

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Brian M. Gibbons, Circuit Court Judge

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THE STATE,

SC Court of Appeals
RESPONDENT,

V.

QUANELL MARQUAN MCILWAIN,

APPELLANT

APPELLATE CASE NO. 2014-002539

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
2011-GS-29-1138

State of South Carolina

vs.

Quanell McIlwain

Lancaster, South Carolina

November 10, 2014

Before the Honorable Brian M. Gibbons

APPEARANCES

For the State: Doug Barfield

For the Defendant: Brandon Steen, Justin Jones

Reported by: Michael C. Watkins

Official Court Reporter

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PRETRIAL MOTIONS

1 THE CLERK: Defendant?

2 MR. STEEN: Please excuse the juror.

3 THE CLERK: Juror 150, Jeffrey Wotring. What say the
4 State?

5 MR. BARFIELD: Please present the juror.

6 THE CLERK: Defendant?

7 MR. STEEN: Please seat the juror.

8 THE COURT: All right. Any matters of law regarding
9 jury selection?

10 MR. BARFIELD: Nothing from the State.

11 MR. STEEN: Nothing from the defense, Your Honor.

12 (The remaining panel was excused.)

13 (Back in the courtroom.

14 MR. BARFIELD: Your Honor, I have got just a couple of
15 odds and ins and I think Mr. Steen has some others. First
16 of all as we went through the process of arraigning
17 Mr. McIlwain on the indictment for possession of a firearm
18 or ammunition earlier this morning, I reviewed his record
19 with Mr. Steen. An element of that offense is that he has
20 a record of conviction for a crime which is a violent
21 felony, and when we get the jury in here later on I think
22 we have agreed to stipulate that Mr. McIlwain has been
23 convicted of a violent felony crime without saying anything
24 further about the nature of the offenses.

25 THE COURT: All right. Is that correct, Mr. Steen?

PRETRIAL MOTIONS

1 MR. STEEN: Yes, Your Honor.

2 THE COURT: So you're going to stipulate that the
3 State has met that prong of not having to prove that it's a
4 violent crime.

5 MR. STEEN: Yes, Your Honor.

6 THE COURT: Okay. That's so stipulated.

7 MR. BARFIELD: Your Honor, there's some documents that
8 I reviewed with Mr. Steen and Mr. Jones yesterday which we
9 have agreed -- of course, I'll have witnesses to tell what
10 they are, but we have agreed in the interest of time to go
11 ahead and -- there will be no objection to their admission
12 and I'm getting Mr. Watkins to mark them. But they include
13 26 photographs, a letter sized SLED crime scene sketch, a
14 screen shot of a cellular telephone which is relevant to
15 this case, a stapled batch of I think five pages of what we
16 agree is some telephone records concerning that phone, an
17 affidavit of Amy Stevens, a SLED evidence control witness,
18 we're going to admit the affidavit in lieu of her testimony
19 concerning some evidence that will be introduced. And then
20 a 19 page SLED verified chain of custody, those are all I
21 think going to be introduced without objection. And
22 further I think we've agreed that there really are no
23 issues as to chain of custody pertaining to the physical
24 items that will be introduced by the State in this trial,
25 but, of course, we will deal with that item by item if any

PRETRIAL MOTIONS

1 issue arises about them.

2 THE COURT: Is that correct, Mr. Steen?

3 MR. STEEN: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. BARFIELD: And I think that's all that I have.

6 And I might just over the lunch break just type this very
7 short stipulation about the record of the violent felony
8 crime.

9 THE COURT: That would be good. All right, Mr. Steen,
10 let me hear from you. Of course, you've handed up your
11 motion and we'll just deal with it in the order in which
12 you presented it unless you would rather deal with it in a
13 different order.

14 MR. STEEN: No, Your Honor, that's fine.

15 THE COURT: Your first motion then is to exclude
16 evidence under Rule 404 dealing with Mauricio Richardson
17 and other wrongs or acts. Let me hear from you on that and
18 then, Mr. Barfield, you can respond.

19 MR. STEEN: Thank you, Your Honor. Mauricio
20 Richardson and Quannell McIlwain were co-defendants on a
21 charge from several years ago, I just want to make sure the
22 State is not going to have the witness bring up those
23 pending charges while on the stand.

24 THE COURT: All right. Solicitor?

25 MR. BARFIELD: I do not intend to do that. Mr.

PRETRIAL MOTIONS

1 Richardson is a witness for the State, it is my intention
2 to call him. I will ask him if he knows Quaneil Marquan
3 McIlwain and he has told me in my interview with him that
4 he does and that they are buddies and he's known him for a
5 long time. But I do not intend to illicit from him any
6 testimony that one of the ways that he knows him is that
7 they were codefendants in another criminal case here in
8 Lancaster County.

9 THE COURT: If the witness opens the door and says
10 that then we will just have to deal with it.

11 MR. BARFIELD: I will caution him about that.

12 THE COURT: Right. Caution the witness about that and
13 we will go from there. So there's really no need for a
14 ruling at this point in time on that initial motion.
15 Anything else you wanted to say on that?

16 MR. STEEN: No, Your Honor.

17 THE COURT: All right. Tell me about your second
18 motion.

19 MR. STEEN: The other 404 concerning Quay Stevens and
20 possibly Tanisha Nelson. There's an incident that happened
21 right prior to our current incident where Mr. McIlwain is
22 alleged to have pulled a gun out on one of the State's
23 witnesses, he was charged for that under a separate
24 incident report by separate officers for separate charges
25 and I would ask the State to exclude that as evidence of

PRETRIAL MOTIONS

1 prior bad acts.

2 THE COURT: Does the state intend to offer any
3 evidence about that?

4 MR. BARFIELD: The State does. Let me give you a
5 little bit more of a factual background about this. You
6 don't know anything about the case yet I don't think and I
7 will try not to get you twisted up but it is sort of
8 convoluted. Quay Stevens and Tanisha Nelson -- and I am
9 speaking in the past tense at the time this event
10 occurred -- Quay Stevens were boyfriend and girlfriend,
11 they were in Pardue where this event occurred. Quay
12 Stevens knows Quanell McIlwain. Quay Stevens and Tanisha
13 Nelson got into an argument. It is the State's contention
14 at some point McIlwain saw the boyfriend and girlfriend
15 arguing with each other out there in Pardue Street. The
16 argument ended between boyfriend and girlfriend and at some
17 point shortly thereafter Stevens is prepared to testify
18 that McIlwain came up to him and basically fussed at him
19 for arguing with his girlfriend and there was a little back
20 and forth between the two of them and Quay Stevens, I
21 believe, is prepared to testify that during the
22 conversation between Quay Stevens and Quanell McIlwain,
23 Quay Stevens said, "Who's going to stop me?" And McIlwaine
24 simply pulled a pistol out of his pocket, presented it, did
25 not point it at Stevens, but pulled it out of his pocket

PRETRIAL MOTIONS

1 and said to Stevens, "I'll stop you." Within minutes the
2 State's allegation is that Quaneil McIlwain shot and killed
3 the victim in this case. I do not -- and McIlwaine is, in
4 fact, charged with pointing and presenting a firearm
5 related to the Quay Stevens event that occurred minutes
6 before the shooting. I do not intend to get into the fact
7 that McIlwaine was charged with anything with respect to
8 pulling out the pistol when he was talking to Stevens, but
9 I certainly intend to offer testimony from Stevens that
10 minutes before the victim in this case was shot and killed
11 we allege by McIlwain, that McIlwaine had in his possession
12 a pistol which matches the general description of what we
13 found and later learned was in fact the murder weapon. So
14 I intend to offer Stevens' testimony that he got into an
15 argument with Stevens and Stevens pulled out a pistol. I'm
16 not going to go any farther than that concerning did he get
17 arrested for it, is the case over, is it pending or
18 anything else like that. And I think that it's certainly a
19 bad act, I guess, and it certainly occurred before the
20 killing. But I think more importantly it's not a prior bad
21 act under the rule nearly as much as it is a part of the
22 res gestae of this crime. One of the elements of this
23 offense is -- one of the allegations as an element of the
24 offense is that he shot him with a pistol, and I intend to
25 offer evidence that minutes before the shooting Quaneil

PRETRIAL MOTIONS

1 McIlwain was armed with a pistol, res gestae.

2 THE COURT: All right. Got it. Let me hear from you
3 then, Mr. Steen.

4 MR. STEEN: I understand what the solicitor is saying,
5 Your Honor, but I have case law that says he must prove by
6 clear and convincing evidence that the defendant committed
7 this act before it can be presented to the jury. He must
8 first prove by clear and convincing evidence that he
9 committed the act, he must logically connect this to one of
10 the five Lyle reasons why it can come in, then show that
11 it's more probative than prejudicial. I'm just asking for
12 the solicitor to show us -- tell us --

13 THE COURT: Have you got the witness you can proffer?

14 MR. BARFIELD: I can't today, he's coming Wednesday.

15 THE COURT: All right. Well, why don't I just take
16 this -- I will take the ruling of this motion under
17 advisement, we'll proffer that witness before we actually
18 start Wednesday or before whenever that witness is supposed
19 to testify, we'll hold that issue in abeyance and I'll make
20 a ruling on that at that time.

21 MR. STEEN: Your Honor, may I pass up my case law, I
22 guess?

23 THE COURT: Yes, sir. What's your -- just tell me
24 your case.

25 MR. STEEN: State v. Smith.

PRETRIAL MOTIONS

1 THE COURT: I'll have my clerk pull it.

2 MR. STEEN: Yes, sir.

3 THE COURT: All right. And your next motion?

4 MR. STEEN: Your Honor, this would be a motion under
5 Neil v. Biggers. This case contains two photo lineups. I
6 have seen the video, there is a video of I believe it's
7 Tanisha Nelson, I think the Court needs to review it. I'm
8 not alleging any impropriety but it has the appearance of
9 impropriety where in the video -- it's a camera video and
10 you can't see the papers, you can only hear the
11 conversation discussing the papers. I would just like for
12 Detective Hall to explain what was going on during this
13 incident.

14 THE COURT: Okay. All right. Solicitor, what's your
15 position on that?

16 MR. BARFIELD: Well -- and there's another witness,
17 too, I think but there's no video of the lineup, and
18 Detective Hall can certainly testify. Those two witnesses
19 are coming also Wednesday. You've got to understand, I
20 have got a lot of witnesses and it's like herding cats and
21 I've got everybody kind of locked in, I did not bring them
22 today, they're coming Wednesday. We can hear from
23 Investigator Hall now or we can hear from him Wednesday
24 morning before we start.

25 THE COURT: What's the other witness going to say?

PRETRIAL MOTIONS

1 MR. BARFIELD: Well, Timothy Nelson is one witness who
2 picked him out of a lineup, Tanisha Nelson is the other.
3 Tanisha Nelson's lineup procedure is on videotape in
4 Lieutenant Hall's in-car camera, Timothy Nelson's is not.

5 THE COURT: Well, Mr. Steen, how would you propose to
6 deal with it? Obviously you're entitled to a hearing under
7 Biggers. How do you believe you want to -- or how do you
8 want to have that heard? Do you want to do it all
9 Wednesday when the witnesses will actually be here as far
10 as any questions you may have concerning any identification
11 issues? Do you wish to start part of it now and then we
12 can finish it Wednesday?

13 MR. STEEN: One moment, Your Honor.

14 (Break in proceedings.)

15 THE COURT: Your Honor, there's an approximately 30 or
16 40 minute video involved with this, does the State intend
17 to show the video?

18 MR. BARFIELD: Well, we certainly can. And let me
19 make this suggestion, I intentionally kind of set my case
20 up so this afternoon there's not a lot of heavy hitting and
21 I think we'll move pretty fast this afternoon. I don't
22 know if you want to deal with it after you finish the
23 handful of witnesses this afternoon or get into it now,
24 it's a little after noon, it doesn't matter.

