just talking about then
11 that you said you only just saw the guy but you didn't
12 recognize him?

13 A I saw the guy with the fake -- I mean the fake ID. I
14 don't know his name. You telling me Bernard or whatever.
15 I don't know his name. I just said the guy.

16 Q Okay. You just said you seen him, you didn't
17 recognize him.

18 A I seen him.

19 Q Okay. So how many people approached the door to try
20 to get in?

21 A Um, it's a lot of people approached the door to try to
22 get in.

23 Q At this point ---

24 A But at that point it was just him and Jimbo, and then
25 when Jimbo and him walked off, I walked out.

1 Q Why did you walk out at that point?

2 A Because when Jim walks out, I seen him following the
3 guy off.

4 Q Okay. So he had already started to walk away?

5 A Yes, and Jim was escorting him out.

6 Q How far away were they from each other?

7 A It wasn't that far.

8 Q Normally when he's escorting them out, does he just
9 escort them to their car?

10 A No, not -- that -- that wasn't the case. Yes.

11 Q Okay. So where does he normally escort them to?

12 A He normally asks anybody else to leave and they leave.

13 Q Okay. Did Mr. Moti have anything in his hands at this
14 point?

15 A I don't know who you speaking of.

16 Q Mr. Moti. Jimbo. I'm sorry.

17 A Jimbo.

18 Q Jimbo. Did he have anything in his hands at this
19 point?

20 A He had his mace can out.

21 Q Okay. So he already had his mace can out.

22 A Yes.

23 Q Okay. And you said at some point you thought you saw
24 this gentlemen turn around.

25 A Yes.

1 Q And so both of them -- the guy with the dreads and
2 Bernard went back to their car.

3 A Yes.

4 Q And you saw both of them arrive at two cars. Correct?

5 A I can't say who got in what car at that particularly
6 time, because I was going back on the inside. I was trying
7 to get Jim to go back in.

8 Q I'm not wondering who got in where. I'm ---

9 A I seen people go in both cars.

10 Q That's fine. That -- all I'm asking is, you saw both
11 of them arrive at two cars. Correct? Just arrive. Just
12 getting ---

13 A Both of who arrive at two cars?

14 Q The two -- the guy with the dreads and Bernard. You
15 saw them both arrive at their cars.

16 A I don't know who went to what car if you're asking me
17 that question. I don't know who went to what car, ---

18 Q Okay.

19 A --- but I know I seen somebody get in the black crown
20 vic. I don't know who got in the white one.

21 Q And the black crown -- were they parked next to each?

22 A Yes.

23 Q And you and Jim went back to the steps.

24 A I went back to the steps. Jim stayed outside.

25 Q Where was he standing when he stayed outside?

1 A Um, I can't answer that, because I went back inside.
2 I had my back turned at that time. And when I got inside
3 and turned around, Jim was standing by the porch.

4 Q So he was still in the parking lot at that point?

5 A Yes.

6 Q All right, what did you do then?

7 A Me? I walked back in.

8 Q Okay.

9 A Went inside the door and I was -- as I was telling my
10 partner, you know, I turned around and checked back on Jim
11 and I was talking, shots fired, girl said, he shot the
12 security, so I -- I seen the cars -- I made a look (sic).

13 Q So a girl informed you that Jimbo had been shot.

14 A I heard the girl yelling they shot security and they
15 was still shooting at that time.

16 Q How many shots do you think you heard that night?

17 A I know I heard more than one.

18 Q Can you help me out a little more?

19 A About four or six I guess.

20 Q But you didn't see Jim actually get shot. Correct?

21 A Yes. I was standing right there in the doorway. In
22 the doorway you can see the parking lot. You can see
23 outside.

24 Q Okay. Well, you said just now that you heard a girl
25 yell that he had been shot.

1 A I heard a girl yell; there was people on the balcony,
2 too.

3 Q Okay. But -- so you didn't actually you see it; you
4 saw after he was already down.

5 A I seen -- I didn't actually see the bullet go in him,
6 no. I seen the shooting when he fell.

7 Q He fell on his back?

8 A Yes.

9 Q Where were -- you said you saw these cars. Where were
10 they at that point?

11 A They was pulling out.

12 Q Okay.. Where were -- pulling out -- were they pulled
13 out? Were they not pulled out? Were ---

14 A They wasn't pulled out; they was pulling out.

15 Q So they were not on the scene after he was hit?

16 A No.

17 Q Now, if we can just back up a bit. The last time
18 before you saw Jim, he was -- you said he was on the phone.
19 Right?

20 A Yes.

21 Q And you saw his gun. Right?

22 A Yes.

23 MR. SAWYER - Beg the Court's indulgence, briefly.

24 THE COURT - All right.

1 TAIMA JORDAN, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 DEPUTY CLERK - Thank you. Please have a seat in
4 the witness stand and state your full name for the record
5 and spell your first name.

6 MR. JORDAN - Taima Jordan, T-a-i-m-a.

7 THE COURT - Your witness.

8 MS. WALKER - Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. WALKER -

11 Q Investigator Jordan, where do you work?

12 A Richland County Sheriff's Department

13 Q And how long have you been at the sheriff's
14 department?

15 A Ten years.

16 Q And is there a particular division that you're
17 assigned to?

18 A The burglary unit.

19 Q And are there times when you get involved in cases
20 that aren't burglaries?

21 A Yes.

22 Q And how does that happen?

23 A Normally when we have a homicide, there are multiple
24 investigators assigned, the lead and then myself, I'll be
25 secondary, so I will assist the lead in that investigation.

- 1 Q And I want to turn your attention to this homicide
- 2 investigation. Who was the lead investigator?
- 3 A Sergeant Lindler.
- 4 Q And you became a secondary investigator?
- 5 A I did.
- 6 Q How did you become involved?
- 7 A I was contacted by Sergeant Lindler that I need to
- 8 meet with him and Chief Wilson in Chief Wilson's office in
- 9 regards to the homicide that took place.
- 10 Q And what is the purpose of those meetings?
- 11 A To go over what happened initially and to formulate a
- 12 plan to start the investigation.
- 13 Q Do you remember when that initial meeting was?
- 14 A About 9:00 o'clock on the 27th I believe.
- 15 Q And are you receiving information from I guess the
- 16 events that transpired?
- 17 A Correct.
- 18 Q Who was present at that meeting?
- 19 A Myself, Chief Wilson and Sergeant Lindler.
- 20 Q Was there anyone else present?
- 21 A (No response)
- 22 Q Do you have -- do you have a follow-up in this case?
- 23 A I do. Yes.
- 24 Q Would it help to refresh your memory to ---
- 25 A It's myself, Chief Wilson, Sergeant Lindler ---

1 Q And that's Sergeant ---

2 A Sergeant Lindler.

3 Q Yes.

4 A Audra Linfert.

5 Q And who is Audra Linfert?

6 A She does our intel. (sic)

7 Q Okay.

8 A Sergeant Linford, Gray Amick who is in ID in the
9 forensic, and Sergeant Vince Goggins who is over our gang
10 unit.

11 Q And at that point in time can you tell me what steps
12 in the investigation y'all took at that point?

13 A Initially I guess the evening shift when they went out
14 they took statements or talked to witnesses, had that
15 information available, had gave to Sergeant Lindler. They
16 were -- we were actually viewing it during this -- during
17 this meeting to determine where we need to go, who we need
18 to maybe re-interview or try to find to help further the
19 investigation.

20 Q And did you become aware of a possible video in this
21 case?

22 A We did.

23 Q And kind of -- tell me how you became aware of that.

24 A We were told that there was a possible video from the
25 Exxon Station that was, I guess, next door to the El Toro

1 Club and that we needed to pull their video to see if it
2 captured the events that took place in the El Toro's
3 parking lot.

4 Q And at that point did y'all develop possible suspects?

5 A No, but we did develop possible witnesses from that
6 video.

7 Q Possible witnesses.

8 A Correct.

9 Q What was the next -- what was your next step in terms
10 of this investigation?

11 A Once we developed a possible witness, we got in
12 contact with that witness, and the witness agreed to meet
13 with us at the Applebee's off of Broad River Road.

14 Q And who was that witness?

15 A Mr. Kevin Lee.

16 Q And how'd you become aware of him as a possible
17 witness?

18 A I believe the gentleman came into head -- came into
19 headquarters.

20 Q Do you need to review your follow-up to refresh your
21 memory?

22 A Yes, if you mind if (sic) ---

23 Q Go ahead. (Pause) Do you recall how y'all got in
24 touch with Mr. Lee?

1 A We actually got -- made a phone call to him, tried to
2 get him to come to headquarters, but he was reluctant to
3 come. He stated that he would meet us at the Applebee's
4 parking lot.

5 Q In terms of your experience with investigations, are
6 witnesses at times, especially in homicide cases, reluctant
7 to talk to you?

8 A Yes.

9 Q Why is that?

10 A Fear of retaliation.

11 Q Did you, in fact, meet him at Applebee's?

12 A We did.

13 Q And was he able to give you -- don't tell me what he
14 said, but was he able to give you information about the
15 murder that took place?

16 A He was; he was able to.

17 Q Did you meet again -- okay, after speaking with Mr.
18 Lee, what was your next step in the investigation?

19 A We actually went to the Red Roof Inn because he gave
20 us information that led us there, and there we spoke to the
21 clerk at the front desk and told her -- told her why we
22 were there. We looked for two females; we did not have a
23 name but a possible room. We told them what the possible
24 room may have been. She gave us a possible room number --
25 excuse me -- gave us possible room number and once we went

1 to the door, Sergeant Lindler actually recognized one of
2 the females from the video.

3 Q Do you -- from the video at the gas station.

4 A Correct.

5 Q Do you remember the names of the females that y'all
6 had contact with at Red Roof Inn?

7 A Marquita Mobley and Kristina Nuttry.

8 Q Ms. Mobley, is that the same lady that testified this
9 morning?

10 A Yes.

11 Q And did y'all talk to them about this investigation?

12 A We did.

13 Q Were you able to get information from them regarding
14 what, if anything, they saw that night?

15 A Yes, we were.

16 Q And was that the only time that y'all talked to them?

17 A No, we talked to them a second time.

18 Q Why was it important to talk to these two witnesses
19 twice?

20 A Ms. Kristina for -- that she could identify the
21 suspect if she saw him again in a photo line-up.

22 Q Which one could?

23 A Kristina.

24 Q Nuttry?

25 A Nuttry.

1 Q Go ahead.

2 A And also Marquita as well. So we felt that if we were
3 able to develop a suspect, that we could show them a photo
4 line-up so that they could identify the possible suspect.

5 Q Was there additional information that you were trying
6 to get out of them with a second interview?

7 A Correct.

8 Q And why is it important to interview people more than
9 once?

10 A Sometimes the first time they may be, once again, a
11 little more reluctant to tell you what -- what they know,
12 and they may feel more comfortable a second time around.

13 Q And did you have a conversation with them a second
14 time about the importance of truthfulness?

15 A I did.

16 Q And is that when you showed the photo line-up? Or
17 were you present for that?

18 A I was not.

19 Q You were not present for the photo line-up.

20 A (No response)

21 Q Can you tell me what you did next?

22 A Once we -- are you talking about the second time or
23 the first time?

24 Q The second time.

1 A Second time. We actually called in a SLED forensic
2 artist to come in. Ms. Nuttry actually sat down with the
3 forensic artist to come up with a composite sketch of the
4 possible suspect.

5 Q How many -- did you know at that point in time how
6 many people were involved in this?

7 A Yes, I think it was maybe three or four, but it was
8 on-going situation, but maybe three or four.

9 Q And the sketch that she drew was not of the defendant;
10 it was of another person?

11 A Correct.

12 Q After -- were you present for the sketch?

13 A Somewhat. I left her with the forensic artist and I
14 sat with Ms. Mobley.

15 Q I want to turn your attention to August 28th. Did you
16 get information at that point that became pertinent in this
17 investigation?

18 A Yes, I believe we received a Crimestopper's tip.

19 Q I'm sorry, you ---

20 A Crimestopper's tip stating that Mr. Gerald Haltiwanger
21 was the person responsible for the shooting that took place
22 at ---

23 MR. SAWYER - Objection.

24 THE COURT - You want to be heard?

1 MS. WALKER - I didn't understand -- I didn't hear
2 what the objection was.

3 THE COURT - I believe that the objection is
4 hearsay. Correct?

5 MR. SAWYER - Yes, Your Honor.

6 THE COURT - Yes.

7 MR. WALKER - Your Honor, I think over the course
8 of his investigation he can talk about what information he
9 relied upon.

10 THE COURT - Sustained.

11 MR. SAWYER - Your Honor, I just - argue - this
12 would be a Crawford violation as well.

13 COURT REPORTER - He needs to speak up.

14 MR. SAWYER - This will be a Crawford violation as
15 well, as we have no ability to cross examine anyone he
16 might have got in touch with ---

17 THE COURT - I sustained your objection.

18 MR. SAWYER - Oh.

19 THE COURT - Did you know that?

20 MR. SAWYER - Sorry, Your Honor.

21 THE COURT - Okay. You may proceed.

22 Q Don't tell me what the Crimestopper's tip said. What
23 is Crimestopper's?

1 A It is a hotline where people can call in with
2 anonymous information in regards to various crimes that
3 happened within Richland County or wherever they live.

4 Q And don't tell me what was said, but did you get
5 Crimestopper's information?

6 A We did.

7 Q And was that information useful in helping solve this
8 case?

9 A It was.

10 Q After receiving the Crimestopper's information, what
11 did you do?

12 A We then followed up on that information, started
13 conducting more research on that particular individual to
14 determine if that person matched the information or the
15 identity that we had for witnesses.

16 Q And did it?

17 A It did.

18 Q Can you kind of describe for the jury the process that
19 you go through in terms of trying to see if that
20 information is corroborated by other information you have?

21 A Pull photographs to see if they matched, then it's put
22 into a line-up and then it is shown to the witnesses to see
23 if they are able to identify the possible suspect and they
24 all were identical in some form or identical to each other.

1 Q The -- was there something, I guess, significant about
2 the pictures you were pulling?

3 A Gold teeth in the mouth.

4 Q And was gold teeth in the mouth a recurring thing
5 throughout your investigation?

6 A Yes, it was.

7 Q Can you tell me -- at some point in time did your
8 investigation narrow to a particular individual?

9 A Yes, it did.

10 Q And who was that individual?

11 A Mr. Haltiwanger.

12 Q Did you use - and I guess that was using -- at that
13 point in time had you gotten the photo line-ups back?

14 A Not quite sure. It was -- it all kind of happened
15 around the same time as a sketch was being time, kind of --
16 kind of come together all at one time, so it was all like
17 the same time.

18 Q Did you try to make contact with Mr. Haltiwanger?

19 A No, we did not. Well, actually we did. We did try to
20 go to a residence out in Hopkins with another law
21 enforcement agency, but was unable to make contact with
22 him.

23 Q How many times did you go to that residence?

24 A Just one.

25 Q And you were unable to make contact with him?

1 A Correct.

2 Q At some point were -- did you actually make contact
3 with him?

4 A We did.

5 Q And where was that?

6 A Allen Benedict Court.

7 Q And can you kind of -- can you describe for the jury
8 where that is?

9 A It's a housing -- apartment complex off of Hardin
10 Street near Benedict College.

11 Q And were you actually present when contact was made?

12 A I was.

13 Q Explain what happened.

14 A I was sent there to do -- do surveillance to get a
15 description of the residence for a possible search warrant.
16 As I pulled into the courtyard, I observed who I believed
17 to be Mr. Haltiwanger in the courtyard. I parked my
18 vehicle, conducted surveillance, notified Sergeant Lindler
19 that I think I see him out in the courtyard and he rounded
20 up more investigators and deputies to come to Allen
21 Benedict Court.

22 Q When you're identifying a suspect in a murder case
23 such as this one, is there a -- once you identify them, is
24 there a group effort to kind of make contact with them?

25 A Yes.

1 Q And why is that?

2 A Because of the possible danger that one officer could
3 be in and the seriousness of the case, of the crime.

4 Q And when you made contact with him, what did you do?

5 A He was placed into custody and placed into a vehicle
6 and he was read his Miranda rights.

7 Q Did you read him his Miranda rights?

8 A Sergeant Lindler did.

9 Q Sergeant Lindler read him his Miranda rights?

10 A Yes.

11 Q And where did y'all take him after that?

12 A To headquarters on Two Notch Road.

13 Q And what was the purpose of taking him to
14 headquarters?

15 A For further questioning.

16 Q Were you present for the questioning?

17 A I was.

18 MS. WALKER - Your Honor, may I approach the
19 witness?

20 THE COURT - You may.

21 MS. WALKER - Thank you.

22 Q I want to show you what's been marked as State's
23 Exhibits 1 and 2. Were you present for his rights being
24 read to him?

25 A I was..

1 Q Do you recognize this?

2 A Yes.

3 Q And how do you recognize it?

4 A It's our Richland County Sheriff's Department Advice
5 of Right's form.

6 MS. WALKER - Your Honor, at this point State
7 seeks to move Exhibit 1 into evidence.

8 MR. SAWYER - Your Honor, I renew my objection to
9 that.

10 THE COURT - Indeed. Over the objection of
11 defense ---

12 (WHEREUPON, DOCUMENT WAS MARKED INTO EVIDENCE AT
13 STATE'S EXHIBIT NUMBER 1.)

14 MS. WALKER - I'm sorry, and State's Exhibit 2. I
15 just want to show that to him as well.

16 THE COURT - You want to move them both in at the
17 same time. Is that what we're doing?

18 MS. WALKER - Well, I was over here. I just
19 wanted to let the record reflect that I was showing both
20 Exhibits 1 and 2.

21 THE COURT - All right. You're being efficient.

22 MS. WALKER - Trying to, Your Honor.

23 THE COURT - Very good.

24 Q State's Exhibit 1, where was this -- where was the
25 questioning taking place?

1 A In Sergeant Strange's office.

2 Q And that's at headquarters?

3 A Yes, 5623 Two Notch Road.

4 Q And how is that office set up?

5 A It's a small office with a desk and two chairs -- I'm
6 sorry, three chairs, one chair behind the actual desk and
7 then two chairs in front.

8 Q And was the defendant, in fact, advised of his rights?

9 A He was.

10 Q What were the rights that the defendant was advised
11 of?

12 A Before we ask you any questions, you must understand
13 your rights. You have the right to remain silent; anything
14 you say can be used against you in a Court; you have the
15 right to talk to a lawyer for advice before we ask you any
16 questions and to have a lawyer with you during any
17 questioning. If you cannot afford a lawyer, one will be
18 appointed before any questioning if you wish. If you
19 decide to answer questions and not have a lawyer present,
20 you have the right to stop answering at any time. You also
21 have the right to stop answering at any time until you talk
22 to your lawyer.

23 Q And did the defendant sign that Advice of Rights?

24 A He did.

25 Q And when they sign, what does that acknowledge?

1 A That they understand those rights and they were read -
2 - the rights were read to them.

3 Q And are their check boxes to the left of each of those
4 rights?

5 A Yes.

6 Q And are those check boxes actually checked?

7 A Yes, they are.

8 Q Indicating what?

9 A That they were read and he understood them.

10 Q Okay, if you'll continue with that form.

11 A At the bottom is the waiver of rights. I have read
12 the statement of my rights. I understand what my rights
13 are. I am going to talk and answer questions. I
14 understand and know what I am doing. No promises have been
15 made to me and no pressure or coercion of any kind have
16 been used against me.

17 Q And is that signed as well?

18 A Yes, it is.

19 Q And is there a box to the left of that?

20 A Yes.

21 Q And is that checked?

22 A It is.

23 Q The underlining of promises, pressure or coercion,
24 what does that indicate?

1 A That those words were explained to him or reiterated
2 to him, and he stated he understood.

3 Q Did he agree to talk to you?

4 A He did.

5 Q In your opinion, was he agreeing to talk to you
6 freely?

7 A Yes.

8 Q Voluntarily?

9 A Yes.

10 Q Did y'all threaten him in any way to get him to talk
11 to you?

12 A We did not.

13 Q Did promise him anything if he talked to you?

14 A No, we did not.

15 Q Did he seem to understand the conversation that y'all
16 were having?

17 A Yes, he did.

18 Q Did he answer questions appropriately?

19 A Yes.

20 Q And this is the Advice of Rights that he signed before
21 giving a statement?

22 A Yes.

23 Q I want to show you State's Exhibit 2 and ask if you
24 recognize that.

25 A Yes, I do.

1 Q And how do you recognize it?

2 A It's the statement of Mr. Haltiwanger.

3 Q And whose signature is this?

4 A My statement as a witness.

5 Q That's your signature?

6 A Yes. Excuse me, my signature, sorry.

7 MS. WALKER - Your Honor, at this point State's
8 seeks to admit Exhibit 2 into evidence.

9 MR. SAWYER - Your Honor, over our earlier
10 objection, Your Honor.

11 THE COURT - All right. Admitted ---

12 MS. WALKER - Thank you, Your Honor.

13 THE COURT - --- over the objection of the
14 defense.

15 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
16 STATE'S EXHIBIT NUMBER 2.)

17 Q I want to ask you to publish that to the jury.

18 A All right. There's a Q for myself and Sergeant
19 Lindler, and there's a A for Mr. Haltiwanger.

20 Q Will you start actually at the top?

21 A Okay. Today's -- the date of this statement is -- or
22 excuse me -- at the very top is his name and then 1810
23 Allen Benedict Court, Apartment C-7, then there's Columbia,
24 South Carolina, and the date which is 29th of August, 2012,
25 at 7:00 p.m. in the presence of Sergeant Lindler and

1 myself, then it has his name, then it has his rights again
2 which we read to him all the way -- or excuse me -- of the
3 Advice of Right's form.

4 Q So the rights are listed twice?

5 A Yes.

6 Q Okay.

7 A Then at the very bottom it says, do you make the
8 following statement, then there's a Q for Sergeant Lindler
9 and myself, and then a A for Mr. Haltiwanger. First
10 question, do you a brother by the name of Carlos Brown.
11 Mr. Haltiwanger answered yes, he's not my real brother, but
12 I call him my brother. He answer ro (sic) -- my real - my
13 real brother's -- my real brother or brother's Terrell and
14 I have the same father.

15 Q Terrell and I do have the same father?

16 A Terrell and Mr. Haltiwanger have the same father from
17 what the statement said. Well, wait a minute. Terrell and
18 he had the same father, excuse me. Terrell and I have the
19 same mother. Terrell and Carlos' father always treated me
20 like I was one of theirs. Next question, did you go to a
21 party a couple of weeks ago where Carlos lived? Yes, sir,
22 he had just got out of prison and I had not seen my brother
23 in several years; I wanted to see him. Did you -- did you
24 drive to a party? Yes, sir, I drove a little Toyota. It
25 was a crack rental. I ain't got to lie to you. My car's

1 in the shop. Who was with you? It was me and Terrell. We
2 went down there to see him. How long did y'all stay? We
3 stayed a little while and there was an altercation and we
4 left. Have you spoken to Carlos since? I've spoken to
5 Carlos -- I have spoken to him once. He told me the police
6 was coming to get him about some homicide. He said he
7 didn't know what was going on. Did you pick his ID up
8 while you were there? No.

9 Q That's the -- the next question is what?

10 A Did you pick his ID up while you were there? No. His
11 answer was no. Do you know if anyone did? No. Were you -
12 - where were you the last -- this past Saturday? At home,
13 back and forth to Benedict talking with girls. Did you go
14 anywhere else Saturday night? No. Where were you -- where
15 were you with your brother's Saturday? No, excuse me --
16 were you with your brothers Saturday night? Yes. Which
17 ones? Terrell, Tyrobia and Larry stopped by for a little
18 while. Larry's not my brother, but he's always out there.
19 What were you wearing Saturday night? A t-shirt and
20 basketball shorts. Does any one of your brothers have a
21 white crown victoria? Yes, John Sterling, III has one. It
22 looks like a newer model, but you can tell it has age on
23 it. Was he with you Saturday night? No. Who is John
24 Sterling the III's father? John Sterling, Jr., and John
25 Sterling, the III have the same father. He's also Terrell

1 and Carlos' father. His name is John Sterling. Did you go
 2 to any club on Saturday on Broad River Road that night?
 3 No, sir. Did your brothers? No, sir. Terrell and Tyrobia
 4 were with me. Did you try to present an ID that wasn't
 5 yours at the club Saturday night? No -- well, nope. Did
 6 you get into an altercation at a club Saturday night? No.
 7 Did you fire any shots out of a car Saturday night? No.
 8 Were you at an Exxon gas station next to El Toro Saturday
 9 night talking with two girls? No. Were you in the Broad
 10 River Road area anywhere Saturday night? No. Is
 11 everything you told me the truth? Yes.

12 Q Let me stop you right there.

13 MS. WALKER - Your Honor, may we approach?

14 THE COURT - Okay.

15 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
 16 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
 17 WHICH WAS NOT REPORTED.)

18 Q Keep going. What's the -- what's the last line of the
 19 statement?

20 A Are you willing to take a polygraph as it pertains to
 21 this statement? No, due to lawyer issues.

22 Q So he was offered that opportunity.

23 A Yes.

24 Q After -- after taking that statement from the
 25 defendant, were y'all able to refute a great deal of that?

1 A Yes.

2 Q And what, if anything, was done with the defendant
3 after he gave that statement?

4 A He was taken to the jail and once again placed under
5 arrest for the crime, for murder.

6 Q And are there -- the phone calls at the jail, are
7 those recorded?

8 A Yes, they are.

9 Q And as part of the investigation, were certain phone
10 calls that the defendant made recorded?

11 A Yes, they were.

12 Q And with that information did y'all make contact with
13 the defendant a second time?

14 A We did.

15 Q And how was that done?

16 A I was asked to go to the jail to pick him up, which I
17 did, and I brought him back to headquarters at 5326 (sic)
18 Two Notch Road.

19 Q And when you were transporting him from the jail to
20 headquarters, did you have any conversation with him?

21 A Just general conversation.

22 Q Was it anything pertaining to the case?

23 A No.

24 Q And were you present for -- do you know if he gave
25 another statement?

1 A He did.

2 Q Were you present for that statement?

3 A I was not.

4 Q I want to take you back to his statement. The first
5 question that you got to ask about Carlos Brown -- were
6 y'all able to identify -- why was Carlos Brown, that name
7 significant to you?

8 A That was the actual person on the ID that was tried to
9 -- that was presented at the club the night of the
10 incident.

11 Q And the defendant I guess admitted knowing him. And
12 there was a term in here that I'm not familiar with; it was
13 crack rental. What's a crack rental?

14 A Normally drug dealers will give their client's, if you
15 will, crack in return for them letting them use their car
16 to ride around or to do whatever they need to do.

17 Q And did you, after making contact with the defendant a
18 second time, did you have any further involvement with this
19 investigation?

20 A I was present when Sergeant Lindler read him his
21 Miranda rights and then I had to -- to leave for a personal
22 matter.

23 Q And were those Miranda rights the same ones that we've
24 been over before?

25 A Yes.

1 Q The first statement, do you remember when that one was
2 made?

3 A For Mr. Haltiwanger?

4 Q Yes.

5 A One the 29th of August.

6 Q And the second statement, when was that one made?

7 A The 31st.

8 Q And did he waive his rights at that time as well?

9 A He did.

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

12 THE COURT - He may. I'm going to ask you all to
13 use the laser pointer because it is absolutely impossible
14 for you to point to things on the board and not block the
15 jury's view while you're doing that, so.

16 MS. WALKER - Yes, Your Honor.

17 Q Let me ask you, do you recognize State's Exhibit 75?

18 THE COURT - For identification purposes. Right?

19 MS. WALKER - For identification purposes.

20 A It's a aerial map of the Club El Toro, the gas station
21 and this is Motel 6 St. Andrews Road ---

22 COURT REPORTER - He needs to speak up, Judge. It
23 would help if he would switch places ---

24 Q Why don't we flip. You talk going towards the court
25 reporter and I'll -- if you'll just stand over here.

1 COURT REPORTER - Thank you.

2 Q This is State's Exhibit 75.

3 MS. WALKER - Your Honor, at this point the State
4 seeks to move Exhibit 75 into evidence.

5 MR. SAWYER - Without objection.

6 THE COURT - Any objection?

7 MR. SAWYER - Without objection.

8 THE COURT - Very well.

9 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
10 STATE'S EXHIBIT NUMBER 75.)

11 Q Can you show me where El Toro is on this map? That's
12 the club?

13 A Yes, it is.

14 Q And this is where the murder happened?

15 A Yes.

16 Q And what building is this?

17 A Exxon gas station.

18 Q And how did the Exxon gas station become relevant in
19 this case?

20 A The defendant walked over for -- the incident kind of
21 spilled over into the parking lot where he met Marquita and
22 Ms. Kristina.

23 Q And I guess what -- what street is this?

24 A St. Andrews Road.

25 Q And this is ---

1 A I-26.

2 Q And this is all in Richland County?

3 A Yes, it is.

4 Q State's Exhibit 77, do you recognize this?

5 A Yes, I do.

6 Q And how do you recognize it?

7 A It's El Toro and also the gas station along with St.
8 Andrews Road.

9 MS. WALKER - At this point, Your Honor, the State
10 seeks to admit Exhibit 77 into evidence.

11 THE COURT - Any objection?

12 MR. SAWYER - Without objection.

13 THE COURT - Very well.

14 COURT REPORTER - Your Honor, I have it as 76. If
15 you want to look at this.

16 (DISCUSSION IS HELD REGARDING NUMBERING OF
17 EXHIBITS WHICH WAS NOT REPORTED.)

18 (DOCUMENT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
19 NUMBER 77.)

20 MS. WALKER - Permission to publish to the jury,
21 Your Honor?

22 THE COURT - Yes.

23 MS. WALKER - Thank you.

24 THE COURT - Ladies and gentlemen, can you all see
25 what's being pointed to? Can everyone see? Yes?

1 (Jurors indicating yes)

2 THE COURT - All right.

3 Q Exhibit 77, is this I guess a closer view?

4 A Yes, it is.

5 Q And can you kind of describe where the incident
6 spilled over?

7 A Kinda in here -- where they kind of had their first
8 altercation. When Mr. Moti pulled his weapon, you could
9 see another subject kind of fall over here and then they
10 kind of went over here in this area.

11 Q And do you know where Marquita Mobley was at that
12 time?

13 A She was in the vehicle I believe somewhere within this
14 area.

15 Q Okay. Thank you, sir. You can step back in the
16 stand.

17 A (Witness complies)

18 Q The person that gave you that first statement that
19 denied being anywhere near El Toro that night, do you
20 recognize him in the courtroom?

21 A I do.

22 Q Can you point him out?

23 A Mr. -- on the corner with the gray shirt with the
24 white collar.

1 MS. WALKER - Your Honor, may the record reflect
2 that he's identified the defendant?

3 THE COURT - Yes.

4 MS. WALKER - I don't have any further questions
5 of Investigator Jordan. Thank you.

6 THE COURT - Cross examination.

7 MR. SAWYER - Thank you, Your Honor. May it
8 please the Court.

9 THE COURT - Yes.

10 CROSS EXAMINATION

11 BY MR. SAWYER -

12 Q All right, Investigator Jordan, you got started on
13 this investigation about a day later. Is that right?

14 A Yes, sir.

15 Q Was there a reason why you were -- got assigned a day
16 later?

17 A I was just told on the day I told to assist with the
18 investigation. I have no clue on that.

19 Q Okay. Now, obviously, I guess, about a little over 24
20 hours of work had been done before you got involved. Is
21 that correct?

22 A About that, yes, sir.

23 Q Okay. So at that point you had developed a gentleman
24 by the name of -- I believe his name's Kelvin Lee or Kevin
25 Lee?

1 Q Okay. So she saw the events that happened that night.

2 A Yes, some of it, yes.

3 Q Now, when you went to go arrest Bernard, he didn't
4 struggle or anything? He came with you?

5 A No, he didn't ---

6 Q Okay. And you sat down and you interviewed him.
7 Right?

8 A Myself and Sergeant Lindler. Correct.

9 Q Okay. And that was that interview you just read
10 through. Correct?

11 A Yes, the first one.

12 Q Okay. And do you have the other one with you? The
13 Exhibit. There you go. Thank you. All right. And what
14 time does he show you just began the Advice of Rights?

15 A That would be 5:55 p.m.

16 Q Okay. And you have it in military hours here?

17 A Yes, 1755.

18 Q Okay. And then when did you actually write down his
19 statement?

20 A 1900 hours, which is 7:00 p.m.

21 Q Okay. So that was about an hour and five minutes in
22 between?

23 A Yes, sir.

1 Q Okay. And you're saying that everything y'all talked
2 about in that hour and five minutes is all recorded within
3 this statement.

4 A No, sir, it was not.

5 Q Okay. What's not in there?

6 A His family history, his girlfriend, his kids, things
7 about his life, nothing pertinent. You know, everything in
8 that statement is about the case itself but not where he
9 went yesterday or the day before that, anything like that.
10 It was all pertinent to that case.

11 Q Okay. Did you -- I can have you reading -- time me
12 again -- but would you believe me it took you about four
13 minutes to read that entire statement?

14 A About.

15 Q So four minutes to read all the pertinent information
16 and then another hour and a minute of non-pertinent
17 information that day?

18 A Well, sir, you have to realize that we like to get to
19 know the people that we're talking with, so that may take
20 some time. We don't just jump in and start asking
21 questions. We like to try to get to know them, if you
22 will, so that may take a little bit of time.

23 Q Okay. Did you try to determine if Bernard could read
24 and write that day before you started taking a statement?

25 A I'm sure we asked him if he could.

1 Q Okay. And was he able to read and write the Advice of
2 Rights?

3 A I don't recall him saying he couldn't.

4 Q Okay. Didn't he read them aloud to you?

5 A We actually read them to him.

6 Q Okay. Was he given the opportunity to hand-write his
7 own statement?

8 A We don't do that?

9 Q You don't do that? What -- you're not allowed to,
10 just policy of the sheriff's department?

11 A No, that's not a practice that we do; we type and asks
12 questions and then afterwards they are -- they -- either
13 read it back to them or then read it themselves, and if
14 there's any changes that need to be made, they let us know
15 it before we print it out, and they're allowed to make
16 changes.

17 Q Okay. Could he get on the computer and make changes
18 himself?

19 A No, sir, he just tell us that -- for example, this
20 question is not what you asked -- this is not the answer
21 that I won't in this particular -- to this particular
22 question; we would then change it.

23 Q Okay. Were you ever a patrol officer at any point?

24 A I was.

25 Q Okay. Did you ever engage in a police chase?

1 A Yes.

2 Q Okay. You are -- even better, did you ever give a DUI
3 field sobriety?

4 A Maybe once or twice.

5 Q Okay. You know your cars are equipped with audio and
6 visual recording equipment. Right?

7 A It is.

8 Q How about cars do you think y'all have?

9 A Oh, ---

10 Q More than a hundred?

11 A Yes.

12 Q Okay. Y'all didn't audio/visual record his statement?

13 A No, it's not in our policy and procedures to do so.

14 Q Okay. So you're -- actually your policy strictly
15 forbids you from audio and visual recording a statement.

16 A Yes, sir.

17 MR. SAWYER - Beg the Court's indulgence briefly.

18 THE COURT - All right.

19 MR. SAWYER - Nothing further, Judge.

20 THE COURT - Re-direct?

21 MS. WALKER - No, Your Honor.

22 THE COURT - All right. You may come down.

23 Ladies and gentlemen, we're going to take our afternoon

24 break at this time. We're going to take about 15 minutes.

25 During our afternoon break, please remember, do not discuss

1 Q Good morning, Dr. Marcus. Where are you currently
2 employed?

3 A I'm employed at Professional Pathology Services here
4 in Columbia. It's a private practice pathology group.

5 Q And what do you do at Pathology Services?

6 A I'm basically -- I'm a pathologist. I do -- I do
7 autopsies. I look at pap smears, and I look at any
8 surgical specimen that comes from somebody's body, like a
9 breast biopsy, you know, colon cancers, breast cancers. I
10 look at that under the microscope and make diagnosis so
11 they can then be treated by an oncologist and so forth like
12 that.

13 Q And how long have you been doing that?

14 A I've been doing this for -- doing the private practice
15 for five years.

16 Q And can you tell us about any specialized training or
17 education that you have in the field of forensic pathology?

18 A Yes. I went to medical school. After medical school
19 I spent six years down at the Medical University of South
20 Carolina. That's called residency and fellowship training
21 where I learned -- I was a doctor but then I learned to
22 become a pathologist. Okay? So it took six years. During
23 that time I worked with pathologist looking at specimens,
24 cases, doing hundreds and hundreds of autopsies. After
25 that six years was up, I did that, I actually then sat and

1 took my board examinations in pathology. I took several --
2 several board exams. I'm actually certified in four --
3 board certified in four aspects of pathology. I took an
4 exam for anatomic pathology. So I'm board certified in
5 that. I'm board certified in clinical pathology which
6 deals with blood and, you know, all the chemistries, you go
7 get a blood test -- a doctor has to run that lab, so I'm
8 board certified in that. I'm also board certified in
9 forensic pathology and also in cytopathology which is
10 looking at the pap smears.

11 Q And have you been qualified as an expert in forensic
12 pathology before?

13 A Yes.

14 Q How many times?

15 A Approximately 20 to 25 times.

16 MS. WALKER - Your Honor, at this point we offer
17 Dr. Marcus as an expert in forensic pathology.

18 THE COURT - Is there any voir dire?

19 MR. SAWYER - No, Your Honor.

20 THE COURT - Any objection?

21 MR. SAWYER - No, Your Honor.

22 THE COURT - So qualified.

23 MS. WALKER - Thank you, Your Honor.

24 Q When you perform an autopsy, can you explain to the
25 jury how that works?

1 A No, this did not -- I mean this did not contribute to
2 his death. He would still be alive today in my opinion if
3 he hadn't been shot.

4 Q Were you able to determine a cause of death in this
5 case?

6 A Yes, I was.

7 Q And what was that?

8 A Mr. Moti died -- I put the cause of death as a gunshot
9 wound to the right back flank region. Basically he bled to
10 death. He bled to death. They couldn't stop the bleeding,
11 because the bullet went in, went to the liver, went to the
12 small bowel and then it -- it exited and it hit, you know,
13 hit vessels in the liver. The liver is a very large organ
14 and basically he bled to death. He basically bled to
15 death. There was no way -- giving him packed red blood
16 cells did not help; he could not stop the bleeding, because
17 the wound was so severe.

18 Q And it was the gunshot wound.

19 A It was the gunshot wound that killed him, no question
20 about it.

21 Q And are you able to determine distances of gunshot
22 wounds when you do an autopsy?

23 A I am.

24 Q And were you able to do that in this case?

25 A I did.

1 Q Can you explain for the jury how you're able to
2 determine the distance?

3 A Sure. All right, so basically what happens here is
4 when you have a gun and you fire a weapon, the projectile
5 comes out but also what comes out of that is, you know,
6 soot, gunpowder, so when you have, for instance, a contact
7 -- when a gun, say, is right up to your body, the bullet
8 will come out, but also that dark brown soot-like material
9 will also come out. If you see that on the skin, you have
10 a contact gunshot wound. Now, when a gun, for instance, is
11 say up to maybe 18 inches away from your body, you can --
12 also what comes out is unburned gunpowder. Unburned
13 gunpowder comes out of the muzzle of the weapon, and that
14 is very course. It's almost like sand. So if that hits
15 your skin, that can cause a -- what they have as an
16 abrasion on your skin, a little scratch. Now, if you live
17 that heals, but sometimes if you die -- if you die, those
18 things are there at autopsy, so then I can say the gun was
19 an intermediate range away. If I don't see any of that on
20 a wound, again, greater than 18 inches, I call that a
21 distant range gunshot wound. So in this case I didn't see
22 any of that on his skin, and it appeared to be a distant
23 range gunshot wound to him.

24 Q And that's when it's greater than 18 inches away?

25 A Yes.

1 Q And that was to the back?

2 A That was to the back, yes.

3 Q Can you determine -- and you're saying it's at least
4 18 inches away. Can you determine how far away it could
5 possibly be?

6 A No, not -- no, no, I can't. It's impossible.

7 Q And are you, in fact, the Chief Medical Examiner for
8 Richland County?

9 A Yes, I'm the Chief Medical Examiner at Richland
10 County.

11 MS. WALKER - Thank you, sir. I don't have any
12 more questions.

13 THE COURT - Cross examination.

14 MR. SAWYER - Thank you, Your Honor. May it
15 please the Court.

16 CROSS EXAMINATION

17 BY MR. SAWYER -

18 Q Dr. Marcus, when was it that you actually performed
19 this autopsy again? What was the date and time?

20 A August 27th, 2012, 8:30 a.m.

21 Q From your understanding that's approximately 24 hours
22 after the gunshot wound happened?

23 A I guess so. It says August 26th, 2012 he was
24 pronounced dead, but that -- that -- for some reason that
25 doesn't sound right. I -- generally I would do the autopsy

1 Q Okay.

2 MR. SAWYER - All right. Thank you. Nothing
3 further.

4 THE COURT - All right. Is this witness free to
5 leave?

6 MS. WALKER - Yes, Your Honor.

7 THE COURT - Any objection?

8 MR. SAWYER - No, Your Honor.

9 THE COURT - Very well. You are free to go. Call
10 your next witness please.

11 MS. VRIESINGA - State calls Ila Simmons.

12 ILA SIMMONS, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 DEPUTY CLERK - Thank you. Please have a seat in
15 the witness stand and state your full name for the record
16 and please spell your first name.

17 MS. SIMMONS - My name is Ila Simmons, and my
18 first name is spelled I-l-a.

19 THE COURT - Your witness.

20 MS. VRIESINGA - Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. VRIESINGA -

23 Q Hi, Ms. Simmons.

24 A Hello.

25 Q How are you doing?

1 A I'm well, and yourself?

2 Q Good. Where were you most recently employed?

3 A At the South Carolina Law Enforcement Division, also
4 known as SLED in the forensic services laboratory's trace
5 evidence department.

6 Q And how long did you work at SLED?

7 A Fourteen years.

8 Q Fourteen years. And what did you do for SLED?

9 A In the trace evidence department we analyze gunshot
10 residue, gunpowder residues. We perform comparisons of
11 glass, paint, fibers, as well as analyzing any arson
12 evidence that may come into the laboratory.

13 Q Can you tell us more specifically about the field of
14 trace evidence?

15 A Yes, ma'am. Basically trace evidence is anything that
16 can be collected at a scene in very small amounts. It's
17 generally things that are collected with swabs or sticky
18 tape or something like that that maybe the investigator
19 can't even see.

20 Q And please tell the jury about your background and
21 your education.

22 A I have a bachelor's of science degree in chemistry.
23 After completing that, I went to work at SLED where my
24 first three years there were spent looking with a qualified
25 SLED certified trace evidence examiner. During that time I

1 had to take written and practical examinations and complete
2 them with one hundred percent efficiency. After that I was
3 certified by SLED to be a trace evidence examiner, and each
4 year I had to take a proficiency test in every area of
5 trace evidence to remain a certified trace evidence
6 examiner.

7 Q So those were your continuing education classes?

8 A Yes, ma'am, and I also attended seminars. I'm a
9 member of the Association of Forensic Science, the Academy
10 of Forensic Science and I'm a member of the FBI's GSR
11 Symposium where they invite GSR analyst from around the
12 world to come to Quantico and discuss the standards and
13 practices that are put into place for analysis around the
14 world.

15 Q And have you been previously qualified as an expert?

16 A Yes, ma'am, I have.

17 Q Okay, what field?

18 A In the field of gunshot residue, trace evidence
19 examination in Civil, Federal and State Courts of South
20 Carolina over 250 times.

21 Q Over 250 times.

22 A Yes, ma'am.

23 MS. VRIESINGA - Your Honor, at this time I would
24 ask that the witness be qualified as an expert in trace
25 evidence.

1 THE COURT - Voir dire?

2 MS. DYAR - No, Your Honor.

3 THE COURT - All right, any objection?

4 MS. DYAR - None, Your Honor.

5 THE COURT - Very well. So qualified.

6 MS. VRIESINGA - Thank you, Your Honor.

7 Q Ms. Simmons, let me take you back to what you did on
8 the gunshot residue in Moti case. First of all, what is
9 gunshot residue?

10 A Gunshot residue, or GSR as it's sometimes called, is a
11 mixture of microscopic chemicals that come out of a gun
12 when it's discharged. It comes out in a cone-shaped cloud
13 and can get on anything in close proximity to the gun,
14 including the hands of the person shooting the gun. It is
15 made up primarily of lead, barium and antimony and that's
16 what we're looking for when we analyze the gunshot residue
17 collection kits.

18 Q So it's primarily created from gunshots?

19 A It is specifically. If we find a particle that is
20 spheroidal or round and it contains lead, barium and
21 antimony, there is no place else that has ever been found
22 to create particles like that except the discharge of a
23 gun.

24 Q And how would someone end up with GSR on them?

1 A They can discharge a firearm; they can touch the thing
2 that has gunshot residue on it or they can have a gun
3 discharged in close proximity to them.

4 Q And how long does the GSR stay on a person?

5 A On a living person's hands it won't remain longer than
6 six hours. If I were to shoot a gun at noon, by 6:00 p.m
7 just by natural interactions with my hands, gunshot residue
8 will not be left on my hands.

9 Q So you have to collect it within the six hours.

10 A Yes, ma'am.

11 Q Is it easily removed?

12 A Yes, it has the consistency of flour, so if you were
13 to wipe your hands on a rag, put your hands in and out of
14 your pockets, wash your hands, shower, this will all remove
15 gunshot residue.

16 Q Did you analyze the GSR in this case?

17 A Yes, ma'am, I did. I had -- received two kits for
18 analysis.

19 Q Okay. All right.

20 MS. VRIESINGA - Your Honor, may I approach the
21 witness?

22 THE COURT - You may.

23 Q And for the record, I'm going to show you what's
24 previously been entered into evidence as State's Exhibit
25 Number 57.

1 A Yes, ma'am.

2 Q Would you tell me what that is?

3 A This is a gunshot residue collection kit collected
4 from Jimmy Moti. It was marked with my unique
5 identification number. Every case that comes into the SLED
6 laboratory is given a unique identification number and each
7 piece of evidence in every case is given an item number, so
8 it is marked with that. It's also marked with my initials
9 and the date I received it to begin analysis.

10 Q Okay. And I know you've kind of already touched on
11 this, but how exactly do you collect the GSR?

12 A Gunshot residue is collected with a standardized kit
13 that is produced by companies that are qualified assured.
14 This particular kit was made by Tri-Tech Incorporated, and
15 it has a two-part kit. The first part is a double-sided
16 sticky tape with a handle that's dabbed like this over the
17 areas of the hands; a sample is collected from the palm of
18 the right hand, the back of the right hand, the palm of the
19 left hand and the back of the left hand. After that, these
20 are all sealed, put away and then two swabs are taken from
21 each area. They're just basic cotton swabs with a couple
22 of drops of dilute nitric acid and they're rubbed over the
23 same areas of the hands, sealed and put in the kit.

24 Q Do you remember the results here in this case?

25 A Yes, ma'am.

1 Q Okay, and what were those results?

2 A On this specific kit labeled as coming from Jimmy
3 Moti, no gunshot residue was found on any areas of the
4 hands that the samples were collected.

5 Q And they were again collected from both of his hands.
6 Correct?

7 A Yes, ma'am.

8 Q Were you also asked to examine the GSR kit from a
9 vehicle?

10 A Yes, ma'am.

11 MS. VRIESINGA - Again, may I approach?

12 THE COURT - You May.

13 MS. VRIESINGA - Thank you, Your Honor.

14 Q What I'm showing you now has been marked as State's
15 Exhibit 84. If you'd just tell me what that is?

16 A Yes, ma'am, this was the GSR kit that was submitted
17 from Amy Hickie.

18 Q Okay.

19 A It's also marked with our unique identification number
20 and item number and my initials.

21 Q So you do recognize that?

22 A Yes, ma'am, I do.

23 Q How do you insure that it's been packaged correctly?

24 A When we receive it, we always check to make sure that
25 the evidence is sealed. When someone brings -- in this

1 case, Richland County Sheriff's Department -- brought in
2 these samples, they bring them into our central log-in,
3 they are logged in to our computer system, and they are
4 sealed with a piece of tamper-resistant tape so that, as
5 you can see here, you can see exactly when the tape was put
6 on, the initials and the date, the initials of the
7 investigator that's bringing it in and the date in which
8 they seal it, and if you were to mess with this tape at
9 all, you can clearly tell that it's been tampered with, and
10 if that were the case, if it had been tampered with in any
11 way, it would not have been analyzed.

12 Q Did you analyze this sample?

13 A I attempted to analyze this kit, however, with the way
14 that the kit is made, our instrument was not capable of
15 analyzing it.

16 Q Okay, will you explain that a little bit more?

17 A Yes, ma'am. The double-sided sticky tape I was
18 talking about earlier is a black sticky tape, therefore,
19 when our instrument shoots a very strong beam of
20 electricity down onto the black sticky tape and can pick up
21 any particles that are present, these were just a piece of
22 aluminum with a little bit of adhesive on them, but when
23 the instrument would shoot the strong beam of electrons
24 down onto the aluminum, it caused a glare and the
25 instrument couldn't run, because it would be like shining a

1 light at a black curtain, you're not going to get a glare
2 from it, but if you shine a flashlight onto a bright piece
3 of aluminum, it's going to flash back in your eyes and
4 cause a glare, and that's what happened with the
5 instrument, so the instrument couldn't analyze the samples.

6 Q Okay. Let me back a little bit. Where did you get
7 this -- this sample from?

8 A I got it from the central log-in area. It is a sealed
9 area that only our log-in technicians in the log-in
10 department have access to.

11 Q Okay. Okay. So you didn't actually analyze this
12 sample, because you were unable to do so.

13 A Yes, ma'am.

14 Q All right. Can GSR be rubbed off?

15 A Yes, ma'am, it can.

16 Q Okay. So if a gun was fired in a car that had been
17 cleaned or wiped down, would it necessarily have GSR on it?

18 A No, ma'am, not if it was wiped well. GSR can be wiped
19 off inanimate objects.

20 Q Okay.

21 MS. VRIESINGA - Your Honor, at this time the
22 State would seek to admit State's Exhibit Number 84 into
23 evidence.

24 THE COURT - Any objection?

25 MS. DYAR - None, Your Honor.

1 THE COURT - Thank you. Very well.

2 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
3 EXHIBIT NUMBER 84.)

4 MS. VRIESINGA - Thank you, Your Honor. Beg the
5 Court's indulgence. (Pause) One follow-up question.

6 Q If we can go back to the first GSR kit that you did on
7 the victim, ---

8 A Yes, ma'am.

9 Q --- were the results consistent with the victim not
10 shooting a gun?

11 A Yes, ma'am.

12 MS. VRIESINGA - Okay. No further questions, Your
13 Honor.

14 THE COURT - Very well. Cross examination?

15 MS. DYAR - Thank you, Your Honor. May it please
16 the Court.

17 THE COURT - Yes. Yes.

18 CROSS EXAMINATION

19 BY MS. DYAR -

20 Q And you said that the GSR could be wiped off of hands
21 very easily. Right?

22 A Yes, ma'am.

23 Q Within six hours or so ---

24 A Yes, ma'am.

25 Q Okay. Now, say -- can it get on clothing?

1 MS. DYAR - None, Your Honor.

2 THE COURT - Very well. You are free to go. Call
3 your next witness, please.

4 MS. WALKER - Your Honor, the State calls Zondra
5 Gilyard.

6 ZONDRA GILYARD, AFTER BEING FIRST DULY SWORN,
7 TESTIFIES AS FOLLOWS -

8 DEPUTY CLERK - Thank you. Please have a seat in
9 the witness stand and state your full name for the record
10 and please spell your first and your last name, please.

11 MS. GILYARD - Yes, my name is Zondra Sherise
12 Gilyard.

13 DEPUTY CLERK - And would you spell that, please.

14 MS. GILYARD - Z-o-n-d-r-a G-i-l-y-a-r-d.

15 DEPUTY CLERK - Thank you.

16 THE COURT - Your witness.

17 MS. WALKER - Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. WALKER -

20 Q Ms. Gilyard, where do you live?

21 A I live in Allen Benedict Court.

22 Q In Allen Benedict Court?

23 A (Indicating yes)

24 Q How long have you lived there?

25 A About three years.

- 1 Q Who lives there with you?
- 2 A Me and my four children.
- 3 Q How old are they?
- 4 A Four, three, two and one.
- 5 Q What's their fathers' names?
- 6 A All of them?
- 7 Q Is one of them related to the defendant?
- 8 A Yes.
- 9 Q How old is that child?
- 10 A One.
- 11 Q Do you know Gerald Bernard Haltiwanger?
- 12 A Yes, I do.
- 13 Q How long have you known him?
- 14 A Now going on three years.
- 15 Q Did y'all live together at some point?
- 16 A Some point, yes.
- 17 Q Where did y'all live?
- 18 A In Allen Benedict Court.
- 19 Q Did y'all live there last summer, summer of 2012?
- 20 A Yes.
- 21 Q I want to take your attention back to August of 2012.
- 22 Were y'all living together at that point?
- 23 A Yes.
- 24 Q The defendant, how many brothers does he have? Do you
- 25 know?

1 A Right off hand it's about four, maybe five, I think.

2 Q What are their names?

3 A The ones that I know is Tyrobia Green, Terrell Vaughn
4 and Jonathan -- I don't know Jonathan's last name.

5 Q There's a Jonathan?

6 A Yes.

7 Q Just one Jonathan?

8 A Yes.

9 Q Did you know his brothers pretty well?

10 A Yes.

11 COURT REPORTER - She needs to speak up, Judge.

12 Q Just speak up so the court reporter can hear you.

13 Okay?

14 A All right.

15 Q And make sure everybody in the courtroom can hear you.

16 A Okay.

17 Q Did you know the brothers pretty well?

18 A Yes, I did.

19 Q Back in August of 2012, did you become aware of an
20 incident that happened at El Toro?

21 A After the fact, yes, I did.

22 Q Tell me how you became aware of that.

23 A Um, I guess that morning after it happened, that next
24 morning when he woke up I found out about it.

25 Q Did you see him that night?

1 A No.

2 Q Did he say anything to you about the incident?

3 A (No response)

4 Q Did the defendant say anything to you about what
5 happened at El Toro?

6 A Not at -- that night, no.

7 Q That morning when you woke up ---

8 A Yes.

9 Q What did he say?

10 A Um well, he just told me that he had gotten into an
11 altercation at the club, but he didn't go into detail at
12 that point.

13 Q At some point did he go into detail?

14 A Some of it, yes, he did.

15 Q Tell me what he told you.

16 A He told me that he got into an incident with the
17 bouncer at the club and um that one thing led to another
18 and he just -- he just started shooting.

19 Q That who started shooting?

20 A He did.

21 Q Did he tell you about the actual -- the first incident
22 that he got in before he started shooting?

23 A Somewhat, yes.

24 Q Tell me what he told you.

1 A That he went to the club; he approached the door, him
2 and his brothers, and I guess something happened with the
3 ID to where he couldn't get into the club, and the security
4 guard maced him.

5 Q Did he tell you where he maced him?

6 A Yes.

7 Q Where?

8 A He was walking away and he got maced in the back of
9 his shirt, because he asked me to smell his shirt and my
10 face went numb from the pepper spray that was on the back
11 of his shirt.

12 Q But it was in the back?

13 A Yes, it was in the back.

14 Q Could you see anything on him?

15 A It was red. The shirt was blue.

16 Q Was the spray ---

17 A Yes, and the spray was red.

18 Q He had on a baby blue shirt that night?

19 A Yes.

20 Q Did he tell you anything about anyone trying to hit
21 the bouncer?

22 A Um, yes.

23 Q What did he say about that?

24 A His younger brother, Trouble, did.

25 Q He has a younger brother named Trouble?

1 A Well, he -- Jonathan.

2 Q Jonathan? You call him Trouble sometimes?

3 A Yes.

4 Q Okay. What did he say happened when Trouble tried to
5 hit the bouncer?

6 A He just hit him once and I guess they walked away and
7 that's when they approached the gas station, I guess.

8 Q When who approached the gas station?

9 A Him and his brother, Trouble.

10 Q What did he say happened after they went to the gas
11 station?

12 A He told me that they -- I guess at some point they
13 separated and him and Terrell got into the car together,
14 and he told me that -- I guess at that point he was upset
15 and he was angry and he rolled down the window and he just
16 started shooting.

17 Q He shot because he was mad?

18 A I guess so.

19 Q Is that what he told you?

20 A I'm assuming that's what it was for. I mean he -- he
21 was just angry, because he had got maced for no reason.

22 Q That's what he told you.

23 A Yes.

24 Q And you're here under subpoena. Right?

25 A Yes.

1 Q After he told you about what happened -- was that all
2 he told you?

3 A At that point, yes.

4 Q Well, at any point, was that all he told you?

5 A Yes, pretty much.

6 Q Did you know what car he was driving that night?

7 A Yes.

8 Q What car was that?

9 A That was my car, the 1980 crown vic, ltd.

10 Q It was a 1980 crown vic?

11 A (Indicating yes)

12 Q What color is it?

13 A Black.

14 Q Do you know what happened to that car?

15 A No, I didn't until the next day. Well, matter of
16 fact, not even the next day. When they came and arrested
17 him a couple days later, they told me where the car was,
18 because I didn't know where it was.

19 Q And where was it?

20 A From my understanding it was at another lady named
21 Laquanda Issac's house.

22 Q Who's Laquanda Issac?

23 A A young lady -- another young lady that he was seeing.

24 Q Did you know about her before then?

25 A Somewhat, yes.

- 1 Q Was the car supposed to be at Laquanda Issac's house?
- 2 A They never told me where the car was. Nobody did.
- 3 Q Where was the car usually?
- 4 A Outside.
- 5 Q Outside your house?
- 6 A (Indicating yes)
- 7 Q So was it unusual for it to be at Laquanda's house?
- 8 A Very much so, yes.
- 9 Q Do you know what, if anything, Gerald or anyone else -
- 10 - or what do you call Gerald Haltiwanger?
- 11 A Berns.
- 12 Q Berns?
- 13 A (Indicating yes)
- 14 Q Do you know what, if anything, he did with that car?
- 15 A I don't understand the question.
- 16 Q Did he ever talk to you about doing anything with the
- 17 car after the shooting, other than taking it to Laquanda's
- 18 house?
- 19 A Well, he never told me where the car was going. He
- 20 never even left with the car, so ---
- 21 Q Who left with the car?
- 22 A Tyrobia.
- 23 Q Tyrobia is ---
- 24 A His brother.
- 25 Q His brother left with the car.

1 A Yes.

2 Q How long was the car gone you found out where it was?

3 A Um, the car was gone until the investigators found it.

4 Q At that point last summer, did Berns or Gerald
5 Haltiwanger, did the defendant have gold teeth?

6 A At some point, yes, he did.

7 Q And what kind of -- can you describe what they looked
8 like?

9 A They were -- they were all closed faced, just top and
10 bottom.

11 Q They were top and bottom gold teeth.

12 A (Indicating yes)

13 Q At some point did he have a conversation with you
14 about where those told teeth had gone the night after the
15 murder?

16 A No, they were usually on my dresser. He'd come home
17 and take them out and eat or whether. He just wore them
18 out.

19 Q Were they on your dresser after the murder?

20 A They were there the whole time.

21 Q They were always on your dresser.

22 A Yes.

23 Q So the police got them from your dresser.

24 A No, I gave them to them. They asked me for them. He
25 didn't have them. I had them. They were on my dresser.

1 Q Okay.

2 A Yes.

3 Q Where did you find them?

4 A I don't remember where they were. I was -- I happened
5 to be cleaning up the room after the police left my house.
6 They kind of left it in a mess, so as I was cleaning, I
7 found them at some point and I called the investigator,
8 because he had asked them about them and I gave them to
9 them.

10 Q Do you remember giving a statement to investigators?

11 A (Indicating yes)

12 Q Do you remember giving two statements?

13 A No.

14 Q How many statements do you remember giving?

15 A One.

16 MS. WALKER - Your Honor, may I approach the
17 witness?

18 THE COURT - You may.

19 MS. WALKER - Thank you.

20 Q Do you recognize this?

21 A Yes.

22 Q Is this -- what is this?

23 A That's the statements from Detective Lindler I want to
24 say.

25 Q And who gave it?

- 1 A What do you mean?
- 2 Q Who gave this -- who -- is this your statement?
- 3 A Yes.
- 4 Q Let me show you this. Do you recognize this?
- 5 A Yes, I think that was the day of, the day that they
- 6 came and got him.
- 7 Q Okay. So how many statements did you give?
- 8 A Okay, well, two.
- 9 Q Okay. And in the first statement did you tell them
- 10 everything that you just told me?
- 11 A I can't remember. I don't recall.
- 12 Q Take a look at it.
- 13 A (Witness complies) Okay.
- 14 Q Did you tell them in that first statement everything
- 15 that you told me?
- 16 A Yes.
- 17 Q I want you to look at this right here on page 3.
- 18 A Okay.
- 19 Q They asked you where Bernard had been the night
- 20 before.
- 21 A Do you mean to the club?
- 22 Q Did they ask you where he had been, if he told you
- 23 where he had been?
- 24 A No. I don't remember that, no.
- 25 Q Okay. This is your statement.

- 1 A Yes.
- 2 Q Is this your signature?
- 3 A Yes, it is.
- 4 Q Do you see this question?
- 5 A Yes.
- 6 Q Did they ask you where he had been, where he said he
- 7 had been the night before?
- 8 A Yes.
- 9 Q And what did you tell them?
- 10 A I told them no.
- 11 Q But now you're saying that he told you he had been at
- 12 El Toro and got into an altercation and shot the club up.
- 13 A No, that's not what I said. I said he told me that he
- 14 had got into an altercation. I didn't know which club he
- 15 went to, but he told me that he was going out, yes. I
- 16 didn't know where he went.
- 17 Q Okay. Did you tell the police officers the first time
- 18 they talked to you anything about that?
- 19 A About El Toro's?
- 20 Q Right.
- 21 A No.
- 22 Q About the altercation.
- 23 A No.
- 24 Q About him shooting at anyone.
- 25 A No.

1 Q The second time you talked to them ---

2 A Yes.

3 Q --- you gave them that information.

4 A Yes.

5 Q And you're saying that you found the gold teeth while
6 you were just -- somewhere around the room while you were
7 cleaning up?

8 A Yes.

9 Q And you remember giving that second statement to
10 police?

11 A Yes.

12 MS. WALKER - Your Honor, may I approach the
13 witness again?

14 THE COURT - You may.

15 Q I want to show you this.

16 A Okay.

17 Q Does that refresh your memory?

18 A Yes.

19 Q Where did you find the gold teeth?

20 A Okay, they were in the diaper bag.

21 Q Where in the diaper bag?

22 A They were in the bottom of the diaper bag. My son,
23 Gerald, his son, his things are in our room, so everything
24 was just in our room. Like I said, the police had left
25 everything in a mess, so ---

1 Q Were his gold teeth usually in the bottom of your
2 son's diaper bag?

3 A They weren't.

4 Q So that was uncommon.

5 A It was.

6 Q After he was arrested, did you have a series of phone
7 conversations with the defendant?

8 A I did.

9 Q Did he talk to you about getting rid of the gold
10 teeth?

11 A No.

12 Q Did he talk to you about getting rid of the gun?

13 A No.

14 Q Did he talk to you about getting rid of the car?

15 A No.

16 Q Did he talk to you about telling his brothers to hold
17 it?

18 A Hold what?

19 Q To hold -- did he say anything to you along the lines
20 of, tell my brothers I held it, so they need to hold it
21 too?

22 A No.

23 Q Do you know those jail phone calls are recorded?

24 A Yes.

1 Q But y'all never had any sort of conversation about
2 getting rid of anything?

3 A No.

4 Q Did he ever tell you about stashing the gold teeth?

5 A No.

6 Q And y'all never had those conversations in those
7 recorded jail phone calls.

8 A No.

9 Q The person who told you that he got mad and shot --
10 and shot out the car, do you see him in the courtroom?

11 A Yes.

12 Q Can you point him out for me?

13 A My son's father, Gerald Haltiwanger.

14 Q What's he wearing?

15 A The white shirt with the tie.

16 Q Sitting at the end of the table?

17 A Yes.

18 MS. WALKER - Thank you. Your Honor, may the
19 record reflect that the witness has identified the
20 defendant.

21 THE COURT - Very well.

22 MS. WALKER - I don't have any further questions.

23 THE COURT - Cross examination?

24 MR. SAWYER - Thank you, Your Honor. May it
25 please the Court.

1 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
3 WHICH WAS NOT REPORTED.)

4 Q On cross examination you said that you were having
5 trouble kind of remembering the details of those
6 conversations?

7 A Somewhat, yes.

8 Q But then you were able to give him details about car
9 parts and taking those back to ---

10 A That was the first conversation that we had.

11 Q That was the first conversation?

12 A Yes.

13 Q And you also talked about him wanting to get those
14 parts to you so that you -- so you could get some money.

15 A Yes.

16 Q Did y'all have any other conversations about things
17 that you might do to raise money during that time?

18 A Well, he told me that if I wasn't able to get my car
19 back, for me to just sell the rims off it. That was the
20 only other -- that and the parts to get the other car
21 fixed. That was it.

22 Q That's the only conversation that y'all had about
23 things that you were going to do to raise money?

24 A That I remember, yes.

1 Q And you said that you didn't know what happened to the
2 car, what he did with the car. Right?

3 A Correct.

4 Q But you do remember giving a statement to law
5 enforcement.

6 A Yes.

7 MS. WALKER - Your Honor, may I approach the
8 witness?

9 THE COURT - You may.

10 MS. WALKER - Thank you.

11 A Yes.

12 Q Does that refresh your memory?

13 A Yes.

14 Q What did he say that he had done with the car?

15 A The next day? After the car was gone?

16 Q Right.

17 A Because the car was at my house the whole night.
18 Well, the morning that he came home.

19 Q I'm confused.

20 A Okay. He came home late. It was the next day, the
21 next morning, early that morning. The car was there up
22 until daylight. Tyrobia took the car from the house.

23 Q Tyrobia is his brother.

24 A Correct.

25 Q Took the car from the house.

1 A He did. They didn't tell me where the car was going
2 or anything. Now, a couple hours later his brothers
3 returned to my house and they left and I called him and
4 asked him where he was going. He told me he was coming
5 back, he had to wipe the car down. Yes, I did say that.

6 Q And when you say him -- when you said you called him
7 and he said he was wiping the car down, who are you
8 referring to?

9 A I'm referring to my son's father.

10 Q The defendant.

11 A Yes.

12 Q And then you didn't see the car for several days.

13 A Correct.

14 Q And that was unusual.

15 A Correct.

16 Q And the gold teeth that were are the bottom of the
17 diaper bag, that was unusual.

18 A Yes.

19 MS. WALKER - Beg the Court's indulgence.

20 THE COURT - Yes.

21 MS. WALKER - Your Honor, can we approach one more
22 time. I apologize.

23 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
25 WHICH WAS NOT REPORTED.)

1 THE COURT - All right. All right, as I
2 understand it, no further questions at this time with the
3 consent to opportunity to recall. Yes?

4 MS. WALKER - Yes, Your Honor.

5 THE COURT - Cross examination?

6 MR. SAWYER - None, Your Honor.

7 THE COURT - Very well. Yes, ma'am, you may come
8 down. At this point though you are not free to leave. All
9 right, and now call your next witness.

10 MS. VRIESINGA - State calls Investigator Rast.

11 BRANDON RAST, AFTER BEING FIRST DULY SWORN,
12 TESTIFIES AS FOLLOWS -

13 DEPUTY CLERK - Thank you. Please have a seat in
14 the witness stand and state your full name for the record
15 and please spell your last name.

16 MR. RAST - Brandon Rast, R-a-s-t.

17 THE COURT - Your witness.

18 MS. VRIESINGA - Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. VRIESINGA -

21 Q Hey, Investigator Rast.

22 A Hi.

23 Q Where do you work?

24 A Richland County Sheriff's Department.

25 Q And how long have you worked there?

1 A About nine and half years.

2 Q Okay. What do you do?

3 A I'm a criminal investigator with the criminal
4 investigation division.

5 Q Okay, will you tell us a little bit about your duties?

6 A Yes. Yes, we receive the incident reports that are
7 taken from the road, the line units. We continue the
8 investigations. We request processing of evidence; we
9 basically do the in-depth leg work that is involved with
10 prosecution of criminal cases.

11 Q Okay. I'm going to turn your attention back to the
12 end of August of last year. How did you become involved
13 with the case on that -- August 30th I believe is when you
14 became involved.

15 A I got a phone call from Sergeant Lindler, the sergeant
16 over CID or one of the sergeants in CID. We were working -
17 - he was working a case of a homicide that occurred at the
18 El Toro night club. He told me that there was a vehicle
19 that was possibly involved in the incident located at 7231
20 Bluff Road and asked that I go out to that location and
21 look into that vehicle.

22 Q So did you go out to that location?

23 A I did.

24 Q And did you find a vehicle?

25 A We did.

1 Q Okay. What was that vehicle?

2 A It was a black crown victoria, older model.

3 Q And if you could just explain for the jury how you
4 ended up finding the vehicle?

5 A Yes, I drove past the location and saw that there was
6 a vehicle under a car cover. I could tell that the shape
7 of the vehicle under the car cover was consistent with an
8 older model crown victoria. I pulled into the -- into the
9 -- in front of the mobile home and made contact with a
10 young lady that was inside, explained why I was there, told
11 her that I -- that, you know, I'd to take a look at the
12 vehicle under the car cover and, you know, she -- so we
13 took the car -- I pulled the car cover back and saw that it
14 was black in color, older model, ford crown victoria and I
15 could peak in the window, we could see that it had a
16 burgundy interior which matched the description of what we
17 were looking for and spoke to her and told her that this
18 vehicle was believed to be, you know, involved in a crime,
19 and we had it towed.

20 Q Who was the young woman you spoke to?

21 A Spoke to Ms. Laquanda Shanika (phonetic) Issac.

22 Q Okay. Did she tell you who she was in relation to the
23 defendant?

24 A Yes, she said he was -- she was his girlfriend.

25 Q Okay, how long had they been dating?

1 had that, and so she gave me permission to collect that and
2 we took it with us.

3 MS. VRIESINGA - May I approach the witness?

4 THE COURT - You may.

5 MS. VRIESINGA - Thank you, Your Honor. (Pause)

6 Beg the Court's indulgence. No further questions, Your
7 Honor.

8 THE COURT - Very well. Cross examination?

9 MR. SAWYER - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes.

12 CROSS EXAMINATION

13 BY MR. SAWYER -

14 Q Investigator Rast, again, what kind of car was this?

15 A The one that we found?

16 Q Yes.

17 A Is a older model black crown victoria.

18 Q And you served a search warrant on it?

19 A No, sir.

20 Q Okay.

21 A Not at the scene.

22 Q Okay. Did you have it towed?

23 A Yes, sir.

24 Q Just while we're on the topic, Ms. Issac, did she
25 happen to mention to you who had stolen that gun from her?

1 DEPUTY CLERK - Thank you. Please have a seat in
2 the witness stand and state your full name for the record
3 and spell your first name.

4 MS. NUTTRY - Kristina Nuttry, K-r-i-s-t-I-n-a.

5 THE COURT - And spell your last name for us, too.
6 Please.

7 MS. NUTTRY - N-u-t-t-r-y.

8 THE COURT - Very well. Everybody's got their
9 note pads now? Everybody's getting them? Hold on one
10 second. This is awesome presiding juror conduct I would
11 just like to say. Okay, everyone has their ---

12 (JURORS AFFIRM)

13 THE COURT - Okay, wonderful. Yes, we may now
14 proceed.

15 MS. CAMPBELL - May it please the Court.

16 THE COURT - Yes.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL -

19 Q Ms. Nuttry, how old are you?

20 A Twenty-two.

21 Q And where do you currently live?

22 A In Boston, Massachusetts.

23 Q Can you get a little closer to that microphone? It's
24 hard to hear in here.

25 A In Boston, Massachusetts.

1 Q And how long have you been living in Boston,
2 Massachusetts?

3 A Since last -- the end of last January.

4 Q The end of last January?

5 A Yes, ma'am.

6 Q And where do you stay in Boston?

7 A At a shelter.

8 Q At a shelter?

9 A Yes, ma'am.

10 Q Back in August of last year, were you staying here in
11 the Columbia area?

12 A Yes, ma'am.

13 Q And where were you staying back in August of last
14 year?

15 A August of last year ---

16 Q Around the time all this happened we're getting ready
17 to talk about.

18 A I was staying -- residing with a family member.

19 Q A family member here?

20 A Yes, ma'am.

21 Q And do you know a young lady named Marquita Mobley?

22 A Yes, ma'am.

23 Q And how do you know Marquita?

1 Q I want to turn your attention to the evening of August
2 the 25th, that night. Do you remember that?

3 A Yes, ma'am.

4 Q And what were y'all doing that evening?

5 A Hanging out with friends.

6 Q And where were y'all hanging out?

7 A We were at our hotel room and we left to go to the
8 bar.

9 Q Do you remember the name of the hotel?

10 A The Red Roof.

11 Q The Red Roof Inn?

12 A Yes, ma'am. No, sorry. It was the Motel 6.

13 Q Motel -- do you know the ---

14 A No, Red Roof. Red Roof. Sorry. It was The Red Roof
15 Inn.

16 Q That evening did you all leave the hotel to go
17 somewhere, the motel?

18 A Yes, ma'am.

19 Q And where were y'all going?

20 A To El Toro's.

21 Q How were you getting that?

22 A We had walked over.

23 Q Who all was with you?

24 A Just me and Marquita.

1 Q And when you walked over to El-Toro, what was your
2 intention? What were y'all planning on doing?

3 A Having a couple of drinks and just having fun hanging
4 out.

5 Q Once you got to El Toro -- was it a long walk?

6 A No. No, ma'am.

7 Q Once you got there, what happened?

8 A We got there and went to the entrance. I didn't have
9 my ID; I had lost it, so they wouldn't let us in.

10 Q You didn't have your ID?

11 A No.

12 Q You had lost it.

13 A Yes.

14 Q And did they ask for your ID?

15 A Yes, they did.

16 Q And were they rude when they wouldn't let you in?

17 A No.

18 Q And that was because you didn't have your ID?

19 A Yes, ma'am.

20 Q When you couldn't get in the El Toro, what did y'all
21 do?

22 A We proceeded to leave the premises and we had been
23 walking and a guy had offered us a ride and we had went to
24 the gas station.

1 Q Okay, let me back up a minute. Where were you walking
2 when the guy came up and offered y'all a ride?

3 A We was right like around the area, like right by El
4 Toro's.

5 Q Was it on the street?

6 A I believe so.

7 Q And at that point, do you remember what kind of
8 automobile the guy was driving when offered you a ride?

9 A A white truck.

10 Q A white truck?

11 A Yes, ma'am.

12 Q And did y'all get in with him?

13 A Yes, ma'am.

14 Q And where did you go?

15 A We drove to the gas station.

16 Q And where was the gas station located in relation to
17 the El Toro?

18 A Was to -- from the front of El Toro's it was to the
19 right.

20 Q To the right? Was it next door?

21 A Yes.

22 Q What happened when y'all pulled in at the gas station
23 next to El Toro?

24 A When we pulled in, Marquita got out the car, the
25 driver had got out of the car and went in the gas station.

- 1 Q The driver went in the gas station?
- 2 A Yes.
- 3 Q What was he going in there to do?
- 4 A To purchase beer.
- 5 Q And that was for y'all to drink?
- 6 A Yes.
- 7 Q And then what did you observe?
- 8 A I observed some commotion going on in like the area --
- 9 the parking lot of El Toro's. I had -- I seen some men
- 10 yelling and causing commotion. I had called one of the men
- 11 over and asked him what was wrong.
- 12 Q Okay, let me stop for a minute. You said you saw some
- 13 men.
- 14 A (Indicating yes)
- 15 Q Do you remember what generally they looked like?
- 16 A Black males. One was no more than six feet, baby blue
- 17 t-shirt, jean shorts, sneakers.
- 18 Q What kind of t-shirt?
- 19 A Baby blue.
- 20 Q Baby blue? And what did the other one look like that
- 21 you saw?
- 22 A He had dreads and was wearing I believe a red shirt.
- 23 Q And you said you saw them causing a commotion?
- 24 A Yes.
- 25 Q And what did you actually see them doing?

1 A Just basically, you know, hand motions in the air and
2 arguing, yelling out loud.

3 Q Do you remember what they were yelling?

4 A Basically, you trying me, not about that way, just,
5 you know, ---

6 Q You trying me ---

7 A -- just maybe - just basically like they're angry,
8 yelling out, they were mad.

9 Q Could you see anybody else with those two men?

10 A Just the security guard that was on duty.

11 Q The security guard?

12 A That was --

13 Q And was that the same security guard you'd seen
14 earlier that night?

15 A Yes.

16 Q It was?

17 A (No response)

18 Q And when you heard them yell something, what was the
19 first thing you heard them yell?

20 A You tried me.

21 Q You tried me?

22 A (No response)

23 Q And who are they yelling at?

24 A The security officer.

25 Q And then what else did you hear them yell?

- 1 A You're not about that life.
- 2 Q You're not about that life. And what was the security
- 3 guard doing?
- 4 A Basically continuing to, I guess, lead them off of the
- 5 premises and telling them to leave.
- 6 Q What happened next as you observed the men over there
- 7 -- what area were they in?
- 8 A The grass in between the two parking lots.
- 9 Q The grass in between the two parking lots?
- 10 A Yes, ma'am.
- 11 Q And did you observe anything else while they were in
- 12 that grassy area?
- 13 A The guy with the dreads had hit the office -- the
- 14 security officer from behind.
- 15 Q He hit him from behind?
- 16 A Yes, ma'am.
- 17 Q And what did he actually do to him?
- 18 A The officer proceeded to pull out his gun.
- 19 Q After he got hit from behind?
- 20 A Yes.
- 21 Q And which one hit him from behind?
- 22 A The guy with the dreads.
- 23 Q And where did he hit him?
- 24 A In the back of the head.
- 25 Q And that's when the security guard pulled out his gun?

1 A Yes, ma'am.

2 Q And at that point were the two men you saw with the
3 security guard still yelling?

4 A Yes, ma'am.

5 Q What were they saying?

6 A Basically you trying me, not about that life, that's
7 all that was repeated, was you're not about that life.

8 Q Did you see where they went next?

9 A Well, I had called over one of the men and asked him
10 what was the matter and he was saying that he was asked to
11 be removed from the club and wasn't being allowed back in,
12 expressing how he was maced by the officer and ---

13 Q Did he say whether or not he got maced in the face?

14 A He said he did not get maced in the face, that it was
15 in the back of the head.

16 Q And who was talking to you at this point?

17 A Well, the guy in the baby blue.

18 Q Guy in the baby blue?

19 A Yes, ma'am.

20 Q And where was the conversation taking place?

21 A In the gas station, at the gas station parking lot at
22 the truck.

23 Q At the truck?

24 A Yes, ma'am.

25 Q Were you in or out of the truck?

- 1 A I was inside.
- 2 Q Was the guy in or out of the truck?
- 3 A The guy was outside of the truck.
- 4 Q The one you were talking to?
- 5 A Yes.
- 6 Q And what did he say to you then?
- 7 A He was just basically saying how he's mad, he couldn't
- 8 get back in the club, he doesn't understand why, basically
- 9 just expressing that he was very upset about the situation.
- 10 Q And that's when he talked about getting maced?
- 11 A Yes.
- 12 Q But what did he say about when the guy maced?
- 13 A He was like he missed, my eyes ain't burning, my eyes
- 14 ain't red.
- 15 Q My eyes aren't burning, my eyes aren't red?
- 16 A Yes, ma'am.
- 17 Q What else did he say to you?
- 18 A He was basically just expressing, like same thing,
- 19 you're not about that life; he expressed that he was going
- 20 to light the place up.
- 21 Q He was going to light the place up?
- 22 A Yes.
- 23 Q And did he tell you to do anything?
- 24 A He told me to leave.
- 25 Q To leave?

1 A (Indicating yes)

2 Q This is the conversation you had with the guy in the
3 blue?

4 A Yes, ma'am.

5 Q Did you see where the other guy with dreads was?

6 A I believe still in the grassy area.

7 Q At that point what happened?

8 A Marquita and the driver got in the car, and I told
9 them like let's go. We turned out of the parking lot and
10 we reached about to the light, I heard rounds go off.

11 Q And when you say you heard rounds go off, what did you
12 hear?

13 A I heard gunshots.

14 Q And did you hear more than one?

15 A Yes, ma'am.

16 Q Could you tell where they were coming from?

17 A Yes, ma'am.

18 Q Prior to leaving, did you see the direction where
19 either the guy in the blue t-shirt or the guy with dreads
20 walking to?

21 A Just the parking lot.

22 Q Could you tell what kind of car the shooting was
23 coming from?

24 A It was -- there was two cars. There was the black car
25 and the white car.

1 Q There was a black car and white car?

2 A Yes, ma'am.

3 Q Could you tell which one the shots were coming from?

4 A No.

5 Q When you heard the shots, what did y'all do?

6 A We proceeded to keep on rolling away back to the
7 hotel.

8 Q Did you want to be involved?

9 A No, not at all. I was just trying to express to the
10 man that it's not worth it.

11 Q What did you say to him?

12 A I was just expressing to him that it wasn't worth it
13 to get in trouble and do years in jail and lose his freedom
14 over a place that he can just go back to at another time or
15 go to somewhere different.

16 Q And that's what you told him when you were talking to
17 him that night?

18 A Yes, ma'am.

19 Q Did you ever see any guns that night?

20 A No, ma'am.

21 Q Did you ever hear anybody talking about guns?

22 A I heard the two men talking about guns.

23 Q And what were they saying about the guns when they
24 were out there with you that night?

1 A They were just saying that they got something for
2 them, kept repeating they're not about that way.

3 Q Did they indicate where they had something for them?

4 A I don't remember.

5 Q Do you remember giving a statement? Well, let me
6 finish up. You went and went back to the hotel.

7 A Yes, ma'am.

8 Q Over the next several days, did the police make
9 contact with you?

10 A Yes, ma'am.

11 Q And when they made contact with you, did they actually
12 ask you questions about what you saw that night?

13 A Yes, ma'am.

14 Q And did you give them a statement?

15 A Yes, ma'am.

16 Q At a later time did they come back and talk to y'all
17 again?

18 A Yes, ma'am.

19 Q And what, if anything, did they say to you about you
20 telling the truth and being forthcoming?

21 A They just basically asked me to tell the truth on what
22 I saw and what I heard about the situation.

23 Q Did you want to be involved in this situation?

24 A Not at all. I was just trying to help somebody make a
25 better decision.

1 Q Why did you call them over to the car that -- or did
2 you know him before this?

3 A No, ma'am.

4 Q Why did you call him over to the car that night?

5 A Because I was under the influence of alcohol, and I'm
6 a friendly -- I'm actually a friendly person, and because I
7 didn't want to see somebody get in trouble.

8 Q And you tried to help him?

9 A Yes, ma'am.

10 Q And y'all had been drinking that night?

11 A Yes, ma'am.

12 Q But you know what you saw.

13 A Yes, ma'am.

14 Q At some point did officers actually show you some
15 photos?

16 A Yes, ma'am, they showed me a video.

17 Q A video?

18 A Yes, and showed me a line-up of photos, but I didn't
19 remember what the man exactly looked like, and I ended up
20 identifying the wrong person.

21 Q But you cooperated with the police.

22 A Yes, ma'am.

23 Q Do you remember giving a statement in this case to the
24 police?

25 A Yes, ma'am.

1 Q On the 27th, I believe, a couple days afterwards?

2 A Yes, ma'am.

3 Q And do you remember them asking you about -- them
4 asking you about guns and what they said about the guns?

5 A (No response)

6 Q Is that your statement?

7 MS. DYAR - Refresh her recollection first, Your
8 Honor.

9 MS. CAMPBELL - I have to ask her to identify it
10 first. Thank you.

11 Q Is this your statement?

12 A Am I reading the highlighted or am I reading ---

13 COURT REPORTER - She needs to speak up. I'm
14 having trouble hearing her.

15 MS. CAMPBELL - Okay.

16 Q Is that your signature at the bottom?

17 A Yes, ma'am.

18 Q And is this part of your statement?

19 A Yes, ma'am, that's what's on the paper.

20 Q And do you remember them ask -- will this help you
21 refresh your memory?

22 A Yes, ma'am, the highlighted area.

23 Q Okay, and does that help you?

24 A Yes, ma'am.

1 Q Do you remember what they were saying about the guns
2 that night?

3 A They're talking about them being located in the car.

4 Q They were located in the car?

5 A (No response)

6 Q And who said that?

7 A I couldn't -- I ---

8 Q When ---

9 A They were both saying it.

10 Q Both saying it. You also mentioned earlier that you
11 picked the wrong person. You remember telling them you
12 just weren't sure?

13 A I wasn't sure like which one it was, like I didn't
14 remember what the man's face looked like exactly.

15 Q Okay.

16 MS. CAMPBELL - Thank you. I have nothing
17 further.

18 THE COURT - Cross examination.

19 MS. DYAR - Thank you, Your Honor.

20 THE COURT - Yes.

21 CROSS EXAMINATION

22 BY MS. DYAR -

23 Q So, Ms. Nuttry, you're saying that the gentleman who
24 picked you and Ms. Marquita up from the street, he wasn't
25 in the car during this?

1 A No.

2 Q Ms. Marquita wasn't in the car as well?

3 A No, ma'am.

4 Q And you testified you actually saw the commotion? Did
5 you hear the commotion?

6 A Both.

7 Q Both. And at that time it was just the two men that
8 you saw, the person in the baby blue and then the gentleman
9 with the dreads?

10 A And the security guard.

11 Q And the security guard. And you said they're angry.

12 A Yes.

13 Q They're yelling.

14 A Yes, ma'am.

15 Q They're arguing.

16 A Yes, ma'am.

17 Q They're being escorted off the property?

18 A Yes, ma'am.

19 Q They make it all the way to the edge of the property?

20 A Yes, ma'am.

21 Q Into the gas station parking lot?

22 A Yes, ma'am.

23 Q And then that's when you called one of the gentleman
24 over?

1 A The gentleman in the baby blue I called him over from
2 the -- when he was in the grassy area.

3 Q Okay. And he tells you he's been maced in the back of
4 the head.

5 A Yes, ma'am.

6 Q And you don't see any signs on his face that he's been
7 -- that he's been maced?

8 A No, I ain't never seen a maced person before.

9 Q And again, he's mad.

10 A Yes.

11 Q He's telling you he's mad.

12 A Yes, ma'am.

13 Q And the other gentleman is still in the grassy area?
14 It's just the guy in the baby blue speaking with you?

15 A Yes, just the guy in the baby blue.

16 Q And you said you heard shots, more than one shot.

17 A Yes, ma'am.

18 Q And you can tell where they were coming from.

19 A Yes, ma'am.

20 Q Where -- can you tell me where they were coming from?

21 A From the right of me.

22 Q From the right of you. And this -- and where are you
23 guys at this point?

1 A Turning out of the parking lot, so if we're turning
2 out of the parking lot, we're going left; the shots are
3 coming from the right.

4 Q And where are you in the car?

5 A On the right -- back -- no left -- I'm behind the
6 driver in the passenger.

7 Q And you say you actually see two cars.

8 A Yes, ma'am.

9 Q At what point to you see those two cars?

10 A When I was turning left going out of the parking lot.

11 Q But you can't say which car the shots came from.

12 A No, ma'am.

13 Q Or who fired the shots.

14 A No, ma'am, I did not ---

15 Q You didn't see the shooter.

16 A No, I did not see the shooter.

17 Q And you gave a statement to law enforcement a couple
18 days later. Correct?

19 A Yes, ma'am.

20 Q Do you remember speaking to Investigator Jordan?

21 A Yes, ma'am.

22 Q He actually talked to you a couple times. Right?

23 A Yes, ma'am.

24 Q And that second time he expressed to you that it's
25 very important to tell the truth.

1 A Yes, ma'am.

2 Q He needed your cooperation.

3 A Yes, ma'am.

4 Q At that point he told you if you weren't telling the
5 truth that you could be arrested.

6 A Yes, ma'am.

7 Q That you could go to jail.

8 A Yes, ma'am.

9 Q And did you tell him that you were being truthful?

10 A Yes, ma'am.

11 Q But that night you and Ms. Marquita had been drinking.

12 A Yes, ma'am.

13 Q And going drugs?

14 A Smoking marijuana.

15 MS. DYAR - Beg the Court's indulgence.

16 THE COURT - Very well.

17 Q And at this point in the evening how much had you been
18 drinking?

19 A Not a lot.

20 Q What's not a lot?

21 A Maybe like one or two shots and a beer.

22 Q And again he -- he told you he didn't know why he had
23 been maced. Right?

24 A Said he was maced. I didn't ask him why.

25 Q And he got maced in the back.

1 A Yes, ma'am.

2 MS. DYAR - Nothing further, Your Honor.

3 THE COURT - All right, re-direct?

4 MS. CAMPBELL - No, ma'am.

5 THE COURT - And is this witness free to leave?

6 MS. CAMPBELL - Yes, Your Honor.

7 THE COURT - Any objection?

8 MS. DYAR - None, Your Honor.

9 THE COURT - Very well. You are free to go. All
10 right. Call your next witness, please.

11 MS. WALKER - Yes, Your Honor. The State calls
12 Chief David Wilson.

13 DAVID WILSON, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 DEPUTY CLERK - Thank you. Please have a seat in
16 the witness stand and state your full name for the record.

17 MR. WILSON - David Wilson.

18 THE COURT - Your witness.

19 MS. WALKER - Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. WALKER -

22 Q Chief Wilson?

23 A Yes, ma'am.

24 Q Sir, where are you currently employed?

25 A The Richland County Sheriff's Department.

1 Q And how long have you been at the sheriff's
2 department?

3 A A little over 30 years.

4 Q Little over how long?

5 A Thirty years.

6 Q And what do you do at the sheriff's department?

7 A I'm the deputy chief in charge of the investigative
8 unit.

9 Q Can you tell us what, I guess what all that entails?

10 A All the criminal investigations done by the sheriff's
11 department. I've over the forensics labs, the crime scene
12 and the DNA chemistry labs as well as the evidence room and
13 archives.