25 THE COURT: All right. Well, let's -- I tell you

PRETRIAL MOTIONS

1 what, let's do it this afternoon. How many witnesses do
2 you have this afternoon?

3 MR. BARFIELD: Well, I have got --

4 THE COURT: We've got openings, I've got initial
5 instructions, that's 45 minutes for all of that. Then
6 we've got witnesses.

7 MR. BARFIELD: I actually got about eight or nine but
8 they're all quick. There are no eye witnesses or anything
9 that's got to be a lot of cross examination I don't
10 anticipate this afternoon.

11 THE COURT: If we have time this afternoon we'll do
12 it, if not we'll just defer it until Wednesday. All right.
13 Sounds good. Anything else?

14 MR. STEEN: Just I would move for the State to
15 sequester witnesses.

16 MR. BARFIELD: That's fine.

17 THE COURT: That motion is granted.

18 (A lunch break taken.)

19 THE COURT: Gentleman, are y'all ready to proceed and
20 ready to bring the jury?

21 MR. BARFIELD: Mr. Jones is on his way back in. He
22 has got the stipulation about the prior convictions and he
23 will be back with that, but other than that I'm ready.

24 THE COURT: Okay.

25 MR. STEEN: We have one more thing. I would ask the

PRETRIAL MOTIONS

1 State to not discuss the stuff that's under advisement
2 during his opening.

3 MR. BARFIELD: I won't. I don't say a whole lot of
4 anything in the opening.

5 THE COURT: All right.

6 MR. BARFIELD: Your Honor, one thing real quick, too.
7 Kimberly Ingram is on my witness list. She is not a fact
8 witness, she is a relative of the victim and would just
9 testify later on in the week about who he was and who his
10 family was. Any objection to her staying in the courtroom
11 for the proceedings?

12 MR. STEEN: I would ask her not to since I don't know
13 the extent of her testimony.

14 THE COURT: Is she going to be testifying as to any
15 fact basis or just --

16 MR. BARFIELD: She is not. She's simply going to
17 testify who Mr. Antonio Jones was, who his family was, what
18 they did, just a little bit about him.

19 THE COURT: I will allow her to stay as representative
20 of the family. While I'm on that, let me go ahead and
21 caution everybody in the gallery, you know, what the
22 Court -- what I do not want to see is people shaking heads
23 and nodding heads. If y'all -- obviously this is a public
24 courtroom but, you know, outward expressions can tend to
25 have an affect on the jury so I'm going to ask that y'all

PRETRIAL MOTIONS

1 refrain -- I'm talking to everybody in the courtroom --
2 refrain from any activity like that.

3 MR. BARFIELD: Your Honor, one additional item of
4 evidence that we have agreed upon is this ariel shot of the
5 1700 building of Pardue, Mr. Steen has said he has no
6 objection to this. We have already premarked some things
7 and introduce it also.

8 THE COURT: You want to go ahead and get that marked
9 the?

10 MR. BARFIELD: When we get in front of the jury all of
11 these things that we've premarked I'm going to move into
12 evidence.

13 THE COURT: Is that correct, Mr. Steen?

14 MR. STEEN: Yes, Your Honor.

15 THE COURT: That will be fine then, without objection
16 admitted into evidence. All right. Anything further?

17 MR. BARFIELD: Nothing else from the State.

18 THE COURT: Anything further, Mr. Steen?

19 MR. STEEN: Nothing further, Your Honor.

20 (The jury returned to the courtroom.)

21 THE COURT: All right. All members of the jury are
22 present. Ladies and gentlemen, let me have you stand real
23 quick and please. Madam Clerk, if you will please swear in
24 the trial jury.

25 (At this point the jury was sworn.)

1 THE COURT: Thank you, Madam Clerk. Ladies and
2 gentlemen, if you will please direct your attention to me,
3 I am going to give you some what's called initial
4 instructions before we begin the trial of this case. And I
5 want to tell you that this trial is probably going to be
6 different from what you might expect. Many people don't
7 have the chance to attend actual court sessions or as
8 you're doing now and may think from what they read on TV or
9 read in the newspaper -- excuse me, watch on TV or look
10 into what they see in the movies that trials are always
11 full of high drama, intense action and riveting
12 circumstances. Now, certainly while that may be true from
13 time to time, this trial is not for entertainment. It is a
14 fundamental part of our democracy. It is a search for the
15 truth in an effort to make sure that justice is done
16 between the parties before the Court. Now, searching for
17 the truth and making sure that justice is done can
18 sometimes be a repetitive and slow, deliberate process, the
19 opposite of what you may have seen in the movies or on TV
20 or read in books. Now ladies and gentlemen, this courtroom
21 is a place of honor dedicated to the protection and
22 preservation of citizen's rights through what many have
23 called the greatest justice system ever created. The
24 attorneys appearing before you are advocates for the
25 parties they represent, but first and foremost they are

1 officers of this Court sworn to uphold the integrity and
2 fairness of our judicial system and to help you in your
3 search for the true. You should expect them to be
4 professional, competent and ethical in the representation
5 of their client's interest, and remember that you have just
6 taken an oath to reach a fair and just verdict, so you are
7 also expected to be professional, reasonable and ethical.
8 Thank you for accepting this important responsibility for
9 your jury service and for your contributions today to our
10 system. Now, I thought it might be helpful to explain to
11 you how a trial proceeds. Now, first the State will make
12 an opening statement to you. An opening statement is not
13 evidence, it is simply an outline to help you understand
14 what that party expects the evidence will show. The
15 defendant may if he wishes make an opening statement as
16 well but he doesn't have to for reasons that I will explain
17 later on as the trial proceeds. Now, following opening
18 statements after they are made to you, you will then hear
19 testimony and evidence in this case. This will consist of
20 testimony from various witnesses as well as any physical
21 exhibits which may be introduced into evidence. And
22 following the completion of the testimony the attorneys
23 again will have an opportunity to make what is called a
24 closing statement or a closing argument or summation to
25 you. This is an opportunity for the attorneys to summarize

1 the case from their respective points of view. Again,
2 these arguments that the attorneys make to you are not
3 evidence. Now, following the closing statements by the
4 attorneys that's when I will instruct you on the law of
5 South Carolina as it pertains to the issues which may have
6 arisen in this case. And when I have completed my
7 instructions to you that's when you, the jury, will begin
8 to be able to discuss this case in order to reach a
9 verdict. Now, as I indicated to you earlier this
10 morning -- y'all excuse me, I have a little cold going
11 on -- this is a criminal case that's been brought by the
12 State of South Carolina. The State has charged the
13 defendant, Quanel Marquan McIlwaine with the charges
14 contained in these indictments. These indictments, ladies
15 and gentlemen, are not evidence of anything. These papers
16 are simply the description of the criminal charges that the
17 State has made against the defendant. Now, the defendant,
18 Mr. McIlwain, has pled not guilty to these charges and is
19 presumed innocent unless and until proven guilty beyond a
20 reasonable doubt. I will explain to you in detail at the
21 closing of the trial what a reasonable doubt means in the
22 eyes of the law, but I will tell you at this point in time,
23 a reasonable doubt is the kind of doubt that would make a
24 reasonable person to hesitate to act. A defendant has the
25 right to not testify and never has to prove innocence or

1 present any evidence, the burden of proof is always upon
2 the State of South Carolina. Now, it's going to be your
3 duty, ladies and gentlemen, to decide from the evidence
4 what you -- what the facts are and you and you alone are
5 the judges of the facts. You will hear the evidence, you
6 will decide what the facts are and then you will apply
7 those facts to the law which I will give to you. That's
8 how you reach a verdict, and in doing so you must follow
9 the law that I give to you whether you agree with it or
10 not. You shouldn't take anything I say or do during the
11 trial as indicating what I think of the evidence or what
12 your verdict should be. Just like rules which governs
13 sports and other activities, there's certain rules of
14 evidence which control what can be received into evidence.
15 Now, when a lawyer asks a question or offers an exhibit
16 into evidence and a lawyer on the other side thinks that
17 it's not permitted by the rules, that lawyer may object,
18 and if I overrule the objection that means the question may
19 be answered, or the exhibit may come into evidence. If I
20 sustain the objection that means the question cannot be
21 answered, or the exhibit cannot come into evidence. Now,
22 whenever I sustain an objection to a question or rule that
23 something can't come into evidence, you must ignore that
24 question or the existence of that exhibit, and you mustn't
25 guess what the answer would have been if I would have

1 allowed them to answer or what the exhibit would have
2 shown. Now, sometimes also it may be necessary for me to
3 request that you leave the courtroom while I discuss
4 certain legal issues with the attorneys that may come up
5 during the trial. Now, if this occurs while you're back in
6 the jury room don't speculate about what we're talking
7 about or the reason why you were asked to leave the room.
8 This is simply a procedure that the law requires when
9 certain issues with the law arise. Remember, I'm the judge
10 of the law, you're the judge of the facts. Okay. Now,
11 there also may be cases -- and I'll try to do this as much
12 as possible so you won't have to keep getting up and going
13 back to your room and coming back -- there will be a case
14 where I ask the attorneys to approach the bench so that I
15 may discuss a legal issue with them in private. And again,
16 I'll do this as often as possible so you won't have to keep
17 getting up and going back, but when we're up here talking
18 and going through that, don't think that anybody is trying
19 to hide anything or keep anything from you. This is simply
20 a procedure used by all lawyers and all courts to determine
21 and decide legal questions. Now, in deciding the facts of
22 this case, ladies and gentlemen, you may have to decide
23 which witnesses to believe or which witnesses not to
24 believe. Now, you can believe everything a witness says or
25 only part of it or none of it. Now, you're not going to be

1 allowed to take notes during the trial, so for this reason
2 you need to pay close attention to what the witnesses
3 testify to so you will be able to accurately discuss the
4 facts during your deliberations, and at the end of the
5 trial you're going to have to make your decision based on
6 the evidence presented here in this courtroom. You will
7 not have a written transcript of the trial to consult and
8 it's very difficult and time consuming for my court
9 reporter to read back or play back lengthy testimony, so
10 please pay attention to the testimony as it is given. And
11 until I advise you to begin your deliberations you must
12 not -- and this is very important -- you must not discuss
13 this case with anyone, including your fellow jurors,
14 friends, family members and anyone involved in the case.
15 Don't go on social media and talk about how you're a trial
16 juror this week. Don't go googling names of people and
17 find out information. Don't read any news articles that
18 may be occurring about this trial or may have occurred in
19 the past about this trial. But remember, your verdict must
20 only be based upon the evidence received in this courtroom.
21 Do not read, listen to or watch any news reports about this
22 case, that includes anything that may be in the newspapers,
23 on the internet, radio or television. Again, you must not
24 consider anything you may have read or heard about the case
25 outside of the courtroom whether before or during the

1 trial, and after this case is submitted to you you must
2 discuss it only in the jury room with your fellow jurors.
3 If anyone attempts to talk about this case with you in
4 violation of these instructions I'm ordering that you let
5 me know who that is and I will take care of that. Okay.
6 Now, it's important also, ladies and gentlemen, that you
7 keep an open mind and not decide any issue in this case
8 until all of the evidence has been presented, the parties
9 have made their closing arguments and I have instructed you
10 on the law in this case. It is your solemn responsibility
11 to determine the guilt or innocence of the defendant, and
12 your verdict must be based solely on the evidence as it is
13 presented to you at this trial and on the law as I instruct
14 you at the close of the trial. Thank you for accepting
15 this responsibility. Solicitor?

16 MR. BARFIELD: If the Court please, Mr. Steen,
17 Mr. Jones. Good afternoon, ladies and gentlemen of the
18 jury. Everybody in here sincerely appreciates you being
19 here. You are not here by choice but you are here to
20 fulfill a duty that we have as citizens. We don't take for
21 granted what it means for you to be away from where else
22 you would be instead of being here and we appreciate that,
23 and your role in this case is vital to make sure that the
24 system operates the way the system is set up to operate.
25 This is an opening statement. I'm Doug Barfield, the

OPENING STATEMENTS

1 solicitor, and my job on behalf of the State is to present
2 to you the case of the State of South Carolina versus
3 Quaneil Marquan McIlwaine. Mr. McIlwain is charged with
4 three crimes arising out of a single event; he's charged
5 with murder, possession of a firearm or a knife during the
6 commission of a violent crime -- and I will tell you that
7 murder is a violent crime -- and he is also charged with
8 possession of a firearm or ammunition by a person convicted
9 of a violent felony crime. Three indictments, three
10 charges, a single incident led to those three charges.
11 This is an opening statement and as the judge said what I'm
12 telling you is not evidence and for that reason when I make
13 an opening statement typically I don't tell you a whole
14 bunch. I am going to tell you just a handful of things to
15 orient you to the case. First of all I'm going to caution
16 you that as the judge said, this might seem tedious from
17 time to time as we go through this process. We are here
18 today, you're going to hear some evidence today, we are not
19 here tomorrow because it's a holiday. We'll be back
20 Wednesday, Thursday and Friday until we conclude this
21 process. You know basically nothing about this case other
22 than what little bit you heard during the jury
23 qualification and selection process and that's the way it's
24 supposed to be, because what you decide this case upon is
25 what you hear in this courtroom. Those of us who are

OPENING STATEMENTS

1 involved in this case hopefully know everything there is to
2 know about this case because we've been working on it and
3 getting it ready to present to you as jurors, and for that
4 reason for the next three or four days we have got to tell
5 you everything there is to know about this case. And we do
6 that by calling witnesses to the witness stand who are
7 under oath to testify and tell you what they saw and heard
8 and what they know about this case. We introduce things
9 for you to look at and to read, perhaps pictures and charts
10 and diagrams and things like that, telephones and guns.
11 You'll have them introduced at some point during the trial
12 of this case because they are parts of this case. When you
13 got qualified to be picked, or when we went through the
14 jury selection process with you this morning the judge read
15 out a long list of names, and I'm sure I could almost hear
16 the groans among the jury members, "God, we're going to be
17 here for three weeks." Well, this is not California first
18 of all, and trials don't last in Lancaster County three or
19 four months like they do in California and some other
20 places. I will also tell you that there are a lot of names
21 on that list that probably won't even get called as
22 witnesses, I've already eliminated some folks that I just
23 don't need to call in this case and I'm not. Don't be
24 intimidated by the long list of potential witnesses in this
25 case. I submit to you that things will move along pretty

OPENING STATEMENTS

1 fast starting in just a few minutes. Some witnesses know
2 little bits and pieces, some witnesses know more, some
3 witnesses know real vital things and other witnesses sort
4 of know peripheral things. But you have got to learn all
5 of that from hearing these witnesses on the witness stand
6 starting this afternoon, and it is tedious. And I ask
7 questions and Mr. Jones and Mr. Steen ask questions of the
8 same witnesses and we go through it until we've gotten the
9 information out that we feel you need to know about this
10 case. So number one, be patient. It will take awhile and
11 it will seem laborious and tedious, but be patient with us.
12 And number two, as the judge said again, we've got files
13 and we've got papers and we've got stuff that we've been
14 looking at and y'all don't have anything. You're sitting
15 there with your wallet in your pocket and wrist watch on
16 your arm and you don't have a file and you don't have a
17 legal pad to make notes so you have got to get it all when
18 we present it here. So give us your attention. And it
19 will interesting for you, I submit. Now, here is what the
20 case is all about in a nutshell, again, not a lot of
21 detail, just in a nutshell. First of all it happened on
22 May 29th of 2011, which I believe was an early Sunday
23 morning. It happened about 4:00 in the morning. It
24 happened in Pardue Street Apartments which I think now was
25 Palmetto Place Apartments here in the City of Lancaster out

OPENING STATEMENTS

1 Arch Street, turn onto Pardue Street or Pardue Circle and
2 you go into Pardue Apartments. It happened outside the
3 1700 building of Pardue Apartments, and specifically it
4 happened right outside 1703 and 1704, those two apartments.
5 The victim in the case is Terrance Antonio Jones. You will
6 hear evidence later on that Mr. Jones died as a result
7 of -- first of all he got shot twice but he died as a
8 result of a gunshot wound to his chest. He got shot out
9 there about 4:00 in the morning, fell to the ground,
10 police, fire, EMS all responded and Mr. McIlwain (sic) was
11 taken to the hospital here in the Lancaster, some efforts
12 were made to revive him to keep him alive and their efforts
13 were unsuccessful and he died there in the emergency room
14 at Springs Memorial Hospital. Quanell McIlwain is charged
15 and accused of being the person who shot Tonio Jones in
16 Pardue that morning. Quanell McIlwain, his name came up
17 almost immediately as police converged on the scene and
18 started investigating. Police got information which led
19 them to believe that Quanell McIlwain was responsible for
20 this shooting and police started looking for Quanell
21 McIlwain and Quanell McIlwain was arrested in Lawton,
22 Oklahoma on June 23rd of 2011, almost a month later.
23 That's really all I am going to tell you about it right
24 now. The witnesses will tell you what you need to know
25 about this case. Again, we'll go through this process and

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1 later on in the week when all of the evidence and testimony
2 has been presented to you then it will be time for the
3 lawyers to get up here again and make closing statements or
4 closing arguments to you. It goes without saying since I
5 am up here now today that when I get up here at the end of
6 this case, Thursday or Friday or whenever it is, I'm going
7 to tell you that we submit that the State has proven
8 Quanell McIlwain guilty of these three offenses beyond a
9 reasonable doubt, and I am going to ask you at that time to
10 find him guilty of all three of these offenses. Thank you
11 very much.

12 THE COURT: Thank you, solicitor. Yes, sir,
13 Mr. Steen?

14 MR. STEEN: Thank you, Your Honor, solicitor,
15 detectives. Good afternoon. My name is Brandon Steen,
16 myself along with Mr. Justin Jones have the privilege to
17 represent an innocent man here today. Quanell McIlwain did
18 not kill Mr. Terrance Jones. Prosecutors like to say it's
19 their job to present the evidence and it's our jobs to
20 muddy the waters. Ladies and gentlemen, this case was a
21 mudhole from the very beginning. Three years, five months
22 and 13 days ago Terrance Jones was shot at 4:00 a.m. in the
23 Pardue Street Apartments. Based on law enforcement's
24 investigation they charged my client, Mr. McIlwain, with
25 this crime. Let me tell you what the evidence is going to

OPENING STATEMENTS

1 show. It's going to show that Mr. Barfield's own witnesses
2 destroyed State's evidence, evidence that could possibly
3 have exonerated Mr. McIlwain. The evidence is going to
4 show that the witnesses gave misleading statements from the
5 very beginning changing the course of the investigation.
6 The evidence is going to show that the only eye witness to
7 this crime is neither credible nor reliable. In conclusion
8 I ask that you don't skip over the mud in this case, the
9 misleading statements, the destroyed evidence, the lack of
10 a reason for this crime, and I know that if you do you will
11 find that Mr. McIlwain did not commit this crime. Mr.
12 McIlwain is innocent, is a scapegoat and he is not guilty.
13 Thank you.

14 THE COURT: Thank you, Mr. Steen. Solicitor, you may
15 call your first witness.

16 MR. BARFIELD: Call Dewayne Davis. Your Honor, before
17 I start examining Captain Davis, could we -- I want to
18 offer some items that were previously agreed upon and
19 marked.

20 THE COURT: What numbers are they?

21 MR. BARFIELD: Your Honor, I'm offering as State's
22 Exhibits 1 through 26 a stack of photographs; State's
23 Exhibit 27, a sketch made by a crime scene investigator
24 with the State Law Enforcement Division; State's Number 28,
25 a photograph of the screen of a cellphone; States Number

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1 29, five pages of cellphone records; States Number 30, an
2 affidavit of Amy Stevens, an employee with the State Law
3 Enforcement Division who checks in evidence at SLED;
4 State's Exhibit Number 31, State Law Enforcement Division
5 verified chain of custody concerning evidence sent to SLED
6 on this case. Your Honor, in addition to that we have an
7 aerial photograph of the 1700 building of Pardue
8 Apartments, which has been tagged State's Exhibit Number
9 32. I would offer all of those as State's exhibits in this
10 case.

11 THE COURT: All right. Any objection to those
12 documents coming into evidence?

13 MR. STEEN: Without objection, Your Honor.

14 THE COURT: Without objection offered into evidence as
15 States Exhibits Numbers 1 through 32.

16 (State's Exhibits 1-32 were received.)

17 MR. BARFIELD: And if I can approach I will hand you
18 what we captioned the stipulation, which Mr. Steen and I
19 have signed and with the Court's permission I would publish
20 that.

21 THE COURT: All right. Any objection to the
22 stipulation being published?

23 MR. STEEN: None, Your Honor.

24 THE COURT: Thank you. You may publish the
25 stipulation.

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1 MR. BARFIELD: Your Honor, the stipulation is in
2 reference to the State of South Carolina, County of
3 Lancaster, State versus Quanell Marquan McIlwaine. The
4 State and the defendant hereby stipulate that the
5 defendant, Quanell Marquan McIlwaine, has been convicted of
6 a violent crime defined by section 16-1-60 of the code of
7 laws of South Carolina, that is classified as a felony
8 offense. And at this time I would mark that as a Court's
9 Exhibit perhaps.

10 THE COURT: We will make that Court's Exhibit Number
11 One, Mr. Court Reporter, please.

12 (The stipulation was marked as Court's 1.)

13 THE COURT: Ladies and gentlemen, at the conclusion of
14 the trial I will instruct you on what a stipulated fact is.
15 Okay.

16 The witness, DEWAYNE DAVIS, was first duly
17 sworn and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BARFIELD:

20 Q. Tell us your name, please, sir.

21 A. Dewayne Davis.

22 Q. And Captain Davis, you're employed by whom?

23 A. The Lancaster Police Department.

24 Q. How long have you been a police officer?

25 A. Seventeen and a half years.

DEWAYNE DAVIS

1 Q. How long have you been a police officer for the City
2 of Lancaster Police Department?

3 A. During that time, 17 and a half years.

4 Q. Are you familiar with an investigation concerning the
5 shooting death of Terrance Antonio Jones in Pardue Street
6 Apartments on May 29th of 2011 at about 4:00 in the
7 morning?

8 A. Yes, sir, I am.

9 Q. First of all, is the scene where these events
10 occurred in the City of Lancaster?

11 A. They are.

12 Q. And is it in the County of Lancaster?

13 A. It is.

14 Q. Do you remember the day of the week at 4:00 in the
15 morning, what day it was?

16 A. I don't recall what day it was. I was working in the
17 capacity as the shift lieutenant and/or patrol lieutenant
18 at the time.

19 Q. Now, as shift lieutenant at that time, were you the
20 ranking officer, uniformed officer on the street over the
21 shift that was working for that period of time?

22 A. I was.

23 Q. And did you respond to Pardue Street Apartments?

24 A. I did, yes, sir.

25 Q. And what did you -- were you the first responding

DEWAYNE DAVIS

1 officer or were others there before you?

2 A. I don't recall being the first. I do -- we responded
3 I think with a couple of other units around the same time
4 within just a few seconds of one another.

5 Q. And what was the nature of the call that led police
6 to get called out to Pardue Apartments?

7 A. Well, that it was a subject down, there was the
8 possibility of a shooting.

9 Q. Did you find a subject down when you got to Pardue
10 Street Apartments?

11 A. Yes, sir.

12 Q. Did you know -- did you see the subject first?

13 A. I did.

14 Q. Did you know the subject once you had seen him?

15 A. I did know him.

16 Q. Who was the person that was done?

17 A. Terrance Jones.

18 Q. Was Terrance Jones communicative with you or anybody
19 else on the scene while you were there?

20 A. No, sir.

21 Q. Did you notice any injuries about Mr. Jones' body?

22 A. He appeared to have been wounded.

23 Q. Was he being attended to by anybody medically?

24 A. Not at the time, no, only shortly thereafter.

25 Q. Did somebody subsequently attend to Mr. Jones from a

DEWAYNE DAVIS

1 medical standpoint?