14 Q And how long have you been the deputy chief?

15 A Sixteen years.

16 Q And do you on occasion get involved in particular
17 cases?

18 A Yes, ma'am

19 Q The murder that we're here for this week, did you
20 become involved in that case?

21 A I did.

22 Q Can you tell me how you became involved?

23 A I got a call from Sergeant Lindler on the morning of
24 August 26, 2012 about 7:30 that morning to brief me on the

1 case. We were short-handed and so I went in about 10:30
2 that morning and assisted in locating witnesses.

3 Q And did you guys -- do you guys have like an initial
4 debriefing when there's a case of this nature?

5 A Yes.

6 Q And did y'all do that in this case?

7 A Yes.

8 Q And when was that, sir?

9 A That would be the morning of the 26th.

10 Q And during that initial briefing, what information did
11 you have about this murder?

12 A Just the basic information, where it had occurred,
13 when it had occurred, who we knew that were potential
14 witnesses.

15 Q And did y'all have names at that point in time of
16 potential witnesses?

17 A We had some, yes.

18 Q And what was y'all's next step in terms of
19 investigating this case?

20 A Myself and another investigator went to Lexington and
21 picked up Lamar Ray who was a potential witness.

22 Q Who was that -- do you know who the other investigator
23 was?

24 A Josh Mauldin.

25 Q And did you speak with Lamar Ray?

1 A I spoke with him briefly on the way back from
2 Lexington, and then Josh Mauldin actually took a statement
3 from him.

4 Q Were you present when his statement was taken?

5 A No.

6 Q And did Mr. Ray have information pertinent to y'all's
7 investigation?

8 A He did.

9 Q After making contact with Mr. Ray, sir, can you tell
10 me what you did?

11 A I called Lieutenant Poole to have him come in to pull
12 some video for us. There was some video at the gas station
13 next door to where this club was that we wanted to have
14 pulled, so I called him in and had him come in to do that.
15 He is one of our technical services people.

16 Q Does he generally pull video tapes and things of that
17 nature?

18 A He does. Then I started looking -- he developed a
19 potential witness off a credit card receipt, and I tried to
20 locate that witness and that took several hours, checked
21 numerous addresses and with -- with no luck.

22 Q So at this point I guess are y'all just trying to
23 develop any lead y'all can as to who committed the murder?

24 A That is correct.

1 Q And the video tape, did that become important in your
2 investigation?

3 A It did.

4 Q Can you explain that to the jury?

5 A The video tape itself showed several people that were
6 running from the club area ---

7 MR. SAWYER - Objection, Your Honor. Truth of the
8 matter asserted.

9 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
11 WHICH WAS NOT REPORTED.)

12 Q Chief, let me ask you this. You watched the video.

13 A I did.

14 Q And individuals on the video became pertinent in your
15 investigation.

16 A Yes.

17 Q Did you and members of your department then try to
18 make contact with those individuals?

19 A Yes.

20 Q And was that done?

21 A Yes.

22 Q After making contact with the individuals on that
23 video, what did y'all do or what did you do next in the
24 investigation?

1 A There are several things. I was constantly receiving
2 information. I received some information from uniform
3 officers that implicated a certain person as maybe having
4 some involvement in the homicide or having witnessed or
5 having known who did the homicide.

6 Q And who was that person?

7 A I have to find it here in my notes. That was about
8 2:15 in the morning. I received a call from Corporal
9 Fisher and he had given me the name of Larry Cornish, and
10 at that point are y'all still trying to track down
11 different leads?

12 A That's correct.

13 Q After receiving that information, can you tell the
14 jury how your investigation progressed?

15 A On the morning of the 28th we had received a
16 Crimestopper's tip ---

17 Q Don't tell me what was said in the Crimestopper's tip,
18 but did y'all get information about a possible shooter?

19 A We did.

20 Q And did y'all get location information about that
21 shooter?

22 A We did.

23 Q And other information that would prove pertinent to
24 the case.

1 A Other information that was verifiable through other
2 sources that matched up, yes.

3 Q So was the information in the Crimestopper's tip
4 corroborated by the other evidence?

5 A That is correct.

6 Q With that information, can you tell me what y'all did?

7 A Sergeant Lindler prepared a photo line-up of our
8 potential suspect.

9 Q And were those shown to witnesses?

10 A They were.

11 Q And were they able to corroborate the information in
12 the Crimestopper's tip?

13 A Yes, I actually met with Lamar Ray, and he was able to
14 pick out the defendant.

15 Q When you -- how many times did you meet with Mr. Ray?

16 A I met with him initially when we first got a
17 statement, and then I met with him to show him the line-up.

18 Q Can you describe his level of cooperation throughout
19 your investigation in terms of your dealing with him?

20 A He was cooperative but hesitant. He was somewhat
21 afraid to get involved. We had to encourage him to do his
22 civic duty.

23 Q Is that uncommon?

24 A No, it's not.

1 Q And was Mr. Ray able to corroborate the information in
2 the Crimestopper's tip?

3 A He was.

4 Q After the Crimestopper's tip and the corroborating
5 evidence, what did y'all do?

6 A We put everything together. Sergeant Lindler got an
7 arrest warrant for the defendant and we started hunting the
8 defendant.

9 Q I'm sorry, what'd you say?

10 A We start hunting for the defendant.

11 Q And where did y'all go?

12 A The main place was Apartment C-7, Allen Benedict
13 Court, which is right off of Hardin Street here in
14 Columbia.

15 Q Did y'all have -- did y'all know who lived at C-7?

16 A We did.

17 Q And who was that?

18 A His girlfriend and he also lived there as well.

19 Q Is that Zondra Gilyard?

20 A That is correct.

21 Q And what happened when y'all initially went to Allen
22 Benedict Court?

23 A Well, for the next 24 hours several of us rode by that
24 location. It's a project-type location. So we were
25 constantly riding by and see if we could see anybody moving

1 around the apartment, see -- looking for the cars that were
2 described in this incident.

3 Q And what car were you looking for at that point in
4 time?

5 A We were looking for two cars, a white car and a black
6 car. On the 29th at about 3:30 p.m., Investigator Jordan
7 spotted the defendant outside the apartment with some other
8 males. Myself and Sergeant Lindler responded from
9 headquarters. We had other units respond over there as
10 well.

11 Q And was contact made with the defendant at that time?

12 A It -- yes, ma'am.

13 Q And what was done?

14 A He was arrested.

15 Q After he was arrested, where was he taken?

16 A He was placed in my vehicle with Sergeant Lindler and
17 I talked to his girlfriend, Ms. Gilyard.

18 Q Did you ever make contact with his other girlfriend?

19 A No.

20 Q Where was he taken after being placed in your car?

21 A He was taken to the sheriff's department.

22 Q And when you made contact with his girlfriend, was she
23 cooperative in the investigation?

24 A She was cooperative but upset.

1 Q And once he got to the sheriff's department, do you
2 know what -- where exactly he went in the sheriff's
3 department?

4 A I believe he went to Sergeant Strange's office.

5 Q For what purpose, sir?

6 A To be interviewed.

7 Q And was he interviewed?

8 A Yes, he was.

9 Q Were you present for that interview?

10 A Not initially, no.

11 Q At some point did you go make contact with the
12 defendant during the interview?

13 A Later that night I interviewed -- at the time of his
14 initial interview one of his brothers was there at the
15 apartment and agreed to come back. He was curious and
16 asking questions about what we were doing and why his
17 brother had been arrested and he ---

18 Q Do you remember which brother that was?

19 A Terrell Vaughn. And I sat down and interviewed
20 Terrell Vaughn for several hours at which time -- there was
21 no probable cause at that point to arrest Terrell Vaughn so
22 I took him and dropped him off, and when I came back to the
23 department, Sergeant Lindler and Investigator Jordan were
24 waiting on transport for the defendant. They needed to

1 leave, so I sat with the defendant for a period of about an
2 hour talking with him about the case.

3 Q And did he share things about the case with you at
4 that point?

5 A We talked about the case. He didn't give me any
6 really pertinent information. He cried several times, very
7 emotional about things, wasn't very forthright.

8 Q And did you -- and was he then transported to the
9 jail?

10 A He was.

11 Q What did you do next in the investigation, sir?

12 A On the morning of the 30th I was listening to some jail
13 calls. Every phone call made out of our jail by inmates is
14 recorded and they're told it is recorded, and we had
15 Gilyard's number and so we pulled out all the calls coming
16 to that number.

17 Q Gilyard. That's Zondra Gilyard.

18 A Zondra -- Zondra Gilyard, yes, ma'am.

19 Q And was there information in those jail phone calls
20 that led you to believe that that defendant had been less
21 than truthful the day -- when he was interviewed?

22 A Absolutely.

23 Q At that point in time have y'all interviewed any of
24 his other brothers?

1 A Yes, Terrell Vaughn and I don't know that we had the
2 names of the other brothers. I think we did at that point
3 from -- some of them from Terrell Vaughn, but we hadn't
4 interviewed them in any length at that point. When I
5 listened to the jail phone calls there was what I would
6 consider incriminating information on those jail phone
7 calls.

8 Q And those were the calls that were made on August 29th?

9 A That's correct.

10 MS. WALKER - Your Honor, I think at this point I
11 think through the stipulation, the State seeks to admit
12 Exhibit 87 into evidence.

13 THE COURT - Say that one more time.

14 MS. WALKER - State's Exhibit 87, Your Honor, I
15 think is admitted through stipulation?

16 MR. SAWYER - Yes, Your Honor, with ---

17 THE COURT - Very well.

18 MR. SAWYER - -- for purposes we discussed
19 earlier.

20 THE COURT - All right.

21 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
22 EXHIBIT NUMBER 87.)

23 MS. WALKER - Beg the Court's indulgence, Your
24 Honor. Chief Wilson, I'm going to play these phone calls.

25 (WHEREUPON, PHONE CALL IS PLAYED FOR THE JURY.)

1 Q And Chief, I just want to ask you a couple of
2 questions about that phone call. There was a -- and excuse
3 my language, sir -- there was a time in which the
4 statement, fuck, Terrell, was made. Who is Terrell?

5 A Terrell Vaughn, his brother.

6 Q And without telling me what Terrell said, did he give
7 you useful information in this case?

8 A No, not initially. He did later on after this phone
9 call.

10 Q And was Terrell eventually charged as one this
11 defendant's co-defendants?

12 A Yes, he was.

13 Q And what was he charged with?

14 A I believe it was accessory after the fact of murder.

15 Q There was another statement that I want to ask you
16 about, tell all my brothers I didn't say nothing. The
17 defendant's co-defendants, how many are they?

18 A There's three.

19 Q And are they in any way related to the defendant?

20 A They're all brothers.

21 MS. WALKER - There are two more calls.

22 (WHEREUPON, PHONE CALL IS PLAYED FOR THE JURY.)

23 Q Chief, were there things on that phone call that you
24 listened to that caused you concern?

1 A Yes, just basically a cover-up, trying to keep
2 everybody quiet.

3 Q And at that point did y'all know that gold teeth were
4 important in the case?

5 A Yes, and had been looking for them. But it's
6 important to note that on the first day when we pulled
7 these phone calls, I never got past the first phone call.
8 When I heard the conversation about the catergap (phonetic)
9 -- that is common language for a gun -- and talking about
10 getting rid of it, so I immediately stopped what I was
11 doing and called Sergeant Lindler and Investigator Jordan
12 and had him go back over and interview Zondra.

13 Q And did Zondra -- without tell me what she said, did
14 she give y'all pertinent information in the case?

15 A Absolutely.

16 Q And this is the last phone call, Chief.

17 (WHEREUPON, PHONE CALL IS PLAYED FOR THE JURY.)

18 Q Said after reviewing at least the first one while
19 y'all re-interviewed Zondra?

20 A After the first phone call and hearing what was on
21 that first phone call, I alerted Sergeant Lindler and
22 Investigator Jordan to the context of that phone call and
23 they went back out and interviewed Zondra.

24 Q And did y'all also make contact with, I guess, Tyrobia
25 Green, Terrell Vaughn and Jonathan Sterling?

1 A Well, as they were interviewing Zondra and called me
2 with an update that she had broken down and told the truth,
3 I went and got Terrell Vaughn.

4 Q And did you interview him?

5 A Absolutely.

6 Q And did he give you helpful information?

7 A Absolutely.

8 Q After those two interviews, did you think it was
9 pertinent to re-interview the defendant?

10 A Well, his other brothers were interviewed as well.

11 Q And that's Jonathan Sterling?

12 A Sterling and Tyrobia Green and they both gave
13 pertinent information as well.

14 Q And did you with, I guess, all that information re-
15 interview the defendant?

16 A Yes, Sergeant Lindler on the morning of the 31st, him
17 and Investigator Jordan were re-interviewing the defendant
18 in Sergeant Isenhoward's office. Investigator Jordan had
19 to leave due to a family matter, so I stepped in and
20 assisted Sergeant Lindler.

21 Q At what point did you step in to interview?

22 A It was after the Advice of Rights but before he
23 confessed.

24 MS. WALKER - Beg the Court's indulgence.

25 THE COURT - Okay.

1 Q You said you were present for his confession?

2 A That's correct.

3 Q I want to show you what's been marked as State's
4 Exhibit 4 and ask you if you recognize this.

5 A That is the original statement taken from the
6 defendant that morning.

7 Q And this is your signature?

8 A That is correct. My signature is on all three pages
9 as well as Mr. Haltiwanger's and as well as Chris
10 Lindler's.

11 MS. WALKER - At this point, Your Honor, the State
12 seeks to admit Exhibit 4 into evidence.

13 MR. SAWYER - We'd just renew out objection.

14 THE COURT - Very well. Admitted over objection.

15 MS. WALKER - Thank you, Your Honor.

16 (WHEREUPON, ITEM MARKED AS STATE'S EXHIBITS
17 NUMBER 4.)

18 Q Chief Wilson, before I guess he actually gave that
19 statement, did you guys let him know of the additional
20 information that you had?

21 A We did. Sergeant Lindler was reading him excerpts of
22 all his brothers' statements as well as Zondra's statement
23 at that point. And as he got to Zondra's statement, he
24 said, that's enough, I'll tell you.

1 Q And y'all proceeded to take a written statement from
2 him?

3 A That's correct.

4 Q Chief, would you publish that statement to the jury?

5 A I will, and this is on one of our standard statement
6 forms. It's a statement of Gerald Bernard Haltiwanger,
7 Jr., 1810 Allen Benedict Court, C-7, Columbia, South
8 Carolina, and it's got 29210, which I don't think is the
9 right zip code. I think that's going to be the zip code of
10 the club. It says Columbia, South Carolina, this 31st day
11 of May -- I'm sorry -- of August, at 1030 hours in the
12 presence of Investigator Sergeant C. Lindler of the
13 Richland County Sheriff's Department. I, Gerald Bernard
14 Haltiwanger, Jr. understand that have the right to remain
15 silent. Anything I say can be used against me in Court. I
16 have the right to talk to a lawyer for advice before you
17 ask me any questions and have a lawyer with me during any
18 questioning. If I cannot afford a lawyer, one will be
19 appointed for me before any questioning if I wish. If I
20 decide to answer questions now without a lawyer present, I
21 still have the right to stop answering at any time. I also
22 have the right to stop answering at any time until I talk
23 to a lawyer, do make the following statement. And it's in
24 a question and a answer format with Sergeant Lindler and D.
25 Wilson which is myself asking the questions and Mr.

1 Haltiwanger giving the answers. The first question, is
2 there something you need to tell us that you didn't
3 Wednesday night; yes. I gave the security guard my
4 brother's ID. When I gave the man the ID, he looked at it
5 and said it wasn't me. He said that I needed to get out of
6 his face and that wasn't even my ID. I turned away and I
7 was talking junk. I was saying, fuck you, to the guard.
8 He started following me as I was walking to my car and then
9 he was like, put your hands on the car. Then I said, no.
10 I was about to leave. Then he pulled his gun out, and I
11 put my hands in the air and I turned my back to him. He
12 pulled the pepper spray out, and I saw him shaking the
13 spray, then he sprayed me in the head. The spray hit me in
14 the back of the head, then my brother, Trouble, came up and
15 hit the man in the head. He and I both ended up in the gas
16 station parking lot. This is when Trouble fell down. From
17 there we ran to our cars. Tyrobia had pulled my car up and
18 I ran and made him get out, and me and Terrell jumped in.
19 Tyrobia got in the car with Trouble. We left out of the
20 parking lot and I started shooting. No one else shot. I
21 even shot the door handle off the car. Question, where did
22 you go after that? I went to the XO Club with my brothers
23 and we stayed there for a minute. Who -- who is Trouble?
24 My little brother; his name is Jonathan Sterling. Did you
25 tell Zondra what happened? Yes, sir. How did you get your

1 brother's ID? We went to a party with him; he showed me
2 his two IDs. I crept (sic) one from him; I don't even know
3 if he remembers it or not; he was drunk. Then the
4 altercation broke out between me and Terrell and we came
5 back to Columbia after that. Where does Carlos live? Rock
6 Hill. What car did you drive to Rock Hill? The black Ltd.
7 What did you do with the car after Sunday -- Saturday
8 night? Tyrobia and Trouble took it to the country.
9 Question, did you wipe the car down? Yes, I wiped down --
10 everything down. I wiped it down with gas? What did you
11 do with the gun? I sold it to a guy from New York. I knew
12 he was from New York, because I met him in the store. He
13 had an accent. I sold it to him for three hundred dollars.
14 What kind of gun was it? It was a .40 caliber. It had P80
15 on the side and it was black and smaller than the Glock
16 that you have. How many shots did you fire? I don't even
17 remember. What did you do with the shell casings in the
18 car? I threw them in the river. Did Zondra help you in
19 any way? No. The only thing she knows is what I told her.
20 Did you see yourself on the news? Yes, I saw the video
21 from the gas station. I broke down crying; I didn't mean
22 to do it. Question, is there anything else you need to
23 tell us? I'm sorry for what happened; I was drunk and I
24 acted like an asshole. I'm sorry. And on the statement
25 form, it says, I've made this foregoing statement freely

1 and voluntarily without fear, threat, promise of reward or
2 hope of reward of any kind. It's got ---

3 Q Did he sign -- I'm sorry.

4 A It's got my signature and his signature. I signed it
5 as a witness and the next line says, this is to certify
6 I've read or have read to me the foregoing statement
7 consisting of three pages and a true copy has been given to
8 me on the 31st of August, 2012. Again, it's signed by the
9 defendant and it's notarized by Chris Lindler on all three
10 pages.

11 Q Were the defendant's three brothers -- you said they
12 were all charged?

13 A Yes.

14 Q With what charge?

15 A I believe they were all charged with the same charge
16 of accessory after the fact of murder.

17 Q I want to back up to one more thing. With Zondra
18 Gilyard, did you guys do a search at her house?

19 A We did.

20 Q And I want to show you what's been marked as State's
21 Exhibit 85 and ask you if you recognize this?

22 A I do. This is Consent to Search that I executed. I
23 wrote it out at the time of the defendant's arrest. It has
24 the date of August 29th, 2012, location, C-7 Allen Benedict,
25 I Zondra Gilyard, do hereby consent to the search of my

1 premises and automobile without a search warrant by Wilson
2 and RCSD investigators with the Richland County Sheriff's
3 Department. These investigators are authorized by me to
4 take from my premises and/or automobile letters, papers,
5 materials or other property that they may desire.
6 Description of property to be searched, one .40 caliber gun
7 and clothing. I'm aware of any evidence obtained as a
8 result of the search can be used against me in a Court of
9 law. This written permission is being given by me to the
10 above-named investigators freely, voluntarily and without
11 threats or promises of any kind. It's signed by me and
12 Zondra Gilyard.

13 MS. WALKER - Your Honor, at this point we seek to
14 admit State's Exhibit 85 into evidence.

15 MR. SAWYER - Without objection.

16 THE COURT - Very well.

17 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
18 STATE'S EXHIBIT 85.)

19 MS. WALKER - Beg the Court's indulgence.

20 THE COURT - All right.

21 Q Sir, the man that told you he shot because he was
22 drunk and acting like an asshole, do you see him in the
23 courtroom?

24 A Yes.

25 Q Could you point him out for the jury?

1 A It's the gentleman in the white shirt and the gray tie
2 sitting at defense table.

3 MS. WALKER - Your Honor, may the record reflect
4 he's identified the defendant?

5 THE COURT - Yes.

6 MS. WALKER - Thank you, Your Honor. I don't have
7 any further questions.

8 THE COURT - Cross examination?

9 MS. SAWYER - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes.

12 CROSS EXAMINATION

13 BY MR. SAWYER -

14 Q Chief Wilson?

15 A Yes.

16 Q You said you've been working at Richland County for 30
17 years or as an officer for 30 years?

18 A I've been an officer for over 35 years; I've been with
19 Richland County for over 30.

20 Q And you're head of all the investigations at Richland
21 County?

22 A That's correct.

23 Q So Mr. Lindler and Mr. Jordan's boss basically?

24 A Yes.

1 Q And I guess just kind of looking through what your
2 investigation entailed, I guess at this point most of what
3 you do is sort at the office and just sort of help
4 coordinate an investigation. Is that correct?

5 A Pretty much. I mean there's a lot of things that I
6 end up doing throughout the day.

7 Q I just need you to speak for her so she can take it
8 down. All right, so basically the two real main pertinent
9 -- I mean you talked to a bunch a different people, but you
10 interviewed I think a Lamar Ray at one point. Is that
11 right?

12 A I did.

13 Q And you didn't actually engage in his interview. That
14 was an Investigator Mauldin. Right?

15 A That's correct.

16 Q Okay. Do you have your investigative report in front
17 of you?

18 A I do.

19 Q I think on page two about halfway down you actually
20 went and showed him a photo line-up?

21 A That's correct.

22 Q And that's where we had -- saw earlier -- that was the
23 photo line-up that he picked Bernard out of. Correct?

24 A That is correct.

1 Q Did he describe what he thought Bernard was wearing
2 that day?

3 A Said a red shirt.

4 Q And he never mentioned to you that day that he had
5 seen the shooting take place.

6 A No, he did not.

7 Q Now, you -- you didn't speak with Bernard the first
8 time around when they took his first one. Correct?

9 A No.

10 Q Were you present during that interview?

11 A No.

12 Q You were just present, I guess, you said you were
13 waiting with him for about an hour for him to be picked up
14 and taken to the jail?

15 A I had come back from dropping Terrell Vaughn off and
16 Sergeant Lindler and Investigator Jordan needed to go out
17 and interview another witness. So I stepped in and sat
18 with him in the office and talked to him about the case
19 waiting on the transport.

20 Q Did you make any notations or record in any way that
21 conversation?

22 A Only what I have in my notes.

23 Q But you didn't really report down the hours worth --
24 the substance of what you talked about that day. Correct?

25 A No, it wasn't a whole lot of substance.

1 Q And then you came in a second time around when
2 Investigator Jordan had to leave, and you sat in on the
3 interview with Bernard?

4 A That's correct.

5 Q And you talked with him for a while to show him all
6 the evidence you said. Correct?

7 A Actually Sergeant Lindler did most of the talking. I
8 was pretty much there as a witness.

9 Q And then once he agreed to talk with you, you advised
10 him of his rights?

11 A He'd already been advised of his rights prior to me
12 entering the room.

13 Q All right. And that was at 10:00 o'clock a.m.

14 A Approximately, yes.

15 Q And then when you actually produced his statement,
16 that was at 10:30?

17 A I don't have it in front of me; that sounds right.

18 Q Refresh your recollection what you're just looking at?

19 A Yes, statement began at 10:30.

20 Q What do you mean by it began? That's when you started
21 taking or that's when you started writing it?

22 A That's when started writing it.

23 Q While you were writing it, you were still continuing
24 to speak with him about the case.

25 A That's correct.

1 Q And so it look longer than 10:30 before you're finally
2 done.

3 A Certainly. And Chris Lindler was actually typing it,
4 not myself.

5 Q Okay. Would you say it took another half an hour or
6 so?

7 A I don't recall. May have been as much as an hour,
8 hour and a half. I don't know.

9 Q About an hour to hour and a half you said?

10 A Possibly.

11 Q Would you -- rather than have you read it again, would
12 you believe me that what you read took you three minutes to
13 read?

14 A True.

15 Q So you basically -- there's a hour and a half worth of
16 interviews -- hour, hour and a half, and all that was
17 recorded was essentially three minutes worth of a
18 conversation.

19 A Well, it's -- you can read a lot quicker than you can
20 type and write down stuff.

21 Q Now, was Bernard given an opportunity to write his own
22 statement in his own words?

23 A No.

24 Q Bernard wasn't given an opportunity to use the
25 computer to write his own statements and words?

1 A No.

2 Q And do y'all audio or video record at Richland County?

3 A No.

4 Q Why is that?

5 A Number of reasons. The predominant reason is that the
6 process that we use with our forms, our Advice of Rights
7 and everything have stood the test of time for the last 35
8 years that I've been around. It has been accepted in every
9 Court that we've ever gone into, both State and Federal,
10 without problems. In addition, we have looked at various
11 technologies throughout the years and have not found one
12 reliable enough to service what we do. We take statements
13 and we take -- my investigators take thousands of
14 statements every month. We take statements in people's
15 homes, in their offices, in cars, in our offices, so it's
16 just not practical to carry around equipment like that.

17 Q Y'all don't have cell phones with video cameras?

18 A We do have cell phones.

19 Q And that would be able to take an audio and video
20 recording. Right?

21 A To some point, yes. I'm not sure they could do it for
22 two or three hours at a time that we do. I have spent as
23 much as six hours with a victim taking statements, so I
24 don't know.

1 Q You've seen that there's video cameras out there that
2 can go -- record for much longer.

3 A Yes. There's also computers.

4 Q Computers -- that -- right. Computers can take
5 lengthy video and audio recordings. Right?

6 A Not that long.

7 Q You also -- don't you have a strict policy against
8 doing that as well at your precinct?

9 A We do. We don't allow it.

10 Q So your policy is you don't allow it?

11 A No. If you do it for one, we need to do it for all.

12 Q Now, you use other technology over the years. Right?
13 Started using DNA technology ---

14 A Absolutely.

15 Q But at this point in Richland County audio and video
16 is not proven enough technology for y'all?

17 A We have not found a system, and we have experimented
18 with many, many different systems that is reliable enough.

19 Q Well, the jail recorded those phone calls. Right?

20 A That's correct.

21 Q Wouldn't you consider that reliable?

22 A For the most part. It goes down from time to time.

23 MR. SAWYER - Beg the Court's indulgence briefly.

24 Nothing further.

25 THE COURT - Re-direct?

1 RE-DIRECT EXAMINATION

2 BY MS. WALKER -

3 Q Chief, once a defendant has given a statement, are
4 they allowed to read back over the statement?

5 A Absolutely, and that's one of the unique things.
6 They're allowed to read the statement and many, many times
7 we end up changing that statement because they read
8 something in that statement that they don't like, even
9 though that it is in their words as they're dictating it.
10 So we have many, many times -- not in this case, but in
11 many times we go back and change that statement to suit
12 them before they sign it, because it is what is going to
13 end up in Court.

14 Q Was Gerald Haltiwanger given the opportunity to read
15 over his statement?

16 A Not only was he given the opportunity, it was read
17 back to him by Sergeant Lindler.

18 Q And at that point in time he stood by that statement.

19 A That is correct.

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

22 THE COURT - Re-cross?

23 MR. SAWYER - No, Your Honor.

24 THE COURT - Is this witness free to leave?

25 MS. WALKER - Yes, Your Honor.

1 THE COURT - Very well. Okay. Call your next
2 witness, please.

3 MS. CAMPBELL - State will call Investigator
4 Bouknight. Your Honor, he's outside.

5 THE COURT - Okay.

6 HAROLD BOUKNIGHT, AFTER BEING FIRST DULY SWORN,
7 TESTIFIES AS FOLLOWS -

8 DEPUTY CLERK - Thank you. Please have a seat in
9 the witness stand and state your full name for the record
10 and spell your last name.

11 MR. BOUKNIGHT - Investigator Harold Bouknight, B-
12 o-u-k-n-i-g-h-t.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL -

15 Q Investigator Bouknight, where are you employed?

16 A Richland County Sheriff's Department, crime scene
17 unit.

18 Q And as part of the crime scene unit, what do your
19 duties include?

20 A I respond to and process crime scenes. I process
21 vehicles from crime scenes, evidence collected from crime
22 scenes and supervise other crime scene investigators and
23 help them in the documentation, collection processing and
24 identification of evidence.

1 Q And can you tell this jury a little bit about your
2 education and training in crime scene investigation?

3 A Yes, ma'am. I have a two-year degree in criminal
4 justice from Midland's Technical College. I've been in law
5 enforcement for -- in January will be 17 years and been
6 with the crime scene unit for almost eight and a half
7 years. During that time I've completed our internal
8 training program which took about 18 months which consisted
9 of written and proficiency test in different areas of crime
10 scene investigation to include latent fingerprint
11 processing and collection, shooting incident
12 reconstruction, footwear, tire wear evidence, blood stain
13 pattern analysis and latent print comparisons. I've also
14 attended training classes and a 40 hour class in blood
15 stain analysis in crime scene reconstruction. I have 40
16 hour class in shooting incident reconstruction and also 24
17 hour class in crime scene reconstruction.

18 Q Have you been qualified before as an expert in the
19 field of crime scene investigation?

20 A Yes, ma'am.

21 MS. CAMPBELL - Your Honor, at this time we'd
22 offer him as an expert in crime scene investigation.

23 MR. SHARPE - No objection, Your Honor.

24 THE COURT - Very well.

1 Q So when did you first become involved in this
2 investigation?

3 A I became involved on the 31st of August.

4 Q Of last year?

5 A Yes, ma'am, 2012, I'm sorry.

6 Q And how did you become involved?

7 A I was notified by Sergeant Richards that there was a
8 vehicle in our garage that was secured in there, and I was
9 asked to execute a search warrant on the vehicle to search
10 for any evidence, gunshot residue or projectiles or
11 ammunition.

12 Q And again, where was the vehicle located when you
13 actually came in contact with it?

14 A We have a garage at our headquarters on Two Notch Road
15 that we can place vehicles in for processing where they're
16 out of the elements, out of the weather where we can get in
17 and do what we need to and they're secured, and the only
18 people that have access to it are people with keys to our
19 garage which are crime scene investigators and firearms
20 investigators.

21 Q So prior to your involvement, had the car actually
22 been towed to your headquarters to this garage you just
23 mentioned?

24 A Yes, ma'am, it had been towed in.

1 Q And prior to you doing any kind of search of the car,
2 was there a lawful search warrant in place?

3 A Yes, ma'am.

4 Q What time of day was it when you actually initiated
5 your search?

6 A 10:30 in the morning.

7 Q 10:30 in the morning?

8 A Yes, ma'am.

9 Q And again this was on the 31st of August?

10 A Yes, ma'am.

11 Q And what car were you actually searching that day?

12 A It was a 1980 Ford LTD black in color.

13 Q 1980 ---

14 A Yes, ma'am.

15 Q --- Ford LTD.

16 A Yes, ma'am.

17 Q And, again, what color is that car?

18 A Black.

19 Q And since this was your first involvement in the case,
20 what kind of evidence were you looking for inside that car?

21 A I had talked to Sergeant Lindler and we were looking
22 for basically evidence involving firearms, ammunition,
23 fired cartridge casings, gunshot residue, projectiles,
24 impact points, things like that.

1 Q Tell the jury, what, if anything, you observed when
2 you searched this car?

3 A Whenever I searched, the most revealing thing I saw
4 there was what appeared to be -- it was an impact point on
5 the passenger door. Calling it an impact point -- I can't
6 say that it was caused by a projectile, because none was
7 collected, but it entered from the passenger side interior
8 and exited out of the passenger side exterior, perforated
9 the door. Where the door handle would be is where it
10 exited, and I -- there I inserted a trajectory rod which we
11 can use to establish or show a possible projectile path.
12 And this one it was outward like I said and at a downward
13 angle.

14 Q When you say outward, would that be consistent with
15 having been fired from the interior of the car?

16 A Yes, ma'am.

17 Q And the bullet would've traveled from the interior of
18 the door to the outside.

19 MS. SHARPE - Objection, Your Honor, leading.

20 MS. CAMPBELL - I'll rephrase, Your Honor.

21 THE COURT - Very well.

22 Q How would the bullet have traveled?

23 A As I said before, the trajectory of the possible
24 projectile was from inside and hit the interior panel of
25 the door and exited out near the -- where the door handle -

1 - passenger door handle would've been. It was -- the
2 passenger door handle was missing, the exterior door
3 handle.

4 Q The -- which door handle was missing?

5 A Exterior door handle.

6 Q On the passenger's side?

7 A Yes, ma'am.

8 Q Did you take some photographs that day?

9 A Yes, ma'am, I did.

10 Q And memorialized what you found?

11 A Yes, ma'am.

12 Q And I want to show you what's been marked as State's
13 Exhibit 35 through 44 and first ask if you recognize those?

14 BAILIFF - Your Honor, we need a break.

15 THE COURT - Need a break? Not a problem. Not a
16 problem at all. Now, that we've had a break in the answer
17 we'll do that. We've got a juror that needs a break, so we
18 will take that now. If you can just start back where you
19 were maybe or a little bit before. Okay?

20 MS. CAMPBELL - Yes, ma'am.

21 THE COURT - Ladies and gentlemen, do not discuss
22 this matter or allow anyone to discuss it with you. We
23 will take about ten minutes. Very well.

24 (Jury exits the courtroom)

25 (Recess taken)

1 THE COURT - All right. Jury's coming in.

2 (Jury returns to the courtroom)

3 BAILIFF - Jury panel present, Judge.

4 THE COURT - Thank you. All right, yes, ma'am,
5 you may continue. Thank you. Yes. And I tell you, I know
6 there was a bit of a distraction, why don't we go back a
7 couple of question just to pick up.

8 MS. CAMPBELL - Trying to ---

9 THE COURT - Where was I?

10 Q Investigator Bouknight, you mentioned earlier that
11 there was what you referred to I believe as an impact point
12 in this car?

13 A Yes, ma'am, there was a -- what I determined to be an
14 entry impact point on the interior panel of the passenger
15 side door and it exited out of the passenger side door
16 where the door handle would be. That door handle was
17 missing. And I put a trajectory rod in there and it showed
18 that the trajectory was, like I said, out to in in a
19 downward angle and slightly front to back.

20 Q And at that point did you memorialize your findings as
21 far as this car is concerned?

22 A Yes, ma'am, I took photographs of the vehicle and the
23 impact point and with and without a scale and the
24 trajectory rod.

1 Q And before the break I handed you a series of
2 photographs I believe as 36 through 44?

3 A 35 through 44.

4 Q 35 through 44. Thank you, sir. Do you recognize
5 those photographs?

6 A Yes, ma'am.

7 Q And do those fairly and accurately depict your
8 findings that day?

9 A Yes, ma'am, they do.

10 MS. CAMPBELL - Your Honor, at this time we'd
11 offer State's Exhibits 35 through 44 into evidence.

12 THE COURT - Have you seen them?

13 MS. CAMPBELL - They've been provided in discovery
14 and there was no objection.

15 THE COURT - All right, yes.

16 MR. SHARPE - No objection, Your Honor.

17 MS. CAMPBELL - Thank you.

18 THE COURT - Very well.

19 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
20 EXHIBIT NUMBER 35 THROUGH 44.)

21 MS. CAMPBELL - Your Honor, may the witness step
22 down?

23 THE COURT - Yes.

24 Q I want to show you what's been marked as State's
25 Exhibit Number 35. What does that show?

1 A That's the driver's side of the ---

2 COURT REPORTER - He's going to need to speak up
3 and maybe stand over there so his back won't be to me.

4 Q If you can stand over here.

5 A It's the driver's side of the Ford LTD.

6 Q You mentioned earlier in your testimony that you
7 noticed an impact point to the passenger's side door I
8 believe?

9 A Yes, ma'am.

10 Q And I show you State's Exhibit Number 39 and 40 first.

11 A Yes, ma'am.

12 Q Do you recognize those?

13 A Yes, ma'am, these are the impact points -- or the
14 impact point in the passenger side door.

15 Q I show you State's Exhibit Number 38. What does that
16 show?

17 A That's the same impact point over the scaled marker.

18 Q And the marker just does what?

19 A Whenever we have something that we may want to look at
20 later and be able to tell a size of something, we have a
21 scaled marker and that way we can calibrate the photograph
22 and know that it's an actual size, so whenever we measure
23 in that photograph we get an accurate ---

1 Q You also mentioned the trajectory and a trajectory
2 rod. I show you State's Exhibits 36 and 37. Do you
3 recognize those?

4 A Yes, ma'am, that's ---

5 Q What does that show?

6 A --- the trajectory rod inserted into the perforated
7 impact points.

8 Q Once you have used the trajectory rods, did you do
9 anything to try to recover any possible items?

10 A I removed some pieces of the panel to look to see if
11 there were any fragments or a jacket from the projectile
12 that may have fallen inside the vehicle, and I did not
13 locate any.

14 Q Part of that -- on State's Exhibit 43, what does that
15 show?

16 A Looking at the trajectory rod that's from the
17 passenger side -- or the photograph was taken from the
18 driver's side looking at the passenger's side.

19 Q I want to show you State's Exhibit Numbers 41 and 42.
20 What does that show?

21 A That's the impact point, the exit on the passenger's
22 side door where the door handle would've been.

23 Q And where should the door handle have been on this
24 photograph?

25 A It should be connected right here on this mechanism.

1 Q And again is this the interior or the exterior of the
2 passenger door?

3 A It's the exterior.

4 Q Again, State's Exhibit 44. This has the one?

5 A Yes, ma'am, that's the same photograph, just with a
6 scaled marker.

7 Q Thank you, sir. Take a seat.

8 A (Witness complies)

9 Q In searching the car, were you able to locate any
10 shell casings?

11 A No, ma'am.

12 Q Did you also look for any possible projectiles?

13 A I did look and none were located.

14 Q What, if anything, did you do to the door after noting
15 the trajectory angle with the rod in searching for
16 projectiles?

17 A I removed a portion of the interior passenger door
18 panel.

19 Q And were you able to find anything in there?

20 A No, ma'am.

21 Q No projectiles.

22 A No projectiles and no fragments.

23 Q What, if any, other testing did you do on the car that
24 day?

1 A I collected a GSR kit first. We use -- we purchase
2 the kits pre-made and labeled from Tri-Tech Forensics, and
3 they had adhesive tabs on them and you dab them in the
4 suspected area and then they're sent to SLED for analysis.

5 Q And were those the ones you normally used?

6 A The ones that I -- after looking at them later, I
7 noticed that they were silver, and normally ours have a
8 black backing or black adhesive on it, and these did not.
9 There was one that had some black film on it, but they
10 didn't typically look like the ones we normally use, and if
11 the black adhesive had come off then they were defective,
12 something in the manufacturing process.

13 Q In this case -- you're familiar with some combustible
14 items such as gasoline?

15 A Yes, ma'am, I'm familiar.

16 Q And the sticky part on the tab, could that have been
17 affected if it had come in contact with gasoline?

18 A I don't know the composition of it, but I would say it
19 could be.

20 Q And is that the extent of your involvement in this
21 case?

22 A Yes, ma'am.

23 MS. CAMPBELL - Thank you. That's all I have.

24 THE COURT - Cross examination?

1 THE COURT - All right, call your next witness,
2 please.

3 MS. CAMPBELL - The State would call Sergeant
4 Lindler.

5 CHRIS LINDLER, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS -

7 DEPUTY CLERK - Thank you. Please have a seat in
8 the witness stand and state your full name for the record
9 and please spell your last name.

10 MR. LINDLER - Chris Lindler, L-i-n-d-l-e-r.

11 THE COURT - Your witness.

12 MS. CAMPBELL - Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL -

15 Q Sergeant Lindler, where are you employed?

16 A I'm employed with the Richland County Sheriff's
17 Department.

18 Q What are your duties there include?

19 A I'm the major crime sergeant. We -- I supervise about
20 six other investigators and handle all of the major crimes
21 in the county which include criminal domestic violence, any
22 shootings and stabbings that we may have and any homicides
23 that may come up.

24 Q How did you become involved in the investigation of
25 this case?

1 A I was on call the night of the 25th of August of 2012.

2 Q And when you say you were on call, explain that to the
3 jury.

4 A Once every seven weeks each sergeant takes a week of
5 call starting Thursday night at midnight and we follow that
6 through to the following Thursday night at midnight and I
7 have roughly five to six investigators at my disposal when
8 we're on call, so we can respond to anything that happens
9 after hours at the sheriff's department.

10 Q You respond to anything that happens?

11 A Pretty much what we're called for. Usually the road
12 will call us on more serious things, such as armed
13 robberies, of course, shootings and homicides.

14 Q I want to turn your attention to the early morning
15 hours of the 26th. Did you get notified that morning?

16 A I did, around 1:30.

17 Q And who notified you?

18 A The desk sergeant, which is pretty typical. If we
19 have a serious call to go out, he's going to call me first
20 and we're going to go from there.

21 Q Once you had gotten information from the desk
22 sergeant, what, if anything, did you do?

23 A I responded to the El Toro Grill & Bar on St. Andrews
24 Road, contacted Investigator Josh Mauldin in route. He and
25 I met over there about -- roughly about 2:10 that morning.

1 Q Around 2:10 that morning?

2 A Yes, ma'am.

3 Q Once you got to the restaurant that morning, what, if
4 anything, happened?

5 A Whenever I got over to the restaurant that morning, I
6 met with Yvonne Woods, and of course the responding
7 deputies, which I believe was Deputy Brunson. Yvonne Woods
8 would hand me an ID that belonged to a Carlos Brown.

9 Q I show you State's Exhibit Number 56 and first ask, do
10 you recognize that?

11 A I do.

12 Q Was that significant in this investigation?

13 A It was. It was an ID that was presented at the
14 doorway whenever the individuals were turned away from the
15 club.

16 Q And where had that ID been recovered from?

17 A It had been recovered from the security officer.

18 Q Security officer that was shot?

19 A Yes, ma'am.

20 Q Had any other items been recovered from the security
21 officer prior to him being taken by ambulance from the
22 scene?

23 A His vest, which included all of his tools, his
24 flashlight and his handcuffs, his taser and his service
25 weapon or his gun that he carried with him while he was ---

1 Q Where was his gun recovered from?

2 A It was recovered from the holster on this vest.

3 Q There at the scene who did you first make contact with
4 as far as possible witnesses?

5 A First made contact with Roberto Cordoba who was an
6 employee of the club that night. Roberto did not speak any
7 English, so we had to talk to him through an interpreter.

8 Q Let me back up. While you were there, did you learn
9 the identity of the victim in the case?

10 A We did. We learned the victim was a Jimmy Moti.

11 Q And when you're going to a scene such as this, be it a
12 restaurant, a bar, gas station or whatever, are you looking
13 for any type of evidence that may help you as far as what
14 may be recorded as what happened?

15 A Correct. When you go to a restaurant or a club or a
16 bar or any business, the first thing we look for is cameras
17 maybe on the outside of the business as well as the inside,
18 and when we got there that night after I made contact with
19 Investigator Woods from CSI and the initial responding
20 deputy, I took note of the cameras, and there were several
21 cameras on the outside as well as the inside of the El Toro
22 Club. Made contact inside the club with a Juan Macias who
23 was a manager or owner of the club at the time. I think he
24 was a club manager. They had some video, however, the
25 cameras at the front door entrance, as well as the one on

1 the inside facing the front door that the patrons enter
2 were not working. They were inoperable.

3 Q Did you learn of any other video that might become or
4 did become useful in this case?

5 A We did. The deputies that were on scene had stated
6 that the subjects or the suspects there that night may have
7 ended up over in the Gazbah parking lot. The Gazbah
8 typically has pretty good video and we went over there to
9 check, and they have multiple cameras from the inside of
10 the business as well as the outside.

11 Q That night did y'all make any arrangements in order to
12 retrieve some video from there?

13 A We did. I met with the -- I talked with the gentleman
14 behind the counter that night, and his name escapes me at
15 this point, and then we made -- he would make contact with
16 the manager of the store -- I believe his name was Bill --
17 who would agree to meet us the next morning and go through
18 the video with us at the times in question.

19 Q That evening, I believe you've already testified, you
20 made a contact with a Mr. Cordoba, Roberto Cordoba?

21 Correct?

22 A We did.

23 Q And you mentioned something about an interpreter?

24 A Right. He -- Roberto was unable to speak any English,
25 and what little bit he could speak was very broken to where

1 I couldn't understand him and where Investigator Mauldin
2 couldn't understand him, so we -- through an interpreter we
3 got him back to the sheriff's department and sat him down
4 with Investigator Mauldin and Investigator Salguero who was
5 employed by us who speaks Spanish.