2 A. Yes.

3 Q. Describe what that was all about.

4 A. Well, EMS had arrived within moments of our arrival,
5 I don't know the minutes or seconds or -- just a close
6 proximity of our arrival, and immediately started tending
7 to him.

8 Q. Was Mr. Jones transported from -- first of all, where
9 was Mr. Jones when you saw him?

10 A. The apartments face -- you know, it's in kind of a
11 cul-de-sac situation and he was in front of a set of
12 apartments, and there would have been apartments to the
13 right of him, or the right of us. As we pulled in it kind
14 of dead-ends and then there's apartments and then
15 apartments to the left, he would have been to the right
16 center of the complex on that block.

17 Q. All right. Was he taken somewhere from that scene?

18 A. I don't recall.

19 Q. That's fine. Now, what did you do as shift
20 lieutenant when you got to the scene?

21 A. Well, we wanted to obviously establish the scene. We
22 obviously had a crime scene, we had a victim down, we
23 wanted to try to find out any witnesses, if anyone heard
24 anything, start taping off, start securing the scene.

25 Q. And why do you secure the scene? That's a stupid

DEWAYNE DAVIS

- 1 question and I'll ask a bunch of them this week.
- 2 A. For evidence collection and that sort of thing.
- 3 Q. And was all of at that done?
- 4 A. Yes, sir.
- 5 Q. Was your department in charge once y'all got there?
- 6 A. Yes, sir.
- 7 Q. And I'm not asking you to tell me who or what anybody
- 8 said -- but did y'all identify some folks who had some
- 9 knowledge of the events that had led y'all to be called
- 10 there?
- 11 A. Ultimately, yes, sir.
- 12 Q. Did you make any command decisions about other people
- 13 with the police department who needed to be involved in
- 14 this matter?
- 15 A. We did. The investigators were notified in relation
- 16 to what we had, and I know that at the time Captain Susan
- 17 Hunter was involved, Detective Hall was involved and
- 18 several others.
- 19 Q. Was your chief involved at some point that evening,
- 20 or that morning?
- 21 A. I recall the chief being on scene and this was
- 22 towards the daylight hours.
- 23 Q. Okay.
- 24 A. To the extent of that involvement I can't recall, but
- 25 I know -- I remember her arriving on scene briefly.

DEWAYNE DAVIS

1 Q. All right. Did you personally interview any
2 witnesses and take any statements?

3 A. Personally no, I don't recall that.

4 Q. Did you personally seize any evidence?

5 A. No.

6 MR. BARFIELD: Thank you, sir. Answer anything
7 Mr. Steen or Mr. Jones has.

8 CROSS EXAMINATION

9 BY MR. STEEN:

10 Q. Thank you, Captain. When you say our arrival, who
11 all arrived with you?

12 A. I don't recall. There were several people on the
13 shift, I don't recall each shift member that evening. I
14 want to say that Sergeant Dale Johnson was on scene as
15 well.

16 Q. And you stated that you knew the victim. How did you
17 know the victim?

18 A. Well, I've been involved in several calls for service
19 with Mr. Jones where he was a victim as well as when he
20 was a suspect, and I've dealt with him when he's been a
21 prisoner in custody as well.

22 MR. STEEN: One moment, Your Honor.

23 (Break in proceedings.)

24 MR. STEEN: No further questions.

25 THE COURT: Any redirect?

RAKEEM DUNCAN

1 MR. BARFIELD: No, sir.

2 THE COURT: Thank you, sir, you may step down.

3 MR. BARFIELD: Ask that he be excused.

4 THE COURT: You are free to leave.

5 The witness, RAKEEM DUNCAN, was first duly
6 sworn and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BARFIELD:

9 Q. Mr. Duncan, I'm going to ask you a bunch of questions
10 and you have got to talk read loud.

11 A. All right.

12 Q. Tell us your name, please, sir.

13 A. My name is Rakeem Duncan.

14 Q. Slide your chair up so you can use that mic a little
15 better. Tell us your name again.

16 A. Rakeem Duncan.

17 Q. How old are you, Mr. Duncan?

18 A. I'm 21.

19 Q. Do you live in Lancaster now?

20 A. No, sir.

21 Q. Were you living in Lancaster back on May 29th of
22 2011?

23 A. Yes, sir.

24 Q. Where did you live in Lancaster then?

25 A. Stayed on Arch Street with my mama.

RAKEEM DUNCAN

1 Q. Did you know people that lived in Pardue?

2 A. Yes, sir.

3 Q. Did you spend time in Pardue?

4 A. Yes, sir.

5 Q. Did you know Terrance Antonio Jones?

6 A. Yes, sir.

7 Q. How long had you known him?

8 A. A year or two.

9 Q. All right. Were you in Pardue the night, Saturday
10 night into Sunday morning of May 29th of 2011?

11 A. Yes, sir.

12 Q. Were you visiting somebody?

13 A. Yes, sir.

14 Q. Who were you visiting?

15 A. Canisha Sanders.

16 Q. Where did she live?

17 A. In the 1800 block.

18 Q. 1800 block?

19 A. Yes, sir, like -- that's like the last section.

20 Q. All right. And use that microphone.

21 A. That's the last section in the projects.

22 Q. All right. Did you see -- what did you call Mr.
23 Jones?

24 A. What did I call him?

25 Q. Yeah, what did you call him.

RAKEEM DUNCAN

- 1 A. My friend.
- 2 Q. By name, what name did you use for him?
- 3 A. Tonio.
- 4 Q. Tonio. And use that microphone.
- 5 THE COURT: Sir, lift the microphone up so -- there
- 6 you go, now, and just talk.
- 7 Q. Did you see Tonio Jones Saturday night into Sunday
- 8 morning in Pardue?
- 9 A. Yes, sir.
- 10 Q. Where did you see him?
- 11 A. Well, we was together at Canisha's house.
- 12 Q. In the 1800 building?
- 13 A. Yes, sir.
- 14 Q. How long had y'all been together, or how long had you
- 15 been with him that day?
- 16 A. All that day.
- 17 Q. Did he at some point leave Canisha's house?
- 18 A. Yes, sir, just to go get some cigarettes.
- 19 Q. Regular cigarettes?
- 20 A. Yes, sir.
- 21 Q. Was he a smoker?
- 22 A. Yes, sir.
- 23 Q. Did you know where he was going to get cigarettes?
- 24 A. No, sir.
- 25 Q. About what time did he leave Canisha's apartment?

RAKEEM DUNCAN

- 1 A. Probably about 3:00 to 4:00 in the morning.
- 2 Q. In the morning?
- 3 A. Sunday morning.
- 4 Q. Did you see him at anytime -- did you see him alive
- 5 at anytime after that?
- 6 A. No, sir.
- 7 Q. Did you hear any gunshots yourself?
- 8 A. No, sir.
- 9 Q. Did you find out that something had happened out
- 10 there at Pardue?
- 11 A. Yes, sir.
- 12 Q. How did you find out that something had happened out
- 13 there at Pardue?
- 14 A. Her cousin, Kanita, called Canisha and she told
- 15 her --
- 16 Q. Don't say what anybody said. Whose cousin first of
- 17 all?
- 18 A. Canisha's cousin.
- 19 Q. Canisha's cousin called Canisha?
- 20 A. Uh-huh.
- 21 Q. And as a result of that call -- I don't want you to
- 22 tell me what anybody said, but did you find out what had
- 23 happened?
- 24 A. Yes, sir.
- 25 Q. And what had happened?

RAKEEM DUNCAN

- 1 A. He had gotten shot.
- 2 Q. Who had gotten shot?
- 3 A. Tonio.
- 4 Q. Did you leave out of the 1800 building at some point?
- 5 A. Yes, sir.
- 6 Q. Where did you go?
- 7 A. To the middle section.
- 8 Q. And what building is the middle section?
- 9 A. I don't know what building.
- 10 Q. I'm going to take a chance and show you something, I
- 11 don't know if you will recognize it or not. I'm showing
- 12 you State's Exhibit Number 32, I'll put it where everybody
- 13 can see it in a minute. Look at that and tell me if that
- 14 makes any sense to you.
- 15 A. Yes, sir. Yeah, that's the middle section, I think.
- 16 Q. Bare with me just a minute.
- 17 (Break in proceedings.)
- 18 MR. BARFIELD: Permission for the witness to step down
- 19 for a minute, Your Honor.
- 20 THE COURT: Mr. Witness, go on down there where the
- 21 solicitor is.
- 22 Q. Come right over here. That's a pointer. Hold on
- 23 just a minute and let me ask you a couple of questions,
- 24 and step over this way so that they can see what you're
- 25 looking at. First of all, do you see what you described

RAKEEM DUNCAN

1 as the 1800 building on there? Do you see what you know
2 to be the 1700 building on there? And it might not make
3 any sense to you, I don't know.

4 A. The middle section is right here. I think this is
5 the middle section. If the picture is from the end
6 part -- that is the top-end section.

7 Q. Well, if you're driving into Pardue you're going that
8 way.

9 A. Yes, sir.

10 Q. Does that picture make any sense to you?

11 A. Yes, sir.

12 Q. And do you know what apartments those are?

13 A. No.

14 Q. Do you know what the 1800 building is on this
15 diagram?

16 MR. STEEN: Asked and answered, objection.

17 THE COURT: I'm sorry?

18 MR. STEEN: Asked and answered about the 1800 block.

19 THE COURT: All right. Objection overruled.

20 A. I mean, the 1800 block is like the bottom section.

21 Q. Okay. That's fine. You can have a seat back up
22 there. Where did you go when you left the 1800 building?

23 A. Went to the middle section all of the way to the
24 back.

25 Q. Were there people out there? And use that

RAKEEM DUNCAN

1 microphone.

2 A. Yes, sir.

3 Q. A bunch of people?

4 A. I mean, it was the ambulance and the police was out
5 there.

6 Q. Were the ambulance and the police out there before
7 you went out?

8 A. No. I think it was just ambulance first, then the
9 police came.

10 Q. And did you see Tonio Jones out there somewhere?

11 A. Yes, sir. They was loading him up into the
12 ambulance.

13 Q. Loading him up into the ambulance?

14 A. Yes, sir.

15 MR. BARFIELD: Thank you, sir. Answer anything Mr.
16 Steen or Mr. Jones has.

17 THE COURT: All right. Mr. Steen?

18 MR. STEEN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. STEEN:

21 Q. Was there anyone else at Ms. Sanders apartment with
22 you?

23 A. Yes, sir.

24 Q. Who else was there?

25 A. It was me, Canisha, my brother, Curtis Duncan, and I

RAKEEM DUNCAN

1 think that was all. Because we were playing cards that
2 night.