6 Q And at that point -- you can't say what he said to
7 you, but was he able to give you at least some information?

8 A He was able to give us a description, yes, of some
9 things he saw that night.

10 Q That evening did you think it was prudent to go back
11 to the Gazbah?

12 A We did.

13 Q And what did you do when you got there?

14 A We went back to the Gazbah and re-looked at the video
15 again that night and notated some times down on the -- and
16 which cameras the times -- those times came from and also
17 watched as much of that video as we could when we went back
18 out there.

19 Q Later that morning did you return to headquarters?

20 A We did.

21 Q And what were you trying to do at that point?

22 A We wanted to try and make contact with Carlos Brown.

23 He's the individual that was on the ID that was given to

24 Jimmy that night at the club whenever the individuals were

25 trying to get in. We wanted to make contact with him, find

1 out if he knew -- (a) if he knew where his ID was, and (b)
2 if he still had it with him or knew what happened to it.

3 Q Who did you make contact with here locally?

4 A We made contact with his mother, went over by her
5 house; we located a possible address for him through
6 members ---

7 Q What city was that in?

8 A Here in -- it was here in Columbia, South Carolina; it
9 was off of Rocky Mount Road, off of Crane Church Road.

10 Q Yes. Once you made contact with his mother -- you
11 can't say what she said to you -- but then -- did you then
12 pursue him in another city?

13 A We did. We called -- found his number through various
14 database searches and were able to locate a possible number
15 for him and called him and actually spoke with him on the
16 telephone. I was in Chief Wilson's office when we spoke
17 with him on the telephone.

18 Q And what was his address?

19 A It was 218 Roddey Drive, and that's in Rock Hill,
20 South Carolina.

21 Q And you can't say what he said to you, but was he able
22 to give you information about his ID?

23 A Not much.

24 Q That day did you go back out to the Gazbah?

25 A We did.

1 Q And did you take anyone with you at that point?

2 A I did. I went back out there with Lieutenant Mike
3 Poole who's over our technical services division. He pulls
4 most of our video for us. Went back out there with Mike to
5 show him exactly which one of the video cameras we needed
6 and the ones I wanted him to pull the video from, and those
7 cameras were camera 25 which is a long shot on the side of
8 the building. The camera sits at the back of the Gazbah
9 and it shoots toward the front of the store. Camera 23,
10 which would be a camera that's located at the front of the
11 store where you can see the gas pumps out in front of the
12 camera, and then the other camera was a camera that's
13 located inside the store that's over -- kind of over the
14 gas register so you can see the patrons of the stores if
15 you will when they come up to pay for whatever they buy,
16 and then also shows the front door of the store.

17 Q I show you what's been marked as State's Exhibit
18 Number 78. Have you had an opportunity to review this
19 video?

20 A I have, many times.

21 Q And does that reflect some of the video at least that
22 was pulled that day ---

23 A It does.

24 Q --- that's relevant to this case?

25 A It is.

1 MS. CAMPBELL - Your Honor, at this time we'd
2 offer State's Exhibit 78 into evidence.

3 MR. SAWYER - No objection.

4 THE COURT - Very well. No objection.

5 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
6 EXHIBIT NUMBER 78.)

7 MS. CAMPBELL - Your Honor, permission to publish
8 the video to the jury.

9 THE COURT - Very well.

10 MS. CAMPBELL - Just a second to set up. (Pause)
11 Your Honor, may the witness step down and I'll put him on
12 this side so hopefully -- and make him talk really loud.

13 THE COURT - Sounds great.

14 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY.)

15 MS. CAMPBELL - Your Honor, would it be possible
16 to dim the lights for purposes ---

17 THE COURT - Absolutely. Especially if I knew
18 where ---

19 MS. CAMPBELL - Right behind you.

20 THE COURT - I get to do it. Oh, this is
21 exciting. Okay. It says off.

22 MS. CAMPBELL - There we do.

23 THE COURT - Is that good?

24 MS. CAMPBELL - That's perfect. Thank you.

25 Q What's this showing?

1 A This is the long side of the building right here.

2 Q And what car is that that's significant in that?

3 A This is a white SUV. This belongs to Kevin Lee, Kevin

4 ---

5 MR. SAWYER - Objection, Your Honor.

6 THE COURT - Yes?

7 MR. SAWYER - May we approach?

8 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
9 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
10 WHICH WAS NOT REPORTED.)

11 Q Investigator Lindler, let me back up before we go any
12 further. Based on your investigation, were you able to
13 determine who different people are in this video?

14 A Yes.

15 Q Specifically who the people were in the car?

16 A Yes.

17 Q As well as some who come across the parking lot.

18 A Yes.

19 Q Okay.

20 MS. CAMPBELL - Thank you, Your Honor.

21 Q Okay, you can go ahead now.

22 A All right. Again, this is the white car here in
23 question Mr. Lee gets out of, goes inside the store. These
24 are going to be some of the individuals from the
25 altercation here at the club.

1 MS. CAMPBELL - Can we stop this and start it over
2 since we've talking about it? Thank you.

3 Q What's that opening there?

4 A That would be door open of Kevin Lee's vehicle, the
5 white SUV. And you see the individuals pull over from the
6 club parking lot. The club's right back over here. You
7 can't see it on this video, but it's right up here in the
8 corner.

9 Q Who is that?

10 A That would be Mr. Kevin Lee. He gets out of the
11 vehicle, obviously looks over at these guys and then goes
12 inside the store. (Pause) As you can see these guys are
13 still up here on the corner of the property.

14 Q Are you able to see the victim in this case in this
15 video?

16 A You are not. (Pause) All right, at this point you
17 see an individual come walking over to the white vehicle.
18 He's going to walk over to the door of the vehicle here.

19 Q What's his description?

20 A Be a tall slender black male; he's got on a light --
21 looks like a white or a light blue shirt. And he's going
22 to be speaking to the occupants who are inside of that
23 vehicle, still inside of that vehicle, the occupants still
24 inside of that vehicle. And you can see them on a
25 different camera angle -- are going to be Marquita Mobley

1 and Kristina Nuttry, the two girls that have already
2 testified. And you can see he's carrying on a conversation
3 with them; he's talking to them; he's motioning -- hand-
4 gesturing, he's got his hat off; he's wiping his head. He
5 goes back across at this time to the parking lot of the El
6 Toro.

7 Q At any point in this video do you see the victim?

8 A At no point in any -- this video or any of the other
9 videos do you see the victim. (Pause) And as you can see,
10 several minutes pass from the time they are -- he's ejected
11 from the parking until he goes back over and gets in the
12 parking lot.

13 Q Do you know who the person crossing the parking lot is
14 now?

15 A Have no idea. This would be Mr. Lee coming back out
16 of the store with the items that he purchased, two beers.
17 He waves at the buys, I believe, there before they get
18 ready to leave and head out.

19 Q And the person that approached the car and had a
20 conversation with the girls, is he still there in the
21 parking lot?

22 A He is; he's right here. He never left the parking
23 lot.

24 Q Is the time reflected on the bottom of this?

25 A It is.

1 Q And what time is it right now?

2 A 2343 and 34 seconds, which in layman's terms, that's
3 11:43 p.m. The time down here is done in military time.

4 Q You see right there.

5 A This is still our same guy and here's another
6 individual in a red -- red shirt.

7 Q Where they going now?

8 A Based on the witness statements and in talking with
9 Ms. Mobley and Ms. Nuttry and Mr. Ray, they're heading back
10 to their cars at this point to get in their cars to leave
11 the parking lot of El Toro Club; their cars -- cars have
12 obviously been pulled up for them at this time, at some
13 point over here in the parking lot, somewhere in the
14 parking lot, they're getting ready to leave, as well as Mr.
15 Kevin Lee, along with Marquita Mobley and Ms. Nuttry still
16 in the white vehicle are leaving the gas station around the
17 same time.

18 Q And then as this continues, do you see them exit out
19 the front?

20 A You do.

21 Q In the white vehicle. That's Ms. Nuttry?

22 A Correct. You see this vehicle go out this exit right
23 here and make a left-hand turn.

24 Q And we're showing clips from these videos. A lot of
25 videos are on there too.

1 A Correct.

2 Q Okay. What time is it here?

3 A 2337 and 3 seconds and it's counting upwards, and that
4 -- again, that's 11:37 p.m.

5 Q And what do you see in this ---

6 A What you'll see in this video is at some point here,
7 Ms. Mobley will get out of the vehicle here on the front
8 passenger side and walk inside the store to tell Mr. Lee
9 whom she's riding with what she's heard the individual at
10 the door tell her and Ms. Nuttry.

11 Q And in this video are you able to see the person that
12 approached the car on the other side?

13 A You can't really see -- you can't see the person
14 approach the car on the other side, however you are able to
15 see one of the other individuals that is flushed out of the
16 El Toro parking lot come into the Gazbah parking lot and
17 fall down there by the gas pumps as he's trying to pull his
18 pants up. (Pause) Just a few more seconds here; you see
19 her get out of the car. (Pause) You see her moving around
20 in the car at this point. Right there. This will be Ms.
21 Mobley. She gets out of the car, exits and walks inside of
22 the business. And this will be after the individual has
23 approached the driver's side of the vehicle and has spoke
24 through the front driver's side window of the vehicle.
25 (Pause) You see Ms. Mobley come back and get in the

1 vehicle in approximately a minute, fifteen seconds after
2 she got out.

3 Q And then correspondingly would you have seen the
4 driver get in the other side?

5 A Correct, he would have. (Pause) And that's the end
6 of that video.

7 Q Of that clip.

8 A Of that clip.

9 Q There is a lot of video but it's the same. Right?

10 A Yes, it is. (Pause) All right, and this is the
11 inside of the store. Now, this video starts at 2332 and 45
12 seconds, or this clip does. And you won't see her come in
13 -- him nor her come in the store for several minutes.

14 (Pause) Right there. That's good. (Pause) The gentleman
15 in the green shirt that just walked in the door is the
16 gentleman that exited the vehicle on the first camera shot.
17 (Pause) This is Mr. Lee driving the white vehicle.

18 Q The white truck ---

19 A White SUV.

20 COURT REPORTER - Could y'all speak up? I'm
21 having trouble hearing you.

22 A This is Mr. Lee. He's the driver of the white vehicle
23 that we've seen on the first camera shot. And this is Ms.
24 Mobley. (Pause) She's coming in at this point to tell him
25 it's time to go because of what she's been told at the side

1 of the door over there about them getting ready to bust
2 some rounds. (Pause) And he exits the store at 2341 which
3 corresponds to the time on the other video -- that's all.

4 (WHEREUPON WITNESS RE-TAKES THE STAND.)

5 Q On a lot of those videos we saw, is the time
6 reflected?

7 A It is.

8 Q And in that -- in the time period when the person
9 approaches the car in the light blue shirt ---

10 A (Indicating yes) Yes, ma'am.

11 Q --- who was in the car first?

12 A The -- Marquita Mobley and Kristina Nuttry were in the
13 car.

14 Q And at some point when he's over there, who gets out
15 of the car?

16 A Marquita Mobley gets out of the front passenger seat.

17 Q And goes where?

18 A Inside the store.

19 Q And that's reflected on the times?

20 A It is.

21 Q And at this point you've got the video. Correct?

22 A We do have the video at this point.

23 Q And this is the first day of the investigation?

1 A This will be on Sunday. We pulled the video on Sunday
2 morning, which would've been approximately 10 to 12 hours
3 since we started the investigation. Yes, ma'am.

4 Q And at this point do you have anyone on the videos
5 identified?

6 A We do not have anybody identified. We pulled one
7 small clip off of those videos from the inside of the
8 store. We broke that video down kind of just like we broke
9 it down in here and put the video out to the news -- news
10 media in an effort to get some possible witnesses
11 identified, namely the gentleman in the lime-green shirt.

12 Q And when you say you put it out to media, explain that
13 to the jury.

14 A We ran that clip -- pulled that clip down and it's
15 given to our PIO officer which is Captain Chris Calvin or
16 Deputy Curtis Wilson and they would have taken that video
17 and they would have sent that video out to all the
18 respective news stations here in the Columbia area.

19 Q That same day did y'all make any attempts to interview
20 any of witnesses to what happened?

21 A We -- I don't know that we interviewed anybody else
22 that same day, that Sunday.

23 Q What about Lamar Ray?

24 A Investigator Mauldin and -- had Lamar come back in to
25 the sheriff's department that morning and Investigator

1 Mauldin took a statement from Mr. Ray that day. I was not
2 present for that statement.

3 Q And in this case when the shooting occurred, do you
4 know exactly how many people were out there in the El Toro
5 parking lot?

6 A There was a lot.

7 Q And do you know who, if any, saw anything that was
8 significant in this case?

9 A There were -- we don't know if anybody saw anything.
10 No witness names were given to us when we responded --
11 first initially responded out there that night. When I got
12 on the scene at 2:10 that morning, any possible witnesses
13 we had, other than the folks who worked there, were gone.

14 Q Is that unusual?

15 A That is not unusual. When you have a shooting and
16 shots are fired, especially at a heavily populated club or
17 gas station or wherever, people are going to scatter.
18 They're going to get out of there. They want to go. They
19 don't want to be around.

20 Q And before I get to the next day on August the 27th in
21 your investigation, at this point, do you have any suspects
22 in this case?

23 A We do not have any suspects in this case at this
24 point.

1 Q And have you even been able to identify anyone on the
2 video?

3 A We have not been able to identify anybody on the video
4 at this point.

5 Q The next morning on the 27th, was there a meeting?

6 A There was, 8:30 that morning we met in Chief Wilson's
7 office, myself and Tai Jordan, Chief Wilson and I believe
8 Linda Houck. I'm not sure who else was there. Linda is
9 one of our intel analyst and I believe Ms. Audra Linfert
10 was also in on that meeting. She's one of our intel
11 analyst.

12 Q And at that point was it determined who would actually
13 be working this case in addition to you?

14 A It would. Investigator Mauldin was pulled as the
15 secondary to the case; I would be the primary investigator
16 on it. We were short-handed at the time. We had other
17 investigators working other serious crimes, and
18 Investigator Tai Jordan was brought in to assist me that
19 morning.

20 Q That morning did you receive a phone call that
21 ultimately led you to some information that was important?

22 A We did. I received a phone call from Mr. Lee.

23 Q And based on your review of the video, was Mr. Lee out
24 there when the conversation was had with the person that
25 approached the vehicle.

1 A He was not ---

2 MR. SAWYER - Objection, Your Honor, leading.

3 THE COURT - Don't lead.

4 MS. CAMPBELL - Thank you.

5 Q Based on your review of the video, what were you able
6 to observe about Mr. Lee and where he was?

7 A Mr. Lee had gotten out of the vehicle and was inside
8 of the store before the individuals that spilled over from
9 the El Toro parking lot came up to the side of the vehicle
10 to start talking to the occupants that were still in the
11 vehicle.

12 Q That day did y'all talk to Mr. Lee?

13 A We did.

14 Q Was he able to give you -- you can't say what he said
15 -- but was he able to give you information that led you to
16 other witnesses that were significant?

17 A He was. He was helpful in that regard. Yes.

18 Q And as a result of this information, what did y'all
19 do?

20 A We -- Tai and I went out to the Red Roof Inn, spoke to
21 the manager there at the Red Roof Inn and were able to
22 locate the room that Ms. Mobley and Ms. Nuttry were in, and
23 I believe I was also able to pull a -- maybe a room receipt
24 with their name on it listing the room. We went up and
25 knocked on the door; both of them came to the room (sic)

1 and soon as I -- I saw Ms. Mobley come to the door, I told
2 Tai I recognized her from the video. We had watched the
3 video enough by that point, I could recognize her when she
4 came and answered the door. We explained to them who we
5 were, what we were there for, asked them if they would mind
6 coming with us back down to the sheriff's department to
7 assist us in our investigation.

8 Q And did they agree to come with you?

9 A They did.

10 Q And did y'all transport them back to headquarters.

11 A We did. They were transported in my vehicle back to
12 headquarters, both of them, with Investigator Jordan and
13 myself.

14 Q You mentioned a receipt that you got a copy of. I
15 show you what's been marked as State's Exhibit Number 88.
16 Do you recognize this?

17 A I do. That's the receipt from the Red Roof Inn, Room
18 Number 232 in Marquita Mobley's name.

19 MS. CAMPBELL - Your Honor, at this time, we'd
20 offer State's Exhibit 88.

21 MR. SAWYER - No objection.

22 THE COURT - All right, very well.

23 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
24 STATE'S EXHIBIT NUMBER 88.)

1 Q Once you transported them back to headquarters, did
2 you take statements?

3 A We did. I interviewed Ms. Mobley and talked with her
4 for a while; Investigator Jordan handled Ms. Nuttry.

5 Q Without saying what they said, were they able to give
6 you information that proved very significant in this case?

7 A They were able to give us a lot of helpful
8 information.

9 Q After you took statements from them, what happened?

10 A We carried them back over to the Red Roof Inn where we
11 had picked them up several hours prior, carried them back
12 over there and dropped them off. They were left with my
13 card with my office number on it and e-mail address, as
14 well as Investigator Jordan's, and we told them we may need
15 to be in contact with them again, if they moved from that
16 hotel room, to please give us a call and let us know where
17 they were going so we could keep in contact with them.

18 Q The next day did the investigation continue?

19 A It did. It continued the next day.

20 Q And again, at the end of the 27th -- end of the 27th,
21 were you able to identify anyone?

22 A We still had no suspects at the end of August the 27th,
23 2012.

24 Q That next morning did you receive any additional
25 information of significance?

1 A We did. We received two tips; we received an
2 anonymous tip just stating that the folks that were
3 involved in the shooting at El Toro went to Club Exclusive
4 to try and get in over there. I went in over there to try
5 and -- and I reviewed the video with the manager; I didn't
6 see any of the individuals that were shown on the video
7 that we just watched on that video. We received another
8 tip from Crimestoppers later that day.

9 Q And without saying what was in the tip, did it prove
10 significant in this investigation?

11 A It was very significant in this investigation.

12 Q Based on the information from the Crimestopper's tip,
13 what, if any, did you do?

14 A Started researching based on information that we had,
15 pulling driver's license photos, researching addresses. We
16 pulled the driver's license photo of one Mr. Gerald
17 Haltiwanger, Jr., and in that driver's license photo he was
18 smiling, as some of us do in our driver's license
19 photograph, and had a mouth with gold teeth, had gold teeth
20 in his mouth.

21 Q What about his physical characteristics, height,
22 weight, build?

23 A On your driver's license it has your height, your
24 weight; we could see all that through the DMV website
25 whenever we pull it up. And his physical characteristics

1 matched the individual that Ms. Mobley and Ms. Nuttry had
2 described to us a day earlier.

3 Q At that point did you request a line-up be prepared?

4 A We did. I contacted the Fusion Center at SLED.
5 Sometimes a line-up -- we do line-ups sometimes based off
6 of our jail database. Sometimes they're too difficult when
7 you have a certain number of characteristics, you're trying
8 to get in all those pictures in that line-up. SLED'S
9 Fusion Center has the ability to go through all driver's
10 license photographs and the folks out there do a really
11 good job of putting photographs together in a photographic
12 line-up and sending them back to us.

13 Q And were line-ups prepared in this case?

14 A Line-ups were prepared in this case.

15 Q And what was the purpose -- what's the purpose of
16 getting a photo line-up?

17 A You want to -- based on a physical description from
18 any eyewitness that you may have, they may recognize some
19 characteristics of that individual. They may recognize his
20 face, his hair, his nose, his ears, anything, and you want
21 to put six photographs in those line-ups that are similar.
22 In other words, you want the same characteristics. If they
23 have facial hair, you want all six folks to have facial
24 hair. If all six people have gold teeth in their driver's

1 license photograph, you want to make sure they have gold
2 teeth.

3 Q And was a line-up prepared in this case including the
4 Defendant, Gerald Bernard Haltiwanger?

5 A It was.

6 Q As the line-up was being prepared, did you go make
7 contact with any of the witnesses you had already talked
8 to?

9 A We did. We went back -- Tai and myself went back out
10 to the Red Roof Inn, located Ms. Mobley and Ms. Nuttry and
11 told them that we were in the process of putting together a
12 photographic line-up and if they would be so kind as to
13 accompany us back to headquarters to look at those
14 photographs.

15 Q And were photo line-ups shown to both Marquita and
16 Kristina?

17 A They were.

18 Q And were either of them able to identify the
19 defendant?

20 A Marquita was.

21 Q And did Kristina misidentify anybody or what happened?

22 A She didn't misidentify anybody. She couldn't -- she
23 couldn't pick anybody out of the photo line-up she was
24 shown, therefore, no -- no picture was circled, but she was

1 shown a photographic line-up, but she picked -- she didn't
2 pick anybody.

3 Q That day did you also make arrangements to show Mr.
4 Ray a photographic line-up?

5 A We did. After confirming with Chief Wilson, Chief
6 Wilson stated that he would make contact with Mr. Ray and
7 he would go out and show Mr. Ray that photographic line-up.
8 Tai and I would go back to the club that night in an effort
9 to locate other additional witnesses, employees of the club
10 that were out there that night and had already given us
11 some statements.

12 Q And you can't go into what they said, but did you make
13 contact with other people?

14 A We did.

15 Q The next day on the morning on the 29th, what, if
16 anything happened?

17 A We -- I obtained warrants for Gerald Bernard
18 Haltiwanger, Jr. for murder.

19 Q And at that point what information did you have about
20 where he may be staying?

21 A We had information he was staying at 1810 Allen
22 Benedict Court, Apartment C-7 with Zondra Gilyard.

23 Q And that day was there anyone sent out to that area
24 for a certain purpose?

1 A Investigator Jordan was sent out there to surveil. We
2 had been by on several previous occasions the night before
3 and the morning -- that same morning of. Tai went back out
4 there early that afternoon to just look to see anybody was
5 standing back out there or if there were -- if anybody --
6 if he saw anybody out there. As Tai pulled up, he called
7 me on the phone to let me know that the individual he
8 recognized as Gerald Haltiwanger was standing out in the
9 little -- just off of the -- I guess you would call it a
10 little patio or steps coming down from the apartment out
11 there with several other individuals.

12 Q Once Investigator Jordan spotted the defendant, what,
13 if anything, did he do and what did you do?

14 A Investigator Jordan stayed put where he was at. It's
15 not advantageous for Investigator Jordan to approach a
16 murder suspect on his own by himself, and we waited for
17 additional units. Myself and Chief Wilson responded over
18 there, as well as several units from our fugitive task
19 force, and before we got there, we kind of made a plan as
20 to who was going to go on what side of the building and
21 where we were going to pull up at, and Mr. Haltiwanger was
22 taken into custody without any problems.

23 Q At that point was contact made with Ms. Zondra
24 Gilyard?

25 A It was. Chief Wilson made contact with her inside.

1 Q Prior to any search of that residence being done, did
2 y'all obtain permission?

3 A We did. Chief Wilson obtained a consent to search
4 from her.

5 Q What, if anything, did you do at that point?

6 A I carried Mr. Haltiwanger back over to Chief Wilson's
7 vehicle, myself and Tai. I read -- I verbally -- I gave
8 him his rights.

9 Q At that point was he under arrest?

10 A He was under arrest at that point.

11 Q And he was in your custody.

12 A He was in our custody.

13 Q What's the purpose of giving someone their rights?
14 What are they referred to?

15 A They're referred to their Miranda warnings.

16 Q And what's the purpose of advising someone of their
17 Miranda warnings?

18 A So they'd know what they're entitled to, that they
19 have the right to remain silent and that they're entitled
20 to an attorney.

21 Q Specifically you said that first you went over his
22 rights with him prior right there at the vehicle?

23 A Yes, ma'am.

24 Q And did you do that verbally or in written form at
25 that point?

1 A Verbally at that point.

2 Q And can you explain to the jury exactly what rights
3 you went through with him verbally at that point?

4 A I told him he had the right to remain silent, that
5 anything he said can be used against him in Court, he had
6 the right to an attorney, if he could not afford one, one
7 will be appointed for him if he wished, that he had the
8 right to talk to an attorney at any time and that -- before
9 we asked him any questions, and he could have one with him
10 during the questioning, and he was told if he couldn't
11 afford one again one would be appointed for him, asked him
12 if he understood his rights, and he said that he did.

13 Q And at that point was he transported to headquarters?

14 A He was.

15 Q And did you talk to him any -- were you with him when
16 he was transported?

17 A I was with him when he was transported.

18 Q Did y'all try to talk about the case any during the
19 transported?

20 A No, we waited til we got back to headquarters.

21 Q Once you got back to headquarters, what happened?

22 A We sat him down in Sergeant Randy Strange's office.
23 At that point I gave him his Miranda warnings again for a
24 second time, this time in writing from an Advice of Rights
25 sheet that we use that we use with all defendants.

1 Q And I show you State's Exhibit 1 which you have in
2 your hand -- show it to you, is that the form that you used
3 that day?

4 A It is.

5 Q And the handwriting on the top of that form, whose
6 handwriting is that?

7 A It's my handwriting on top of the form.

8 Q There are checkmarks and things of that nature on that
9 form. Who did those?

10 A I did.

11 Q And finally there are several signatures at the
12 bottom. Whose signatures are at the bottom of that form?

13 A Gerald Haltiwanger signed it and I signed it on one of
14 the witness lines twice. One of -- each of those
15 signatures, his and mine are under his rights, him signing
16 them stating that he understood them; me signing them as a
17 witness to his signature, and then again on the bottom of
18 that form, he signed the waiver of his rights, and I signed
19 it again as a witness.

20 MS. CAMPBELL - Your Honor, at this time we'd
21 offer State's Exhibit Number 1 into evidence. It's Advice
22 of Rights form ---

23 THE COURT - Exhibit 1.

24 MR. SAWYER - Yes. Your Honor, I'd just renew my
25 earlier objection.

1 THE COURT - Very well. Overruled.

2 MS. CAMPBELL - Thank you, Your Honor.

3 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
4 STATE'S EXHIBIT NUMBER 1.)

5 Q Can you go through the rights as you went through them
6 with him that day?

7 A We did. I filled out his name at the top, place which
8 we were doing them at is 5623 Two Notch Road, the officers
9 present were Sergeant Lindler, which is myself, and
10 Investigator Jordan, notated the date which was 8/29 of
11 2012 and the time which was 1755 hours, and in regular time
12 that's 5:55 p.m. I placed the rights form in front of him
13 like this, turned it around so that he could see them; I
14 read the questions off as follows: Before we ask you any
15 questions, you must understand your rights. I checked that
16 box. You have the right to remain silent. I again checked
17 that box. Anything you say can be used against you in
18 Court. I checked that box. You have the right to talk to
19 a lawyer for advice before we ask him any questions and to
20 have a lawyer with you during any questioning. I checked
21 the box next to that. If you cannot afford a lawyer, one
22 will be appointed for you before any questioning if you
23 wish. That box was checked as well. If you decide to
24 answer questions now without a lawyer present, you still
25 have the right to stop answering at any time. You also

1 have the right to stop answering any time until you talk to
2 a lawyer. Mr. Haltiwanger signed that he understood them.
3 I signed as a witness. We went into the waiver of his
4 rights which again is located on the bottom. I read that
5 to him. It says, I've read the statement of my rights and
6 understand what my rights are; I'm willing to talk and
7 answer questions. I understand and know what I'm doing and
8 no promises have been made to me and no pressure or
9 coercion of any kind has been used against me. And on all
10 of my Advice of Rights forms I will underline promises,
11 pressure or coercion just so he may -- I can make sure he
12 knows exactly what all those mean.

13 Q And at that point did he indicate whether or not he
14 wanted to talk to you?

15 A He did. He signed -- signed the bottom of the form
16 waiving his rights, and I signed it as a witness and
17 Investigator Jordan was present.

18 Q So it was the three of you, Investigator Jordan, you
19 and the defendant.

20 A Yes, ma'am.

21 Q And once he had been advised of his rights, did he
22 agree to talk to you?

23 A He did.

24 Q Did you promise him anything?

25 A We did not promise him anything.

1 Q Did you use any threats?

2 A No, ma'am.

3 Q Any kind of force?

4 A No.

5 Q Did you deprive him of any creature comforts?

6 A None.

7 Q At any point did he invoke any of his rights?

8 A He did not.

9 Q And, in fact, in your experience as an investigator,
10 was he cooperative?

11 A He was cooperative, yes, ma'am.

12 Q Did he appear to be coherent and understand what you
13 were saying?

14 A He understood fully what we were talking about.

15 Q And at that point tell the jury how the statement was
16 taken.

17 A Investigator Jordan and myself talked with him in the
18 room there for a little while. As Investigator Jordan
19 testified earlier, before we -- we just don't dive in the
20 pointing fingers and asking questions of suspects.
21 Whenever we get them in, we try to get to know the people a
22 little bit, find out where he's from, where he was born at,
23 stuff about his family, stuff along those lines. Then we
24 start talking about the incident, where he was that night,
25 if he could tell us, if he was, you know, if he has an

1 alibi, if he was somewhere different, and then we get into
2 -- we get into the brass tax of the situation. We sit down
3 and talk to them and kind of let them in on a little bit of
4 the evidence that we have hoping that they'll tell us their
5 involvement.

6 Q And again for the record, what date is this that you
7 advised him of his rights?

8 A That would've been on August the 29th of 2012.

9 Q At that time?

10 A 1755 hours, 5:55 p.m.

11 Q And State's Exhibit 2 which has already been published
12 for the jury, do you recognize that?

13 A I do.

14 Q And what is that?

15 A It is a -- the statement of Gerald Bernard Haltiwanger
16 taken by myself and Investigator Jordan and I would have
17 been the one to type the statement out, the questions and
18 the answers, and it's signed by Mr. Haltiwanger and
19 notarized by myself on all four pages ---

20 Q And ---

21 A --- as well as Mr. Jordan.

22 Q --- Investigator Lindler, at this point the only
23 person that's been identified is whom?

24 A Gerald Bernard Haltiwanger, Jr.

1 Q And what time do you actually start taking that
2 statement?

3 A 1900 hours, which is 7:00 p.m.

4 Q So approximately an hour later?

5 A About an hour and five minutes later, yes, ma'am.

6 Q The information that's in that, who did it come from?

7 A Gerald Bernard Haltiwanger, Jr.

8 Q And at that point, what, if any, information did you
9 provide to Mr. Haltiwanger about what you knew?

10 A We had told him about -- that we had had a
11 photographic line-up picked, that one of the witnesses out
12 there had picked him out of a photographic line-up, as a
13 matter of fact, several witnesses had picked him out of a
14 photographic line-up, we knew he was at the club that
15 night, and we knew that he had come up to the edge of the
16 vehicle over there in the Gazbah parking lot and talked to
17 two young ladies inside of a vehicle over there at the
18 Gazbah parking lot and that there was video of that
19 happening. He was made aware of all of that at that time.

20 Q Did you also ask him questions about his relationship
21 to Carlos Brown?

22 A We did. Asked him if knew a Carlos Brown and what his
23 relationship was to him, and actually asked him, I said do
24 you have a brother by the name of Carlos Brown, and I'm
25 going from my follow-up here, from my notes. He says, yes,

1 he is not my real brother, but I call him my brother. He
2 and Terrell, my real brother, are brothers. Terrell and he
3 -- which is -- he's referring to Carlos -- have the same
4 father, so Terrell and Carlos have the same father.
5 Terrell and I, which is Gerald and Terrell, have the same
6 mother. Terrell and Carlos's father always treated me like
7 I was one of theirs.

8 Q As far as -- and at this point you don't have any DNA
9 results back, do you?

10 A No, ma'am.

11 Q And have you taken statements from any of his other
12 brothers that were involved that night?

13 A We -- Chief Wilson was talking with Terrell Vaughn at
14 this time while we were talking with Mr. Haltiwanger.

15 Q And that date on the -- is that the 29th?

16 A Yes, ma'am, the 29th.

17 Q Did Mr. Haltiwanger admit to participating in this in
18 any way?

19 A He did not.

20 Q Specifically did he say where he was?

21 A He stated that he was over at Benedict College talking
22 to some girls, which Benedict College is right across the
23 street from Allen Benedict Court.

24 Q At this point had you recovered the car that was
25 involved?

1 A We had not recovered any of the vehicles that were
2 involved, nor had we recovered the firearm that was
3 involved either.

4 Q Did you ever recover the firearm that was used in this
5 case?

6 A We have -- to this date we have never recovered the
7 firearm that was used in this case.

8 Q Did you reduce what he told you into a typewritten
9 form?

10 A We did.

11 Q And what, if any, opportunity did he have to review
12 that?

13 A At the end of that statement it was read back to him
14 to (sic) me. He was also given a copy of it to read
15 himself and he signed it after both of those -- having both
16 of those done he signed it that it was his statement.

17 Q And did your investigation stop at that point?

18 A No, it did not. We continued our investigation. As a
19 matter of fact, Investigator Jordan and myself left Mr.
20 Haltiwanger in the care of Chief Wilson, and we went out to
21 inter -- re-interview Ms. Zondra Gilyard based on some
22 other information we had found out. We went back over to
23 the house to talk with her.

24 Q And when was that, sir?

25 A That was later that evening.

1 Q At that point was she completely forthcoming?

2 A Not totally. She was a little bit more cooperative,
3 but not totally forthcoming.

4 Q I want to turn your attention to the morning of August
5 the 30th. Did some information come to your attention that
6 was significant?

7 A It did. Tai and I were out still following up on some
8 things, and Chief Wilson gave me a phone call wanting us to
9 proceed over to Zondra's apartment and talk to her in
10 reference to a white car that was -- some stuff was
11 possibly hidden in at a mechanic shop somewhere close by.

12 Q And specifically had he reviewed a phone call that you
13 later reviewed?

14 A He had.

15 Q And what was it in that phone call that was
16 significant that they were talking about? Who was on the
17 phone?

18 A They were -- there was a phone call between Zondra and
19 Mr. Haltiwanger and they referred to some items in the car
20 that he wanted her to get rid of most specifically a GAT
21 which is referred to by folks on the street -- street slang
22 -- GAT is a gun that's used by them all the time, folks on
23 the street.

24 Q At that point did y'all then make contact with Zondra
25 again?

1 A We did.

2 Q And without saying what she said, was she more
3 forthcoming finally at this time?

4 A She was.

5 Q Based on the information you were finally able to get
6 Zondra (sic) on the 30th, what happened? What did y'all do?

7 A We -- we talked with her a little bit further about
8 what, if anything, Gerald had told her the night that he
9 had gotten home from the club and where possibly the car
10 may have been. We also -- you said on the 30th. Correct?

11 Q Around the 30th?

12 A Yes.

13 Q Yes.

14 A Yes, we talked with her at length about if he had told
15 her anything, possibly who had maybe helped hide the car,
16 maybe where some of the brothers stayed at, stuff along
17 those lines, and she was extremely cooperative at this
18 point. She also turned over to us a set of gold teeth from
19 Mr. Haltiwanger. They were located in the bottom of a
20 diaper bag belonging to their young infant son.

21 Q In the bottom of what?

22 A Bottom a diaper bag.

23 Q I'm going to show you what's been marked as State's
24 Exhibit Number 51. Do you recognize that?

25 A I do.

1 Q What are those two items, three items, actually?

2 A It's a phone, a green phone and a set of gold teeth,
3 top and bottoms.

4 Q And those were turned over to you by whom?

5 A By Zondra Gilyard.

6 Q And the gold teeth were recovered where?

7 A She retrieved them from a diaper bag located within
8 the residence.

9 MS. CAMPBELL - Your Honor, at this time we'd
10 offer State's Exhibit 51 into evidence.

11 MR. SAWYER - No objection.

12 THE COURT - Very well. Exhibit is in evidence
13 without objection.

14 (WHEREUPON ITEMS MARKED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER 51.)

16 Q And then it looks like you submitted these into
17 evidence the next day?

18 A I did.

19 Q Based on your information that you had gotten from
20 Zondra, did you want to make contact with some of the
21 defendant's brothers at this point?

22 A We did. We set out at that point to locate Mr.
23 Vaughn, Tyrobia Green and Jonathan Sterling, Jr. Tai went
24 out and located Jonathan Sterling at his place of
25 employment, and I'm not sure where that was at. Chief

1 Wilson had gone out to find Mr. Vaughn out off of Farrow
2 Road. Zondra told us he was probably over there with his
3 girlfriend and the Fugitive Team had helped us locate
4 Tyrobia Green at that point.

5 Q And were those three individuals interviewed that day?

6 A They were.

7 Q And as a result of their interviews as well as the
8 rest of the evidence in the case, were they ultimately
9 charged in this case?

10 A They were. All three were charged with accessory to
11 murder after the fact, and all three implicated their
12 brother, Gerald Haltiwanger, as the shooter.

13 MR. SAWYER - Your Honor, objection.

14 THE COURT - Sustained.

15 MR. SAWYER - Your Honor, may we approach?

16 THE COURT - Yes. Ladies and gentlemen, there's a
17 matter that I must take up outside your presence. Please
18 step to your jury room. Do not discuss this matter or
19 allow anyone to discuss it with you. We will be with you
20 shortly. Leave your notebooks and your pads too.

21 (Jury exits the courtroom)

22 THE COURT - The jury's out. Thanks. Yes, sir?

23 MR. SAWYER - Your Honor, at this point I'd move
24 for a mistrial. This is a bell that cannot be unrung. I
25 mean we have three witnesses that essentially cannot

1 know what I need to do. I'm from Dorchester County, so
2 there might be issues that I'm not aware of, because we
3 like to park in the field with the chickens and the cows.
4 Not really. We actually have pavement, um, in some places.
5 So y'all just let me know and I will do whatever we need to
6 do to make sure you to getting you - you have the type of
7 parking that you need, not a problem. So just give me a
8 little more information so I'll know what it is I need to
9 do and I'll be happy to do it. Now, ladies and gentlemen,
10 at this time, we will continue with the State's case and
11 the direct examination from Ms. Campbell.

12 MS. CAMPBELL - Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL -

15 Q Investigator, just to refresh -- I'm going to take you
16 back -- we're still talking about events that happened on
17 August the 30th. Is that correct?

18 A Yes, ma'am.

19 Q That you and your investigators were - that day did
20 you make contact with a Larry Cornish?

21 A I did.

22 Q And what, if anything, did Mr. Cornish -- was Mr.
23 Cornish -- and who actually made contact with Mr. Cornish
24 that day?

1 A One of our other investigators from the sheriff's
2 department, a Ms. Green, Investigator Green.

3 Q And that day did you get Investigator Rast to get with
4 Mr. Cornish?

5 A I did. Once Larry Cornish showed up at the
6 headquarters there at the sheriff's department, I placed
7 him with Investigator Rast who testified earlier. He took
8 Investigator Rast down to Bluff Road and showed him where
9 the black Ford LTD was parked that was driven the night of
10 the incident.

11 Q Whose residence was that?

12 A That would've been Laquanda Issac I believe, if I'm
13 pronouncing that right, Laquanda Issac at 7231 Bluff Road.

14 Q And what was her relationship with the defendant?

15 A I understand they were boyfriend and girlfriend maybe.

16 Q At that point were any steps taken to remove the car
17 from her residence?

18 A It was. Investigator Rast asked her for permission to
19 look under the cover that was over the car. She granted
20 that with no problem. The car was towed away from there
21 and towed back to our shed at headquarters so it could be
22 processed.

23 Q What car was that, sir?

24 A It was a 1980 Ford LTD, two-door with a burgundy
25 interior.

1 Q That day were any search warrants obtained?

2 A Yes, ma'am, I typed out a search warrant for the car
3 and had it signed and turned that search warrant over to
4 Investigator Bouknight so the car could be processed for
5 any shell casings, any other trace evidence, GPR, GSR,
6 gunshot residue.

7 Q You had contact with Zondra Gilyard as well. Is that
8 correct?

9 A I did.

10 Q And what was her relationship to the defendant?

11 A They were dating at the time as well, and she is the
12 mover of his young son at that time which was just a few
13 months old.

14 Q And when making contact with her, did you get any
15 information from her about the car?

16 A I did. She handed - she gave me the title to the car.
17 I believe she had it with her in her purse when she was up
18 at headquarters.

19 Q I want to show you State's Exhibit Number 86. Do you
20 recognize that?

21 A I do.

22 Q And what is that, sir?

23 A It's a State of South Carolina Certificate of Title of
24 a vehicle. The vehicle listed on here is a 1980 Ford LTD;
25 the body style is a two-door. It was issued April the 17th

1 of 2012 and on the back of it, on the assignment of the
2 vehicle where it was sold to Ms. Gilyard from the previous
3 owner, Mr. Alexander Ferdick (phonetic) and Diane Ferdick,
4 Alexander Ferdick has signed it as the signature of the
5 seller and the Zondra Gilyard has signed it as the
6 signature of the buyer.

7 Q Is that dated on the transfer on the back?

8 A It is not dated.

9 Q Thank you.

10 MS. CAMPBELL - Your Honor, at this time we'd
11 offer State's Exhibit 86 into evidence.

12 MR. SAWYER - Without objection.

13 THE COURT - Very well, evidence marked.

14 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
15 STATE'S EXHIBIT NUMBER 86.)

16 Q Moving on to the next day, what, if anything, did
17 y'all feel was prudent to do at that point?

18 A We felt it was prudent to interview Mr. Haltiwanger
19 again. Investigator Jordan was sent down to the jail to
20 pick Mr. Haltiwanger up and bring him back up to
21 headquarters so we could interview him again based on some
22 other information we had learned the day prior.

23 Q And did y'all become aware of some phone calls from
24 the jail?

25 A We were.

1 Q Once he got back to headquarters with Investigator
2 Jordan ---

3 A Yes, ma'am.

4 Q --- what, if anything, did y'all do?

5 A Investigator Jordan and I read him his rights again
6 for the written form. I went down and checked them all off
7 like I did previously when we read him off the written
8 form. He signed that he understood them. He was also read
9 a waiver of those rights and he signed that he understood
10 those and I signed both of those as well.

11 Q I show you State's Exhibit Number 3. Do you recognize
12 that?

13 A I do.

14 Q Is that the form you used on the second interview with
15 the defendant?

16 A It is.

17 MS. CAMPBELL - Your Honor, at this time we're
18 offer State's Exhibit Number 3 into evidence.

19 MR. SAWYER - Without objection, Your Honor.

20 THE COURT - Very well.

21 (WHEREUPON, DOCUMENT WAS MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 3.)

23 Q And can you just briefly go through again how you read
24 him his rights on the second ---

1 A We read him his rights again and went down through all
2 of his rights, checked off each of them there before I read
3 them to him and did the same thing with the waiver of
4 rights down there and again I underlined promises, pressure
5 and coercion making sure that he understood what all three
6 of those meant again.

7 Q Once you went through his rights with him, did he
8 indicate whether or not he understood them?

9 A He did.

10 Q Did he indicate whether or not he wanted to talk?

11 A He did.

12 Q And you also had him sign off on the waiver?

13 A We did. He signed off on the waiver as well.

14 Q And on State's Exhibit Number 3 those are his
15 signatures on both of these places just like the first one?

16 A They are.

17 Q At any time when you were talking to him on the second
18 occasion, did you promise him anything?

19 A We did not.

20 Q Did you threaten him in any way?

21 A We did not.

22 Q Did you or Investigator Jordan or anyone -- Chief
23 Wilson use any kind of force to make him talk?

24 A We did not.

1 Q And, in fact, as your experience as an investigator,
2 was he voluntarily talking to y'all?

3 A He was.

4 Q And at any time did he invoke any of his rights?

5 A He did not.

6 Q Tell the jury basically how the conversation went that
7 day after he had been advised of his rights and chose to
8 waive.

9 A We -- myself and Chief Wilson started out with him
10 just talking to him, again, letting him know that we had
11 some additional information, that we had talked to all of
12 his brothers; we had talked to Zondra. He wanted us to
13 read some of their statements to him, so we started out
14 reading one of his brother's ---

15 Q Don't say what they said, but just ---

16 A We started out reading one of his brother's statements
17 and got ready to start on Zondra's statement, and he looked
18 at me and kind of ducked his head down. He got a little
19 emotional, and he said I've heard enough, I'll tell you
20 what happened.

21 Q And at that point did he then tell you about the
22 events of that night?

23 A He did. He -- he had started out telling us that he
24 had the ID -- his brother's ID, Carlos Brown's ID, that he
25 tried to present it to get into the club. When the

1 security guard wouldn't let him get into the club, he said
2 he started talking junk to the security guard, and he said
3 he told the guard, fuck you, as he turned around to walk
4 off, and that at some point in the parking lot he was told
5 by the guard to put his hands on the car, and one thing led
6 to another, Mr. Moti sprayed him with mace and he was at
7 some point moved over to the Gazbah parking lot where you
8 saw them running on the video over the Gazbah parking lot.
9 At some point during that verbal altercation between he and
10 Mr. Moti, he was -- Mr. Moti was struck in the back of the
11 head by one of the other brothers. And then from there he
12 would tell us that -- that he went over and spoke to the
13 girls in the car, that one of his other brothers went over
14 and got his car which is a black Ford LTD, pulled it up; he
15 made them get out, he gets in, pulls a gun, and as they're
16 pulling out of the parking lot at El Toro Club, he fires
17 across his brother's chest out of the passenger's side
18 window and door. He even tells me that he shot the door
19 handle off the car, which was referenced earlier in
20 Investigator Bouknight's testimony where the door handle
21 was missing off the car.

22 Q I show you what's been marked as State's Exhibit 4.
23 Does that contain relevant evidence about what he said
24 about that night?

25 A It does.

1 Q In it does he indicate what he did with the car after
2 the shooting?

3 A It does. I asked him on page 2 of his statement, what
4 car did you drive -- excuse me -- what did you do with the
5 car after Saturday night? He says, Tyrobia and Trouble
6 took it to the country. I asked him, I said, did you wipe
7 the car down? Yes, I wiped down everything; I wiped it
8 down with gas. I asked him what he did with the gun. He
9 says, I sold it to a guy from New York. I knew he -- I
10 knew he was from New York, because I met him in the store.
11 He had an accent. I sold him to him for three hundred
12 dollars. I asked him what kind of gun it was; he said it
13 was a -- it was a .40 and had P80 on the side of it; it was
14 black and smaller than the Glock that I had. I asked him
15 how many shots he fired. He said I don't even remember. I
16 asked him what he did -- what did you do with the shell
17 casings in the car; he says, I threw them in the river.

18 Q And did you ever recover the additional shell casings
19 in this case?

20 A We did not.

21 Q Did you ever recover the gun that was used in this
22 case?

23 A We did not.

24 Q Did he indicate what they did after the shooting that
25 night?

1 A He does. I asked him, where'd you go after they left
2 the club, after he fired out of the car. And he states
3 they went to the XO Club with my brothers, and he says, we
4 stayed there for a minute.

5 Q Where is the XO Club, sir?

6 A XO Club is at the 2700 block of Broad River. It's in
7 a litter strip mall there across from the Rush's on Broad
8 River, or it used to be. It's closed now.

9 Q At some point in the course of your investigation, did
10 you feel it was necessary to get what's known as a buccal
11 swab from the defendant?

12 A We did.

13 Q And I'm going to show you State's Exhibit Number 53.
14 Do you recognize that?

15 A I do. That's a buccal swab. Two buccal swabs were
16 obtained from Gerald Bernard Haltiwanger.

17 Q And in addition to that I show you what's been marked
18 as State's Exhibit 61. Do you recognize that?

19 A I do. That's a buccal swab from myself that I gave
20 back on the 27th of August, 2012.

21 Q And tell the jury why you needed a buccal swab from
22 the defendant.

23 A When I first arrived on the scene that Sunday morning
24 out on the scene, Investigator Woods handed me the ID that
25 was handed to Jimmy Moti, the guard. I did not have on

1 latex gloves at the time. Even though I handled the ID by
2 the corners and the edges, I felt it was -- it was
3 necessary for me to give a buccal swab for elimination
4 purposes in case my DNA showed up on that ID card.

5 MS. CAMPBELL - Your Honor, at this time we'd
6 offer State's Exhibit Number 61 as well as 53 into
7 evidence.

8 THE COURT - Any objection?

9 MR. SAWYER - No objection.

10 THE COURT - Very well.

11 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
12 STATE'S EXHIBITS 61 AND 53.)

13 Q In this case there were certain items had been
14 requested to be tested for DNA. Is that correct?

15 A (No response)

16 Q There were certain items that were requested to be
17 tested for DNA?

18 A Yes, ma'am.

19 Q But you didn't get the actual gun from the victim
20 tested. Was there any -- explain that.

21 A The gun -- the gun from Mr. Moti came from a known
22 entity. We knew it was his gun; it was in his vest at the
23 time and in his holster, so we felt -- and there was no --
24 we had no witness statements. Nobody else saw anybody else
25 with a gun out there that night, therefore, it was no need

1 Q And as a deputy sheriff, how are the security guards -
2 - does he have the same -- explain how his -- what he has
3 the right to do there on the property if he's employed as a
4 security ---

5 A He has the right to escort individuals that are
6 causing a problem off of that property. If he feels
7 threatened in any manner, he has the right to defend
8 himself, just as I would defend myself if I were escorting
9 that person off of that property. At any point in time if
10 he felt threatened, we have a force continuum that we go by
11 as sheriff's deputies that we're taught. You meet the
12 level of force you're given with the level of force that
13 you're receiving from whoever you're dealing with. If Mr.
14 Haltiwanger was not obeying commands from Mr. Moti that
15 night and he was escorting him from the property and he
16 turns on Mr. Moti at any point in time, Mr. Moti has
17 several different tools as you would say in his vest that
18 he can, use one of those being mace, which is a non-lethal
19 form to keep him off of him, and obviously he felt
20 threatened night by the verbal non-compliance of Mr.
21 Haltiwanger.

22 Q And Mr. Haltiwanger presenting someone else's ID in
23 order to gain entry into that club, is that against the
24 law?

25 A That's against the law.

1 Q I want to show you State's Exhibit Number 20. Do you
2 recognize that?

3 A I do. That's the front of the El Toro Club.

4 Q And these doors in the front, what are they made out
5 of?

6 A Glass.

7 Q And have you actually -- in the course of your
8 investigation, did you actually go inside?

9 A We did.

10 Q That front lobby area?

11 A We did.

12 Q And were you able to see outside from there?

13 A You could see clearly outside of those doors, out of
14 those windows on those doors, yes.

15 Q I want to show you what's been marked as State's
16 Exhibit Number 76. Do you recognize this?

17 A I do. It's an aerial shot of St. Andrews Road, I-26,
18 Burning Tree Road.

19 MS. CAMPBELL - Your Honor, at this time we'd
20 offer State's Exhibit 76 into evidence.

21 MR. SAWYER - I thought it already was, but no
22 objection.

23 MS. CAMPBELL - Thank you.

24 THE COURT - Very well.

1 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
2 EXHIBIT NUMBER 76.

3 MS. CAMPBELL - Your Honor, may the witness step
4 down for just a moment?

5 THE COURT - Certainly.

6 Q If you'd come over on this side and talk up loudly so
7 ---

8 A Probably don't need the laser pointer on this one, but
9 we'll -- as you can see, this is I-26 going right here,
10 this is St. Andrews Road. This would be the Gazbah
11 station. This is the El Toro Club. This is Chuck-E-
12 Cheese, and this is the Red Roof Inn over here just across
13 the interstate, so it gives you kind of a relation to where
14 all the parties involved were at that night.

15 Q If I were going outbound on 26, is there an exit right
16 there?

17 A There is. You get on here ---

18 Q Going outbound.

19 A Outbound, you get on here and it puts you on ---

20 Q If I were coming out to ---

21 A And if you're coming -- and if you're coming up
22 outbound here to get on St. Andrews Road, you would exit
23 here and there's two separate turns you can use to get on
24 St. Andrews Road. One takes you to Burning Tree where you

1 can make a left and right turn. And the other one carries
2 you around to where you just merge onto St. Andrews Road.

3 Q And again, where is the Gazbah as seen on here?

4 A Here.

5 Q It's right here.

6 A Yes, ma'am.

7 Q And where is the El Toro?

8 A Right here.

9 Q And the Red Roof Inn that's been referred to, where is
10 it?

11 A Here.

12 Q Thank you.

13 (WHEREUPON, WITNESS RE-TAKES THE STAND)

14 Q The person that gave you the first statement denying
15 being there and then later gave you a second statement, Mr.
16 Hatliwanger, do you see him here in the courtroom?

17 A I do.

18 Q Can you identify him for the jury?

19 A He's in the white shirt with the gray striped tie
20 sitting next to counsel at the table.

21 Q Thank you.

22 MS. CAMPBELL - That's all I have, Your Honor.

23 THE COURT - All right, cross examination.

24 MR. SAWYER - Thank you, Your Honor. May it
25 please the Court.

1 THE COURT - Yes.

2 CROSS EXAMINATION

3 BY MR. SAWYER -

4 Q Hey, Mr. Lindler.

5 A Good morning, Mark.

6 Q I don't think I have a whole lot, but I just want to
7 start with -- Ms. Campbell kind of glossed over your
8 qualifications a little bit, can you just I mean go a
9 little bit more into a background of how you got from
10 graduated from high school to lead investigator for the
11 homicide division ---

12 A Sure. Sure. I graduated from Carolina with a
13 bachelor of science in criminal justice, been a law
14 enforcement officer or in some type of law enforcement for
15 seventeen and a half years. I've been employed with the
16 Richland County Sheriff's Department this past May was my
17 fifteenth year at the sheriff's department. I've been
18 sergeant for almost three years, and the last year I have
19 been the major crimes sergeant handling the assaults unit
20 there at the sheriff's department.

21 Q What sort of training qualification goes into you
22 after you've gotten your bachelor's of science to get to
23 where you are?

24 A Once you're hired -- back when I went through the
25 academy it was only an eight-week course. I believe now

1 Q Now, you've been here this whole time. Brunson, I
2 know you encountered him as the responding officer there.
3 Correct?

4 A Correct.

5 Q Were there other just the other just field deputies
6 that arrived as well?

7 A Deputy Sullivan was over there at the time. He wasn't
8 actually in the parking lot. I believe he was over in the
9 Gazbah parking lot. There were other deputies out doing
10 other things, had other calls they were responding to. By
11 the time I got there, most of them had disbursed. Those
12 were the only two that I saw and had contact with.

13 Q But from your understanding there were multiple
14 deputies ---

15 A At some point, yes.

16 Q Well, might make it easier for you. Normally when
17 there's a shooting, you just don't have one or two
18 deputies. Correct?

19 A No.

20 Q How many do you normally send out there?

21 A Usually that shift that's working that evening, you'll
22 -- you'll -- anywhere from two to four, maybe five,
23 depending on whose on shift, whoever comes, whatever help's
24 needed as far as, you know, roping off the crime scene, if
25 they have -- if they have more people than, you know, one

1 or two people can handle, of course, you're going to have
2 more than one or two deputies.

3 Q So sort of a all hands on deck sort of scenario?

4 A Kind of, yes.

5 Q But again, by the time you got there it cleared out
6 and that's just a matter of you getting called, assigned,
7 getting physically from -- where were you at, Two Notch at
8 the time?

9 A No, I was at the house.

10 Q Okay. So you were at home ---

11 A I was home.

12 Q Waking up and driving all the way from your house to
13 there.

14 A Correct.

15 Q Was there another investigator that got there before
16 you?

17 A Investigator Rowe responded to the hospital I believe.
18 He was the -- he got the initial call for the shooting and
19 he went and did some follow-up at the hospital. I don't
20 think he was -- he was unable to speak with the victim at
21 the hospital at the time, and then once we found out that
22 he had perished at the hospital is when I was notified, and
23 myself and Investigator Mauldin would respond out to the
24 scene, and actually Josh and I got there at the same time.

1 We were both sitting next to each other at the stoplight on
2 St. Andrews Road.

3 Q And just briefly on Investigator Mauldin, he was -- I
4 guess he was involved with helping you for about a day?

5 A First -- that first morning up until we -- we quit
6 working on that Sunday. We worked through probably the
7 middle part of that afternoon from being up all night. We
8 went home to get some rest and that ceased his involvement
9 at that point.

10 Q And that's when he was handed over to Investigator
11 Jordan?

12 A That Monday morning at 8:30 we have our initial
13 briefing as we'd gone into, and Investigator Jordan was
14 brought in at that time.

15 Q Now, you worked this case for about two days, but it
16 wasn't until essentially you got a tip involving Bernard
17 that you even knew who was involved. Correct?

18 A Correct.

19 Q And at that point you started looking at Bernard's
20 background. Correct?

21 A Correct, yes.

22 Q And eventually would go to interview him after picking
23 him up from Allen Benedict Court.

1 A We -- no, we had gotten several photo line-up picks,
2 and we obtained a warrant for him, and then we went to pick
3 him up from Allen Benedict Court.

4 Q And he was cooperative in being arrested the first
5 time?

6 A He was. He didn't give us any problems.

7 Q But in talking with him the first time he was clearly
8 trying to cover-up involvement?

9 A He was -- he was denying being there and he also
10 denied his involvement, which is not unusual.

11 Q So it's common whenever -- first encounters that
12 there's people you talk to aren't forthcoming?

13 A Usually when you've done something, you never want to
14 tell the police that you've done something.

15 Q Let me -- I might have gotten ahead of myself. Let's
16 go back to the scene at the El Toro. You found -- or maybe
17 it was when you visited the second time around -- you
18 remember getting two additional witnesses, an Elisha
19 Springs and Roberto Cordoba?

20 A Roberto Cordoba was there that first initial night.
21 We actually -- Investigator Mauldin through an interpreter
22 at the sheriff's department took a statement from Roberto
23 that night or that morning I should say. Once we got the
24 initial photo line-up picked on Mr. Haltiwanger -- we
25 didn't obtain warrants right away. We went out and got a

1 second line-up pick from Lamar Ray, and we went to the club
2 just to go back to follow-up with Mr. Cordoba to show him a
3 photo line-up as well, and ---

4 Q Can't really talk about what all went on ---

5 A Correct. Right. And while we were there, we were
6 approached by Ms. Springs.

7 Q Did she provide information as well?

8 A She did. She gave us a statement.

9 Q And you said the video at El Toro on the front wasn't
10 working?

11 A Correct.

12 Q Probably would've been helpful for all this, huh?

13 A It would've been extremely helpful.

14 Q From your understanding just from debriefing Brunson
15 all them, how many people do you think were at the club
16 that night when the shooting took place?

17 A Probably anywhere from 75 to 100.

18 Q All right, well, let's just kind of continue on. So
19 you talked to Bernard and eventually arrested him.

20 A We did.

21 Q And was it Chief Wilson who brought him down to
22 Richland or ---

23 A It was myself and Tai Jordan. Excuse me. It was
24 myself and Chief Wilson brought him back to headquarters,
25 because Tai was in a separate vehicle and then Tai and I

1 would eventually interview him in Sergeant Strange's
2 office.

3 Q That was the first time?

4 A That was the first time.

5 Q Okay. And you all talked I think you kind of
6 determined for about an hour or so?

7 A About an hour.

8 Q And you got that statement. And again he wasn't
9 allowed to write a statement down, was he?

10 A Correct, he was not.

11 Q He wasn't allowed to type it.

12 A Right. I typed it.

13 Q He wasn't allowed -- can't audio video record because
14 it's policy of sheriff's department ---

15 A Correct.

16 Q --- that you're not allowed to audio video record.

17 A Correct.

18 Q And then he spent some more time with Chief Wilson I
19 believe?

20 A He did. Tai and I went back out after we had spoken
21 with Gerald, and once we were done, we left him in the care
22 of Chief Wilson waiting on the paddy wagon to carry him
23 down to the jail, and we went back out to interview Zondra
24 at the house.

25 Q And interviewed Zondra twice, I believe?

1 A That night when we went back out there, yes, and then
2 the - that following morning after we had heard some of the
3 phone calls from the jail.

4 Q And then at that point, that was when you went and
5 picked Bernard up at jail again?

6 A We would re-interview Zondra on the 30th, I believe was
7 that Thursday morning, and once we learned what we learned
8 from her, we would talk to each of the brothers, and then
9 the following day, which was Friday morning, the 31st, we
10 went -- Investigator Jordan went down and picked up Gerald
11 from the jail.

12 Q And that conversation I believe lasted about an hour
13 and a half Chief Wilson said?

14 A Somewhere along in there, yes, give or take a few
15 minutes.

16 Q And you said earlier that basically as Gerald - he
17 kind of emotionally broke down a little bit?

18 A He did.

19 Q Okay. He was crying at that point?

20 A He was. He -- I mean he was visibly upset.

21 Q And that's when he gave you the second statement that
22 Chief Wilson read. Correct?

23 A He did.

24 Q And again, he couldn't write it himself?

25 A Correct.

1 Q He couldn't type it himself.

2 A Correct.

3 Q And you don't audio visual record it because it's
4 policy of sheriff's department not to do that.

5 A Correct.

6 Q You might have -- the buccal swab with DNA that helped
7 you identify Bernard as someone that could've hold the ID.

8 A Yes.

9 Q He willingly gave that to you. Right?

10 A He did. He did of his own free will, yes, he did.

11 Q The 9-1-1 phone call that you and Ms. Campbell were
12 talking about, did you ever actually check the number to
13 see who that went to?

14 A We did I believe. It comes back to - I'm not sure who
15 it comes back to.

16 MR. SAWYER - Beg the Court's indulgence briefly.

17 THE COURT - All right.

18 MR. SAWYER - Nothing further, Judge.

19 THE COURT - Re-direct?

20 MS. CAMPBELL - Just a few questions.

21 RE-DIRECT EXAMINATION

22 BY MS. CAMPBELL -

23 Q He asked you about the number of deputies that went
24 out there that night.

1 A Yes, ma'am.

2 Q And you mentioned Sullivan I believe and who's the ---

3 A Brunson.

4 Q Brunson, who testified?

5 A Yes, ma'am.

6 Q And were there any deputies during the course of your
7 investigations that had any additional information you
8 needed?

9 A None - none that I know that, and I know several of
10 them had wrote some follow-ups on some third page
11 supplementals, which are the long page of our incident
12 reports. I believe one of those was Corporal Fisher. He
13 was a corporal over that shift that night, and a few
14 others, but the only two that I saw out there that night
15 were Deputy Sullivan and Deputy Brunson.

16 Q And information including those follow-ups was
17 provided to you during the course of your investigation.

18 A It was.

19 Q So in your investigation, did you gather all the
20 pertinent information from the deputies at the scene?

21 A We did.

22 Q There at the scene that night was you and Investigator
23 Mauldin?

24 A It was.

25 Q And there at the scene were y'all working together?

1 A We were working together, yes.

2 Q He asked you specifically about two witnesses'
3 statements, a Mr. Cordoba and Ms. Springs?

4 A Yes, ma'am.

5 Q Did they actually witness the shooting?

6 A They didn't actually witness the shooting, no.

7 Q He asked you about the number of people in the parking
8 lot? Or at the club. Excuse me. He said the club. Do
9 you know how many of those actually were in the parking lot
10 that night?

11 A We do not know how many of those were in the parking
12 lot that night.

13 Q He asked you about taking a statement from the
14 defendant, the two statements, whether it was audio
15 recorded. In both statements as State's Exhibit 2 and 4,
16 was the defendant allowed to review those?

17 A He was. They were read to him, and he was allowed to
18 read over them and make any changes that he needed to make.

19 Q And the 9-1-1 call that went out originally, through
20 the course of your investigations, who made that initial
21 civil disturbance call?

22 A We believe it was Jimmy Moti.

23 MS. CAMPBELL - Beg the Court's indulgence.

24 THE COURT - All right.

1 THE COURT - Oh, you do? All right.

2 MS. CAMPBELL - And may I approach on that issue
3 we just talked about?

4 THE COURT - Sure. Oh, okay, I was thinking that
5 was re-direct. I'm sorry.

6 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
8 WHICH WAS NOT REPORTED.)

9 THE COURT - That was re-direct. Okay.

10 MS. CAMPBELL - Thank you, Your Honor. May it
11 please the Court.

12 THE COURT - Yes, ma'am.

13 MS. CAMPBELL - Thank you, Your Honor.

14 RE-DIRECT EXAMINATION

15 BY MS. CAMPBELL -

16 Q He asked you about who implicated him as the shooter.
17 Did you interview the -- and listen carefully to my
18 question and just answer my question. Did you interview
19 the co-defendants in this case?

20 A Some of them.

21 Q Were they all ---

22 A They were all ---

23 Q Were three co-defendants interviewed?

24 A Yes.

25 Q And what was their relationship to the defendant?

1 A They were brothers.

2 Q And did any -- and just answer yes or no. Did any of
3 those co-defendants implicate him as the shooter?

4 A Yes.

5 Q I want to show you what's been marked as State's
6 Exhibit Number 89. Do you recognize that?

7 A That's the incident report.

8 Q From ---

9 A From the Richland County Sheriff's Department.

10 Q Reflecting ---

11 A It would've been the response to the club that night.

12 Q The 9-1-1 -- the ---

13 A Yes, it would've been a 9-1-1 call.

14 Q Okay.

15 MS. CAMPBELL - Your Honor, at this time we'd
16 offer State's Exhibit 89.

17 MR. SAWYER - No objection.

18 THE COURT - Very well.

19 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
20 STATE'S EXHIBIT NUMBER 89.)

21 Q Is there phone number indicated on the front of that?

22 A It's 803-231-9553.

23 Q And finally, sir, have you seen the incident report in
24 this case?

25 A I have.

1 Q And does that list Mr. Moti's phone number?

2 A It listed as 231-9553.

3 MS. CAMPBELL - Thank you, sir. I don't have
4 anything further.

5 THE COURT - All right, re-cross?

6 MR. SAWYER - Nothing, Your Honor.

7 THE COURT - Now you may come down. Call your
8 next witness, please.

9 MS. WALKER - Your Honor, at this time the State
10 rest.

11 THE COURT - All right, very well. Ladies and
12 gentlemen, you have now heard all of the witnesses and
13 received the evidence which you will from the State -- in
14 the State's case in chief. That signifies to me that there
15 are matters which I must take up outside your presence.
16 All right, you feel like you're getting a little exercise
17 this morning. I must, therefore, ask you to please step to
18 your jury room. Leave your notebooks in your seats and
19 remember, do not discuss this matter or allow anyone to
20 discuss with you. We will be with you shortly.

21 (Jury exits the courtroom)

22 THE COURT - All right, the jury is out. Motions?

23 MS. DYAR - Yes, Your Honor. At this time we
24 would make a motion for a directed verdict. Viewing the
25 evidence in the light most favorable to the State, we ask

1 you've heard the testimony and received exhibits from the
2 State in their case in chief. We now turn to the defense.
3 Call your first witness.

4 MR. SAYWER - Call Gerald Bernard Haltiwanger, Jr.

5 THE COURT - Very well. Pat's going to swear him
6 in.

7 GERALD BERNARD HALTIWANGER, AFTER BEING FIRST
8 DULY SWORN, TESTIFIES AS FOLLOWS -

9 DEPUTY CLERK - Thank you. Please state your full
10 name for the record and please spell your last name.

11 MR. HALTIWANGER - Gerald Bernard Haltiwanger,
12 Jr., H-a-l-t-i-w-a-n-g-e-r.

13 MR. SAWYER - Gerald, make sure you're leaning
14 forward talking into the mic. Okay?

15 MR. HALTIWANGER - Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. SAWYER -

18 Q All right, what name do you go by?

19 A Bernard.

20 Q Okay. Bernard. Bernard, can you tell me how old you
21 are?

22 A 25.

23 Q How long have you been living in Columbia, Bernard?

24 A All my life, 25 years.

25 Q Where'd you go to high school?

- 1 A In Lower Richland High School.
- 2 Q How far'd you go through high school?
- 3 A Tenth grade.
- 4 Q What have you done for work?
- 5 A I worked at the museum for three years.
- 6 Q What'd you do at the museum?
- 7 A I was a janitor.
- 8 Q What happened with that job?
- 9 A I got laid off because of the budget cut.
- 10 Q What'd you do for work after that?
- 11 A I got a job at Columbia Farms.
- 12 Q And what does Columbia Farms do?
- 13 A Like they're like a chicken factory and I was cutting
- 14 shoulders.
- 15 Q So you were actually butchering the chicken?
- 16 A Yes, sir.
- 17 Q All right. You know why you're here.
- 18 A Yes, sir.
- 19 Q I just -- again to the night of August 25th. Well,
- 20 let's start with the day. How'd that day start out for
- 21 you?
- 22 A Well, me and my brothers, we woke up that morning, you
- 23 know, we hanging out; we decided to throw some meat on the
- 24 grill; threw some meat on the grill.
- 25 Q And what time of day was this?

1 A This is like around about 4:00, 5:00 o'clock.

2 Q In that evening?

3 A Yes, sir.

4 Q And what brothers were with you?

5 A Jonathan, Tyrobia and Terrell.

6 Q And so you decided to grill for dinner.

7 A Yes, sir.

8 Q Okay. What happened next?

9 A We started cooking on the grill. You know, we was
10 hanging out, had a few drinks and we decided we was going
11 to go out that night.

12 Q Okay. And about what time was this that you decided
13 to go out?

14 A It was like around 9:30.

15 Q Okay. Did y'all start getting ready?

16 A Yes, sir.

17 Q Did y'all get some sort of plan on what you were going
18 to do?

19 A Yes, sir.

20 Q What was that?

21 A Our originally (sic) plan was to go to Club Phenom,
22 which is known as XO by the title on the top of the door.

23 Q And what time do you think you left the house at?

24 A We left the house I'd say about 10:00 o'clock.

25 Q How'd y'all leave?

- 1 A In my black car, black Ltd crown vic.
- 2 Q Okay. Did you just take that car?
- 3 A Jonathan drove in his white crown vic.
- 4 Q Who rode with you?
- 5 A It was me and Terrell.
- 6 Q Who rode with Jonathan?
- 7 A Tyrobia was in the car with Jonathan when we left my
- 8 house.
- 9 Q Who drove that car?
- 10 A Jonathan.
- 11 Q Where'd y'all go -- where were you at that point?
- 12 What actual area of the city?
- 13 A We were at Allen Benedict Court.
- 14 Q Where'd you go from there?
- 15 A We left there and we went to pick up my home boy -- we
- 16 call him Cuz -- over on North Main.
- 17 Q Do you know Cuz's real name?
- 18 A We call him Bats, you know.
- 19 Q How long have you known him for?
- 20 A Known him for like -- I'm going to say two, three
- 21 years.
- 22 Q You've always called him Cuz, though?
- 23 A Yes, sir.
- 24 Q Whose car did he ride in?
- 25 A He rode in the car with Jonathan once we got there.

1 Q How long were you at Cuz's house?

2 A A quick, quick minute.

3 Q Where'd you go from there?

4 A We left there and we headed towards Broad River.

5 Q And this is from North Main towards Spartanburg?

6 A Towards Broad River.

7 Q What happened once you got onto Broad River?

8 A We started riding down Broad River. We was
9 approaching Phenom. We noticed there wasn't a crowd there
10 yet, so we decided to pass time and, you know, I kept
11 riding and we went to Club El Toro.

12 Q About what time do you think you got at Club El Toro?

13 A I'm going to say it was probably 10:30 or a little bit
14 after 10:30, somewhere up in there.

15 Q Are you certain on that time?

16 A Not really sure exactly, but I know it's got to be
17 somewhere in there.

18 Q Now, have you used one of these laser pointers before?

19 A Yes, sir.

20 MR. SAWYER - Just for the record I'm putting up
21 State's Exhibit 77.

22 Q Can you see this okay, Bernard?

23 A Yes, sir.

24 MR. SAWYER - Can everyone see this okay?

25 (Jurors indicating yes)

1 Q Bernard, just try pointing your laser pointer on there
2 just to see if we can ---

3 A (Witness complies)

4 Q Okay, good. Okay. So which direction do you come up
5 approaching Club El Toro?

6 A Came in the entrance right there.

7 Q Okay. And where is it that you parked your car?

8 A I parked my car like right about right there.

9 Q Okay. Where is it that Jonathan and -- or Jonathan
10 parked his car?

11 A In the back right -- like it's a fence back there. He
12 parked his car like back up in there.

13 Q So you were parked here.

14 A Yes, sir.

15 Q And they were parked somewhere right around here?

16 A Yes, sir.

17 Q All right. So after you parked, what happened?

18 A Terrell jumps out of the car -- as soon as Terrell
19 jumped out of the car, before Jonathan even actually
20 parked, Cuz backs -- you know, we call him Cuz -- he jumps
21 out like about in the front doorway of the club, so ---

22 Q Just -- I want to back you up a second. So you parked
23 and Terrell jumps out, goes in right away.

24 A Yes, sir.

25 Q Does Jonathan stop to let Cuz out?

- 1 A Yes, sir.
- 2 Q And he goes in.
- 3 A Yes, sir.
- 4 Q And Jonathan parks.
- 5 A Yes, sir.
- 6 Q So you parked your car.
- 7 A Yes, sir.
- 8 Q What'd you do next?
- 9 A When I parked my car, I was locking my car up -- you
- 10 know, I locked my car up, got out, put the alarm on, and I
- 11 started approaching the front doorway of the club. I
- 12 noticed I didn't have my ID in my pocket, so I figured it
- 13 probably slid out of my pocket, you know, because my seats
- 14 is low in my car, so I went back to my car to look for my
- 15 ID. I noticed I didn't have my ID.
- 16 Q Then checked your pockets.
- 17 A Yes, sir.
- 18 Q You didn't have any identification.
- 19 A No, sir.
- 20 Q Why'd you need that?
- 21 A To get in the club.
- 22 Q So what'd you do then?
- 23 A I walked back to my car and checked my car for my ID.
- 24 Q Okay. And what'd you find in your car?
- 25 A I found my brother Carlos Brown's ID.

1 Q How did you get Carlos's ID?

2 A I got Carlos's ID from when I went to Rock Hill when
3 he first came home to visit.

4 Q Why'd you take it from him?

5 A Because, you know, just -- it was more of a -- he
6 really supposed to -- like when we went down there, he was
7 supposed to go out with us, you know, but it never end up
8 happening, and he was -- showed it to me, and it was like,
9 yes, I got my driver's license, and I snatched it from him.
10 I was like, well, this ain't no driver's license, and he
11 just walked off, so I just put it in my pocket.

12 Q So you were going to try to use Carlos's ID to get in?

13 A Yes, sir.

14 Q How old were you at this point?

15 A 25.

16 Q When these events were happening, how old?

17 A 24.

18 Q So then what happened next?

19 A I gets Carlos's ID. I approached the door and I gave
20 the ID to Jimmy, which is the security guard.

21 Q If I can just back you up. Did you lock the car up
22 again?

23 A Yes, sir.

24 Q All right. You gave your ID to Jimmy.

1 A Yes, sir. And he looked at it; he looked at me; he
2 noticed it wasn't me, so he put the ID in his pocket, and
3 when he put the ID in his pocket, I pulled out my money and
4 was like, you know, man, I pay you extra money, you know,
5 just let me in the club; I'll pay you some extra money on
6 the side to, you know.

7 Q Now, had you been to this club before?

8 A Yes, sir, several times.

9 Q Have you interacted with Jimmy before?

10 A Yes, sir.

11 Q Okay. Why did you decide to try to give him extra
12 money?

13 A Because it done been like different occasions where
14 like either my brothers or someone's who's with us probably
15 done forgot, you know, their ID, and he'll let us give him
16 like a little twenty, thirty dollars, just to, you know,
17 let us slide past the door and we'll also pay the entry fee
18 once we get on the inside to go on the inside of the club.

19 Q Okay. How did Jimmy react to that?

20 A In a -- like once I like try to pay him the extra
21 money, like he got like in an aggressive tone, like, no,
22 didn't I tell you no ID, no entry of the club, then that's
23 when I was like, fuck that, you know, tell my peoples to
24 come on, I can go somewhere else and spend my money.

1 Q Now, talking about your peoples, were -- did -- you
2 had people in the club?

3 A Yes, sir.

4 Q Who was that?

5 A Terrell and Cuz.

6 Q So they had to get out for y'all to leave?

7 A Yes, sir.

8 Q What happened next?

9 A So at that moment when I said get my peoples, fuck
10 that, I'll go somewhere else and spend my money, he pulled
11 his weapon, he pulled his gun.

12 Q Just -- were you making any movements towards him?

13 A No, sir.

14 Q Were you acting aggressively toward him?

15 A No, sir.

16 Q All you did was cuss at him.

17 A Yes, sir.

18 Q And at that point he drew his firearm.

19 A Yes, sir.

20 Q Okay. What did he do with it?

21 A He pulled his firearm. As soon as he pulled it, he
22 cocked it back; he put a bullet in the chamber.

23 Q Okay.

1 A When he did that, I turned my back to him, put my
2 hands in the air and starting walking off. At that moment

3 ---

4 Q All right, so you got your back to him.

5 A Yes, sir.

6 Q You got your hands in the air.

7 A Yes, sir.

8 Q You started to walk away.

9 A Yes, sir.

10 Q Did you say anything at this point?

11 A You say what?

12 Q Are you saying anything at this point?

13 A Oh, I was basically -- you know, I'm telling him like
14 before I even actually really got a chance to say
15 something, he was like put your hands on the car.

16 Q Any car in particular?

17 A No, sir.

18 Q Just a car.

19 A Yes, sir.

20 Q And what'd you say?

21 A I told him, no, I'm about to leave.

22 Q How did Jimmy respond?

23 A Jimmy, he's -- at this moment he's following me
24 basically with the gun to my back.

25 Q How far between you and Jimmy were you do you think?

1 A It was -- probably right there. Like right there.

2 Q Okay, so you were like this?

3 A Yes, sir.

4 Q And get your laser pointer out if you would again,
5 Bernard. Show me where y'all are at this point.

6 A We're like -- that's the doorway. Right? So we're
7 walking like -- I walked like -- when I walked off, I
8 started walking, because it wasn't really no cars right
9 there, you know. So it was a car like right there, and it
10 was a car right there, but it was a open space in between,
11 you know, so I started walking like through the cars like
12 right there, you know.

13 Q Okay. So at this point you're walking forward with
14 your hands up.

15 A Yes, sir.

16 Q What does Jimmy say to you?

17 A Jimmy's -- like he's just -- he's pointing his gun at
18 me, and I'm telling him, like, fuck you, I know my rights,
19 all these cameras around here, what, you going to shoot me
20 in my back; that's what I'm telling Jimmy.

21 Q What are you saying that to Jimmy?

22 A I'm saying that to him, because I'm scared; I'm
23 terrified at the moment.

24 Q Okay. Were you surprised that he had pulled his gun
25 on you?

1 A Yes, sir.

2 Q So is Jimmy saying anything back to you at this point?

3 A He's -- he's not really saying nothing. It's just --
4 he's letting his actions speak for itself.

5 Q So you continued to walk forward.

6 A Yes, sir.

7 Q And something else happens at some point. Right?

8 A Yes, sir.

9 Q What happens next?

10 A Jimmy got the gun in his right hand, so after I told
11 him, fuck you, I know my rights, what, you going to shoot
12 me in my back, he pulls the mace with his left hand. When
13 he pulls the mace with his left hand, I'm walking away with
14 my hands in the air like this, but I'm looking at him in my
15 peripheral vision like this talking to him, you know, so I
16 see him pull the mace with his left hand, then he start
17 macing me in the back.

18 Q Okay. And this was just in reaction to you saying
19 what you said.

20 A Yes, sir.

21 Q Did you turn around?

22 A No, sir, I kept walking.

23 Q Did you make any movements towards him?

24 A No, sir.

25 Q You were just still walking toward the Gazbah.

- 1 A Yes, sir.
- 2 Q Okay. Where did the mace hit you?
- 3 A In the back of my head and the back of my shirt.
- 4 Q What did you do at that point?
- 5 A At that point I hear Jonathan say don't mace that man.
- 6 Q Now, who is Jonathan?
- 7 A My brother.
- 8 Q Okay. And again show the jury where is he parked at
- 9 this point?
- 10 A He was parked in the back.
- 11 Q Okay. Had you seen him -- up until this moment had
- 12 you seen him since you parked?
- 13 A When -- I seen him like when the incident first
- 14 happened, like started -- like, you know, I seen him and
- 15 Tyrobia just getting out of the car and like start walking,
- 16 walking up this way. You know, they was just taking their
- 17 time slowly walking up, you know, up towards the club.
- 18 Q Okay. And so, again, tell the jury what'd you hear
- 19 Jonathan say?
- 20 A I heard Jonathan say don't mace that man.
- 21 Q And this is as you're getting maced.
- 22 A Yes, sir.
- 23 Q Did you see what Jonathan did next?
- 24 A Only thing I know, I seen Jonathan come and hit Jimmy
- 25 upside the head.

1 Q Okay. Did you see what happened between the two of
2 them?

3 A Soon -- as soon as Jonathan hit him, the gun fell out
4 of the right hand of Jimmy, Jimmy hand.

5 Q Okay.

6 A Then Jimmy picks the gun up real fast and Jonathan
7 noticed that it's a gun now, you know, so Jonathan falls
8 back in the Exxon gas station parking lot.

9 Q Okay, let's pause right here. (Pause)

10 MS. CAMPBELL - You need help?

11 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
12 WHICH WAS NOT REPORTED.)

13 MR. SAWYER - And just let the record reflect at
14 this point we're about to replay State's Exhibit 78.

15 THE COURT - Okay. Thank you.

16 Q Bernard, can you just put your laser pointer out there
17 just to see if we can get a ---

18 MR. SAWYER - Can everyone see okay?

19 (Jurors indicating yes)

20 MR. SAWYER - Anyone need me to turn the lights
21 down?

22 (No response)

23 MR. HALTIWANGER - I might need you to, because
24 I'm a little ---

25 Q Okay. Want me to turn the lights down a little bit?

1 A Yes, sir.

2 THE COURT - Is that it?

3 MR. SAWYER - Okay, thank you, Judge..

4 THE COURT - How about that?

5 Q Can you see better, Bernard?

6 A Yes, sir.

7 THE COURT - Is that better? Can everybody see?

8 (Jurors indicting yes)

9 THE COURT - If you cannot raise both hands.

10 (No response)

11 THE COURT - Wonderful.

12 Q Would it help if we angled it a little more?

13 A Yes, sir.

14 THE COURT - Yes, I think our jurors can see. If
15 you can't -- if you can't see it over on this end, let us
16 know if we angle it. Can everybody see?

17 (Jurors indicating yes)

18 THE COURT - Yes.

19 MR. HALTIWANGER - Yes, sir. (sic)

20 THE COURT - And nothing's - boxes aren't blocking
21 anybody's ---

22 JUROR - No, ma'am.

23 Q Okay?

24 A Yes, sir.

25 Q All right, who are we seeing right now, Bernard?

1 A That's -- that's me and that's Jonathan.

2 Q Okay.

3 A And that's Jimmy right there.

4 MR. SAWYER - Pause that again. Play.

5 A Like -- you see right there? That's Jimmy.

6 Q Walking toward you right there.

7 A Yes, that's Jimmy.

8 Q Dressed all in black.

9 A Yes, sir.

10 Q Okay. You're making hand gestures.

11 A Yes, sir.

12 Q What are you saying to Jimmy?

13 A Jimmy -- now at this moment Jimmy's actually really
14 pointing this gun at me and my brother, and I'm standing in
15 between Jonathan which is right here, you know, and Jimmy's
16 right there. I'm telling Jimmy, please don't shoot, please
17 don't shoot, we about to go, please don't shoot.

18 Q Why are you saying please don't shoot?

19 A Because he's actually making threats now like I should
20 shoot your mother-fucking ass, if you come back on the
21 property I'll shoot.

22 Q Is Jonathan your little brother?

23 A Yes, sir.

24 Q How are you standing right now? Between you and
25 Jonathan?

1 A Basically I'm standing -- like I'm -- like really I'm
2 like blocking Jonathan. You know, I'm standing in front of
3 -- like actually -- you know, blocking like so if he was to
4 shoot, he wouldn't hit Jonathan you know.

5 MR. SAWYER - Pause it again.

6 Q What's happened with Jimmy at this point? Is he still
7 there?

8 A Jimmy's still right there in a rage talking, talking,
9 you know, junk. That's what I call it. He's talking junk.
10 And at that moment that's when one of the club managers
11 comes out there and grabs Jimmy.

12 Q And what did that club manager look like?

13 A It was -- he looked like a -- you know, Mexican or
14 something like that.

15 Q And what does he do?

16 A He grabs Jimmy and pulls -- like forced Jimmy back up
17 to the doorway of the club and like come on.

18 Q Jimmy still talking to you?

19 A Yes, sir.

20 Q What's he saying?

21 A I mean he's -- I can't really remember exact words he
22 was saying, but I know he was talking junk and like in the
23 -- you know, in a rage.

24 Q Does he have his weapon still drawn?

25 A Yes, sir, he still have his gun in this hand.

1 MR. SAWYER - Actually, can you rewind it just a
2 little bit? Hit play.

3 Q Is that Jimmy going away?

4 A Yes, sir, and the guy -- the manager of the club.

5 Q What are you two doing at this point?

6 A We're actually like -- because Tyrobia and -- Tyrobia
7 was right -- like right over here -- like -- Tyrobia's like
8 right here in the parking lot, and as Tyrobia's like right
9 over there in the parking lot, Cuz had done came out the
10 club, so we - throw my peoples like -- like our keys like
11 pull our car up.

12 Q Okay. All right. What are you doing there?

13 A I'm waiting on the curb, waiting on my car to pull up.

14 Q What was that hand gesture?

15 A I'm like, all right, whatever man, all right,
16 whatever.

17 Q So you're waiting on -- Cuz has come out.

18 A Yes, sir.

19 Q And Tyrobia has come out.

20 A Yes, sir.

21 Q And so you're waiting there.

22 A Yes, sir.

23 Q By yourself.

24 A Yes, sir.

25 Q What happens next?

1 A Then that's when I took my hat off, because, you know,
2 my neck started burning, and then it's these girls in this
3 truck called me to the truck.

4 MR. SAWYER - And pause -- stop right there.

5 Q What are you saying to them right now?

6 A At this moment the girl asked me, she's what's going
7 on, what happened. And now I got my hands like this, like
8 this man done pulled a gun on me and maced me for no
9 reason. That's what I'm actually telling her.

10 Q Okay. Are you complaining to the girls about what
11 happened?

12 A Yes, I keep expressing the fact that he pulled this
13 gun and maced me in the back for no reason and while I keep
14 saying that, the girls just saying, y'all just need to
15 leave, because they are not going to do nothing but call
16 the police. That's what they're saying.

17 Q What are you doing right now?

18 A I'm waiting on my car to be pulled up, and see at this
19 moment, like I told you, I gave Tyrobia my keys. I had
20 just got an alarm on my car, so the post battery -- the
21 post that's on top of the battery was loose, so, you know,
22 it -- I guess it had a bad connection, so it really
23 couldn't, you know, start the car right away, so Tyrobia --
24 I'm telling him, like really like lift the hood and just

1 try to twist it, tighten it up on the posts a little bit,
2 you know, enough so it can crank, so he did that.

3 Q And so you're just waiting for them to pull your car
4 around.

5 A Yes, sir.

6 Q And trying to explain to them how to get your car
7 started.

8 A Yes, sir.

9 Q Has he tried to start your car?

10 A Yes, he tried, but it wouldn't start at first.

11 Q Now, are you watching anyone else at the club at this
12 point?

13 A I -- I -- like I kept a eye on Jimmy really the whole
14 time, you know, because ---

15 Q And what's he doing?

16 A -- because the whole time he's pacing like back and
17 forth in the front of the club with his gun in his hand.

18 Q Is he on the phone?

19 A Yes, he's on the phone.

20 Q And you're still waiting on your car at this point.

21 A Yes, sir. There goes Jonathan. He's -- no, it ain't
22 Jonathan. That's -- see I didn't even notice that girl
23 walking past.

24 Q Remember that guy?

25 A Yes, sir.

1 Q What's he saying to you right now?

2 A He's asking me -- he like, you all right, man; I'm
3 like, yes, I'm all right, and he asked me do I need a ride;
4 I told him, no, I don't need a ride, I got my own car.
5 (Pause) There goes Jonathan again.

6 Q Jonathan's come back to you?

7 A Jonathan always like been in this area the whole time.
8 He never like actually really went to his car. He been in
9 that area right there the whole time. That's why at some
10 time you see me moving from here to there.

11 Q Okay. Where are you going now?

12 A At that moment we are running -- because our cars have
13 been pulled up and we are running, so -- because they
14 parked -- they parked like towards the entrance, right
15 there, entrance/exit, so we running through here like to
16 get in our car and go.

17 MR. SAWYER - We can ---

18 THE COURT - Okay. Great. Have you reached the
19 end of this ---

20 MR. SAWYER - Of the video, yes.

21 THE COURT - Of the video. Great. Okay. All
22 right, ladies and gentlemen, we're going to take our lunch
23 break now. We had planned yesterday to break it at this
24 point and we're going to take about an hour -- we're going
25 to take about an hour for lunch. That's why we brought it

1 in so we could be as efficient as we could regarding lunch.
2 Of course, during the lunch break please do not discuss
3 this matter or allow anyone to discuss it with you. I know
4 that there's someone that wanted to have possession of
5 their phone so they could check e-mails. I'm concerned
6 about that, but as long as you don't mind one of our
7 bailiffs observing what you are checking and observing
8 those communications, I will allow that, but you really
9 need to only respond to those matters which are of
10 considerable urgency, otherwise, I don't want you to be
11 doing that, but in any event, I'll certainly allow it in
12 that regard. And, again, remember during your lunch, do
13 not discuss this matter or allow anyone to discuss it with
14 you. And don't read anything or listen to anything or
15 communicate about this matter. Please leave your notebooks
16 in your seats. We're going to take -- we'll probably start
17 back -- we're breaking now because I have something that I
18 must attend, and so we'll actually be starting back right
19 at 1:00 -- probably 1:30 which gives you an hour and ten
20 minutes. Very well. Go to your jury room, please. Enjoy
21 your lunch.