3 Q. And what relationship did Ms. Sanders have to the
4 victim?

5 A. That was her cousin.

6 Q. But you have no relationship to the victim.

7 A. No.

8 Q. How did you know Mr. Jones?

9 A. I met him through her.

10 Q. Through Canisha?

11 A. Yeah.

12 Q. So you would say you and Mr. Jones are friends?

13 A. Uh-huh.

14 Q. Did Mr. Jones say anything before he left to go find
15 some cigarettes?

16 A. No, sir.

17 Q. Did he take anything with him when he left to go find
18 some cigarettes?

19 A. I thought he had some change, but --

20 Q. Does he normally just go bum, for lack of a better
21 word, cigarettes from people?

22 A. Yes, sir.

23 Q. And that's a normal routine for Mr. Jones.

24 A. Uh-huh.

25 Q. Without getting the picture back up, was the 800

RAKEEM DUNCAN

- 1 block on this picture?
- 2 A. Nuh-uh.
- 3 Q. Now, you spoke with law enforcement at this incident,
- 4 correct?
- 5 A. Yes, sir.
- 6 Q. And did you tell law enforcement that the victim had
- 7 any beef with anyone?
- 8 MR. BARFIELD: Objection. I don't think it's
- 9 relevant.
- 10 THE COURT: Sustained.
- 11 Q. Do you know Mataus (phonetically) Bennett?
- 12 A. Who?
- 13 Q. Mataus Bennett.
- 14 A. Mataus?
- 15 Q. Otherwise known as Mute?
- 16 A. That's not his name.
- 17 Q. Who is Mute?
- 18 A. Mathis.
- 19 Q. Mathis Bennett.
- 20 A. Yeah.
- 21 Q. I apologize. But do you know Mathis Bennett?
- 22 A. Yes.
- 23 Q. That's who is known as Mute.
- 24 A. Yes, sir.
- 25 Q. Had you been with him at all that night?

MELVINIA IZZARD

1 A. No, sir.

2 MR. STEEN: One moment.

3 (Break in proceedings.)

4 MR. STEEN: No further questions. Thank you.

5 THE COURT: Any redirect, solicitor?

6 MR. BARFIELD: None.

7 THE COURT: Thank you, sir, you may step down. You
8 are free to leave. Call your next witness.

9 The witness, MELVINIA IZZARD, was first duly
10 sworn and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BARFIELD:

13 Q. Use that microphone and tell us your name, please.

14 A. Melvinia Izzard.

15 Q. Ms. Izzard, do you live in Lancaster now?

16 A. Yes, I do.

17 Q. Do you live now in the same place you lived on
18 May 29th of 2011?

19 A. I still live in Pardue but I stay in a different
20 apartment.

21 Q. Different apartment?

22 A. Uh-huh.

23 Q. Were you living in Pardue on May 29th of 2011?

24 A. Yes, I was.

25 Q. What apartment were you living in then?

MELVINIA IZZARD

- 1 A. 1702.
- 2 Q. Describe the apartments for -- how many apartments
3 are in the 1700 building, do you know?
- 4 A. Six.
- 5 Q. And do you know the numbers of those six?
- 6 A. Uh-huh.
- 7 Q. What are the numbers?
- 8 A. 1701, 1702, 1703, 1704, 1705, 1706.
- 9 Q. And if you're facing the front of the 1700 building,
10 is 1701 on the left or is it on the right?
- 11 A. On the left.
- 12 Q. Moving to the right to 1706?
- 13 A. Uh-huh.
- 14 Q. You've got to say yes or no.
- 15 A. Yes.
- 16 Q. How long had you been living out there before then,
17 before May 29th of '11, how long had you been in 1702?
- 18 A. About five years.
- 19 Q. Each one of those 1701 through 1706 apartments, are
20 they one story or two story apartments?
- 21 A. What you mean?
- 22 Q. Is there an upstairs and a downstairs to each one of
23 those apartments?
- 24 A. Yes, there is.
- 25 Q. Were you in your apartment at about 4:00 that

MELVINIA IZZARD

1 morning?

2 A. Yes, I was.

3 Q. What were you doing in your apartment about 4:00 that
4 morning?

5 A. Sleep.

6 Q. Did anything happen to change your being asleep?

7 A. Yes.

8 Q. What?

9 A. I heard the gunshots.

10 Q. Could you tell about how many gunshots did you hear?

11 A. Two or three, I'm not real sure, but it was more than
12 one.

13 Q. Could you tell where the shots were coming from?

14 A. No, I couldn't.

15 Q. Could you tell whether they were close or far off?

16 A. Not really.

17 Q. When you heard gunshots what did do you?

18 A. I jumped up and looked out my window.

19 Q. Are you upstairs in the bedroom or downstairs in the
20 bedroom?

21 A. Upstairs in the bedroom.

22 Q. And the window you looked out overlooks what?

23 A. The front of my apartment.

24 Q. Did you see anything when you looked out your window?

25 A. Yes.

MELVINIA IZZARD

- 1 Q. What did you see?
- 2 A. A young man standing with his arms out.
- 3 Q. Do you know who it was that you saw?
- 4 A. At first I didn't.
- 5 Q. Did you later learn who it was that you saw?
- 6 A. Yes.
- 7 Q. Who was it that you saw?
- 8 A. A boy named Antonio.
- 9 Q. Did you know him?
- 10 A. No, just know him from around.
- 11 Q. Did you know him by sight I guess is my question.
- 12 A. Yes, I did.
- 13 Q. Did you know his name?
- 14 A. I just knew his name was Antonio.
- 15 Q. When you looked out and saw Antonio with his hands
- 16 out, did you see anything else then?
- 17 A. No, I did not.
- 18 Q. What did you do after you first saw Antonio?
- 19 A. I got up and went downstairs and went out the door.
- 20 Q. All right. Stop right there. What door? Where does
- 21 that door open up in to?
- 22 A. The front door.
- 23 Q. What did you see when you opened up your door?
- 24 A. He had fell.
- 25 Q. He who?

MELVINIA IZZARD

- 1 A. Antonio.
- 2 Q. And when you saw that, what did you do?
- 3 A. Nothing. I went over -- people was out there
- 4 hollering and screaming and crying and I went and looked
- 5 at him and I just seen him.
- 6 Q. You weren't the only one out there when you opened
- 7 your door and went out, is that what you're saying?
- 8 A. I wasn't the only one.
- 9 Q. Did you stay in Pardue that -- do you remember about
- 10 what time this was?
- 11 A. I know it was early morning before day.
- 12 Q. Still dark?
- 13 A. Uh-huh.
- 14 Q. Did you stay in the apartment complex until later on
- 15 in the day?
- 16 A. Uh-huh.
- 17 Q. Again, you've got to say yes or no.
- 18 A. Yes, sir.
- 19 Q. That's fine. Did anybody respond -- did any
- 20 officials respond as a result of what you had heard?
- 21 A. What you mean?
- 22 Q. That's not a good question. Did you see police out
- 23 there?
- 24 A. No, not at that time.
- 25 Q. Did they come?

MELVINIA IZZARD

1 A. Yes.

2 Q. Did you see an ambulance out there? Or maybe more
3 than one, I don't know.

4 A. Yes.

5 Q. Was any of that out there when you first opened your
6 door, any police or EMS or any law enforcement or
7 emergency workers?

8 A. No, sir.

9 Q. Did they all arrive?

10 A. Yes, sir.

11 Q. And did you talk to anybody when the police arrived?

12 A. Yes.

13 Q. I'm going to hold State's Exhibit Number 32 up and
14 just let you look at it for a minute from there. Does
15 that picture make any sense to you?

16 A. Yeah.

17 Q. All right. Is your apartment -- is the 1700 building
18 shown on State's Exhibit Number 32?

19 A. Yes, sir.

20 Q. Do you see where your apartment is in that building?

21 A. Yes, sir.

22 MR. BARFIELD: Permission for the witness to stand
23 down?

24 THE COURT: Yes, sir.

25 Q. Step down here a minute, Ms. Izzard. Stand over

MELVINIA IZZARD

1 there to the side so we're not blocking anybody's view.

2 Do you see the 1700 building in Pardue on that picture?

3 A. Yes, sir.

4 Q. With that pointer mash the buttons and circle the
5 1700 building.

6 A. (Witness complies.)

7 Q. Now, do you see the yellow tags with numbers on them
8 on that building?

9 A. Yes, sir.

10 Q. Are those numbers accurate for which apartment is
11 which?

12 A. Yes, sir.

13 Q. And point to your apartment in that building.

14 A. (Witness complies.)

15 Q. Now, do you know where the 1800 building is?

16 A. Uh-huh.

17 Q. Circle it with a pointer.

18 A. (Witness complies.)

19 Q. Now, when you looked out -- let me ask you this
20 first. When you looked out and saw Tonio standing and
21 when you opened your door and saw him on the ground, was
22 he in the same place or a different place?

23 A. The same place.

24 Q. Where did you see Tonio Jones on the ground?

25 A. Can I do it with my finger?

MELVINIA IZZARD

1 Q. You do it with your finger and then I will do it with
2 the pointer maybe.

3 A. This is my apartment right here and he was like right
4 here.

5 Q. And are you pointing to that area right there?

6 A. Uh-huh.

7 Q. All right. Thank you, ma'am, you can take your seat
8 again. Other than the shots, did you hear any other
9 commotion out there before the shots?

10 A. No, I didn't.

11 MR. BARFIELD: Thank you, ma'am. Answer anything
12 Mr. Steen or Mr. Jones has.

13 CROSS EXAMINATION

14 BY MR. JONES:

15 Q. Ms. Izzard, I don't have very many questions for you.
16 You said that you heard the shots and then you went and
17 looked pretty much immediately after that, you went to the
18 window?

19 A. Uh-huh.

20 Q. And when you went to the window, Mr. Jones was
21 actually still standing when you first saw him?

22 A. Uh-huh. Yes.

23 THE COURT: Ma'am, is that a yes?

24 A. Yes, sir.

25 Q. Yes, ma'am. So it's a very short period of time when

MELVINIA IZZARD

1 the shots were fired and when you got to the window. Did
2 you see anybody outside with a gun?

3 A. No, I didn't.

4 MR. JONES: No further questions. Thank you.

5 THE COURT: Any redirect?

6 MR. BARFIELD: None.

7 THE COURT: Thank you, ma'am, you may step down. You
8 are free to leave. You may call your next witness.

9 MR. BARFIELD: Annette Benson.

10 The witness, ANNETTE BENSON, was first duly
11 sworn and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BARFIELD:

14 Q. Tell us your name, please, ma'am.

15 A. Annette Benson.

16 Q. Ms. Benson, do you live in Lancaster now?

17 A. Yes, sir.

18 Q. Do you live in Pardue now?

19 A. Yes, sir.

20 Q. Were you living in Pardue on May 29th of 2011?

21 A. Yes, sir.

22 Q. What apartment were you living in in May of 2011?

23 A. 1704.

24 Q. Are you still in 1704?

25 A. No, sir.

ANNETTE BENSON

- 1 Q. Okay. Were you home early the morning of May 29th of
2 2011?
- 3 A. Yes, sir.
- 4 Q. And about 4:00 in the morning what were you doing?
- 5 A. I was asleep.
- 6 Q. Was anybody else home with you that morning?
- 7 A. My kids, they were.
- 8 Q. And do you have a son named Patrick?
- 9 A. Yes, sir.
- 10 Q. Was your bedroom upstairs or downstairs?
- 11 A. Upstairs.
- 12 Q. Are all of the bedrooms in your apartment upstairs?
- 13 A. Yes, sir.
- 14 Q. Are all of the bedrooms in the 1700 building
15 upstairs?
- 16 A. Yes, sir.
- 17 Q. Did you know Terrance Antonio Jones?
- 18 A. Yes, sir.
- 19 Q. How did you know him?
- 20 A. He's a family member through by marriage.
- 21 Q. How long had you known him before May 29th of '11?
- 22 A. Just about all of my life.
- 23 Q. How soon -- what did you call Mr. Jones?
- 24 A. I called him Tonio.
- 25 Q. Had you seen Tonio during the day Saturday, or in the

ANNETTE BENSON

1 night Saturday, or in the early morning of Sunday, had you
2 seen him at all that day or night or morning?

3 A. No, sir.

4 Q. Did you know Quanell McIlwain?

5 A. Yes, sir.

6 Q. How did you know Quanell McIlwain?

7 A. He was a friend of my kids through school.

8 Q. Do you see Quanell McIlwain in the courtroom today?

9 A. That's him sitting right over there.

10 Q. And what's he wearing -- first of all when you say
11 sitting over there, you mean over there next to the table
12 where my stuff is?