22 (Jury exits the courtroom)

23 THE COURT - Great. Thank you. All right,
24 anything before we take our break. From the State?

25 (No response)

1 THE COURT - From the defense?

2 MR. SAWYER - No, Your Honor.

3 THE COURT - I'll see you all right back at 1:30.

4 (Lunch recess taken)

5 THE COURT - Thank you kindly. Please be seated
6 everyone. Anything from the State before we bring the jury
7 out?

8 MS. CAMPBELL - No, Your Honor.

9 THE COURT - From the defense?

10 MR. SAWYER - No thank you, Your Honor.

11 THE COURT - All right, very well. Let us have
12 our jury.

13 (Jury returns to the courtroom)

14 BAILIFF - Jury panel present, Judge, Your Honor.

15 THE COURT - Thank you so much. There you are.
16 You may continue.

17 MR. SAWYER - Thank you, Your Honor.

18 THE COURT - Yes.

19 MR. SAWYER - May it please the Court.

20 DIRECT EXAMINATION

21 BY MR. SAWYER (CONTD.) -

22 Q All right, Bernard, let's kind of back up a little
23 bit, just kind of start from back where we were. I think
24 we had just finished watching the video and you just
25 started to walk up the curb to get into your car.

1 A Yes, sir.

2 Q And again I'm just going to hold this up and use
3 State's Exhibit 77. Can you use that pointer again and
4 show me where your cars were parked?

5 A Where -- from the beginning?

6 Q No, once they had been pulled up by your brothers,
7 where were they parked?

8 A About right there.

9 Q Okay.

10 MS. CAMPBELL - I'm sorry, Your Honor. Can I see
11 that? I apologize.

12 Q Do it again, Bernard.

13 A About right there.

14 Q And who had pulled your car up?

15 A Tyrobia.

16 Q Who had pulled Jonathan's car up?

17 A Cuz.

18 Q Now, what happened as soon as Tyrobia pulled your car
19 up?

20 A As soon as Tyrobia pulled my car up, Tyrobia jumps out
21 of the car and at that same time while he's jumping out the
22 car I'm running to my car, and Jonathan's doing the same,
23 running to his car too.

24 Q Okay. And that was where we saw you going up?

25 A Yes, sir.

1 Q Okay. Then what happens?

2 A When I get in my car, Terrell also was in the
3 passenger seat too. So as soon as I got in my car, I
4 pulled up a little -- like a little bit at the enter/exit.

5 Q Okay. Just -- I don't need you ---

6 MS. SAWYER - Let's pull up State's 77 again if we
7 could again.

8 Q So which exit?

9 A I pulled it up right there, right exactly in front of
10 the road to the entry/exit.

11 Q All right. What'd you do once you pulled up to the
12 rail?

13 A I looked to the left, because you got cars coming up
14 the road.

15 Q Okay. Was traffic busy?

16 A Yes, sir.

17 Q About what time a night was this?

18 A This is like I'm going to say probably -- it's in
19 between I know close to about 11:00 o'clock, somewhere up
20 in there.

21 Q What happened after you looked to your left?

22 A I looked to the left; I seen a car coming, so I
23 couldn't pull out right then and there. As the car was
24 passing by, I look out my passenger window. When I look
25 out my passenger window I noticed Jimmy charging off the

1 porch where uh -- where he, you know, was pulled back up
2 to.

3 Q Was this the porch you're talking about?

4 A Yes, sir.

5 Q And he -- where would he start out at?

6 A He started off like -- he was like back by the door at
7 first, like from the time I got in the car, but when I
8 actually like looked when I pulled up to the entry/exit, he
9 was like jumping off the porch-way; he was jumping off.

10 Q What'd you see next?

11 A I see him pointing his gun at my car.

12 Q Okay. What was he doing as he was pointing his gun at
13 your car?

14 A Only thing I know I looked, I seen him jumping off the
15 porch pointing the gun at my car, so my reactions was I
16 just -- I say watch out, like watch out, watch out, and I
17 just was ducking, shooting out the window at the same time.

18 Q Okay. Where was your gun in your car?

19 A It's like -- my car has like bucket seats, so in the
20 middle it's no console or nothing and it was just sitting
21 right there in the middle, like laying on the floor.

22 Q Who were you saying watch out to?

23 A To my brother Terrell that was in the passenger's
24 seat.

25 Q And you said you just reacted?

1 A Yes, sir.

2 Q How were you feeling right then?

3 A I was scared; I was terrified. I thought he was going
4 to shoot, you know, my car, at my car and hit me and my
5 brother, either or, one or the other.

6 Q After you shot your gun, what'd you do next?

7 A After I shot, I turned -- like I was turning right on
8 St. Andrews; like when I was shooting and ducking at the
9 same time, I turned right on St. Andrews. I went up to
10 Club Phenom then.

11 Q Okay. How far was it between El Toro and the club?

12 A I'm going to say it was probably like from here to
13 like over there where, you know, where my family's sitting
14 at.

15 Q From here to the -- the two different businesses are
16 that close?

17 A You say -- oh, no, the -- you say Club Phenom.
18 Phenom's is like driving-wise it's like -- actually like
19 three, four minutes away.

20 Q What happens once you get to Club Phenom?

21 A I pulls up; I parks my car. Me and Terrell jump out.
22 Then that's when, you know, Jonathan pulls up behinds me,
23 then I ask everybody, what's, y'all all right, y'all all
24 right. They was like yes; then I walk around to the

1 passenger side of my car looking for bullet holes, like,
2 you know, to make sure ---

3 Q Why were you looking for bullet holes?

4 A Just to make sure he hasn't shot my car up, you know.
5 And then we was looking for bullet holes; we haven't seen
6 none. So as -- you know, I was like, well, come on, let's
7 just go in for a quick minute, because really, we, you
8 know, we wasn't really in the mood no more to, you know, be
9 out there.

10 Q At that point had you thought you hit anyone?

11 A No, sir.

12 Q How long were you in Club Phenom for?

13 A I'd say for about thirty minutes to a hour.

14 Q What happened after that?

15 A After that I came out the club. I noticed Terrell,
16 because I had sent him to the car for something, but, you
17 know, I'm going to back up a little bit. When - from the
18 beginning where we checked the car for the bullet holes,
19 when Terrell end up shutting the door of my car, my door
20 handle fell off. So he was like, oh, yes, it is a bullet
21 hole, you know. So we looking at the car and the way the
22 bullet hole looked, it was like -- like it was a bullet
23 that came from, you know, the gun that I was shooting
24 because it was coming in the outward, you know, from the
25 outside, so I came outside though. Terrell was sitting in

1 my car. He had my door wide open, so, you know, I'm
2 guessing he's feeling good because he was drinking. We had
3 been drinking since earlier that day, you know, so I got to
4 check - checking his pockets and stuff. He's just sitting
5 in the car like this, you know.

6 Q Is he awake, asleep?

7 A He's actually like asleep.

8 Q What happens between y'all then?

9 A From then I was like, brother, tighten up, what you
10 doing, you just sitting out here with my car door open,
11 like I could've been anybody, I'm going through your
12 pockets all kind of stuff like that, you know, basically
13 being concerned about him.

14 Q What happens between y'all then?

15 A Then that's when he just, man, what the - what the
16 fuck you talking about, you know, I ain't doing that,
17 matter of fact, I'm about to go, and he just got out of the
18 car started walking down the street. So I was like, bro,
19 I'm not going to chase you tonight now, if you walk off,
20 I'm going to leave you now. So he walked off.

21 Q Where'd you go after that?

22 A I went home.

23 Q Where was that?

24 A Allen Benedict Court.

1 Q At that point did you start to hide the evidence in
2 this case?

3 A Yes, sir.

4 Q What'd you do with the car?

5 A I got Tyrobia to take the car down to one of my
6 girlfriend's house, and, you know, I came like probably
7 like a hour later and wiped the car down with gas.

8 Q What'd you do with the gun in this case?

9 A I sold it. I sold it to a guy from New York.

10 Q Did you to talk to any of your brothers about this?

11 A About selling the gun?

12 Q Just about this situation in general.

13 A No, sir.

14 Q Did you tell Zondra anything about this?

15 A Yes, sir.

16 Q Were you telling her to keep quiet about this?

17 A Yes, sir.

18 Q Did you call the police at any point about this?

19 A No, sir.

20 Q Any reason why?

21 A Yes, sir.

22 Q Why is that?

23 A Because I was scared, and, you know, as I grewed up it
24 was like I never would believe that the police would
25 believe what a person was telling them, you know.

1 Q At some point did you meet with Investigator Lindler
2 for a statement about August 29th, I believe it was?

3 A Yes, sir.

4 Q Did you lie to Investigator Lindler when you met with
5 him?

6 A Yes, sir.

7 Q Did you at some point go down to the county jail?

8 A Yes, sir.

9 Q Did you call your girlfriend?

10 A Yes, sir.

11 Q Were you telling her to hide evidence?

12 A I was telling her just to -- yes, yes.

13 MR. SAWYER - Beg the Court's indulgence briefly.

14 Q Let me back up a little bit, Bernard. When'd you
15 first learn that someone had died?

16 A The next morning.

17 Q And that's when you started to hide evidence?

18 A Yes, sir.

19 Q Let me -- do you remember going back to Investigator
20 Lindler's office a second time?

21 A Yes, sir.

22 Q Do you remember giving a statement to Investigator
23 Lindler a second time?

24 A Yes, sir.

1 Q Does this look like a copy of the statement that you
2 gave?

3 A Yes, sir.

4 Q Have you read over that statement before?

5 A Can you repeat the question?

6 Q You've read over that statement several times before.

7 A Yes, sir.

8 Q That first paragraph, what does it describe?

9 A It basically describe like what I was telling them
10 what happened that night.

11 Q Is it missing any information?

12 A Yes, sir.

13 Q What's it missing?

14 A It's missing the part where Jimmy pulled the gun out
15 before he even maced me.

16 Q Okay.

17 A And it's also missing what I told him -- I told the
18 women who was in the truck.

19 Q Okay.

20 A And it's also missing the part when I told them that
21 Jimmy never put his gun away and that he was charging off
22 the porch-way of the club pointing his gun at my car.

23 Q You told Investigator Lindler and Chief Wilson all
24 these things?

25 A Yes, sir.

1 Q Do you remember were you crying at the time?

2 A Yes, sir.

3 Q Were you upset at the time?

4 A Really upset.

5 Q Let's go to that last line on there near the last

6 page.

7 A Yes, sir.

8 Q What does that last sentence say?

9 A Is there anything else you need to tell us? I am
10 sorry for -- and I answered, I am sorry for what happened.
11 I was drunk and I acted like a asshole. I am sorry.

12 Q Is that the question Investigator Lindler asked you?

13 A No, sir.

14 Q What was the question Investigator Lindler ---

15 A The question was, this is -- this is your moment to
16 tell the family, you know, basically give the family
17 closure, so what do you have to tell the family?

18 Q And what do you remember telling him?

19 A Only thing I remember telling him is I was sorry,
20 telling him I'm sorry, and I can't remember exactly
21 everything else I told him, but I know I said I was sorry,
22 this is not my choice of vocabulary.

23 Q Do you remember signing that statement?

24 A Yes, sir.

1 Q Okay. Why'd you sign the statement if it wasn't what
2 you said?

3 A Because basically I just skim -- skimmed through it
4 real fast and I was just ready to go at the moment. You
5 know, I was ready to lay down, feeling -- feeling down
6 about a myself, you know, about the whole situation.

7 MR. SAWYER - Beg the Court's indulgence.

8 THE COURT - All right.

9 Q Just one other thing, Bernard. The interior of the
10 black Ford ---

11 A Yes, sir.

12 Q --- what color is it?

13 A It's blue.

14 MR. SAWYER - Nothing further, Judge.

15 THE COURT - Cross examination?

16 MS. CAMPBELL - Thank you, Your Honor.

17 THE COURT - Yes.

18 CROSS EXAMINATION

19 BY MS. CAMPBELL -

20 Q So essentially according to your testimony here today,
21 you're just a victim?

22 A Yes, ma'am, if that's what you -- if that's what you
23 chose to call it.

24 Q No, I don't want to put words in your mouth. You
25 explain to me ---

1 A Yes, yes, ma'am.

2 Q Would you agree with me that according to your
3 testimony here today, 13, 14 months later, you're a victim?

4 A Yes, ma'am.

5 Q Of circumstances.

6 A Yes, ma'am.

7 Q Why so many stories?

8 A It's not so many stories. It's like -- I just told
9 you what really happened.

10 Q For the first time.

11 A No, ma'am, the second time.

12 Q Let's go back to who you did tell what happened. What
13 about Tyrobia? Does he know what happened?

14 A About -- you talking about the whole thing? Like
15 really -- yes, ma'am.

16 Q And just so we can be straight, let me back up for a
17 minute. Where were you living at the time?

18 A Allen Benedict Court.

19 Q And who were you living there with?

20 A Zondra Gilyard.

21 Q And what was her relationship with you?

22 A My girlfriend/baby mama.

23 Q And y'all had a child together.

24 A Yes, ma'am.

25 Q And were y'all on good terms at the time?

1 A Yes, ma'am.

2 Q Do you remember why she packed your stuff up that day?

3 A She never packed her stuff up.

4 Q Not her stuff, your stuff.

5 A I mean, you know, we -- you know how it go, we just
6 get in altercations, but it wasn't nothing dealing with
7 this case or nothing.

8 Q And let's be straight. Even if y'all had a fight that
9 day and she packed your stuff up, y'all made up.

10 A I mean we -- we always -- basically we always we'll
11 have a little argument, but, you know, I might pack my
12 stuff like I'm about to go, but I really will never go
13 nowhere.

14 Q And the car that was involved in this, the black Ford,
15 whose car was that?

16 A It's originally mines, but since, you know, I have no
17 driver's license, I put my car in her name.

18 Q Okay. I was going to get to that about your ID that
19 night. What is your relationship with Jonathan Sterling?
20 And what's his nickname?

21 A Trouble.

22 Q Trouble. So if we're talking about Trouble, that's
23 Jonathan Sterling who was with you that night.

24 A Yes, ma'am.

25 Q And what is your relationship with him?

- 1 A My little brother.
- 2 Q And how are y'all related?
- 3 A Same mama.
- 4 Q Same mother?
- 5 A Yes, ma'am.
- 6 Q And then Terrell Vaughn, what is his relationship to
- 7 you?
- 8 A My brother.
- 9 Q And how are y'all related?
- 10 A Same mama.
- 11 Q And then Tyrobia Green, what is his relationship to
- 12 you?
- 13 A My brother.
- 14 Q And how are y'all related?
- 15 A Because like I look at his father as a father, too,
- 16 because he always helped raise me too when I was growing
- 17 up.
- 18 Q Okay, so this is -- they're all tight family.
- 19 A Yes, ma'am.
- 20 Q And then Carlos Brown, what is your relationship to
- 21 him?
- 22 A He's a brother, too.
- 23 Q And how are y'all related?
- 24 A The same way me and Tyrobia's related.
- 25 Q Through Carlos's father?

1 A Yes, ma'am.

2 Q Who's not really your father but kind of like that.

3 A Yes, ma'am.

4 Q Is Carlos Brown here today?

5 A No, ma'am.

6 Q And your relationship -- let's talk about to Lamar
7 Ray. Did you know Lamar Ray?

8 A No, ma'am.

9 Q So y'all didn't have any prior beef or any kind of
10 problem with each other?

11 A No, ma'am.

12 Q Okay. What about Ms. Mobley?

13 A No, ma'am, don't know her.

14 Q Had you ever met her before that night?

15 A No, ma'am.

16 Q Do you remember seeing her in the car that night?

17 A No, ma'am. You talking about seeing her in the truck?

18 Q In the truck. I'm sorry.

19 A I just really -- I haven't really -- I didn't pay them
20 no attention, so I really couldn't tell you like how they
21 actually really looked until they came and testified.

22 Q For the jury. Y'all didn't have any beef prior to
23 that night, did you?

24 A No, ma'am.

25 Q What about the gentleman that got out of the truck?

- 1 A The gentleman? I don't know him neither.
- 2 Q And finally what about Ms. Nuttry?
- 3 A Don't know her neither.
- 4 Q So she doesn't have any beef with you, does she?
- 5 A No, ma'am.
- 6 Q And like you said and pointed out on the video, they
- 7 were right there where everything was kind of happening.
- 8 A Yes, yes, ma'am.
- 9 Q No doubt about that.
- 10 A Yes, ma'am.
- 11 Q You also mentioned at one point about another woman
- 12 named -- where'd you stash the car?
- 13 A At Laquanda Issac house on Bluff Road.
- 14 Q On Bluff Road.
- 15 A Yes, ma'am.
- 16 Q And what is her relationship to you?
- 17 A My girlfriend also.
- 18 Q Do y'all have any children?
- 19 A No, ma'am.
- 20 Q Do you have any other children?
- 21 A You say do I have? Yes, I have two. I have two kids.
- 22 Q Okay. And where is your wife?
- 23 A My wife, she has an apartment in the Colonys.

1 Q You mentioned at the time you had a pretty good job at
2 Lower Richland. No, excuse me. You went to Lower Richland
3 High School. Right?

4 A Yes, ma'am.

5 Q And then you had a pretty good job at the museum for a
6 while?

7 A For three years.

8 Q When'd you get laid off from that?

9 A I can't exactly like give you an exact date or
10 something. I think it ---

11 Q Give me a year.

12 A Yes, a year. I can't really give you an exact, but I
13 know ---

14 Q Would it have been a long time before this happened or
15 a short time?

16 A I mean it's been a good many before this happened, you
17 know.

18 Q How long had you worked for the chicken factory?

19 A For like I'm going to say about seven months.

20 Q And on this night -- going back -- at the chicken
21 factory typically how many hours a week did you work?

22 A I know worked at least, I'm going to say between 40 or
23 a little over 40 hours a week.

24 Q And did you get paid by the hour?

25 A Yes, ma'am.

1 Q How much did you make an hour?

2 A It was almost ten dollars.

3 Q Almost ten dollars?

4 A Yes, ma'am.

5 Q And as a father of two children, you provided for
6 them.

7 A Yes, ma'am.

8 Q Take care of them?

9 A Yes, ma'am.

10 Q And as you stated or replied earlier, money was tight?

11 A Yes, ma'am.

12 Q But on that night y'all were cooking out.

13 A Yes, ma'am.

14 Q And where were you cooking out?

15 A Allen Benedict Court.

16 Q And who all was there?

17 A Me, Jonathan, Tyrobia and Terrell.

18 Q And you mentioned you were drinking.

19 A Yes, ma'am, we had a couple drinks.

20 Q Okay. When you say couple of drinks, what were you
21 drinking that night?

22 A Budweisers.

23 Q And how many did you have? Do you remember?

24 A Had like two or three.

1 Q Two or three. And what time'd y'all start grilling
2 out?

3 A We start grilling like around, say about 5:00 o'clock,
4 4:00 or 5:00 that afternoon.

5 Q Typical?

6 A Yes, ma'am.

7 Q What were y'all grilling that day?

8 A I mean just different kind of meats, like pork chop,
9 you know, little -- couple ribs and, you know, Zondra made
10 some potato salad and stuff like that.

11 Q And what night of the week was this?

12 A You say what?

13 Q What night of the week?

14 A I'm not sure of the exact night.

15 Q Okay. And so y'all are just cooking out having a good
16 time, and you had two to three beers I think?

17 A Yes, ma'am.

18 Q And that's all you drank that night.

19 A No, not all through the night, but ---

20 Q Okay, well, let me get to the rest of it. What else
21 did you have to drink that night?

22 A As, you know, we went out, when I got to Phenom, I had
23 got a little shot of liquor, you know, but ---

24 Q Well, did you go to Phenom before or after?

25 A After El Toro.

1 Q Okay. So prior to going to El Toro, your testimony to
2 this jury is you had two or three beers.

3 A Yes, ma'am.

4 Q And that was it.

5 A Yes, ma'am.

6 Q So you weren't drunk.

7 A No, ma'am.

8 Q Okay. Then you mentioned for the first time that you
9 started getting ready to go out and y'all's plan was to go
10 to Club Phenom.

11 A Yes, ma'am.

12 Q And that's XO.

13 A Yes, ma'am.

14 Q Most people know it by XO?

15 A I call it the XO because it's a big sign at the top
16 that says XO.

17 Q So when you put it in your statement, that was you
18 saying it was XO.

19 A Yes, ma'am.

20 Q Okay. And at that point your testimony here today in
21 November of 2013 is that y'all left in how many cars?

22 A Two.

23 Q Why'd y'all take two cars that night?

24 A Because Jonathan he stays in the country and like when
25 we go out, he might decide like he just might leave, and he

1 going to jump -- just leave -- he basically just going to
2 leave, well, bro I might go, because when we party, we
3 party.

4 Q And would you say y'all were partying that night?

5 A No, ma'am, we really didn't get to party.

6 Q Okay. And you said earlier at one point that you left
7 at 9:30, then you said you left at 10:00, but somewhere in
8 that range would you say?

9 A We left the house at 9:30.

10 Q Okay. So you left the house at 9:30.

11 A Yes, ma'am.

12 Q Don't want to get it wrong. And who was driving what
13 car?

14 A I was driving the black 1980 crown victoria and
15 Jonathan was driving a white crown victoria.

16 Q And where'd you go?

17 A We went to pick -- on North Main to pick up Cuz.

18 Q Does Cuz have a name?

19 A We call him Bats.

20 Q Bats?

21 A Yes, ma'am.

22 Q And this is the first time anybody's heard about Bats.

23 Where does Bats live?

24 A He actually stays in Ridgewood.

25 Q Ridgewood?

1 A Yes, ma'am.

2 Q And do you know an address, or could you take somebody
3 there?

4 A Yes, I could take someone there, but I don't know the
5 exact address.

6 Q Let me ask you this. When you were telling the police
7 all these details, was that another detail they left out
8 when you told them about him?

9 A You say what?

10 Q When you talked to the police about what happened that
11 night, did you tell them about Bats?

12 A No, ma'am.

13 Q Why not?

14 A Because he played -- really played -- he -- you know,
15 like basically when we left Phenom/XO he stayed there. You
16 know, he didn't have no parts in taking no car to the
17 country or none of that, so I felt like it was no need to
18 say his name.

19 Q And you don't know his name here today, according to
20 you.

21 A I mean, you know, Bats, Cuz. That's -- that's what I
22 call him. I don't know his government. (sic)

23 Q And you've known him for two or three years.

24 A Yes, ma'am, through my brother.

25 Q Which brother?

1 A Terrell.

2 Q You never talked to the police about him.

3 A No, ma'am.

4 Q And the police never went and talked to him that you
5 know of, did they?

6 A No, ma'am.

7 Q Because no one ever mentioned him.

8 A No, ma'am.

9 Q And why were you leaving him out of it?

10 A Because I felt like he played no part in the cover-up
11 and nothing like that.

12 Q At that point the five of y'all then leave North Main
13 Street. Right?

14 A Yes, ma'am.

15 Q And who's driving your car?

16 A I am.

17 Q Why were you driving if you don't have a license?

18 A I mean because I figure if I'm going to tear it up --
19 if someone's going to tear it up, it's going to be me,
20 because it's my car.

21 Q Okay. And then you mentioned that -- your testimony
22 was that you parked your car and put the alarm on and you
23 approached the front door.

24 A Yes, ma'am.

1 Q And at that time you figured out you didn't have --
2 what, your license?

3 A My ID, identification.

4 Q ID. Where was your ID?

5 A I thought it probably slid out my pocket and fell on
6 the floor, you know, in my car.

7 Q Did you find it later?

8 A No, still to this day I haven't found my ID.

9 Q Okay. So you didn't have your ID and it just happened
10 that night, but luckily you had Carlos's ID.

11 A When I looked in the car, I found -- I seen Carlos's
12 ID sitting in the ashtray.

13 Q When you mentioned that earlier you'd gone to Rock
14 Hill and there was an exchange and Carlos just happened to
15 give you his ID?

16 A No, I mentioned that when I went to Rock Hill, he
17 said, brother, look I got my driver's license, and I
18 grabbed it from him and I was like, brother, this ain't no
19 driver's license, and he was just tripping, and he walked
20 off, and I just put it in my pocket.

21 Q And your testimony here today is you just put it your
22 pocket?

23 A Yes, ma'am.

24 Q And then at some point you just happened -- well, let
25 me ask you this. What car were you driving that night?

1 A The same black car.

2 Q So what you put in your statement was wrong?

3 A The first statement -- the whole first statement was a
4 lie.

5 Q Okay, well, why did you lie about what car you drove
6 to Rock Hill to get the ID from Carlos?

7 A The whole first statement was a lie due to the fact
8 like I just said, as I was growing up, I always just felt
9 like the police always going to believe what they want to
10 believe.

11 Q Okay. So when you grabbed Carlos's ID -- and how long
12 before this was it that you took Carlos's ID?

13 A I really can't say.

14 Q Was it days or weeks or months, or do you remember?

15 A I know it was -- I know it was just past days. It
16 probably was like some weeks.

17 Q So on the day in question, you found Carlos's ID which
18 luckily was in your car.

19 A The day I what?

20 Q The date we're talking about, when this happened,
21 where was it in the car?

22 A It was in the ashtray.

23 Q Okay. Is that where you kept it, or it just happened
24 to be there? Did you know it was there or what?

1 A I'm guessing like when I noticed I still had his ID in
2 my pocket, I just set it -- set it there.

3 Q And Carlos didn't need his ID to get in a club or
4 anything like that.

5 A I'm not sure. Only thing I know, he had just came
6 home, so -- and I wasn't ---

7 Q He had just come home from where?

8 A From uh prison.

9 Q And at that point you decided to use Carlos's ID.

10 A You say at that point what?

11 Q When you went to the car and found the ID, you decided
12 to use it to get in.

13 A Yes, ma'am.

14 Q So when you went up to the door, you knew you were
15 using somebody else's ID, but you wanted to get in the
16 club.

17 A Yes, ma'am.

18 Q Well, let me ask you this. You talk about Mr. Moti
19 and that you've been in that club before.

20 A Yes, ma'am.

21 Q And on prior occasions he let you pay your way in.

22 A Yes, ma'am.

23 Q Is that because you didn't have your ID on those
24 occasions?

1 A I mean I wouldn't say me, because I have -- I normally
2 have my ID, but you know, sometimes my brothers or somebody
3 else who's with us might not have a ID.

4 Q Okay. So you were aware that it wasn't unusual if you
5 didn't have -- if someone didn't have their ID that you
6 could just pay Mr. Moti and he would let you in that club.

7 A Yes, ma'am.

8 Q And you'd seen that happen before.

9 A I done done it plenty of times with him.

10 Q And so when you walked up to that door, why did you
11 need somebody else's ID?

12 A Just to play off so -- just to make it look good for
13 the people that's around, because you got people that's
14 sitting on the deck right there ---

15 Q Okay.

16 A --- and they're watching, you know.

17 Q And then at that point you present an ID, and he says,
18 huh uh, it's not you.

19 A Yes, ma'am.

20 Q And it doesn't really look like you, does it?

21 A No, ma'am.

22 Q So at that point you do what everybody's always done,
23 you offered him money.

24 A (No response)

25 Q That was your testimony.

1 A Yes, ma'am.

2 Q How much did you offer him?

3 A I mean I really can't say how much I offered him, but
4 I know I offered him some money though.

5 Q Do you remember offering him a hundred dollars?

6 A I really can't say.

7 Q But that could be possible.

8 A I mean it could be, because I had a lot of money on
9 me.

10 Q Why did you have a lot of money on you?

11 A Because I figured it's mines.

12 Q So you offered him, let's say, a hundred dollars, and
13 for some reason on this occasion, this evil victim said no.
14 Is that your story?

15 A I ain't going to say I offered him a hundred dollars,
16 but I know when I offered him the money, he said no, and he
17 said in an aggressive tone, he was like, no, that's -- like
18 get out of my face, and he pulled his gun out.

19 Q In an aggressive tone?

20 A Yes, ma'am.

21 Q Is that your words?

22 A I mean I'm pretty sure anybody ---

23 Q Or are those the words you read somewhere?

1 A No, ma'am, this -- I'm pretty sure anybody who
2 would've been around would've said it was an aggressive
3 tone.

4 Q Well, there were other people around.

5 A And, you know ---

6 Q And at that point when he said no, did you go, come
7 on, bro, you do this all the time?

8 A I -- when he said no, I was like, man, come on, don't
9 act like that, you know, yes, I said that.

10 Q Because he had an aggressive tone?

11 A Who me?

12 Q No, he did, according to you.

13 A No, he did, but I'm saying I didn't have -- I was just
14 like, man, come on, don't act like that. He was like, no,
15 didn't I tell you, ---

16 Q So at that point ---

17 A --- no.

18 Q --- you're like surprised, because he's being
19 aggressive towards you.

20 A Yes, ma'am.

21 Q So at that point I believe you testified, you were
22 like, I've got money, I can spend it somewhere else,
23 because you had a lot of money that night, didn't you?

24 A Yes, yes, ma'am.

25 Q Did you tell him you had a lot of money that night?

- 1 A No, he seen it for ---
- 2 Q And he was missing out?
- 3 A He seen it for his own eyes.
- 4 Q How did he see it?
- 5 A Because when I made the offer, I pulled the money ---
- 6 Q Flashed.
- 7 A --- out. Yes, flashed.
- 8 Q Did you have a roll of money?
- 9 A Yes, ma'am.
- 10 Q And at that point you're flashing your roll of money
- 11 now in front of him?
- 12 A Yes, ma'am.
- 13 Q Offering him some amount of that money.
- 14 A Yes, ma'am.
- 15 Q And at that point he gets aggressive with you, and
- 16 you're offended or should be. Right?
- 17 A Yes, ma'am.
- 18 Q So at that point, according to your testimony, you're
- 19 like, I can go spend my money somewhere else.
- 20 A Yes, ma'am.
- 21 Q And at that point because he's being aggressive -- and
- 22 I believe your words were, you started walking -- you
- 23 feared for your life, terrified at that moment, surprised.
- 24 All that was going through your mind?
- 25 A Say what?

1 Q Do you remember testifying to that?

2 A Say it over again.

3 Q That at that point you start walking through the
4 parking lot, because you're fearful, you're terrified,
5 you're surprised. Those are some of the words I wrote
6 down.

7 A After I said what I said, I told him, go get my
8 peoples, which was Terrell and Bats ---

9 Q Okay.

10 A --- and tell them come on, I can ---

11 Q He was being aggressive. Right?

12 MR. SAWYER - Your Honor, can he finish answering
13 the question?

14 THE COURT - Yes, let him finish.

15 A I said, tell my peoples to come on, referring to
16 Terrell and Bats, ---

17 Q Who did you ---

18 A --- and ---

19 Q I'm sorry. Keep going.

20 A And referring to them I was like fuck it, just tell my
21 people to come on, I can go somewhere else and spend my
22 money.

23 Q Okay. And at that point though, are you in fear? Is
24 he being aggressive?

25 A At that point he pulls his gun out.

1 Q Okay. Well, let's get to that. So you didn't do
2 anything to provoke him, for him to then pull -- which is
3 the first time we've heard this -- your -- the gun out.

4 A No, ma'am. The only thing I did was try to offer him
5 cash.

6 Q And you don't have a raised voice.

7 A No, ma'am.

8 Q You weren't being aggressive towards him?

9 A No, ma'am.

10 Q And he just after turning you down for your generous
11 offer with your roll of cash, were -- you were willing to
12 leave. And that's what you told him. Right? I got -- I'm
13 going to leave; I just need my people.

14 A Can you repeat it again?

15 Q Is that what you told him, that you were ---

16 A Can you repeat it again.

17 Q --- going to leave? Do you understand? You can read
18 and write, can't you?

19 A Yes, ma'am.

20 MR. SAWYER - Your Honor, objection. Just being
21 argumentative at this point. Ask her to repeat her
22 question.

23 THE COURT - Overruled. You may proceed.

24 MS. CAMPBELL - Thank you.

25 Q You can read and write.

1 A Yes, ma'am.

2 Q And you can understand him.

3 A Yes, ma'am.

4 Q And at that point did you tell him you were going to
5 leave?

6 A After I put my hands up and he -- like once he pulled
7 the gun on me, I put my hands up.

8 Q Let's get before that. After you offered him the
9 money and he turned down your offer, and at that point you
10 said something about -- you just testified -- about needing
11 to get your brothers ---

12 A Yes, ma'am.

13 Q At that point were you backing off?

14 A Yes, ma'am.

15 Q Was he -- because -- your testimony was he's being
16 aggressive at this point.

17 A Yes, ma'am.

18 Q And he's still being aggressive. Right?

19 A Yes, ma'am.

20 Q So you're backing up.

21 A Yes, ma'am.

22 Q And so then out of the blue, he pulls a gun on you,
23 according to your testimony.

24 A He -- he pulls the gun when I tell him, fuck that, go
25 get my peoples, I'll go spend my money somewhere else.

1 Q That's when he pulls the gun on you.

2 A That's when he pulls the gun.

3 Q Were you walking towards him?

4 A No, ma'am.

5 Q Did you make any overt acts towards him?

6 A No, ma'am.

7 Q And that's all you said to him.

8 A That's all I said.

9 Q And according to your testimony here today in November
10 of 2013 he pulled his gun.

11 A Yes, ma'am.

12 Q And then, according to you, he cocked it.

13 A Yes, ma'am.

14 Q And that was even more intimidating, wasn't it?

15 A Yes, ma'am.

16 Q Because when you cock a gun, what does that do?

17 A It put a bullet into the chamber.

18 Q And do you recognize this gun?

19 A Do I recognize that gun? No, I don't recognize that
20 gun.

21 Q Does it look like the gun he had, similar?

22 A I really can't say it, because at -- that night at the
23 club when he pulled the gun out, you know, they got like
24 some light -- it's not white lights but it's like a

1 brownish color looking lights, so it was like it was shiny,
2 you know.

3 Q You've been looking at pictures? Okay. And at that
4 point he pulls out a gun though, and he cocks it, and how
5 do you cock a gun like this?

6 A Cock it from the top, like -- he cocked it like that.

7 Q Like that?

8 A Yes, ma'am.

9 Q That motion.

10 A Yes, ma'am.

11 Q And what does that do to a gun when you cock it like
12 that?

13 A It puts a bullet in the chamber.

14 Q And that's why you were more scared.

15 A Yes, ma'am.

16 Q And your testimony is there's no doubt, just like
17 everything else you're saying here today is the truth, that
18 he cocked this gun.

19 A Yes, ma'am.

20 Q So a bullet would've been in the chamber.

21 A Yes, ma'am.

22 Q And then you put your hands up. Right?

23 A Yes, ma'am.

24 Q Do you turn around, away from him?

25 A Yes, ma'am.

1 Q Why do you turn away from him at this point if he's
2 got a gun pointed at you?

3 A Because I'm scared; I'm trying to let him know that I
4 don't want no problems; I'm walking away.

5 Q But at that point you turned your back to him.

6 A Yes, ma'am.

7 Q And that's when he puts the gun to your head,
8 according to your testimony.

9 A No, I didn't say he put it to my head; I say he put it
10 to my back.

11 Q Excuse me. . Puts the gun to your back.

12 A Yes, ma'am.

13 Q And you start walking in an open space.

14 A Yes, ma'am.

15 Q Through the car.

16 A Yes, ma'am.

17 Q And he's pointing the gun.

18 A Yes, ma'am.

19 Q And again, you're terrified, surprised at that moment.

20 A I'm terrified, scared.

21 Q Because again, you're the victim; you haven't done
22 anything wrong.

23 A Only thing I done wrong really was try to provide the
24 ID that wasn't me.

25 Q Okay.

1 A That's all I done wrong.

2 Q And at that point you talked in detail with your
3 lawyer about how Jimmy had the gun in his right hand.

4 MR. SAWYER - Objection. Oh, I'm sorry ---

5 THE COURT - All right..

6 Q Do you remember saying that to your lawyer today?

7 A Yes, ma'am.

8 Q And where are -- where are y'all walking across the
9 parking lot?

10 A We were walking ---

11 Q What area are you going towards?

12 A We were walking like towards the gas station.

13 Q Then what happens?

14 A He says, put your hands on the car; I said, no, I'm
15 about to leave. I still got my hands in the air, and after
16 I said that I was telling him, fuck you, I know my rights,
17 what you -- all these cameras around here, you can't shoot
18 me in the back. That's exactly what I said.

19 Q Where was Tyrobia?

20 A Tyrobia and Jonathan was walking up towards the club.

21 Q And where in the parking lot is it when he tells you
22 to put your hands on the car? Where are you?

23 A If you can show me a post -- you know, I can show -- I
24 can like point exactly to where you're talking about.

25 Q Will this help you? State's Exhibit 77?

1 A Yes, ma'am. I was like I'm going to say right over --
2 above here.

3 Q Right in there?

4 A Yes, ma'am.

5 Q So y'all have only walked a few steps.

6 A Yes, ma'am.

7 Q And at that point you tell him no.

8 A Yes, ma'am. I tell him, no, I'm about to leave.

9 Q So you weren't so scared you did what he told you to?

10 A Can you repeat the question?

11 Q You were not so scared that you did what he told you
12 to do. You didn't do what he told you to do.

13 A Oh, I was trying to get out of there. And to be
14 honest, I thought he was going to try -- try to run my
15 pockets.

16 Q Oh, this is new. Why did you think he was going to
17 try to run your pockets?

18 A Because he seen the wad of money.

19 Q Oh. You didn't testify to that on direct testimony?

20 A I mean ---

21 Q It wasn't good then?

22 A (No response)

23 Q Okay. So at this point he's got the gun in his right
24 hand. Right?

25 A Yes, ma'am.

1 Q And he's telling you to put your hands on the car.

2 A Yes, ma'am.

3 Q You told him no, you were about to leave.

4 A Yes, ma'am.

5 Q Does he continue to follow you with the gun?

6 A Yes, ma'am.

7 Q Jimmy's got the gun in his right hand.

8 A Yes, ma'am.

9 Q And then according to your testimony, what does he do?

10 A After I tell him, fuck you, I know my rights, you
11 can't shoot me in the back, that's when he pulls the mace
12 with the left hand.

13 Q With the left hand.

14 A Yes, ma'am.

15 Q And then what did he do with the mace?

16 A He maced me in the back.

17 Q He maced you in the back.

18 A Yes, ma'am.

19 Q And just to be clear for this jury, the mace didn't
20 get in your face, did it?

21 A No, ma'am.

22 Q And it didn't get in your eyes did it?

23 A No, ma'am.

1 Q So he's got this gun on you. According to your
2 testimony now is he may be trying to rob you, and he's
3 macing you in the back of the head?

4 A Yes, ma'am.

5 Q And he's not macing you in the back of the head
6 because you're jerking around or spinning at that point, is
7 he?

8 A No, ma'am.

9 Q What happened then?

10 A I mean after all that, you know, after he maced me,
11 that's when we fell over -- well, that's when I, you know,
12 like went into Exxon parking lot.

13 Q Okay. So now we have what's on the video tape.
14 Right?

15 A Yes, ma'am.

16 Q And that's when you get into the Exxon parking lot.

17 A And at the same time, that's when Jonathan comes and
18 hit him -- you know, hits him.

19 Q Okay. Do you see that on the video? You didn't point
20 that part out.

21 A You can't actually see Jonathan hit him in the video.

22 Q Because something's blocking him at that point.

23 Right?

24 A Yes. I guess it's the trees or something.

1 Q But you can see Jonathan come up and then run right --

2 -

3 A Yes, ma'am.

4 Q --- across --- that's in the video.

5 A (No response)

6 Q So did you actually see him get hit in the head?

7 A Yes, ma'am.

8 Q And at that point where's his gun?

9 A His gun had fell.

10 Q After he got hit in the head.

11 A Yes, ma'am.

12 Q So when Jonathan ran up to him and hit him in the head
13 he had the gun in his hand.

14 A Yes, ma'am.

15 Q And then the gun fell down, and he picked it right
16 back up according to you.

17 A Yes, ma'am.

18 Q And at that point, you're in the Exxon parking lot.
19 Right?

20 A Yes, ma'am.

21 Q Because you're over here in the parking lot, according
22 to the video, which the jury will have, and Jimmy's still
23 back over in the El Toro parking lot. Right?

24 A Yes, ma'am.

25 Q When Jonathan approaches him and hits him.

1 A Yes, ma'am.

2 Q And then you see Jonathan run right into the Exxon
3 parking lot too.

4 A Yes, ma'am.

5 Q And at that point you're still scared?

6 A Yes, ma'am, because at this point he's actually like -
7 - he's pointing the gun again, like at me and Jonathan, so
8 I'm basically standing to block Jonathan so if he was --
9 and I'm telling him, please don't shoot, please don't
10 shoot, we about to go.

11 Q Don't see him pointing the gun in that video.

12 A I mean you really can't see Jimmy. You can see his
13 shadow in the video out -- which way I pointed out.

14 Q So but you don't see a hand out like that or anything
15 like that. Was he more like this?

16 A You can see the same thing that y'all had showed.

17 Q And at that point, what's going through your mind?

18 A It's time to -- it's time to go. I been trying to
19 leave ever since, you know, he wouldn't let me in.

20 Q Well, at this point you just testified you're
21 concerned for the safety of your brother?

22 A Yes, I am. I'm scared.

23 Q You're concerned for your safety?

24 A Yes, ma'am.

25 Q So at this point do you run?

1 A At that point, as, you know, I'm waiting on my car to
2 be pulled up, because I didn't want to go back on the
3 property.

4 Q If he's still standing there with a gun pointed at
5 you, you said he was threatening?

6 A Yes, ma'am.

7 Q You didn't run ---

8 A No, ---

9 Q --- to hide?

10 A --- no, ma'am, I didn't run.

11 Q So you weren't that scared.

12 A I was scared.

13 Q But you didn't run?

14 A I mean ---

15 Q Your testimony here today ---

16 A Yes, I was -- you know ---

17 Q --- is you thought he was going to shoot you.

18 A I didn't run, no. Yes, I thought he was going to
19 shoot.

20 Q But you just stood there ---

21 A But I can't -- I can't just leave my brother sitting
22 there.

23 Q Well, does your brother know how to run?

24 A Yes, I'm pretty sure, but I'm not going to leave him
25 by his self.

1 Q But your brother doesn't run off either, does he?

2 A No, ma'am.

3 Q So this madman ---

4 A See at -- at that point it was a club manager who came
5 and like forced Jimmy back up to the doorway of the club.

6 Q Okay. That's your testimony.

7 A Yes, ma'am.

8 Q Do you remember in the several seconds -- and you can
9 look at the video prior to that that you're just standing
10 there while he's supposedly enraged threatening to shoot
11 you and you just stand there ---

12 A Yes, ma'am.

13 Q --- and so does your brother.

14 A Yes, ma'am, with my hands in the air telling him, no,
15 please, don't shoot, we about to go, please don't shoot, we
16 about to go.

17 Q And his intention was to get you off the property.

18 Right?

19 A Yes, ma'am.

20 Q So you were off his property.

21 A Yes, ma'am.

22 Q So at that point you ran inside and called the police.

23 A I ran inside? No, ma'am.

24 Q Why not?

1 A Because, you know, I don't have no phone on me, and
2 then it's like I'm scared. Like I -- I don't like police
3 to be honest.

4 Q I would agree with that. So you don't run and hide
5 behind a building or a car.

6 A No, ma'am.

7 Q And he's still out there and he's still got the gun
8 drawn.

9 A Yes, ma'am.

10 Q Because according to your testimony, even when that
11 manager comes over, this manager -- that's Mexican?

12 A Yes, he looked Mexican.

13 Q Do you remember seeing Mr. Ray out there that day?

14 A No, actually I really don't.

15 Q Okay. He's still got the gun drawn. Right?

16 A The Mexican guy came and forced Jimmy back up to the
17 club. He wasn't aiming the gun at no one, but he still had
18 the gun in his hand.

19 Q Because that's why you're still scared.

20 A At that moment it's like I'm just sitting there
21 waiting on my car to pull up.

22 Q When did you put your gun in the car, luckily?

23 A Like really it was just -- it was in there when I got
24 in there.

1 Q Well, when did you put your -- do you usually carry
2 your gun in your car?

3 A Yes, ma'am.

4 Q Is that the same car where you carry your children
5 around?

6 A When my kids are in the car with me -- they really --
7 well, I have two cars, so, you know, when my kids are in
8 the car, I really don't have it just laying around, nothing
9 like that.

10 Q Okay. Well, that night though, it just happened to be
11 laying between the seats, according to you here today.
12 Right?

13 A Yes, ma'am.

14 Q And luckily for you, you had that gun in your car.

15 A Yes, ma'am.

16 Q And did you know that it's not really so legal to
17 carry your gun in your car?

18 A What you mean?

19 Q It's illegal for you to have a gun.

20 A It's illegal for me to have a gun?

21 Q That's right.

22 A Yes, ma'am.

23 Q So then in the video -- which we do have that video,
24 don't we -- you can see you're still standing there in the
25 parking lot.

1 A Yes, ma'am.

2 Q And minutes go by.

3 A Yes, ma'am.

4 Q And you're still scared.

5 A Actually I'm -- I'm sitting there waiting on my car,
6 waiting on my property to pull up to the curb, so I
7 wouldn't have to go back on their property and get my car
8 myself.

9 Q Well, are you scared?

10 A I mean -- yes, I'm still shook up about the previous
11 incident, yes.

12 Q So all you want to do is get out of there.

13 A Yes, ma'am.

14 Q And you knew and you've said over and over you didn't
15 want to go back on the property.

16 A Yes, ma'am.

17 Q So why didn't you get Terrell when y'all had that
18 exchange to bring the car over to the gas station?

19 A See, when they pulled the car up, he automatically
20 just stopped and put the car in park and jumped out,
21 Tyrobia.