13 A. No, over to my left.

14 Q. What has he got on?

15 A. A striped shirt and it like has got blue in it, or
16 blue or gray or blue or white one, it's a striped shirt.

17 Q. Next to the two fellows with the neckties over there?

18 A. Yes, sir.

19 Q. That's Quanell McIlwain?

20 A. Yes, sir.

21 Q. Did anything happen while you were in your bed asleep
22 that Sunday morning?

23 A. I heard a gunshot.

24 Q. Stop right there. About how many gunshots did you
25 hear?

ANNETTE BENSON

- 1 A. About three or four if I'm not mistaken.
- 2 Q. Could you tell from where the gunshots were coming
- 3 from?
- 4 A. From outside.
- 5 Q. The front -- outside on the front or outside on the
- 6 back of your apartment?
- 7 A. On the front side.
- 8 Q. Did they sound like they were close or were they far
- 9 away?
- 10 A. It was about like they were close.
- 11 Q. When you heard those gunshots what did you do?
- 12 A. I got up out of my bed and looked out my window.
- 13 Q. Your bedroom window upstairs?
- 14 A. Upstairs.
- 15 Q. What did you see when you looked out your bedroom
- 16 window?
- 17 A. I seen Antonio laying on the ground.
- 18 Q. Did you see anybody around him at that time?
- 19 A. No, sir.
- 20 Q. Did you ever go outside that night and talk to police
- 21 or anybody else who came?
- 22 A. No. They came and knocked on my back door.
- 23 Q. Did you talk to the police some time that early
- 24 morning?
- 25 A. Yes, sir.

ANNETTE BENSON

1 MR. BARFIELD: Thank you, ma'am. Answer anything
2 Mr. Steen or Mr. Jones has.

3 THE COURT: Mr. Jones?

4 CROSS EXAMINATION

5 BY MR. JONES:

6 Q. Ms. Benson, I don't have very many questions for you.
7 That morning you said you heard some gunshots and they
8 woke you up.

9 A. Yes, sir.

10 Q. And almost immediately after that you went to your
11 window?

12 A. Yes, sir.

13 Q. And you saw Mr. Jones then?

14 A. Yes, sir.

15 Q. And you didn't see anyone else around him at that
16 time with a gun?

17 A. No, sir.

18 MR. JONES: No further questions, thank you.

19 THE COURT: Any redirect?

20 MR. BARFIELD: None.

21 THE COURT: Thank you, ma'am, you may step down and
22 you're free to leave.

23 MR. BARFIELD: Patrick Benson.

24 The witness, PATRICK BENSON, was first duly
25 sworn and testified as follows:

PATRICK BENSON

1 DIRECT EXAMINATION

2 BY MR. BARFIELD:

3 Q. Slide up and use that microphone and please tell us
4 your name.

5 A. Patrick Benson.

6 Q. Mr. Benson, how old are you?

7 A. Twenty-six.

8 Q. Do you live here in Lancaster?

9 A. Yes, sir.

10 Q. Do you live in Pardue now?

11 A. Yes, sir.

12 Q. Were you living in Pardue on May 29th of 2011?

13 A. Yes, sir.

14 Q. What apartment were you living in on May 29th of
15 2011?

16 A. Apartment 1704.

17 Q. Is that the same apartment that you live in now?

18 A. No, sir.

19 Q. Okay. Is your mama Patricia --, no -- is Annette
20 Benson your mama?

21 A. Yes, sir.

22 Q. Were you home during the early morning hours of
23 May 29th of '11?

24 A. Yes, sir.

25 Q. Did you know Terrance Antonio Jones?

PATRICK BENSON

- 1 A. Yes, sir.
- 2 Q. What did you call him?
- 3 A. I called him Tonio.
- 4 Q. How long had you known him?
- 5 A. Before then I would say probably about a year.
- 6 Q. And use that microphone so everybody can hear you.
- 7 Had you seen Tonio anywhere Saturday afternoon, Saturday
- 8 during the daytime, or Saturday night or over into Sunday
- 9 morning, did you see him at anytime?
- 10 A. Yes, sir.
- 11 Q. Where did you see him?
- 12 A. I seen him at the third section of Pardue.
- 13 Q. And about when was it that you saw Tonio in Pardue?
- 14 A. 11:30.
- 15 Q. 11:30 at night or 11:30 during the daytime?
- 16 A. During the day.
- 17 Q. Did you see him any time after 11:30 that Saturday?
- 18 Do you know Quanell Marquan McIlwain.
- 19 A. Yes, sir.
- 20 Q. How long have you known him?
- 21 A. Since high school.
- 22 Q. Is that how you know Quanell, through high school?
- 23 A. Yes, sir.
- 24 Q. Do you see Quanell McIlwain in the courtroom today?
- 25 A. Yes, sir.

PATRICK BENSON

- 1 Q. Where is Quanell sitting and what is he wearing?
- 2 A. He's sitting right there with a collared shirt on.
- 3 Q. Raise your hand, Mr. McIlwaine.
- 4 A. (Defendant complies.)
- 5 Q. Is that who you're referring to as Quanell McIlwain?
- 6 A. Yes, sir.
- 7 Q. What were you doing about 4:00 that morning?
- 8 A. I was asleep.
- 9 Q. Where was your bedroom in your mama's apartment?
- 10 A. My room was in the back-end of the apartment.
- 11 Q. Upstairs?
- 12 A. Yes, sir.
- 13 Q. Did anything happen as you slept?
- 14 A. Yes, sir. I had heard about three or four gunshots.
- 15 Q. Could you tell from where the gunshots were coming?
- 16 A. They were coming from out in front of the apartment.
- 17 Q. Could you tell whether they were close to the
- 18 apartment or far from the apartment?
- 19 A. It was close.
- 20 Q. When you heard the gunshots what did you do?
- 21 A. When I heard the gunshots I got up and I watched
- 22 through my mom's window and that's when I seen the victim
- 23 laying on the ground.
- 24 Q. And who did you see laying on the ground?
- 25 A. Tonio.

PATRICK BENSON

1 Q. Are you looking at him from the upstairs bedroom
2 window?

3 A. Yes, sir. I'm looking at him through my mother's
4 bedroom.

5 Q. Did you go anywhere after you saw him out the window
6 in your mama's bedroom?

7 A. Yes, sir, I had walked outside.

8 Q. Were you the only one outside when you saw him?

9 A. No, sir.

10 Q. When you first saw him was anybody else out there?

11 A. Yeah. It was probably about like six people outside.

12 Q. Okay. Did the police come?

13 A. Yes, sir.

14 Q. Were you there when the police came?

15 A. Yes, sir.

16 Q. Did you talk to the police?

17 A. Yes, sir.

18 MR. BARFIELD: Thank you, sir. Answer anything
19 Mr. Steen or Mr. Jones has.

20 THE COURT: All right. Mr. Jones?

21 CROSS EXAMINATION

22 BY MR. JONES:

23 Q. Mr. Benson, I only have a few questions for you. You
24 said you were asleep that night when you heard the
25 gunshots.

PATRICK BENSON

1 A. Yes, sir.

2 Q. And they woke you up.

3 A. Yes, sir.

4 Q. And you pretty much immediately went to the window to
5 see what happened?

6 A. Yes, sir.

7 Q. And when you went, did you see my client anywhere
8 nearby?

9 A. No, sir.

10 MR. JONES: Nothing further, thank you.

11 THE COURT: Any redirect?

12 MR. BARFIELD: None, thank you.

13 THE COURT: All right. Thank you, sir, you may step
14 down and you are free to leave. Call your next witness.

15 The witness, SHAWANDA MINGO, was first duly
16 sworn and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BARFIELD:

19 Q. I'm going to holler at you and I want you to holler,
20 too, please, ma'am. Use that microphone and tell us your
21 name.

22 A. Shawanda Mingo.

23 Q. Ms. Mingo, do you live in Lancaster now?

24 A. Yes.

25 Q. Do you live in Pardue now?

- 1 A. Yes.
- 2 Q. Were you living in Pardue back on May 29th of 2011?
- 3 A. Yes.
- 4 Q. You've got to talk louder.
- 5 A. Yes.
- 6 Q. Slide way up and use that microphone. What apartment
7 were you staying in in Pardue on May 29th of 2011?
- 8 A. 1704.
- 9 Q. Where were you about 4:00 in the morning on May 29th
10 of 2011?
- 11 A. I can't remember, I could have been at home asleep.
- 12 Q. Did anything happen out there that night to get your
13 attention?
- 14 A. I heard gunshots.
- 15 Q. When you heard gunshots where were you?
- 16 A. In bed.
- 17 Q. In 1704?
- 18 A. Yes.
- 19 Q. Do you recall how many gunshots you heard?
- 20 A. I think it was around four.
- 21 Q. Could you tell where they were coming from?
- 22 A. No.
- 23 Q. Could you tell whether they were close to where you
24 were or far off from where you were?
- 25 A. They sounded close.

SHAWANDA MINGO

- 1 Q. When you heard -- were you sleeping upstairs?
- 2 A. Uh-huh.
- 3 Q. You've got to say yes or no.
- 4 A. Yes.
- 5 Q. When you heard the gunshots, did you do anything?
- 6 A. I jumped out the bed and looked out the door.
- 7 Q. Out the door to go outside?
- 8 A. Yeah.
- 9 Q. All right. Now, when you say you jumped out the
- 10 bed -- I'm asking a stupid question again. Is there a
- 11 door upstairs?
- 12 A. No, it's downstairs.
- 13 Q. And how did you get from being in the bed upstairs to
- 14 being at the door downstairs?
- 15 A. I took the stairs.
- 16 Q. Okay. And did you open the door or go out the door?
- 17 A. I opened the door.
- 18 Q. Did you see anything or anybody when you opened the
- 19 door?
- 20 A. Yes.
- 21 Q. What did you see?
- 22 A. I seen Tonio laying on the ground.
- 23 Q. Where was Tonio lying on the ground?
- 24 A. Kind of in front of the apartment like on the grass
- 25 in front of the sidewalk.

1 Q. All right. You say Tonio, did you know Terrance
2 Antonio Jones?

3 A. Yes.

4 Q. How did you know him?

5 A. He's my cousin.

6 Q. When you were upstairs and heard the shots, did you
7 look out from upstairs at all?

8 A. No.

9 Q. When you opened the door and saw Tonio outside, what
10 did you do?

11 A. I called the police.

12 Q. Did you stay there?

13 A. Yes.

14 Q. Did the police come?

15 A. Yes.

16 Q. Did you talk to the police?

17 A. Yes.

18 Q. Now, you said Tonio was -- tell the jury again where
19 Tonio was when you saw him lying on the ground.

20 A. He was laying on the grass in front of the sidewalk.

21 Q. I'm going to show you something. I'm showing you
22 State's Exhibit Number 31. Have you ever seen this item
23 before? Have you seen you this before?

24 A. No.

25 Q. Look at it and tell me if it makes any sense to you.

SHAWANDA MINGO

- 1 Do you recognize what is shown on there?
- 2 A. It looks like the apartments.
- 3 Q. Answer out loud.
- 4 A. It look like the apartments.
- 5 Q. Do you see what appears to be the 1700 building on
- 6 there?
- 7 A. Uh-huh.
- 8 Q. And do you see a label of 1704?
- 9 A. Yes.
- 10 Q. Does that appear to be the apartment you were talking
- 11 about that you were in?
- 12 A. Yes.
- 13 MR. BARFIELD: Permission for the witness to step down
- 14 briefly.
- 15 THE COURT: Yes, ma'am, you can step down there,
- 16 please.
- 17 Q. Stand over there to the side so you're not blocking
- 18 anybody's view. Can you make that work and show the jury
- 19 what your apartment is? And you've got to talk loud
- 20 because I'm asking you questions.
- 21 A. It's right here.
- 22 Q. Can you tell the jury where Tonio was when you saw
- 23 him on the ground?
- 24 A. I think he was right here.
- 25 Q. Thank you, ma'am, you can take your seat again. You

1 can go back up there. Had you been in any apartment other
2 than 1704 earlier that night or earlier that early
3 morning?