22 Q So you didn't tell Tyrobia to bring the car to the gas
23 station.

24 A No, ma'am.

25 Q But he knew what was going on that night, didn't he?

1 A Yes, ma'am.

2 Q So then once the car pulls up with your gun, you're
3 able to go back on the property.

4 A No, ma'am. It was actually like the car -- when they
5 pulled it up, it was at the -- basically close to the
6 entry/exit. That's why I basically just ran and jumped in
7 my car, you know, thinking I can just pull out and go.

8 Q And, in fact, that's what you did, wasn't it?

9 A Ma'am?

10 Q In fact, that's what you did.

11 A I didn't just pull out, because when I put the car in
12 drive and I pulled up a little bit exactly at the
13 entry/exit, a car was coming down the road.

14 Q Okay. So you're sitting there in the entry/exit.
15 Right?

16 A Yes, ma'am.

17 Q And at that point, is the other white car behind you?

18 A I think it, yes. Yes, ma'am.

19 Q And who all's in that car?

20 A Jonathan, Tyrobia and Cuz.

21 Q Cuz? And at that point you look to your left was your
22 testimony.

23 A Yes, ma'am.

24 Q So you're no longer that concerned about the bouncer.

25 A No, ma'am.

1 Q You aren't concerned about him at that point because
2 you didn't realize ---

3 A I mean I'm -- I'm still watching him, but I'm really
4 not concerned about him no more.

5 Q And then you look to your left and there's a car
6 coming.

7 A Yes, ma'am.

8 Q And then you look to your right.

9 A Yes, ma'am.

10 Q And according to your testimony only, that's when he
11 jumps off the porch.

12 A Yes, ma'am, pointing his gun at my car.

13 Q At your car.

14 A Yes, ma'am.

15 Q And then he shot at you?

16 A It was more of a reaction. I didn't know at that
17 time, but now after the incident I know is (sic) that he
18 didn't shoot.

19 Q And luckily you are so fast with your reflexes that
20 you were able to reach down, find the gun, put it in your
21 hand, aim it and shoot it.

22 A Yes, ma'am. It was right there. I didn't have to
23 find it.

24 Q And how many times did you shoot?

25 A I would say like, probably like three, four.

1 Q Three to four times?

2 A Yes, ma'am.

3 Q And then you pulled off. Right?

4 A Yes, ma'am.

5 Q And again you're terrified.

6 A Yes, ma'am, at that moment I am again.

7 Q And you didn't know, according to you, that you'd hit
8 anybody.

9 A No, ma'am.

10 Q And then you're able to make a right-hand turn and go
11 towards Club Phenom.

12 A Yes, ma'am.

13 Q So you turned into the direction where you were
14 terrified the person was coming at you.

15 A I mean it's all right there. It's all cluttered.
16 It's a busy road. You got cars going down; you got cars
17 going up.

18 Q And at that point y'all go to XO.

19 A Yes, ma'am.

20 Q And again, this has been a terrifying experience.

21 A Yes, ma'am.

22 Q But you don't like the police.

23 A No, ma'am.

24 Q So you didn't report anything to them about how
25 horribly victimized you were that night.

1 A No, ma'am.

2 Q And at that point you go to Club XO or Phenom,
3 whatever you want to call it.

4 A Yes, ma'am.

5 Q And y'all get out of the car.

6 A Yes, ma'am.

7 Q And then you check for bullet holes.

8 A Yes, ma'am.

9 Q And you're the one that actually shot off the handle
10 of the car.

11 A Yes, ma'am.

12 Q You know that now.

13 A Yes, ma'am.

14 Q And then y'all go in and you stay there for thirty
15 minutes to an hour.

16 A Yes, ma'am.

17 Q Then Terrell just leaves you for no apparent reason.

18 A No, he didn't just leave me for no reason. I told you
19 like when I came outside he was sitting in the car like
20 sleep and I went through his pockets and stuff just, you
21 know, messing with him, and then I like woke him up, like,
22 man, bro, wake up.

23 Q So you were just kind of messing with him like you
24 would with a brother.

25 A Yes, like ---

1 Q Like, you know, messing with him kind of ---

2 A Like wake up, bro. Like wake up, brother. If I
3 would've been anybody else, they -- you would've been got.

4 Q And then you got mad and stormed off?

5 A Yes, ma'am.

6 Q Because you'd been messing with him.

7 A Yes, ma'am.

8 Q Trying to be funny.

9 A I mean I was messing with him, but I also was mad due
10 to the fact that he's just sitting in my car with my car
11 door wide open like that.

12 Q Where was the gun while you were in Phenom?

13 A It was in the car.

14 Q You testified that you found out the next morning
15 somebody got killed?

16 A Yes, ma'am.

17 Q And at that point did you go to the police?

18 A No, ma'am.

19 Q But according to your testimony you were innocent.

20 A Yes, ma'am.

21 Q And there were plenty of people out there that saw
22 what happened.

23 A Yes, ma'am.

1 Q So knowing all that, didn't you think it was important
2 since someone had been killed and you'd been a victim to go
3 to the police?

4 A See I figure, like I told you before, I always felt
5 like the police is going to believe what they want to
6 believe, and I know even if I would've done that, I still
7 would've got locked up.

8 Q Why?

9 A Due to the fact that someone lost their life. They
10 are not just going to come and question me and then let me
11 go and say, well, yes, we -- you know, we know you shot
12 this guy, but we're going to let you go today.

13 Q But you didn't do anything wrong.

14 A No, ma'am.

15 Q And the witnesses would've known that and would've
16 supported you. Right?

17 A Yes, they probably would've support me, but, you know,
18 I figured it's a process that they got to do.

19 Q That morning do you remember what time you got home?

20 A I don't remember exactly what time I got home.

21 Q Do you remember it was around 3:00 o'clock in the
22 morning?

23 A It could've been. I'm not sure.

24 Q And that night did you wake up Zondra?

25 A Yes, ma'am.

1 Q Did you tell her what had happened to you and how
2 you'd been a victim?

3 A Yes, ma'am.

4 Q And did you tell her all the details you've told this
5 jury?

6 A Yes, ma'am.

7 Q And at that point y'all had some arguments but you're
8 still on good terms. Right?

9 A At that point it really, you know, we had some
10 arguments like earlier that day before -- basically due to
11 the fact that I wanted to go out and she don't like when I
12 go out.

13 Q But she wouldn't come in here to Court and lie about
14 what you told her, would she?

15 A No, ma'am.

16 Q And as soon as you found out someone was dead, you
17 started getting rid of the evidence.

18 A After I gathered myself together, yes, ma'am.

19 Q Why?

20 A Because ---

21 Q The evidence would exonerate you.

22 A I mean I never been in this situation before.

23 Q And luckily you found somebody to sell the gun to?

24 A Yes, ma'am.

25 Q Did you hear the jail phone calls?

1 A Yes, ma'am.

2 Q And just to be clear, the video -- today wasn't the
3 first time you've ever seen the video, was it?

4 A No, ma'am.

5 Q How many times have you looked at that video?

6 A I mean probably like -- other than today, probably
7 like once or twice.

8 Q You've only seen that video once or twice?

9 A Probably like twice, yes.

10 Q Did you have an opportunity to review all the
11 statements of the witnesses in this case?

12 A You talking about like before today?

13 Q (Indicating yes) Before this week.

14 A Yes, ma'am.

15 Q And did you review what all the forensic evidence
16 said?

17 A Yes, ma'am.

18 Q And did you review the photographs?

19 A Yes, ma'am.

20 Q So prior to you coming into Court and testifying to
21 any of this, you had an opportunity to see what all the
22 evidence is.

23 A Yes, ma'am.

24 Q Did you review your statement?

25 A Yes, ma'am.

1 Q And just to be clear, you gave two different
2 statements. You didn't go to the police, did you?

3 A Ma'am?

4 Q Did you go to the police or did they find you?

5 A They found me.

6 Q And, in fact, on the 29th around 6:00 o'clock in the
7 evening they took you to headquarters and advised you of
8 your rights?

9 A Yes, ma'am.

10 Q Did you understand those?

11 A Yes, ma'am.

12 Q And did you agree to talk to them?

13 A Actually really it was more of a -- like they sat me
14 down and was like more aggressive, you too, like they're
15 making all kind of faces, like, oh, you, you, you -- you
16 killed this man, this, that, you know, they are saying all
17 kind of stuff like that; either you're going to be a cold-
18 blooded killer or you're going to cooperate. They're
19 saying all kind of stuff like that.

20 Q And to be clear, on the first time when you talked,
21 you talked to Investigator Jordan?

22 A He was in the office and Sergeant Lindler was in the
23 office.

24 Q Well, did you understand what your rights were?

1 A Yes, ma'am, and even though I stated that, it still
2 was pressure behind.

3 Q So now your testimony is is you were pressured to talk
4 to them?

5 A Yes, ma'am.

6 Q So that you could deny ever doing anything?

7 A Yes, ma'am.

8 Q Well, let me ask you this. That day when they were
9 talking to you and pressuring you into talking, do you
10 remember them telling you that they had witnesses that
11 could pick you out and put you there?

12 A That first statement, no, they didn't tell me that.

13 Q Really?

14 A The first statement they didn't say nothing about they
15 had witnesses that point me out in no photo line-up or
16 nothing, no.

17 Q Do you remember talking to your girlfriend Zondra that
18 night on the phone?

19 A Yes, ma'am.

20 Q Do you remember the phone call that was played for
21 this jury where you talk about all they had?

22 A Yes, ma'am. That they spoke about they said they had
23 like witnesses that could point me out, but they didn't
24 actually present the paperwork showing me that people

1 pointed me out and stuff. Like basically they used that as
2 a, you know, trying to run gang on someone.

3 Q Trying to do what?

4 A Basically trying to like, you know, trick someone into
5 saying something.

6 Q Okay. But you weren't tricked were you?

7 A No, ma'am.

8 Q And, in fact, you told him you didn't have anything to
9 do with it.

10 A Yes, ma'am.

11 Q You were home. No, you weren't home. You were with
12 some girls from Benedict.

13 A I was at home and I was back and forth to Benedict
14 talking to girls..

15 Q So you admit that everything you said in this first
16 statement was what you told them?

17 A Yes, ma'am.

18 Q And that's the story you wanted to tell them at that
19 time.

20 A Yes, ma'am.

21 Q Because at that point all you thought they had was a
22 couple of witnesses picking you out.

23 A Yes, ma'am.

24 Q And as you told your girlfriend on the phone that
25 night, that ain't nothing.

1 A Yes, ma'am.

2 Q And do you remember talking to your girlfriend on the
3 phone? Did you know those phone calls were recorded?

4 A Yes, ma'am, that's why I was talking in codes like
5 that.

6 Q So you do admit you were talking in codes about
7 getting rid of evidence?

8 A Yes, ma'am.

9 Q So at that point it was still important to you to get
10 rid of evidence.

11 A Yes, ma'am.

12 Q Let me ask you this. Why didn't you tell them -- they
13 had you in custody, they said they had witnesses that put
14 you there. Why didn't you tell them this story then?

15 A Because they didn't provide the evidence. I figured
16 they didn't really have nothing, so if they would hold me
17 until the investigation was over with, and if they didn't
18 find nothing, they would let me go.

19 Q Well, if you're innocent like you've said here today,
20 why not just tell them that?

21 A Because then they would know that -- only thing I'm
22 thinking at the moment that I shot someone, and, you know,
23 they not going to believe what I say, so once they found
24 out that I shot someone, that's all they need.

25 Q And they found out.

1 A Yes, ma'am.

2 Q And then they brought you back a second time.

3 A Yes, ma'am.

4 Q And Investigator Jordan and Investigator Lindler
5 advised you of your rights again.

6 A Yes, ma'am.

7 Q Did you understand them?

8 A I mean yes, ma'am.

9 Q And you chose to talk to them.

10 A Through -- after -- after they presented the
11 statements from my family members, yes, ma'am.

12 Q And those would be your brothers.

13 A Yes, ma'am.

14 Q And what they said happened.

15 A Yes, ma'am.

16 Q And at that point you told them what you told Zondra?

17 A You say I told them what? I told Zondra.

18 Q Same thing you told Zondra.

19 A I mean I'm not sure exactly what Zondra said. I, you
20 know, ---

21 Q Were you in here for when Zondra testified?

22 MR. SAWYER - Objection, pitting witnesses.

23 THE COURT - I'm sorry?

24 MR. SAWYER - Pitting witnesses.

1 THE COURT - Pitting witnesses. Yes, don't pit
2 witnesses.

3 Q Do you remember what you told Zondra?

4 A I remember parts of what I told her. I can't remember
5 exactly word for word what I told Zondra.

6 Q Well, do you remember telling Zondra the exact same
7 thing that you have in your statement?

8 MR. SAWYER - Objection, Your Honor. Pitting
9 witnesses.

10 THE COURT - Overruled.

11 MS. CAMPBELL - Thank you.

12 A You say what again?

13 Q Do you remember telling Zondra the same sequence of
14 events that is in this statement, State's Exhibit 4?

15 A I told Zondra that and what they left out, yes, ma'am.

16 Q Do you know why she wouldn't have told the police
17 that?

18 A Do I -- do I what?

19 Q Did they read you Zondra's statement that day?

20 A Yes, ma'am.

21 Q Did you tell them that the parts you told her just
22 weren't in there?

23 A No, ma'am, only thing -- once they read Zondra's
24 statement, my brother's statement, I just was like that's

1 enough. So basically I gave them what they wanted. I
2 admitted to every -- you know, shooting and that was it.

3 Q So you admit that State's Exhibit 4 is what you told
4 them?

5 A Yes, ma'am.

6 Q So you didn't tell them the parts that you've added
7 here today.

8 A Yes, ma'am, I told them that. I told them the parts -
9 - I told them everything I testified today. I told them.

10 Q Which is according to you, the same thing you told
11 Zondra.

12 A Yes, ma'am.

13 Q But when they read you Zondra's statement, did you
14 tell them, oh, my God, she left out important parts?

15 A I ---

16 MR. SAWYER - Objection, asked and answered.

17 THE COURT - Very well. Overruled.

18 MS. CAMPBELL - Thank you.

19 Q What'd you tell them?

20 A I basically like cut them off in the middle of the
21 statement because basically had -- I had done heard enough,
22 so she -- they never really got through all the statement,
23 you know.

24 Q And since giving that statement, you've been allowed
25 to review all the evidence.

1 A Since giving that statement? Yes, ma'am.

2 Q And seen the video.

3 A Yes, ma'am.

4 Q And you're aware of what all the witnesses' statements
5 said.

6 A Yes, ma'am.

7 Q And today for the first time this is what you're
8 telling this jury.

9 A You say today what?

10 Q This is what you're telling this jury.

11 A I told the jury the same thing I said when I was
12 talking to the Ser -- investigators. I told them the same
13 thing today.

14 Q Why did you sign -- did you think this was important?

15 A At that moment I really didn't, because I just -- only
16 thing was -- I was -- I was down. I was crying. You know,
17 I was -- I was down and just crying. So I just was ready
18 to go back to the jail and lay down.

19 Q So you didn't think it was important to review the
20 statement?

21 A I mean I skammed (sic) through it, you know, and I
22 seen things that I stated, you know, so I figured
23 everything was there.

24 Q But the important parts were all that's left out.

1 A Yes. I guess -- I mean it's all important. I guess
2 if you want to call it that.

3 Q Since giving that statement, did you make some more
4 jail phone calls?

5 A Since giving what statement? That statement?

6 Q Statement to the police, but you say they left out the
7 most important parts.

8 A I made plenty phone calls, jail phone calls.

9 Q And have you had opportunity to review those?

10 A No, ma'am.

11 Q Do you remember on one of the phone calls talking to
12 Zondra about looking in a law book?

13 A Looking at a law book?

14 Q (Indicating yes) Do you remember telling her that?

15 A I mean keep going. I got to hear the -- more of it.

16 Q And you'd seen involuntarily manslaughter shit, some
17 shit like that?

18 A Yes.

19 Q That that don't carry ---

20 MR. SAWYER - Objection, Your Honor. Ms.
21 Campbell's testifying at this point..

22 THE COURT - Is the statement -- is this
23 particular statement in evidence?

24 MS. CAMPBELL - It is impeachment, Your Honor.

25 It's a telephone call he made and it's recorded, and it's

1 been turned over to the defense, and he's had the
2 opportunity to review it.

3 THE COURT - All right. And have you asked him is
4 that your statement?

5 MS. CAMPBELL - It's -- this is a transcript of
6 what it is. The actual telephone call itself is recorded.
7 I'm just asking him if he said this.

8 THE COURT - All right. Ask him did you make the
9 statement, then you can publish the statement. Did you
10 make this statement? And then you can publish ---

11 MS. CAMPBELL - Do you want me to read the
12 statement to him and ask him if he made it?

13 THE COURT - (Indicating yes)

14 Q Do you remember ---

15 MR. SAWYER - Your Honor, do you want her to read
16 it or let him read it first and then she can publish it?

17 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE
18 JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
19 REPORTED.)

20 Q And I'm going to ask you, did you make this statement?
21 Did you say, I was just looking at this dude's law book,
22 and I seen involuntary manslaughter shit, some shit like
23 that; they don't carry no more than five years. You see
24 what I'm saying? And I'm going to try to get the lawyers

1 stuck on that, so when I go to Court it will be anywhere
2 from zero to five.

3 A Yes, ma'am, I remember saying that.

4 Q Did you see it then go under the statute and it will
5 be all straight?

6 A Can you repeat it?

7 Q That even if you got convicted under that statute it
8 would be all straight.

9 A Yes, ma'am.

10 Q I wouldn't do the whole thing.

11 A Because -- the reason for me saying that because this
12 is basically like my understanding of involuntary
13 manslaughter is basically accident, you know, and this
14 wasn't meant to happen. This was planned or nothing, none
15 of that.

16 Q You were doing more research, because you talked on a
17 different phone call about involuntary manslaughter or
18 manslaughter, and you said that as long as everybody said
19 that man tried me, you know what I'm saying, but we got to
20 do what we got to do with it. I got to try my best, you
21 know what I'm saying. To convince the lawyer to get the
22 jury convinced to that.

23 A Yes, ma'am. Basically to make sure my lawyer's doing
24 his appropriate job by defending me. Yes, ma'am.

25 Q The phrase, you tried me, do you know what that means?

1 A Ma'am?

2 Q You tried me.

3 A What about those words?

4 Q Do you know what those words mean?

5 A Yes, ma'am.

6 Q And what does it mean when someone says, you ain't
7 about that life?

8 A I guess just, you know, or whatever, like you trying
9 to infiltrate something that you're not.

10 MS. CAMPBELL - Beg the Court's indulgence.

11 THE COURT - All right.

12 MS. CAMPBELL - Thank you.

13 THE COURT - All right, re-direct?

14 MR. SAWYER - Thank you, Your Honor. May it
15 please the Court.

16 THE COURT - Yes.

17 RE-DIRECT EXAMINATION

18 BY MR. SAWYER -

19 Q Bernard, ---

20 A Yes, sir.

21 Q --- we've known each other for about ten and a half
22 months now, haven't we?

23 A Yes, sir.

24 Q What's my job?

25 A To defend me.

1 Q What have I been doing this whole time?

2 A Defending me.

3 Q Well, have I gone over all the evidence with you?

4 A Sir?

5 Q Have I gone over all the evidence with you?

6 A Yes, sir.

7 Q And that's my job.

8 A Yes, sir.

9 Q Have I shown you all the witness and evidence?

10 A Yes, sir.

11 Q And that's my job.

12 A Yes, sir.

13 Q Have I gone over the video with you?

14 A Yes, sir.

15 Q Because that's my job.

16 A Yes, sir.

17 Q So all this evidence you saw because I was doing my
18 job.

19 A Yes, sir.

20 MR. SAWYER - Nothing further.

21 THE COURT - Re-cross?

22 MS. CAMPBELL - No, ma'am.

23 THE COURT - All right. Ladies and gentlemen,

24 we're going to now take our afternoon break, take about 15

1 (Jury returns to the courtroom)

2 BAILIFF - Jury is seated, Your Honor.

3 THE COURT - Thank you so much. Thank you so
4 much.

5 MR. SAWYER - Your Honor, at this point the
6 defense rest.

7 THE COURT - Very well. Now, ladies and
8 gentlemen, you have heard the witnesses on behalf of
9 defense. We will now turn to the solicitors and see
10 whether or not there will be any reply rebuttal.

11 MS. WALKER - Yes, Your Honor, we have one
12 witness.

13 THE COURT - Very well. Call your witness.

14 MS. WALKER - The State calls Patricia Labbe.

15 THE COURT - And I was going to say if you will
16 recall you have already been sworn in this matter.

17 PATRICIA LABBE, AFTER BEING PREVIOUSLY SWORN
18 TESTIFIES AS FOLLOWS -

19 THE COURT - And going to do when she states her
20 name again for our record.

21 MS. LABBE - My name is Patricia Labbe.

22 THE COURT - Thank you so much.

23 DIRECT EXAMINATION

24 BY MS. WALKER -

25 Q Oh, I'm sorry. Ms. Labbe, I mispronounced your name.

1 You work for EMS?

2 A Yes, ma'am, I work for Richland County EMS.

3 Q And you responded to the El Toro on the night of this
4 incident?

5 A Yes.

6 Q Did the victim have on a vest when you got there?

7 A Yes, he did.

8 Q Was there a gun with the vest?

9 A Yes, there was.

10 Q Can you describe for the jury where the gun was?

11 A The gun was holstered in the vest, and I zipped off
12 the vest.

13 MS. WALKER - Thank you. I don't have any further
14 questions.

15 THE COURT - Cross examination?

16 MR. SAWYER - Thank you, Your Honor. May it
17 please the Court.

18 THE COURT - Yes.

19 CROSS EXAMINATION

20 BY MR. SAWYER -

21 Q Just briefly, Ms. Labbe. Do you remember what date
22 this happened on?

23 A I know it was in August of last year.

24 Q Okay. Do you remember where it was?

25 A Yes, on St. Andrews Road at the El Toro.

1 Q Okay. And have you responded to gunshot wound victims
2 since then?

3 A Yes, I have.

4 Q How many do you think?

5 A I think it's been two since then.

6 Q Just two since then?

7 A Since then, yes.

8 Q Okay. This is about a year ago?

9 A Approximately a year ago, yes.

10 Q Okay. And you're absolutely certain that's where you
11 found the gun that night?

12 A Yes.

13 Q Was the taser with it too?

14 A I believe it was all still in the vest.

15 Q Okay. But you don't remember if the taser was with
16 it?

17 A I -- the taser was with the vest.

18 Q Okay. Where was it in the vest?

19 A I'm not sure. It was on the vest. I remember zipping
20 off the vest and those two items were there.

21 Q Okay. Where was the gun?

22 A It was holstered on the vest.

23 Q So actually on the vest itself.

24 A Yes.

25 Q So as part of the vest.

1 anyone else. And the last thing I want to take the
2 opportunity to talk to you about a little bit right now is
3 credibility, believability, because that's what this case
4 boils down to. The Judge will instruct you. You can
5 believe all of what a witness says, none of what a witness
6 says or some of what a witness says. You can believe one
7 witness against many or many against one. When considering
8 credibility, consider their demeanor on the stand, were
9 they forthright or hesitant, has their story changed. If
10 it has changed, is there a reason it has changed. You can
11 consider whether their testimony or the evidence is
12 corroborated by the other evidence or not corroborated.
13 You can consider whether their testimony has been
14 consistent or has it evolved. Those are factors you must
15 consider, and I beg you to judge credibility in this case,
16 because either there is a grand conspiracy between the
17 police, Ms. Nuttry, Ms. Mobley, Lamar Ray, the EMS worker,
18 the pathologist or he's guilty of murder. Thank you.

19 THE COURT - Thank you. Mr. Sawyer?

20 MR. SAWYER - Thank you, Your Honor. May it
21 please the Court.

22 THE COURT - Yes.

23 MR. SAWYER - Good morning, ladies and gentlemen.
24 I apologize. I'm under the weather today, so if y'all
25 can't hear me, just please one of y'all just kind of raise

1 your hand a little bit and let me know. Obviously what
2 I've got to say is very important, so I want to make sure
3 that you get them. Okay? All right. What we started here
4 with when Zachary Brunson got to the scene was someone who
5 was deceased. And as the officers all got there, they
6 started with investigating into it. And once Investigator
7 Lindler got there, they made one decision, that he was
8 murdered and we're going to charge someone with murder, and
9 that's it. That was the complete end of the discussion,
10 and that was a complete end of the investigation in the
11 case in response to whether something else could've
12 happened. They decided we are charging whoever this is
13 with murder and let's just only investigate the facts that
14 support our side. And, ladies and gentlemen, I would say
15 to you that that's where we are, is that the only thing the
16 State did in this case was try to prove murder. Now,
17 obviously when Investigation Lindler -- who did do a great
18 job in this case -- got to the crime scene, they're trying
19 to figure out who, who, who, who, who, who. And that was a
20 big part of this case. But once they got to who, that was
21 it. Ladies and gentlemen, I would say that this case is
22 not about who, but it's about how, how did all this happen.
23 Now, Mr. Sharpe over here told you -- it was Wednesday of
24 last week -- Bernard was the shooter, and you've known this
25 this entire time. And let me just emphasize to you all the

1 witnesses the State has called. We have Mr. Ray; we have
2 Ms. Gilyard; we have Ms. Nuttry; we have Ms. Mobley; we
3 have Mr. -- Dr. Marcus; we have Ms. -- EMS worker -- I
4 believe her name was Labbe, Mr. Barron; we have Mr. Collins
5 who did the gun work; we had Investigator Rast who went out
6 to go look at the car; we have Investigator Jordan who was
7 with Investigator Lindler; we have Mr. Bouknight who was
8 also processing the car; we have Chief Wilson; we have
9 Investigator Woods, Investigator Lindler; we have
10 Investigator Polis; we have Deputy Brunson and we have Ila
11 Simmons; 17 witnesses the State called. Okay? Now, let's
12 just look at some of these. Mr. Barron, DNA, was all for
13 identification purposes; Investigator Collins with a gun,
14 all for identification purposes; Investigator Bouknight,
15 again processing the car for DNA and such, all for
16 identification purposes; Yvonne Woods, other than
17 collecting the evidence at the scene, a lot of what she was
18 supposed to be looking into, for identification purposes;
19 Investigator Polis who processed more evidence, for
20 identification purposes; Investigator Simmons who was
21 doing gunshot residue, again for identification purposes.
22 So now we're down to these witnesses here and we'll talk
23 about these witnesses a little more. But my point remains,
24 all those witnesses were here to prove Bernard did it,
25 which y'all already knew. Now, you heard -- our question

1 here is about how, how did this all happen. Ladies and
2 gentlemen of the jury, you're the ones who are deciding the
3 facts today. Okay? Whatever I say and whatever Ms.
4 Campbell says really doesn't mean a hill of beans at the
5 end of the day, because you all are deciding the facts.
6 That's your job here, is you guys get to pick how this
7 happened. You guys get to decide how all this happened.
8 So I'd ask you -- you've heard a couple of different
9 stories of the how. What'd I'd ask you, ladies and
10 gentlemen, is that in my opinion, Bernard's story is the
11 only one that makes sense that happened. Bernard's story
12 is the only accounting of the events that can make sense
13 from the start to finish. Bernard told you about every
14 single little event that happened and put it into context.
15 And when Ms. Campbell cross examined him, Bernard again
16 told you the same thing, didn't he? And she went after him
17 pretty hard and he said the same thing he did the first
18 time around. Now, let's just kind of get back to his story
19 that night. As he said, they started out that evening,
20 went out with his brothers, decided -- after a while
21 cooking some food decided to go out, and after they had
22 went by one club, they decided to go to the El Toro Club,
23 and at that point as he said, all they were looking was
24 just to go out, have a decent time and have a couple
25 drinks. That was their intent going up there that day.

1 One of his brothers ran him (sic), the other two -- or two
2 brothers and their friends were all parking, so Bernard
3 approached the door alone. Now, as he approached the door,
4 as he said, he explained to you, he made this big deal
5 about the ID. He told you exactly what happened with the
6 ID. He said I forgot mine; I was hoping -- I was 24 years
7 old; I was hoping they'd just look the other way and they'd
8 let me in. So he went and found his brother, Carlos's ID
9 and came back there again. Said, hey, you know, I've been
10 here before, I look like I'm 21, here's an ID, 21, can you
11 let me in? The guard said no. Said, well, look I've got a
12 little bit of extra money, you've let me in before by
13 letting me pay a little bit of extra money to let me get
14 in. Now, I can't explain to you why the reaction was, what
15 happened that night. Bernard couldn't either, but he said
16 at that point some sort of argument where the bouncer, as
17 he said, starting getting aggressive at that point, and he
18 said you need to leave. And this was one undisputed fact I
19 believe the State can't say otherwise. Bernard started to
20 leave. And I think that's important to remember, ladies
21 and gentlemen of the jury, is that everyone agreed he
22 turned around and started walking away when he was told to
23 walk away. Everyone agreed with that. Lamar Ray agreed,
24 and actually I guess that was really all they put up to say
25 what happened that night from the door to the side. But

1 Bernard agreed too. He started walking away. He was
2 leaving after he was told it was time to leave. Now, as
3 he's walking away, at some point Bernard says he said
4 something; Lamar Ray says he said something; they didn't
5 really -- can't really tell you what he said other than
6 what Bernard told you, that the response to just yelling
7 something backwards was to get maced. Now, we're not
8 making a big deal about this, but he just said words I'm
9 not going to repeat which weren't very kind, but
10 nonetheless said them over his shoulder as he's walking
11 away; the response at this point was to be maced. And this
12 person's walking off the property; you're getting them to
13 walk off the property and this guard's response is to mace
14 him in the back of the head. Now, they're going to make a
15 big deal too about his brother coming to punch Mr. Moti.
16 And, ladies and gentlemen of the jury, I will tell you, if
17 I'm watching my brother ---

18 MS. WALKER - Objection, Your Honor. Defense
19 counsel is stating his opinion about what he would do in a
20 similar situation.

21 THE COURT - Sustained.

22 MR. SAWYER - As Bernard says, he's walking away
23 at this point and his brother seen Bernard getting pepper-
24 sprayed, maced in the back of the head for seemingly no
25 reason, comes to his defense, hits the guy, then one --

1 both of them -- both of them run into the parking lot and
2 you actually even see his brother tumble once they get into
3 the parking lot. Now, at this point we're at the video,
4 and you're going to have the opportunity to look at the
5 video. You're going to have an opportunity to look at all
6 of this evidence over and over again. But watch both of
7 these videos quite a bit. Number one, with the video what
8 I find interesting is that when you're watching this, one
9 thing Investigator Lindler said when we were looking at the
10 video the first time, you can't see Jimmy Moti in this at
11 all. Then y'all watched it when Bernard pointed out, you
12 can see him standing right there. You see him standing
13 right there at the edge of the parking for quite a
14 substantial amount of time once they're already ejected to
15 (sic) the property. Now, Bernard told you what he said was
16 going on. He said the guy was yelling at him, had his gun
17 drawn, was threatening his younger brother; he was standing
18 in front of his younger brother trying to protect him. And
19 again, watch the video. You can see everything that he
20 said happened. Now, at this point you see them both
21 waiting there, waiting for them to pull their cars around,
22 making a big deal that this is premeditated, but my
23 opinion, they're doing something ---

24 MS. WALKER - Objection, Your Honor. He's stating
25 his opinion again.

1 THE COURT - Sustained.

2 MR. SAWYER - They're pulling them around, and
3 they're waiting there patiently for their two cars to be
4 pulled around so they can go on their way. All right? And
5 you see them waiting there, hanging out. As Bernard said,
6 just waiting for their cars to come around, yelling at his
7 brother, trying to get him to get the car started, because
8 he couldn't get the car started, waiting. Now, you do see
9 him approach that car, and you see him talk to these two
10 women in there. Now, I don't know why their testimony was
11 so divergent. I don't know why it was all over the place,
12 but to be bluntly honest, I can understand exactly what was
13 going on in talking to Ms. Mobley and Ms. Nuttry, because
14 their stories were very much different from one another,
15 and I'll get back to that a little later, but Bernard said
16 he's -- they called him over, asked him what was going on,
17 and he told them what was going on, said, hey, this guy was
18 -- maced me in the back of the head, had a gun to me, was
19 afraid he was going to shoot, and then he walked away and
20 then waited again a while longer for the cars to be pulled
21 around. And the last thing you see in that video was them,
22 not cutting back across, but cutting -- I'll call it north
23 in the video, at least upwards towards St. Andrews to go
24 get in those cars so they can drive off. Now, once they
25 get in the car, Bernard says he's sitting behind the wheel

1 -- and y'all are residents of Richland County; y'all get to
2 use your everyday experience and purposes; I'm sure y'all
3 have been on St. Andrews before. Y'all know what St.
4 Andrews is like. It's a busy road. It's 10:30, 11:00
5 o'clock at night. He looks to his left; he says there's a
6 bunch of traffic coming. He looks to his right and he says
7 at that point all of a sudden he sees Jimmy jump down off
8 of there, his gun which was already out, come at him, gun
9 drawn. He says it is that point he's terrified and he
10 reacts. Okay? Now, let me -- we kind of just barely
11 showed y'all what all Mr. Moti had on him that night.
12 Ladies and gentlemen of the jury, I'll tell you, I'd be
13 terrified myself.

14 MS. WALKER - Objection, Your Honor. He's
15 repeatedly stating his opinion.

16 THE COURT - Sustained.

17 MR. SAWYER - We have an all black tactical vest
18 here. We have -- looks like some sort of nightstick. And
19 again, this is coming back with y'all. So y'all get to do
20 what I'm doing here, and I'd encourage you to do this.
21 Some sort of nightstick. I assume this might've been where
22 his pepper-spray was. And other items basically -- and a
23 holster right here for the taser. This is where the taser
24 goes. That's important too. Dressed all in black, too,
25 remember, with this vest on. And then -- that's -- combat

1 knife as well, and a holster. Additionally, his weapon --
2 these are some of the bullets. I think the clips are still
3 sitting in there. That's what is testified to, three clips
4 with 33 rounds each of -- again, David Collins said was
5 bullets meant to cause the most amount of damage to a human
6 being made possible. Undisputed, his job that night was to
7 check IDs, perhaps to search people and to deny them
8 entrance to the door. He was armed with mace and a
9 nightstick, combat knife, a taser, a .40 caliber weapon
10 with hollow point bullets, 33 of rounds. No wonder Bernard
11 was terrified that night. And I'll just add, Ms. Campbell
12 mentioned something about being able -- he was engaging in
13 an illegal act. Well, you're also getting an instruction
14 that if excessive force is being used, it's no longer
15 illegal act, and in this case, ladies and gentlemen, I
16 think that's what we are, is that excessive force was well
17 used in this case. They could've just let Bernard keep
18 walking and that would be it, but just have (sic) keep
19 going, and I believe Mr. Moti kept provoking him, and
20 that's why we're here. Now, let me talk to you about self-
21 defense. You heard the elements of self-defense, but
22 unlike what Ms. Campbell said about criminal intent which
23 is kind of what you were thinking at a time (sic), self-
24 defense is not a state of mind. It's a set of hurdles the
25 State has to overcome before you can say it wasn't in self-

1 defense. So right now the State has to prove beyond a
2 reasonable doubt to you that this was not in self-defense.
3 Now, let's look at the elements of self-defense. We've
4 got, ladies and gentlemen, at this point when he gets in
5 the car and he's driving off, I don't think he's done
6 anything frugal actually the whole night. We haven't heard
7 any testimony about him doing anything frugal. At this
8 point he's getting in his car. We've got imminent danger.
9 Bernard testifies he's leaping off, coming at him with a
10 gun. As Ms. Campbell said he has a right to protect
11 himself and family members. His brother Terrell was
12 sitting in the car next to him and said that he has a duty
13 to retreat. You see the picture. He's turning out on St.
14 Andrews; there's traffic coming. For one he felt like he
15 couldn't turn. For two, even if he had turned, he'd be
16 turning into where Jimmy was standing that day, into where
17 someone with their gun drawn would be able to shoot at you
18 easy. Ladies and gentlemen, I think we meet self-defense
19 in this case. Again, if you're undecided -- and the Judge
20 is going to instruct you between self-defense, murder and
21 manslaughter, -- if you can't pick any of three, you've got
22 to go with self-defense; again, it's their burden to
23 disprove all these elements, but let's say you agree with
24 Ms. Campbell and that this isn't self-defense. Even
25 according to Bernard's story it's still manslaughter.

1 You've got illegal provocation. This gentleman pointed the
2 gun at him, and then you've got heat of passion. You heard
3 him, he said he was terrified. Ladies and gentleman, I'd
4 submit to you that heat of passion includes fear, includes
5 being terrified, includes being -- having this gentleman
6 coming at you all night long, then finally does it one more
7 time and you're terrified and you just react. Again,
8 Bernard's story fits manslaughter. Now, they're, of
9 course, going to try to disprove Bernard's story. Okay?
10 Ladies and gentlemen, what I'd ask you is -- all we've got
11 here saying what happened that day with their one witness -
12 - the only the State put up was Lamar Ray's testimony, and
13 that's it. No one else they put up to go over the how, but
14 they could've and that's important. You heard that there
15 was at least four other responding officers on the scene.
16 Not just Zachary Brunson, four other individuals, any of
17 which could've found other witnesses, any of which could've
18 been able to look at the scene, describe the scene, write
19 what the scene was down. The State didn't put up any of
20 those witnesses. Additionally, you have two eyewitnesses
21 that Investigator Lindler told you were there and saw what
22 happened, Roberto Cordoba and Elisha Springs. And the
23 State didn't call those two either. Now, -- and let me
24 just -- let me add this part in here, too, because Ms.
25 Campbell made a big deal about when he was sitting there on

1 the stand about how he's had all this time to look over his
2 evidence. I'd like just to make it clear to you like
3 Bernard said. It's his right to do that. It's his right
4 to review all this evidence from the minute he's arrested
5 until now. It's his constitutional right to do that. And
6 to act like that he's doing something malicious and looking
7 at what the State's using to prosecute him is is just
8 wrong. Now, they're making a big deal about the gun being
9 in the holster, the gun was holstered. Okay? Now, the
10 only witness that I heard the State present about where the
11 gun was prior to the shooting is Lamar Ray. Lamar Ray said
12 he was on the phone with his gun drawn. That's the State's
13 witness, and that's what Bernard said too. He had his gun
14 out; the gun was drawn. They didn't present any other
15 testimony of anything other than this. Then something
16 happens in between, because we don't have any testimony
17 about what happened until basically EMS gets up there, and
18 then from there everyone keeps saying it's in the vest,
19 it's in the vest, it's in the vest. Ladies and gentlemen,
20 look in that vest. There's no way for it to have been in
21 that vest. It wasn't in that leg holster. And the stuff -
22 - the taser in here -- ladies and gentlemen, this is a gun
23 holster. You heard nothing about this holster the entire
24 time. Didn't hear about EMS taking something off his leg,
25 because it straps to your leg. Didn't hear them taking

1 nothing about that coming off his leg. Didn't hear nothing
2 about it being in the holster, nothing. Could've called
3 all those other responding officers to tell you where it
4 was, but they didn't. Oh, and one other thing, too. One
5 of the ways they could've disproven what I'm saying right
6 now, is you heard that DNA expert get up there, and that
7 DNA expert said, oh, we did DNA on that gun. You heard how
8 well he was able to find the ID. They tested that gun for
9 DNA. Jimmy Moti's DNA was the only DNA that was on there.
10 I would have a very good argument about that. But you
11 heard, he said they never asked to have it tested. Now,
12 let's talk about this all shot in the back. You heard a
13 lot of expert witnesses, and generally most of the experts
14 I cross examined, all of them were willing to admit, we're
15 pretty sure, we're almost certain, we're kind of sure. Dr.
16 Marcus was a hundred percent certain. Now, the Judge is
17 going to say there are certain -- there's nothing that's
18 ever certain in life. I agree with that -- gives you
19 instruction on that. Dr. Marcus was a hundred percent
20 certain. I just -- I can't trust anyone that says ---

21 MS. WALKER - Objection, Your Honor. This is his
22 opinion ---

23 THE COURT - Sustained.

24 MR. SAWYER - Because a hundred percent certain,
25 not eighty percent, not ninety percent, one hundred percent

1 I can't be wrong. Now, number one, you heard they were
2 basically contractors, contracted out by the State. He
3 didn't work for the State; he had his own corporation and
4 they get paid for a case, so you're going to talk about
5 what certain interest -- interested (sic) these witnesses
6 might have? One of them is monetary interest. Dr. Marcus
7 has monetary interest in prosecuting these cases and being
8 able to have autopsies done for the State. So that's one
9 thing to consider. Number two, as I said, he was a hundred
10 percent certain. The DNA expert got up here and I think we
11 wrote it on the board at that point, ninety-seven point
12 four nine percent. That's not a hundred percent. That's
13 pretty close to a hundred percent, but even he said there
14 was some margin for error in there. And even when I gave
15 him some different possibilities of what that little
16 percentage could be if they were related, he said
17 absolutely, that falls in that percentage, because this
18 expert gave you opinion and it's just that, the hundred
19 percent from Dr. Marcus, no room for error. Again, too,
20 the only facts he knew at the time was that it was a
21 gunshot wound. And when he wrote his report and when he
22 testified from his report, all he knew is that it was a
23 gunshot wound and that was all. He didn't know the caliber
24 of the bullet; he didn't know the distance; he didn't know
25 if Mr. Moti was wearing his vest, and he didn't know what

1 any other witness statement -- that's what I said -- as to
2 where he was shot. So he formed this entire opinion
3 without any of these other facts and then admitted, oh,
4 didn't go back and reform my opinion after that, because
5 I'm a hundred percent certain. And when I asked him, too,
6 do you -- victim said he was shot in the stomach, did that
7 change your opinion. And you can re-listen to his
8 testimony, too. The first time around he said, yes, that
9 can change my opinion. Second time around he said, no, no
10 change at all, no change at all, same opinion. He actually
11 contradicts himself up there. And finally he said that
12 this vest couldn't have any affect on it and -- these
13 pictures -- no, I'm not going to go through all this.
14 Y'all will have the pictures when you get back there, but
15 look at those pictures. He says that there is this
16 abrasion on it, it's very clear. Then he looks at the
17 other picture which he calls the exit wound, and he says,
18 well, there's a bit of an abrasion mark right here, but it
19 could've come from the vest, from the vest being sinched
20 (sic) up against him. The vest was on the back too. He
21 had no response to that either. You heard nothing about
22 the bullet's internal path, where it came, as it came in
23 and exited. Had no testimony about where the bullet went
24 inside, because he said it was tumbling around but he never
25 said actually looked inside to check and see. And then

1 finally he talks about no affect from what's called
2 aggressive resuscitation -- okay -- that there could be
3 absolutely no affect from surgeons working on him for hours
4 to change these at all. Y'all get to look at the pictures
5 and where that stitch wound is and decide if there's no way
6 it could've affected it. The State's witness said he fell
7 backward, said he was shot in the stomach, said he was
8 facing the car. That's what the State's witnesses
9 testified to. Dr. Bradley Marcus was a hundred percent
10 certain. Now, the State's going to get up there and try to
11 - they've tried to disprove or have issues with Bernard's
12 two statements. Now, statement number one, Bernard was as
13 honest as little anybody could be. What'd he say to you?
14 He said I died. I didn't want to get arrested and I lied,
15 because that first statement he admitted, I was lying to
16 police, didn't want to be arrested, so that first
17 statement, shwep, (phonetic) tear it up, toss it. That
18 second statement though he did say there was a lot of what
19 they talked about that was not in there. That second
20 statement, what'd he say? He said that there was a lot in
21 there, especially the key parts that support -- the key
22 parts from his perspective were not in there. While
23 Investigator Lindler did a great job, there's the one part
24 that I take exception with him and Chief Wilson and
25 Investigator Jordan is recording these statements. Because

1 Bernard said what he said is what he actually said.
2 Investigator Lindler and Investigator Wilson says that what
3 he actually said. But do you know how you can tell for
4 certain? There was no audio/visual recording. Don't audio
5 and visual record that statement. They'll describe
6 approximately Jordan met with him for an hour and ten
7 minutes. Investigator -- Chief Wilson met with them for an
8 hour and Chief Wilson and Lindler met with them an hour and
9 a half. That's three and a half hours. And both of them
10 are reading through statement that lasted seven minutes.
11 Even if you were to double that to fourteen minutes, it's
12 still three hours and sixteen minutes of conversation that
13 y'all didn't hear. I mean Chief Wilson said no reliable
14 technology to record a statement in the last 35 years.
15 That's since 1978 that there's no reliable technology to
16 record a statement. But I'll tell you one thing, you heard
17 them all testify we have a strict policy not to do that,
18 have a strict policy not to let them write them themselves,
19 a strict policy not to let Bernard type it himself and a
20 strict policy not to audio and visual record them. Think
21 about that. Now, they'll spend a lot of time, too, talking
22 about this cover-up. Okay? Everything that happened after
23 the events trying to make Bernard seem like a bad person.
24 What'd he tell you when he got there? I tried to cover
25 this up. He answered every one of my questions and every

1 one of Ms. Campbell's questions. Yes, sir, yes, ma'am, I
2 did it; I tried to cover that all up. That is meant to
3 distract you from what happened, because none of it
4 matters. None of that cover-up matters, because all that
5 matters is what happened that night. All the rest of this
6 -- Investigator Rast also called just for the cover-up.
7 None of the cover-up matters because it doesn't have to do
8 with it, but we spent a lot of time on that cover-up. Jail
9 phone calls? A lot on the cover-up, too. What'd Bernard
10 say? Yes, you heard me speaking in code. He was bluntly
11 honest with you about all that. So let's just ignore the
12 cover-up, because it doesn't matter about what happened on
13 the night of August 25th. You know, they made a big deal,
14 too, about -- if you look at the State's version, I would
15 still suggest this is manslaughter. Let's just ignore
16 Bernard's testimony completely, which is what the State's
17 telling you to do. You heard he was sprayed with pepper-
18 spray and a gun drawn on him once he was leaving or left.
19 Ladies and gentlemen, I would argue that's illegal
20 provocation. I would argue is acting in excessive force
21 which the Judge will instruct you, so he was not exercising
22 legal right at that point. And all the State's witnesses,
23 Marquita, Kristina, Zondra and Lamar Ray which I believe
24 nicknamed Rachet or Racket all said he was angry, angry,
25 angry, angry, angry, angry, angry. All of them said that

1 over and over and over again. So I'd say the State did a
2 good job proving voluntary manslaughter to you as well.
3 Now, the State has to disprove manslaughter. Again, if you
4 have a question in your mind between manslaughter and
5 murder, go with manslaughter. The Judge is going to
6 instruct you on that. They have to disprove manslaughter
7 as well, self-defense and manslaughter, have to disprove
8 both of those. Now, they're trying to prove malice. Okay?
9 Let you read malice, let you see what malice was. How are
10 they going to prove malice in this case? Okay. I think
11 there's two ways they're trying to prove it. They're
12 trying to prove it with Marquita and they're trying to
13 prove it with Kristina. Okay? Now, Marquita's testimony
14 was all over the place. She couldn't even get the interior
15 of the car color right, swore it was burgundy. But I will
16 tell you this, y'all saw that video. Y'all saw her walking
17 in there on that video. Watch her on that video and you
18 tell me if that's actions and response of a person who was
19 terrified for their life. Because I saw a woman who was
20 laughing, saw a woman who was grabbing onto this other
21 gentleman, was patting him, was having a good time, who was
22 pointing outside, laughing about what they just saw out
23 there. Watch it again and tell me if that's someone who's
24 terrified, and I think that right there contradicts what
25 she said. And Kristina Nuttry, she came in from Boston,

1 Massachusetts, all the way down here to Columbia, South
2 Carolina just to contradict the testimony of Marquita. She
3 said there was no way Marquita could've been in that car at
4 that point to hear all this. So these two witnesses the
5 State called directly contradict one another, directly.
6 Let me talk to you a little bit about reasonable doubt.
7 The State continues to -- reasonable doubt, reasonable
8 doubt, reasonable doubt. It's not reasonable doubt; it's
9 beyond a reasonable doubt, and let's make this clear and
10 make sure y'all remember it. It's not just if you have a
11 reasonable doubt in your head. You have to take all
12 reasonable doubts and be beyond that before you can have
13 conviction. Okay? So it's not just reasonable doubt; it's
14 beyond a reasonable doubt. Now, these legal terms are
15 problematic. So I'll have to try to -- you know, I'm sure
16 people watching football this weekend. What's the --
17 what's the standard for overturning video replay? Clear
18 and convincing evidence. That's after you watch the video,
19 you've seen clear and convincing evidence on there. Even
20 if we can look at it, even if we can split -- over knees
21 down (sic) -- suppose -- oh, that wasn't a catch made. You
22 have to see more than that. Those referees have to see
23 beyond that to be able to overturn a play in football.
24 That's a good example of reasonable doubt. Y'all -- if you
25 don't watch football, another good example I'd say would

1 be, you wake up in the morning and go to the fridge, got a
2 gallon a milk, and today is the 18th. Today's the 18th. And
3 you look at that milk, and it said that it expired on the
4 17th. Okay? And you just take that milk and chug out of
5 it, it should still be good. All right? It's only a day
6 over. But, no, you cap it and you smell it. The reason
7 why you smell it is because you have some doubt, and that's
8 again reasonable doubt. That smell, even though you know
9 it's probably good, that little extra bit, that's what they
10 have to get past. Okay? Now, I've once heard a saying
11 that defense attorney's trying to muddle up the water.
12 Okay? But the truth is a shiny silver coin that's sitting
13 at the bottom of the puddle at the bottom of a river bed.

14 COURT REPORTER - I'm having trouble hearing him,
15 Judge.

16 MR. SAWYER - Sorry. Excuse me. Better? The
17 truth is a shiny silver coin sitting at the bottom of a
18 river bed, and what we're trying to do is get out hands in
19 there and kick all this mud up and muddy up the water.
20 Ladies and gentlemen, I'd say the State's been trying to do
21 this this whole case. I'd say that the silver coin is what
22 Bernard told you. And all they've been trying to do is try
23 to cover-up, is trying to with witnesses that don't make
24 sense, just generally trying to confuse you and play on
25 your emotions to what this charge carries, and y'all swore

1 an oath to get rid of all that and pay attention to the
2 truth, and in this case I'd say the truth is that shiny
3 silver coin and the truth is Bernard's testimony. Don't
4 let the State muddy up the waters for you. And I believe
5 once y'all get back there and deliberate for a while, you
6 will find Bernard not guilty. Thank you.

7 THE COURT - Thank you, Mr. Sawyer. On behalf of
8 the State?

9 MS. WALKER - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes, ma'am.

12 MS. WALKER - Good morning. Are you finished with
13 this?

14 MR. SAWYER - Yes. Do you need help with it?

15 MS. WALKER - No, I'll take of it.

16 MR. SAWYER - Sorry. Thank you.

17 MS. WALKER - As I was getting prepared for this
18 case I started looking at the evidence, the witness
19 statements, the defendant's confession and I started to try
20 to figure out what the defense was going to be. How do you
21 defend this case? What is the defense when multiple people
22 pick your client out of a line-up as the shooter in a
23 drive-by shooting? What's the defense when your client's
24 own baby's mother comes in and says he confessed to me?
25 What's the defense when your client's DNA is found on the

1 identity card, falsely used by the defendant to try to
2 illegally enter a nightclub? What's the defense when your
3 client himself confesses to murder? What's the defense?
4 How do you defend a case with such overwhelming evidence?
5 And honestly, ladies and gentlemen, to be honest with you I
6 was at a loss, until Pat Sharpe came up here and he gave
7 his opening statement last Tuesday. And then I realized
8 that the defense was to garner a little sympathy for Mr.
9 Haltiwanger by telling everybody that it's Mr. Sharpe's
10 first trial and then attack Luck Campbell for her 25 years
11 of service. Because when the law isn't on your side and
12 when the facts aren't on your side, attack Luck Campbell,
13 because maybe, just maybe, all of you will be so busy
14 looking for tricks to fall out of her sleeve, that you will
15 forget all about the murderer sitting at the table with Pat
16 Sharpe. But luckily, ladies and gentlemen, your job is to
17 evaluate the facts. As Judges say over and over, you are
18 not here to reward any friends or punish any enemies. You
19 are here to evaluate the facts. You're not here to reward
20 Mr. Sharpe for his first trial, congratulations; you're not
21 here to punish Ms. Campbell because she's been doing this
22 for the people of Richland County for 25 years. Your job
23 is to evaluate the facts, and the facts are what I want to
24 talk to you about. The facts, ladies and gentlemen, are
25 presented through the physical evidence that you will have

1 with you, as well as the testimony from the witnesses. And
2 there are several witnesses who came forward and I want to
3 talk to you about all of them, but there's some things that
4 quite frankly we agree with the defense about. August 25th,
5 2012, the defendant was in his car on St. Andrews Road when
6 he shot out of his car several times and one of those
7 bullets struck and killed 42 year old Jimmy Moti. We all
8 agree to that. What the defense wants to do is make a
9 drive-by shooting -- the first drive-by shooting in the
10 history of the United States of America be done in self-
11 defense. They want to make a drive-by shooting either
12 voluntary manslaughter or self-defense, whichever one they
13 can get you to buy, because remember what the defendant
14 said he has to do is to get his attorney convinced to tell
15 you guys it's manslaughter. Remember that phone call when
16 she cross examined him about it and he said, yes, I said
17 that. That's what they want you to do. The first drive-by
18 shooting to be done in self-defense. It's creative.

19 MR. SAWYER - Objection, Your Honor, facts not in
20 evidence. Facts not in evidence.

21 THE COURT - Overruled. You may proceed.

22 MS. WALKER - Thank you, Your Honor. And in order
23 to prove murder to you, we brought forward several
24 witnesses, Marquita Mobley and Kristina Nuttry. Marquita
25 Mobley and Kristina Nuttry, they both testified, and they

1 told you that they were staying at the Red Roof Inn, that
2 they decided to go to El Toro, and when they walked up and
3 they presented the ID, they realized Kristina Nuttry didn't
4 have her ID, and Jimmy, he was respectful and he was polite
5 and he told them that they couldn't get in, and then those
6 two people did what reasonable people do in a situation
7 like that. They decided to do something else that night.
8 They left, and as they were walking down the street, they
9 ran into a man who gave them a ride home, and that's the
10 man you saw in the video in that green t-shirt. They ran
11 into a man who gave them a ride home. They went to the Red
12 Roof Inn, hung out for about 15 more minutes and then they
13 left, and they went back towards El Toro to that Gazbah
14 parking lot, and that is when they said -- they told you
15 what they saw. And he's right. Mr. Sawyer was right about
16 one thing. Kristina Nuttry said Marquita Mobley wasn't in
17 the car. She got confused. You can look at the video and
18 you can see the time in which that door opens and she goes
19 inside. It's about a minute, maybe 50 seconds after the
20 defendant walks over and starts talking through that car
21 window. These two strangers, these two women who have no
22 dog in this fight, who don't know the defendant at all, no
23 bone to pick with him according to his own testimony, that
24 he told them he had been tried. They tried me. He tried
25 me, but he's not about that life. And when Ms. Campbell

1 asked him what he meant by he's not about that life, he
2 meant he was trying to infiltrate somebody he didn't know
3 anything about. He wasn't going to be tried. He wasn't
4 going to be disrespected. He wasn't going to be
5 embarrassed in front of his brothers because he wasn't
6 allowed to pay his way into the club, that he was mad, and
7 these two strangers tried to calm him down. They told him,
8 it's not worth it, go somewhere else, because they're going
9 to call the cops on you. They couldn't calm him down. He
10 told them what he was going to do. I'm going to -- I think
11 he said, let -- let these rounds fly, I'm going to shoot
12 them rounds were his words. Self-defense? He says I'm
13 going to go shoot the club up and then he goes and shoots
14 the club up. There's no self-defense. That's not
15 voluntary manslaughter. That's not the sudden heat of
16 passion. The sudden heat of passion would've been if he'd
17 walked in and I guess he saw either his wife or his baby's
18 mother or his girlfriend pick any of the three of them,
19 maybe in the throws of passion with another man and he lost
20 it and couldn't take it anymore and shot one of them. This
21 is a premeditated murder. He'd been disrespected by Jimmy
22 Moti, and he told them, I'm going to shoot the club up, and
23 then he went and shot the club up. Remember what Marquita
24 Mobley and Kristina Nuttry said. Two women who do not know
25 him who have no reason to come in here and make up stories

1 about him. Stories which if you remember are corroborated
2 by the defendant's statement, the second statement he gave
3 to Chief Wilson and Sergeant Lindler. Remember their
4 testimony. And Lamar Ray, remember when Lamar Ray, he came
5 in, he's the one that kept calling Jimmy Moti, Jimbo. He
6 said that the defendant approached the club, tried to get
7 in with an ID and he was turned away. And then Mr. Sawyer
8 told you everybody agrees that he had just started to walk
9 away peacefully. That is not the truth. Because remember
10 what Lamar Ray said. He said he was racket. He remembered
11 him. He was turned up. He was racket. He had become
12 boisterous and loud. And at that point, unlike he had to
13 do with Kristina and Maquita, at that point when the
14 defendant became so boisterous and so insistent upon
15 getting in and said F-you to the people standing out there,
16 Jimmy Moti did what he is absolutely authorized to do under
17 the law. He tried to eject the defendant and his racket
18 behavior from the nightclub, because under the laws of this
19 State, a person who is registered or licensed under this
20 chapter and was hired or employed to provide security
21 services on specific property is granted the authority and
22 arrest power given to sheriff's deputies. He had the same
23 power, the same rights as a sheriff's deputy that night.
24 The security officer may arrest a person violating or
25 charged with violating a criminal statute in this State but

1 possesses the powers of arrest only on the property on
2 which he is employed. The fake ID, the disorderly conduct.
3 He had the power to eject the defendant from the property,
4 and that's what he was doing. And then according to Lamar
5 Ray, Marquita Mobley and Kristina Nuttry, as he's walking
6 him out, defendant becomes boisterous; there's some sort of
7 confrontation and the defendant is maced in the back of the
8 back. The defendant testified it had no affect on him; it
9 hit him in the back. It didn't get in his eyes; he was
10 fine. And upon seeing this, his little brother, Trouble,
11 punches Jimmy Moti in the back of the head, at which point
12 according to Lamar Ray, Kristina Nuttry and Marquita
13 Mobley, after being assaulted from behind after trying to
14 deal with the boisterous defendant that he had in front of
15 him, that's when he pulls his gun. There's no death march
16 as the defendant wants you to believe where he's being -- a
17 gun is pointed at the back as he's marched off the
18 property. He pulls the gun after the defendant's little
19 brother, Trouble, punches him in the back of the head. But
20 remember one thing -- I want y'all to remember this. Do
21 y'all remember the defendant's testimony when he said, not
22 only did he pull the gun but he racked. Y'all remember
23 that? Sometimes when you're -- when you're trying to
24 change your story and you're trying to evolve to help you
25 out to get you out of something, your story can change. It

1 can just become too good. The lie can become too good to
2 you and you take it too far, which is what the defendant
3 did in this case. Remember, he said he racked it, and
4 that's when he got scared; that's when he got terrified,
5 because now there was a bullet in the chamber. Because I
6 want to (sic) have this with you. It's State's Exhibits
7 25. It was the threat of firearm, that was the victim's
8 and a magazine with 11 unfired .40 caliber cartridges.
9 This was the magazine that was recovered from Jimmy Moti's
10 gun that night. If you see on it, it has 11, which is the
11 number of bullets this holds. All 11 were found in here.
12 There was not a bullet in the chamber, because the gun was
13 never a threat. The lie got too good to him. He took it
14 too far, and it can be disproven. And all of those unfired
15 rounds are in this envelope. Remember Lamar said that
16 after he saw that he went down there and he told them that
17 -- that they weren't going to jump on Jimbo, that the
18 defendant and his brother got onto the Exxon, the Gazbah
19 parking lot, and you see that on the video. And he said he
20 turned and started walking away, as did Jimbo, and as he's
21 turning and walking away he hears gunshots; he sees -- he
22 sees Jimmy Moti down; someone's yelling, they're shooting,
23 they're shooting, and he looks over and he sees out of that
24 black car the defendant firing shots. He told you he saw
25 that, and he was very honest with you when he told you he

1 did not initially tell law enforcement that he saw the
2 shooting. He told them that he saw a person and pointed
3 that person out as the defendant, but he didn't tell them
4 that he initially saw the shooting, because he was afraid.
5 Who can blame him? He just saw the defendant shoot a man
6 because he didn't get into a club. What would the
7 defendant do to the person who pointed him out as the
8 shooter? Who wouldn't be afraid under those circumstances.
9 But he came here; he told you what he saw, and what he saw
10 just happens to be corroborated by Marquita Mobley,
11 Kristina Nuttry and the defendant's own statement, as well
12 as the forensic evidence in this case, because luckily in
13 this case we're not asking you to just go off of eyewitness
14 accounts. We're asking you to look at all of the evidence,
15 because those eyewitness accounts were corroborated by the
16 expert testimony in this case. Ila Simmons? She was the
17 GSR expert who testified about how GSR gets on people's
18 hands. The defendant left, sped off, because remember that
19 night he's not jumping up and down talking about self-
20 defense or sudden heat of passion; he's getting out of
21 there. He just committed a crime. He's leaving. So his
22 hands weren't suitable for GSR testing but the victim's
23 were, and there was no gunshot residue on the victim's
24 hands, but she also testified that if he had been within
25 six feet of the defendant when he fired those fatal shots,

1 she would expect GSR to be on his hands, and he wasn't. He
2 was like across the parking lot when he was shot in the
3 back, and I'll get to that in a second. There was David
4 Collins, ballistics expert. He testified about the
5 projectiles that they were able to recover, that those
6 projectiles were fired from the same gun, not the victim's
7 gun, and that the shell casings, while consistent with
8 those projectiles, can't be an exact match, because the
9 shell casings were damaged as they were run over on St.
10 Andrews Road. John Barron who testified that the
11 defendant's DNA was on that identity card that was used to
12 try to get into the club. Harold Bouknight, he was the one
13 who processed the car and talk about the trajectory path of
14 the bullet from inside of the car to outside of the car,
15 how the door handle was shot off, which is corroborated by
16 the defendant's statement when he says I shot so many times
17 I even shot the door handle off. Yvonne Woods, she came in
18 and she processed the scene and she was the one who
19 collected this gun and the magazine with the 11 unfired
20 cartridge rounds in it. Kristen Polis who attended the
21 autopsy. And Dr. Bradley Marcus, the chief pathologist for
22 Richland County who now they have in on their conspiracy to
23 frame that guy because of some monetary gain. Dr. Marcus
24 testified, and he talked to you about entry wounds and exit
25 wounds, and at the time I didn't understand why we were

1 making such a big deal about it, because it's pretty
2 straight forward, but I didn't know that the defendant was
3 going to talk about the victim charging at him, which is
4 why they need it to be an entry wound to the stomach. He
5 talked about this being a textbook entry wound in the
6 defendant -- in the victim's back. He talked about when
7 the gun is fired and that bullet comes, it's spiraling out
8 of the gun at a very high rate of speed, and that the first
9 thing it hits it's going to drill a hole, a circular hole
10 into that. Look at that hole. Textbook in the back, that
11 circular round hole. And then he -- Mr. Sawyer got up here
12 and said that Dr. Marcus didn't testify about the path that
13 the bullet took inside, but that's just not true. Remember
14 he talked about it piercing the liver and how many veins
15 and arteries there are in the liver and how much he would
16 begin to bleed, because the liver is a large, large organ.
17 So he did talk about that and how as that bullet tore
18 through Jimmy Moti from his back to his front, as it hit
19 different organs it began to tumble. And instead of having
20 that same really like motion, it begins to tumble, lose
21 speed and becomes irregular, which is what makes this
22 triangular-like exit wound. Remember that. Take these
23 pictures back there with you and see if what Dr. Marcus
24 said just actually makes a whole lot of common sense much
25 less expert testimony. But then Mr. Sawyer questioned him

1 about, well, what if the victim said he was hit in the
2 stomach, would that change your opinion? Well maybe. But
3 he was hit in the stomach; he had an entry wound and an
4 exit wound; when he put his hand down as he took his last
5 breath before he died on the concrete of that parking lot,
6 he's bleeding from the stomach. It makes sense that he
7 thought he was hit in the stomach, but remember the expert
8 testimony. Entry wound to the back, exit wound in the
9 stomach, which is problematic for the defense, because that
10 means that he simply wasn't charging at the defendant when
11 this happened. You heard from three investigators in this
12 case, Investigator Tai Jordan, Sergeant Chris Lindler and
13 Chief David Wilson. Investigator Jordan talked about going
14 to Allen Benedict Court, seeing the defendant, radioing in,
15 they swarm on him, they take him in without incident, they
16 read him his rights and he gives a statement.

17 MS. WALKER - Beg the Court's indulgence.

18 THE COURT - Yes.

19 MS. WALKER - Remember this Advice of Rights --
20 and you'll have both of them back there with you. This is
21 the first one from the first statement. He's giving them;
22 he waives them, signed his name. And then in that first
23 statement, the statement that Mr. Sawyer told you to throw
24 away -- can y'all see this?

25 (Jurors indicating yes)

1 MS. WALKER - He acknowledges having his brother,
2 Carlos Brown. He's not my real brother, but I call him my
3 brother; he and Terrell, my real brother, are brothers.
4 Terrell and I have the same father -- Terrell and he have
5 the same father; Terrell and I have the same mother.
6 Terrell and Carlos's father always treated me like I was
7 one of theirs. Did you go to a party a couple of weeks ago
8 where Carlos lives? Yes, sir. He just got out of prison
9 and I'd not seen my brother in several years; I wanted to
10 see him. Did you drive to the party? Yes, I drove a
11 little toyota; it was a crack rental. I didn't want to lie
12 to you; my car was in the shop. Because at this point in
13 time he doesn't want them to know about the black car he
14 has. That's why he talks about driving the little toyota.
15 He's even willing to go so far as to be some sort of a drug
16 dealer and say it's a crack rental, because hiding that car
17 and his possession of that car is so important to him.
18 Don't just throw away the first statement. Look at what he
19 intentionally leaves out, how he changes his statement, how
20 the statements evolve as he gets more and more information
21 about the case. Who was with you? It was me and Terrell.
22 We went down there to see him. How long did y'all stay?
23 We stayed a little while and there was an altercation and
24 we left. Have you spoken to Carlos since? I've spoken to
25 him once. He told me the police was coming to get him

1 about some homicide. He said he didn't know what was going
2 on. He knew. He knew why the police were coming to talk
3 to him about a homicide, because he used his ID to get into
4 the club. Did you pick up his ID while you were up there?
5 No. Because he can't be connected to that ID. He would
6 rather blame it on his brother or his half brother --
7 Terrell's brother, his brother's brother. Did you know if
8 anyone did? No. Where were you this past Saturday? At
9 home and back and forth to Benedict talking with girls.
10 Because he cannot put himself at that point at the scene.
11 He doesn't think they have enough information on him, so
12 he's just denying everything. Which one? Terrell, Tyrobia
13 and Larry Cornish stopped by for a little while. Larry's
14 not my brother but he's always out there. What were you
15 wearing Saturday night? A t-shirt and basketball shorts.
16 Does one of your brothers have a white crown vic? Yes,
17 Jonathan Sterling the III has one. It looks like a new
18 model, but you can tell it has age on it. He's wanting to
19 talk about Jonathan Sterling the III's white crown vic,
20 because that still doesn't tie him to the murder, and he's
21 still lying about that black crown vic and talking about
22 some sort of toyota he was driving. Was he with you
23 Saturday night? No. Lie. Who is Jon Sterling, the III's
24 father? Jon Sterling, Jr. and Jon the III have the same
25 father. He is also Terrell and Carlos's father. His name

1 is Jon Sterling. Did you go to any club on St. Andrews
2 Road and Broad River? No, sir. Did your brothers? No,
3 they were with me. Did you try and present that ID, an ID
4 that wasn't yours at a club on Saturday night? No. Did
5 you get into an altercation?

6 THE COURT - You're going to have to slow down a
7 little bit.

8 MS. WALKER - Oh, I'm so sorry, Your Honor.

9 THE COURT - That's all right.

10 MS. WALKER - Sorry. Did you get into an
11 altercation at a club Saturday night? No. And at this
12 point wouldn't his have been the perfect point to tell him
13 about the fact that he was marched around at gunpoint, that
14 somebody tried to run his pockets. But nope, no
15 altercation at all; everything's fine. Did you fire any
16 shots out of a car Saturday night? No. Were you at an
17 Exxon gas station next to Club El Toro Saturday night
18 talking to two girls? No. Were you in the Broad River
19 Road area anywhere Saturday night? No. Is everything you
20 told me the truth? Yes. Are you willing to take a
21 polygraph as it pertains to this statement? No. Now, I
22 don't blame him for that one. That polygraph's going to
23 mess him up. Then -- that statement was taken by Tai
24 Jordan and Sergeant Lindler. Tai Jordan's been doing this
25 for 13 years; Chris Lindler's been doing it for 17 and 1/2.

1 And then Chief Wilson testified. He's been doing this for
2 35 years, and he talked about that last statement, that
3 statement that the defendant gives after the law
4 enforcement officers listen to those jail phone calls he
5 made. Those three phones calls you'll have back there with
6 you where he's trying to do a cover-up. They want you to
7 ignore the cover-up, because the cover-up doesn't make any
8 sense if the shooting was done in self-defense. Who covers
9 up a shooting in self-defense? So after he's trying to get
10 everybody to hold him -- remember what he said? Tell my
11 brothers to hold it, because I held it. Well, wouldn't his
12 brothers speaking up help him if the man was charging at
13 them with a gun? Wouldn't his brothers telling police
14 officers that help him? But, no, he wants them to hold it.
15 He wants them to hold it because that never happened. And
16 they listened to those jail phone calls and when (sic) they
17 go and they interview Zondra again. And Zondra came in
18 here and she testified. She was reluctant; she was
19 hesitant. She didn't want to be here, but after a certain
20 number of questions, she said, yes, he told me what
21 happened. He told me that he got angry, that the man made
22 him mad and that he shot him. He didn't tell her anything
23 about the man charging at her with the gun. He didn't tell
24 her anything about the man pointing the gun at him. He
25 told her that Trouble punched the man in the back of the

1 head and the man drew his weapon. The story that he tells
2 her and the story that she tells police officers are the
3 same story that he says in that second statement. And
4 after doing that, they go out and they interview his
5 brothers, who didn't hold it, who talked to law enforcement
6 officers. And when they get that information they confront
7 the defendant, because people didn't hold it. They told
8 what they knew. At that point, remember, he said I've had
9 enough, I'll tell you what happened, and he signed that
10 Interrogation and Advice of Right's form again, agreed to
11 speak with them; they checked each one, checked the last
12 one where he waived his rights and he talked to them. And
13 this statement he says, is there something you want to tell
14 us that you didn't Wednesday night? Yes, I gave the
15 security guard my brother's ID; when I gave the man the ID
16 he looked at it and said it wasn't me; he said I need to
17 get out of his face and that it wasn't even my ID. I
18 turned away and I was talking junk. So even he admits that
19 he wasn't just going peacefully, despite what his lawyer
20 just told you. I was saying -- excuse my language -- I
21 would say, fuck you, to the guard. He started following me
22 and I was walking to the car, and then he was like, put
23 your hands on the car, and then I said, no; I was about to
24 leave. Then he pulled his gun out, I put my hands on the
25 air (sic) and I turned my back to him, he pulled the pepper

1 spray out and I saw him shaking the spray, then he sprayed
2 me in the head. The spray hit me in the back of the head.
3 Then my brother Trouble came up and hit the man in the
4 head. He and I both ended up in the gas station parking
5 lot, and that's when Trouble fell down; from there we ran
6 to our cars. Tyrobia had pulled my car up and I ran and
7 made him get out and me and Terrell jumped in. Tyrobia got
8 in the car with Trouble; we left out of the parking lot,
9 and I started shooting. We left out of the parking lot and
10 I started shooting. Nowhere in the statement it says he
11 talk about the man charging at him with a gun. That didn't
12 become relevant until later and I'll tell you why in a
13 second. I even shot the door handle. Where did you go? I
14 went to the XO Club with my brothers. We stayed there for
15 a minute. Who is Trouble? My little brother. His name is
16 Jonathan Sterling. Did you tell Zondra what happened?
17 Yes, sir. How did you get your brother's ID? When we went
18 to the party with him, he showed me his two IDs; I crept
19 (sic) one from him. I don't even know if he remembers or
20 not; he was drunk; then the altercation broke out between
21 me and Terrell; we came back to Columbia after that. Where
22 does Carlos live? Rock Hill. What car did you drive to
23 Rock Hill? The black Ltd. Different from that first
24 statement where he had the toyota. What did you do with
25 the car after Saturday night? Tyrobia and Trouble took it

1 to the country. Did you wipe the car down? Yes, I --
2 yes, I wiped down everything; I wiped it down with gas.
3 This is a whole lot of trouble to cover up a shooting that
4 he had to do in self-defense because a man was charging at
5 him with a gun. What did you do with the gun? I sold it
6 to a guy from New York; I knew he was from New York,
7 because I met him at the store; he had an accent. I sold
8 it to him for three hundred dollars. What kind of gun was
9 it? It was a .40; it had P80 on the side of it; it was
10 black and smaller than the Glock you have. How many shots
11 did you fire? I don't even remember. What did you do with
12 the shell casings in the car? I threw them in the river.
13 Did Zondra help you in any way? No, only thing she knows
14 is what I told her. Did you see yourself on the news?
15 Yes; I saw the video from the gas station; I broke down
16 crying; I didn't mean to do it. Is there anything else you
17 need to tell us? I'm sorry for what happened; I was drunk
18 and I acted like an asshole; I am sorry. He has so little
19 value for Jimmy Moti that he thinks taking his life is
20 nothing more than a drunken asshole moment. I am sorry for
21 what happened; I was drunk and I acted like an asshole.
22 Not, I was afraid; not, I was terrified; not, the man was
23 running at me with a gun; I was drunk and acted like an
24 asshole. Now, on Friday he came up here and he testified
25 and he gave you a whole different version of events. There

1 was a lot added to it. And over the weekend I was trying
2 to figure out what would make him change his story that
3 much. Do you remember that phone call that Ms. Campbell
4 crossed him about, which he said that he read the law
5 books, he read up on the law? He knew that he had to have
6 something in there that changed it from a cold-blooded
7 murder, which it was, to either self-defense or voluntary
8 manslaughter, whichever you guys are willing to buy and let
9 him off the hook for. And that's when he starts talking
10 about people running at him with guns, about being marched
11 through the parking lot, about the gun being cocked, which
12 we now know is certainly not true. That's when those
13 stories -- that's when that started to evolve, to evolve to
14 help him get out of trouble for what he had done. And the
15 thing that struck me, is that after being terrified, after
16 having a gun pulled on him and cocked, after someone
17 shooting at him or charging at him with a gun -- I'm sorry,
18 not shooting at him -- charging at him with a gun, he was
19 so terrified, he was so horrified that he didn't go to
20 police, because he says he doesn't like the police, but it
21 didn't even make him say, you know what, maybe tonight's
22 just not my night, I'm going to go home; I've already been
23 held at gunpoint, I'm going to go home. He's so terrified
24 that he goes to the strip club for three hours. Does that
25 make sense? Does that fly in the face of common sense? He

1 went to go celebrate. He decided what he was going to do
2 when he told the girls, Marquita, that he was going --
3 Marquita and Kristina, that he was going to go shoot up the
4 strip -- the um -- the El Toro, and then he achieved his
5 goal and then he went to go celebrate at the strip club.

6 MR. SAWYER - Objection, Your Honor, opinion --
7 evidence.

8 THE COURT - Overruled. You may proceed.

9 MS. WALKER - Thank you, Your Honor. He went to
10 go celebrate at the strip club, and stayed there for an
11 additional three hours. But when he comes in here and he
12 talks to you, he creates this whole new elaborate set of
13 facts, because in order for him to get off for being held
14 responsible for what he did, you guys have to believe this
15 new set of facts; you have to believe what he said Friday.
16 And in order for you to believe what he said Friday, you
17 have to believe that Chris Lindler and Chief Wilson, who
18 has been doing this longer than I've been alive, are
19 willing to put their careers on the line to frame, not the
20 governor, not a congressman, not a legislature, but to
21 frame who? That's what you have to believe in order to
22 believe the defendant's testimony. Mr. Sawyer wants you to
23 believe that his latest set of facts, what he told you
24 Friday, is the shining star at the bottom of a muddy pool.
25 And in order to find him not guilty, you have to believe

1 that. You have to believe that there was a grand
2 conspiracy to frame Gerald Bernard Haltiwanger, Jr. of
3 murder that started with Investigator Jordan, Chief Wilson
4 and Sergeant Lindler, and that not only did they have this
5 conspiracy to frame him by leaving things out of his
6 statement and making him look bad, but that they then went
7 and got two prostitutes, because that's always who you want
8 to bring in on the conspiracy to come in and talk about
9 what the defendant said and did that night. But then not
10 only did they stop there, but they were able to turn his
11 baby's mother and she came in and she was in on the
12 conspiracy. That's what you have to believe in order to
13 find him not guilty. Please, I beg you, judge this case on
14 credibility, the credibility of the witnesses and the
15 credibility of the evidence. Was the evidence
16 corroborated? And finally, after getting Chief Wilson,
17 Sergeant Lindler, Investigator Jordan, Marquita Mobley,
18 Kristina Nuttry, Zondra Gilyard, they went and got the EMS
19 lady to testify that the gun was holstered. Because if the
20 gun was holstered, he certainly wasn't charging anybody.
21 Here is the gun's holster, right here on the vest. It's
22 not here despite how much they want it to be. This is
23 where the taser goes. This is where the gun was holstered,
24 right here on this vest. And this is where Patricia Labbe
25 said she found it. And then they got, I guess, Dr. Marcus

1 in for good measure to say that the entry wound was to the
2 back. All of these things, all of this effort went into
3 framing him, and I'll bet you -- I'll bet you it's Ms.
4 Campbell's idea, because she's tricky like that. That's
5 what you have to believe in order to find him not guilty.
6 Please, please, judge this case on credibility, on
7 corroboration of evidence. Once you do that, you will find
8 this defendant guilty of the murder of Jimmy Moti. Thank
9 you.

10 THE COURT - Thank you. All right, ladies and
11 gentlemen, who needs to take a comfort break?

12 (Jurors indicating yes)

13 THE COURT - I figured that. Ladies and
14 gentlemen, you have not heard my charge on the law, you are
15 not prepared to deliberate, therefore, no not discuss this
16 matter or allow anyone to discuss it with you, but here's
17 what we're going to do. Y'all are to take your comfort
18 break. When everybody's had their comfort break, then
19 knock on the door and return. We will await you, and then
20 I will deliver the charge to you. Remember, leave your
21 notebooks here and do not discuss this matter or allow
22 anyone to discuss it with you, and we will await you. Just
23 knock on the door when you're ready to return.

24 (Jury exits the courtroom)

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: GERALD BERNARD HARTMAN PLACE: 5622 TWO NOVA RD

OFFICER (S): SGT. LINCOLN, INV. JORDAN

DATE: 8-29-12 TIME: 1755 hrs

YOUR RIGHTS

- ☒ Before we ask you any questions, you must understand your rights.
- ☒ You have the right to remain silent.
- ☒ Anything you say can be used against you in court.
- ☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]

SIGNED: [Signature]

WITNESS: _____

WAIVER OF RIGHTS

- ☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

SIGNED: X [Signature]

WITNESS: _____



Statement of

Gerald Bernard Haltiwanger
1810 Allen Benedict Ct. Apt. C-7



Made at
Columbia, South Carolina, this 29th day of August 2012, at 1900 hours, in the presence
of Sgt. C. Lindler and Inv. T. Jordan of the Richland County Sheriff's Department.

I, Gerald Bernard Haltiwanger, understand that I have the right to remain silent. Anything
I say can be used against me in court. I have the right to talk to a lawyer for advice
before you ask me any questions, and to have a lawyer with me during any questioning.
If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish.
If I decide to answer questions now, without a lawyer present, I still have the right to stop
answering at any time. I also have the right to stop answering at any time until I talk to a
lawyer.

Do make the following statement:

Q: C.Lindler/T. Jordan

A: Gerald Bernard Hatliwanger

Q. Do you have a brother by the name of Carlos Brown?

A. Yes. He not my real brother but I call him my brother. He and Terrell my real brother
are brothers. Terrell and he have the same father. Terrell and I have the same mother.
Terrell and Carlos's father always treated me like I was one of theirs.

Q. Did you go to a party a couple weeks ago where Carlos lives at?

A. Yes sir. He had just got out of prison and I have not seen my brother in several years.
I wanted to see him.

Q. Did you drive to the party?

A. Yes. I drove a little Toyota. It was a crack rental I ain't gonna lie to ya. My car is in the
shop.

I have made the foregoing statement freely and voluntarily without fear, threat, promise
or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Gerald Bernard Haltiwanger

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting
of 4 pages and a true copy has been given to me this 29 day of August, 2012.

Sworn to and subscribed before me
This 29 day of August, 2012

Signed: Gerald Bernard Haltiwanger

[Signature]

Notary Public for South Carolina
My commission expires 01/06/2015

Q. Who was with you?

A. It was me and Terrell. We went down there to see him.

Q. How long did ya'll stay?

A. We stayed a little while and there was an altercation and we left.

Q. Have you spoken to Carlos since?

A. I have spoken to him once. He told me the police was coming to get him about some homicide. He said he didn't know what was going on.

Q. Did you pick his ID up while you were up there?

A. No.

Q. Do you know if anyone did?

A. Nope.

Q. Where were you this past Saturday night?

A. At home and back and forth to Benedict. Talking with the girls.

Q. Did you go anywhere else Saturday night?

A. No.

Q. Where you with your brothers Saturday Night?

A. Yes.

Q. Which ones?

A. Terrell, Tyrobe and Larry Cornish stopped by for a little while. Larry is not my brother but he is always out there.

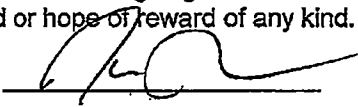
Q. What were you wearing Saturday night?

A. A t-shirt and basketball shorts.

Q. Does one of your brothers have a white crown Victoria?

A. Yes. John Sterling III has one. It looks like a newer model but you can tell it has age on it.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

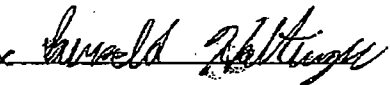
Witness: 

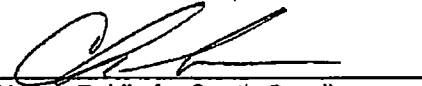
Signed: 

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 25 day of August, 2012.

Sworn to and subscribed before me
This 25 day of August, 2012

Signed: 


Notary Public for South Carolina
My commission expires 01062015

Q. Was he with you Saturday night?

A. Nope.

Q. Who is John Sterling III father?

A. John Sterling, Jr., and John III have the same father. He is also Terrell and Carlos's father. His name is John Sterling.

Q. Did you go to any club on St. Andrews or Broad River that night?

A. No Sir.

Q. Did your brothers?

A. No sir. Terrell and Tyrobe were with me.

Q. Did you try and present an ID that wasn't yours at a club Saturday night?

A. Nope.

Q. Did you get in an altercation at a club Saturday night?

A. No.

Q. Did you fire any shots out of a car Saturday night?

A. No.

Q. Were you at the Exxon Gas Station next Club El Toro Saturday night talking with two girls?

A. Nope.

Q. Where you in the Broad River Rd area anywhere Saturday night?

A. No.

Q. Is everything you told me the truth?

A. Yes.

Q. Are you willing to take a polygraph as it pertains to this statement?

A. No. Due to lawyer issues.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 25 day of August, 2012.

Sworn to and subscribed before me
This 25 day of August, 2012

Signed: [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 05062015.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: x _____

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 29 day of August, 2012.

Sworn to and subscribed before me
This 29 day of August, 2012

Signed: x _____

Notary Public for South Carolina

My commission expires 0806 2015.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: GERARD MARSHMANDEL PLACE: 5623 Two NORTH R.
OFFICER (S): Sgt. C. Lindsey / T. Jordan
DATE: 8-31-12 TIME: 1000 am

YOUR RIGHTS

- ☒ Before we ask you any questions, you must understand your rights.
- ☒ You have the right to remain silent.
- ☒ Anything you say can be used against you in court.
- ☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]

SIGNED: x [Signature]

WITNESS: _____

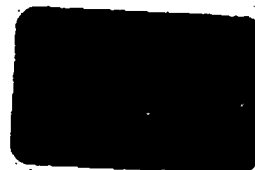
WAIVER OF RIGHTS

- ☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

SIGNED: x [Signature]

WITNESS: _____



Statement of

Gerald Bernard Haltiwanger, Jr
1810 Allen Benedict Ct C-7
Columbia, SC 29210

Made at 2012
Columbia, South Carolina, this 31st day of August 2012, at 1030 hours, in the presence of Inv.
Sgt. C. Lindler of the Richland County Sheriff's Department.

I, Gerald Bernard Haltiwanger, Jr., understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.
Do make the following statement:

Q: Sgt. C. Lindler/D. Wilson

A: Gerald Bernard Haltiwanger, Jr.

Q. Is there something you need to tell us that you didn't Wednesday night?

A. Yes. I gave the security guard my brothers ID. When I gave the man the ID he looked at it and said it wasn't me. He said that I needed to get out of his face and that wasn't even my ID. I turned away and I was talking junk. I was saying, "FUCK YOU" to the guard. He started following me as I was walking to my car and then he was like put your hands on the car. Then I said, "NO". I was about to leave. Then he pulled his gun out and I put my hands in the air and I turned my back to him. He pulled the pepper spray out and I saw him shaking the spray. Then he sprayed me in the head. The spray hit me in the back of the head. Then my brother "trouble" came up and hit the man in the head. He and I both ended up in the gas station parking lot. That is when "trouble" fell down. From there we ran to our cars. Tyrobia had pulled my car up and I ran and made him get out and me and Terrell jumped in. Tyrobia got in the car with "trouble". We left out of the parking lot and I started shooting. No one else shot. I even shot the door handle off the car.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: x Gerald Haltiwanger

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 31st day of August, 2012.

Sworn to and subscribed before me
This 31 day of August, 2012

Signed: x Gerald Haltiwanger

[Signature]
Notary Public for South Carolina

My commission expires 08062015

Q. Where did you go after that?

A. I went to the XO club with my brothers. We stayed there for a minute.

Q. Who is "trouble"?

A. My little brother. His name is Jonathan Sterling.

Q. Did you tell Zondra what happened?

A. Yes Sir.

Q. How did you get your brother's ID?

A. When we went to the party with him he showed me his two ID's. I crept one from him. I don't even no if he remembers or not. He was drunk. Then the altercation broke out between me and Terrell. We came back to Columbia after that.

Q. Where does Carlos live?

A. Rock Hill.

Q. What car did you drive to Rock Hill?

A. The black LTD.

Q. What did you do with the car after Saturday night?

A. Tyrobia and "trouble" took it to the country.

Q. Did you wipe the car down?

A. Yes. I wiped down everything down. I wiped it down with gas.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: p. Sarah Nettiger

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 21st day of August, 2012.

Sworn to and subscribed before me

This 21 day of August, 2012

Signed p. Sarah Nettiger

[Signature]
Notary Public for South Carolina

My commission expires 08/26/15

Q. What did you do with the gun?

A. I sold it to a guy from New York. I knew he was from New York because I met him in the store. He had an accent. I sold it to him for \$300.

Q. What kind of gun was it?

A. It was a .40. It had p80 on the side of it. It was black and smaller than the Glock you have.

Q. How many shots did you fire?

A. I don't even remember.

Q. What did you do with the shell casings in the car?

A. I threw them in the river.

Q. Did Zondra help you in any way?

A. No. Only thing she knows is what I told her.

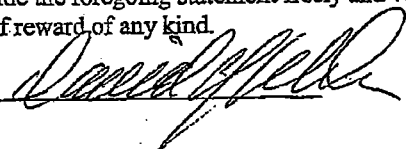
Q. Did you see yourself on the news?

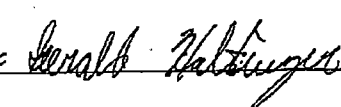
A. Yes. I saw the video from the gas station. I broke down crying. I didn't mean to do it.

Q. Is there anything else you need to tell us?

A. I am sorry for what happened. I was drunk and I acted like an asshole. I am sorry.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: 

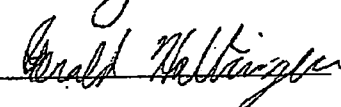
Signed: x 

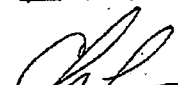
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 3 pages and a true copy has been given to me this 31st day of August, 2012.

Sworn to and subscribed before me

This 31 day of August, 2012

Signed x 

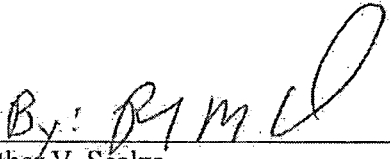

Notary Public for South Carolina

My commission expires 08062015.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 8, 2015

By: 

Heather V. Scalzo
Appellate Project Attorney
419 Vardry Street, Suite D
Greenville, S.C. 29601
(864) 331-0111

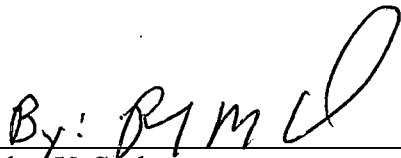
Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEYS FOR APPELLANT

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Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR APPELLANT

RECEIVED
JUN 08 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

RECEIVED

Appeal from Richland County
The Honorable Diane S. Goodstein, Circuit Court Judge

JUN 08 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

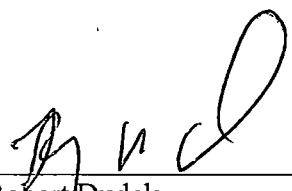
V.

GERALD BERNARD HALTIWANGER,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of June, 2015.



Robert Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 8th day of June, 2015.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.