4 A. Yes.

5 Q. Where had you been?

6 A. 1701.

7 Q. Who lived in 1701?

8 A. Justine.

9 Q. Do you know her last name? If you don't that's fine.

10 A. No.

11 Q. Was anybody else living there with her?

12 A. I think it was just her, I think it was her apartment
13 at the time.

14 Q. When you were at 1701, were there other people there
15 other than Justine and you?

16 A. It was a few people there.

17 Q. And what was happening in 1701?

18 A. Everybody was just chilling really. Like it was a
19 few people drinking but everybody was just chilling.

20 Q. Would it be accurate to describe it as a party?

21 A. No. It was probably more of a get-together.

22 Q. Okay. Do you know somebody named Quanell McIlwain?

23 A. I know of him.

24 Q. Have you ever met somebody you know as Quanell
25 McIlwain?

SHAWANDA MINGO

1 A. Yes.

2 Q. When?

3 A. That night.

4 Q. Where?

5 A. At Justine's apartment.

6 Q. We'll come back to that in a minute. When you saw
7 Tonio lying on the ground, before you heard shots -- did
8 you hear anything else outside before you heard shots?

9 A. No.

10 Q. Did you hear any commotion outside?

11 A. No.

12 Q. Did you hear any yelling, screaming or arguing
13 outside?

14 A. No.

15 MR. BARFIELD: Thank you, ma'am. Answer anything Mr.
16 Steen or Mr. Jones has.

17 THE COURT: All right. Mr. Jones?

18 CROSS EXAMINATION

19 BY MR. JONES:

20 Q. Ms. Mingo, when you woke up and went outside, was
21 that pretty much after you heard the shots?

22 A. Yes.

23 Q. When you went outside and you saw Mr. Jones on the
24 ground, did you see anyone else standing near him?

25 A. No.

SHAWANDA MINGO

1 Q. Did you see anyone with a firearm?

2 A. No.

3 Q. And you testified just earlier that you saw Mr.
4 McIlwaine at a party earlier that night, or get-together
5 earlier that night.

6 A. Yes.

7 Q. Did you tell the police that when you first talked to
8 them?

9 A. No, I wasn't asked that. When I called the police I
10 said I heard shots and Tonio was on the ground.

11 Q. But at anytime before today had you told them that
12 you met Mr. McIlwain at a party?

13 A. Nuh-uh.

14 Q. Did you speak to a Sergeant Hartley?

15 A. Yes.

16 Q. And you never mentioned to him that you had met Mr.
17 McIlwaine at any point?

18 A. No. I didn't even know what was going on at that
19 point.

20 MR. JONES: Okay. No further questions, thank you.

21 REDIRECT EXAMINATION

22 BY MR. BARFIELD:

23 Q. When you talked to the police, were they throwing any
24 names out about who they thought had shot somebody?

25 A. No.

SHAWANDA MINGO

1 MR. BARFIELD: That's all. Thank you, ma'am.

2 THE COURT: All right. Thank you, ma'am, you may
3 stand down, you are free to leave. All right. Ladies and
4 gentlemen of the jury, we're going to take a brief recess
5 at this time, good time for a midafternoon recess.
6 Remember, don't talk about the case, you've not received
7 the case yet to begin deliberations. We will take a brief
8 comfort recess, we will reconvene in about ten minutes.
9 Thank you very much.

10 (The jury left the courtroom and a recess was
11 Taken).

12 THE COURT: Anything before we bring the jury in?

13 MR. BARFIELD: Nothing from the State.

14 MR. STEEN: No, sir.

15 THE COURT: All right. Bring them in.

16 (The jury returned to the courtroom.)

17 THE COURT: Thank you. All members of the jury are
18 present. What is your name?

19 THE JUROR: My name? Roderick McClean.

20 THE COURT: That's what I thought. Mr. McClean -- I
21 wanted to make sure of the notes -- I'm appointing you as
22 the foreman of the jury. You are going to be the jury
23 spokesman here in court, you are also going to be the
24 presiding juror in the jury room during deliberations and
25 you will be the juror who signs and dates and fills out the

RYAN FIREBAUGH

1 verdict form at the end. But although you are the only one
2 who writes on the verdict form the verdict must be
3 unanimous. I will tell you more about that at the close of
4 the trial, but I'm appointing you as foreman. Thank you.

5 MR. BARFIELD: The State calls Ryan Firebaugh.

6 The witness, RYAN FIREBAUGH, was first duly sworn
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARFIELD:

10 Q. Will you tell us your name, please, sir?

11 A. Ryan Firebaugh.

12 Q. Mr. Firebaugh, are you employed by the Lancaster
13 Police Department now?

14 A. I am not.

15 Q. Were you employed by the Lancaster Police Department
16 back on May 29th of 2001?

17 A. Yes, I was.

18 Q. Were you on shift in the early morning hours of that
19 day about 4:00?

20 A. Yes, sir, I was.

21 Q. Did you respond to a call at Pardue Apartments?

22 A. Yes, sir.

23 Q. What was the nature of the call?

24 A. It was a possible shooting incident.

25 Q. When you got there, were you the first law

RYAN FIREBAUGH

1 enforcement officer on the scene?

2 A. Yes, sir, I was.

3 Q. Were any other emergency workers there when you got
4 there?

5 A. No, sir.

6 Q. Just generally describe the scene as you found it
7 when you got there initially. What was going on?

8 A. When I initially pulled up there were not a lot of
9 people out at that time, a lot of people outside the
10 apartments. I --

11 Q. Were there some people outside of the apartments?

12 A. Yes, sir. There was not a crowd -- there wasn't a
13 crown. I went to the area where the caller described
14 where the incident had occurred and I saw a man lying on
15 his back in the grass.

16 Q. Was it later determined who that man was?

17 A. Yes, sir. It was later determined the man was
18 Terrance Jones.

19 Q. Did you make any observations of Mr. Jones -- first
20 of all was Mr. Jones responsive when you first saw him?

21 A. No, sir, he appeared lifeless.

22 Q. Did you make any observations about his body?

23 A. He had a gunshot wound to his chest.

24 Q. Was he lying face down or face up?

25 A. He was face up.

RYAN FIREBAUGH

1 Q. Do you recall where exactly he was lying?

2 A. He was in the grass between -- once you leave the
3 parking lot there's a curve there and there's a grass area
4 before the sidewalk and he was in the grass area there.

5 Q. Between the sidewalk and the curve to the parking
6 lot?

7 A. Correct, yes, sir.

8 Q. And do you recall where in relation to the numbered
9 apartments in the 1700 building he was? If you don't,
10 that's fine.

11 A. I don't right now. It was towards the right
12 middle -- if you're looking facing them towards the right
13 middle.

14 Q. Okay. What did you do when you saw Mr. Jones on the
15 ground?

16 A. Well, I checked for the safety of the area. I
17 checked him to see if there was any signs of life, that if
18 we needed to perform any CPR, anything I could do
19 immediately to help him.

20 Q. And was there anything you determined you could do to
21 help him at that point?

22 A. No, sir.

23 Q. Go ahead. What did you do next?

24 A. I observed the scene appeared safe to me. There
25 wasn't any active fighting, shooting, anything of that

RYAN FIREBAUGH

1 nature, I determined that the scene was safe. I contacted
2 my dispatch on the radio to have EMS respond to the scene.

3 Q. Did you know whether EMS had been summoned to the
4 scene already?

5 A. Yes, sir.

6 Q. Explain the procedure. When the police are going and
7 EMS is needed, who goes in first and how do y'all decide
8 that?

9 A. Yes, sir. In these type of situations EMS is
10 contacted to be on stand-bye, which means they respond to
11 a safe location a short distance from the actual incident
12 scene and they wait there for the police to go in and
13 determine that the scene is safe for them to come in and,
14 you know, do their job.

15 Q. And did you determine it was safe for EMS to come
16 there?

17 A. Yes, sir.

18 Q. Did you observe EMS come in and do some things with
19 respect to Mr. Jones?

20 A. Yes, sir. Once I contacted them on the radio a short
21 time later EMS pulled up and began their job, hooking up
22 the heart monitors and things of that nature.

23 Q. Now, did you -- how long did you stay out there?
24 From your first arrival until you cleared out, how long
25 were you there that morning?

RYAN FIREBAUGH

1 A. Several hours. I went from there to the hospital and
2 I then cleared from the hospital.

3 Q. How long were you at Pardue before you left Pardue to
4 go to the hospital approximately? And I know you're not
5 looking at a stop watch.

6 A. Less than 30 minutes. I was there, EMS got there and
7 put him in the back of the ambulance, put Mr. Jones in the
8 back of the ambulance and went in route to the hospital
9 and I followed them there.

10 Q. All right. While you were there, did other city
11 police officers and perhaps county sheriff's deputies
12 respond?

13 A. Yes, sir. There were numerous officers that
14 responded.

15 Q. Okay. Did talk to any civilians out there -- I'm not
16 asking you to quote anybody, but did you talk to people to
17 see if anybody knew anything?

18 A. Yes, sir. We asked people that were out if they had
19 seen anything, heard anything and things of that nature.

20 Q. Did you take any official written statements from any
21 witnesses while you were there for that 30 minutes?

22 A. I did not. I took down personal identifiable
23 information of a witness that was on the scene but did not
24 take any written statements.

25 Q. We will come back to that witness in a minute. Did

RYAN FIREBAUGH

- 1 you at the scene in Pardue pick up and seize any evidence
2 while you were there?
- 3 A. I did not, no, sir.
- 4 Q. Now, you got some identifying information from a
5 witness. Do you know who that witness was?
- 6 A. Yes, sir. The name of Tanisha Nelson.
- 7 Q. And don't quote Ms. Nelson, but did you have some
8 conversation with her?
- 9 A. Yes, sir, I did.
- 10 Q. Did you know at the time who Eric Jaillette was?
- 11 A. Yes, sir, I did.
- 12 Q. Who was and is he?
- 13 A. He is a Sergeant with the Lancaster County Sheriff's
14 Department.
- 15 Q. Was he on the scene that morning?
- 16 A. Yes, sir, he was.
- 17 Q. Did you have some conversation with him?
- 18 A. Yes, sir. He --
- 19 Q. Go ahead. Don't tell me what he said, but just tell
20 me what happened.
- 21 A. He approached me and identified Ms. Nelson as a
22 witness to me and that he had spoken to her and identified
23 her as a witness to me.
- 24 Q. That's how you got her name?
- 25 A. Correct, yes, sir.

RYAN FIREBAUGH

1 Q. In your presence, was any property taken from Tanisha
2 Nelson?

3 A. Not in my presence, no, sir.

4 Q. Did you ever see any property that had been taken
5 from Tanisha Nelson that morning?

6 A. Sergeant Jaillette had mentioned that he --

7 MR. STEEN: Objection.

8 Q. Don't say what he said. Did you ever see anything
9 that anybody got from Ms. Nelson?

10 A. Yes.

11 Q. What did you see?

12 A. A cellphone.

13 Q. Did you ever possess it?

14 A. I did not.

15 Q. Did you follow the ambulance all of the way to the
16 hospital?

17 A. I did.

18 Q. And what was your purpose going to the hospital?

19 A. Scene securing at the hospital.

20 Q. Is that routine when there's been a shooting?

21 A. Yes, sir, it is, due to heightened emotions to
22 families and everybody involved.

23 Q. And was there any problem at the hospital?

24 A. No, sir, there was not.

25 Q. Was there a crowd outside the ER doors causing a

RYAN FIREBAUGH

1 ruckus or anything?

2 A. No, sir.

3 Q. Were you in the presence of Terrance Antonio Jones as
4 he's being worked on in the hospital?

5 A. Yes, sir, I was in the trauma bay.

6 Q. Did you pick up anything in the trauma bay?

7 A. Yes, sir, I did.

8 Q. Describe -- first of all, what was it?

9 A. Well, when Mr. Jones was in the hospital room -- when
10 the EMS personnel picked him up he was on a backboard,
11 which is a rigid board that somebody is placed on to
12 prevent any further injuries, spinal injuries, things of
13 that nature. When he got to the hospital that was taken
14 off from underneath Mr. Jones and a package of bologna
15 fell out from I guess it was in between Mr. Jones and the
16 backboard.

17 Q. Now, you said a package of bologna. I envision an
18 Oscar Myer circular pack with a square back on it and you
19 peel it loose and it has got however many slices that's in
20 it. Is that what you're talking about?

21 A. Yes, sir.

22 Q. And did you pick it up?

23 A. Yes, sir, I did.

24 Q. Why did you pick it up?

25 A. Because when I looked at it on the floor it appeared

RYAN FIREBAUGH

1 to have a bullet hole in it.

2 Q. What did you do with it after you picked it up?

3 A. When I looked at it and observed it it was a bullet
4 hole, or what appeared to be a bullet hole anyway. I
5 secured it as evidence and then when I returned to the
6 police department entered it in as evidence.

7 Q. Now, the first time you saw it is when it was between
8 Mr. Jones and the backboard?

9 A. Yes, sir.

10 Q. You don't know if it was on his person or where it
11 was on his person if it was on his person; is that
12 correct?

13 A. Correct.

14 Q. And when you got -- what did you ultimately do with
15 the pack of bologna?

16 A. I put it in the evidence refrigerator at the
17 Municipal Justice Center.

18 MR. BARFIELD: Thank you, sir. Answer anything Mr.
19 Steen or Mr. Jones has.

20 THE COURT: All right. Mr. Steen?

21 MR. STEEN: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. STEEN:

24 Q. Mr. Firebaugh, Tanisha Nelson wasn't able to provide
25 you a name of the shooter, was she?

RYAN FIREBAUGH

1 A. Not the name. She gave me a nickname but no legal
2 name, no, sir.

3 Q. What was that nickname?

4 A. K, as in the letter K.

5 Q. Based on there being no written statement from that,
6 that was the only relevant information?

7 A. Can you restate? I'm sorry.

8 Q. Based on there being no written statement provided by
9 Ms. Nelson at that time, that would be the only relevant
10 information?

11 A. She gave me a verbal statement, but I didn't take a
12 written statement from her, no, sir.

13 MR. STEEN: No further questions.

14 THE COURT: Any redirect?

15 MR. BARFIELD: Yeah, just a couple.

16 REDIRECT EXAMINATION

17 BY MR. BARFIELD:

18 Q. Did Ms. Tanisha Nelson purport to be an eye witness
19 to the shooting?

20 A. Yes, sir.

21 Q. Did she purport to know who the shooter was one way
22 or another?

23 A. Yes, sir.

24 Q. And what name did she -- or nickname did she
25 subscribe or ascribe to the person that she --

DUSTYNN BURLINGAME

1 A. The name she gave me was K.

2 Q. K as in Special K, but the K?

3 A. K, the actual letter K.

4 MR. BARFIELD: Thank you, that's all.

5 THE COURT: All right. Thank you, sir, you can step
6 down, you're free to leave.

7 The witness, DUSTYNN BURLINGAME, was first duly
8 sworn and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BARFIELD:

11 Q. Tell us your name, please, sir.

12 A. Dustynn Burlingame.

13 Q. Mr. Burlingame, by whom are you employed?

14 A. Lancaster City.

15 Q. What do you do for the Lancaster City Police
16 Department?

17 A. I'm a detective there.

18 Q. And you're very soft spoken, you've got to be unsoft
19 spoken today. How long have you been a police officer?

20 A. For about nine years now.

21 Q. How long have you been a police officer for the City
22 of Lancaster?

23 A. All nine of those years.

24 Q. Were you a police officer -- what was your job for
25 the city police department back on May 29th of 2011?

DUSTYNN BURLINGAME

- 1 A. I was a patrol officer then.
- 2 Q. What do you do for the police department now?
- 3 A. I'm a detective.
- 4 Q. Were you on duty on May 29th of 2011 early morning
- 5 hours close to 4:00 in the morning?
- 6 A. Yes, sir, I was.
- 7 Q. Did you respond to Pardue apartments?
- 8 A. I did.
- 9 Q. What was the nature of the call?
- 10 A. It was a possible shooting incident.
- 11 Q. Were other officers there when you got there?
- 12 A. Yes, sir.
- 13 Q. Several or just one or two?
- 14 A. Just a few.
- 15 Q. Describe the scene when you rolled up.
- 16 A. Well, I pulled in along with a couple of other
- 17 officers, we all arrived at about the same time. I pulled
- 18 up and Mr. Jones was laying on his back in the front yard
- 19 there in front of the 1600 block.
- 20 Q. Did you know Mr. Jones?
- 21 A. I did.
- 22 Q. Did you recognize him as Mr. Jones, the person lying
- 23 on the ground?
- 24 A. Yes, sir, I did.
- 25 Q. Were there people out there around him when you got

DUSTYNN BURLINGAME

1 there?

2 A. Yes, there was.

3 Q. Had anything been done by the time you got there to
4 secure the scene, or was this within seconds of the
5 dispatch?

6 A. Within seconds.

7 Q. Tell me this, how do officers on the street know to
8 respond to a call?

9 A. Based upon the severity of the call or what it is.

10 Q. How do you know to go somewhere is my question.

11 A. Dispatch will call you over the radio and tell you
12 what's happening and where it's happening.

13 Q. Are times recorded?

14 A. Yes, sir, they are.

15 Q. Are you the author of the primary incident report for
16 this matter?

17 A. Yes, sir, I am.

18 Q. And what time was the dispatch to officers to go to
19 Pardue for this event?

20 A. 4:08 in the morning.

21 Q. And what was the nature of the call that was
22 dispatched out?

23 A. A shooting incident.

24 Q. And what was the address that was dispatched out?

25 A. 1703.

DUSTYNN BURLINGAME

- 1 Q. Pardue?
- 2 A. Yes, sir.
- 3 Q. How long after 14:08 (sic) was it that you got there?
- 4 A. 408. It was just --
- 5 Q. Excuse me, 4:08.
- 6 A. Within a couple of minutes.
- 7 Q. Do you recall where you were to actually start your
- 8 response to this call?
- 9 A. I believe I was on Arch Street coming back to the PD.
- 10 Q. And how far is the PD from Pardue Apartments?
- 11 A. Two minutes.
- 12 Q. Is the PD on Arch Street?
- 13 A. It is.
- 14 Q. Did you take any written statements from any
- 15 witnesses yourself?
- 16 A. I did not.
- 17 Q. Did you seize or collect any evidence there at the
- 18 scene yourself?
- 19 A. I did not.
- 20 Q. Did you find out that there were people out there who
- 21 might or might not know something about what had happened?
- 22 A. I did.
- 23 Q. Did you talk to some of them?
- 24 A. I did.
- 25 Q. Was the scene secured?

DUSTYNN BURLINGAME

1 A. When I got there it was not.

2 Q. How soon after you got there was it secured?

3 A. Just then. When me and the other officers arrived we
4 secured the scene then.

5 Q. And to secure the scene, tell the jury what you had
6 to do in this particular case.

7 A. When you arrive make sure that people that are there
8 don't leave, get the information from the people that are
9 there.

10 Q. Does it matter where the people who are there on the
11 scene are?

12 MR. STEEN: Objection, leading.

13 MR. BARFIELD: Okay.

14 THE COURT: Sustained.

15 Q. That's fine. Go ahead.

16 A. You get there, make sure you understand who is there,
17 what their name is, why they're there. You keep them
18 there until investigators and other people get there,
19 determine what their purpose is for being there, how long
20 they have been there, just as much information as you can
21 from everybody that's there. Also put crime scene tape up
22 around the area and everything to preserve evidence.

23 Q. Where were the people who were told to stay there put
24 or told to stay?

25 A. I spoke to a Ms. Nelson and a Mr. Stevens. They were

DUSTYNN BURLINGAME

1 inside her apartment, or she was standing in the doorway
2 of her apartment. I actually stepped inside her apartment
3 with her to speak with her about the incident and had her
4 stay there until investigators arrived.

5 Q. Was any property seized from Ms. Nelson?

6 A. Not by myself, but yes, there was.

7 Q. Did that occur in your presence or --

8 A. It did. There was a cellphone that was given to a
9 deputy.

10 Q. Which deputy?

11 A. Whitesides.

12 MR. BARFIELD: Permission for the witness to step
13 down.

14 A. Okay.

15 Q. Take a look at this and see if you recognize it first
16 and then we will talk about it, referring to State's
17 Exhibit Number 32.

18 A. Pardue Street Apartments.

19 Q. Now, you've really got to talk loud now. Circle the
20 1700 building.

21 A. 1700 is this.

22 Q. Keep your voice up.

23 A. That is 1700 right there.

24 Q. All right. And point to the 1703 apartment, not the
25 label for it, but the apartment itself.

1 A. Here.

2 Q. Point to the location where you saw Mr. Jones lying
3 on the ground.

4 A. (Witness complies.)

5 Q. All right, sir, you can take your seat again. Thank
6 you. Let me ask you this, you talked about talking to
7 Tanisha Nelson. You also refer to a person by the name of
8 Mr. Stevens. Do you remember his first name?

9 A. Edrickia (phonetically), I think, I believe it was
10 Edrickia.

11 Q. Did you learn through your initial discussions --
12 don't tell me what anybody said -- but whether there was
13 any connection between Ms. Tanisha Nelson and Mr. Edrickis
14 Stevens?

15 A. They were romantically involved.

16 MR. BARFIELD: Thank you, sir. Answer anything Mr.
17 Steen or Mr. Jones has.

18 THE COURT: All right.

19 CROSS EXAMINATION

20 BY MR. STEEN:

21 Q. Detective, how do you know Mr. Jones?

22 A. Just through that day.

23 Q. So prior to you seeing him on the ground you weren't
24 able to identify him as --

25 A. I'm sorry, I knew him through work. I had actually

DUSTYNN BURLINGAME

1 arrested him a few times before.

2 MR. BARFIELD: Your Honor, I kind of let it go
3 earlier, I'm going to object to references to Mr. Jones'
4 background and that kind of connection to law enforcement.
5 I don't think it's relevant.

6 MR. STEEN: Your Honor, he asked him how do you know
7 the decedent and he testified that he knew Mr. Jones.

8 THE COURT: All right. I'm going to overrule the
9 objection. You can answer the question, sir.

10 A. Yes, sir. I knew him through work, yeah.

11 Q. And who else arrived with you on the scene,
12 detective?

13 A. Several other officers did. I know my lieutenant at
14 the time, Dewayne Davis, was there, and also the deputy
15 was there.

16 Q. And you stated that you saw the phone turned over to
17 Deputy Whitesides?

18 A. Yes, sir.

19 MR. STEEN: No further questions, Your Honor. Thank
20 you.

21 THE COURT: Any redirect?

22 MR. BARFIELD: No, sir.

23 THE COURT: All right. Thank you, sir, you can step
24 down, free to leave. Call your next witness.

25 MR. BARFIELD: Call Eric Jaillette.

ERIC JAILLETTE

1 The witness, ERIC JAILLETTE, was first duly
2 sworn and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BARFIELD:

5 Q. Tell us your name, please, sir.

6 A. Eric Jaillette.

7 Q. Mr. Jaillette, by whom are you employed?

8 A. Lancaster County Sheriff's Office.

9 Q. How long have you been in law enforcement?

10 A. Ten years.

11 Q. How long have you been employed by the sheriff's
12 office?

13 A. Ten years.

14 Q. What do you do for the sheriff's office?

15 A. Narcotics agent.

16 Q. Were you working for the sheriff's office on May 29th
17 of 2011 about 4:00 in the morning?

18 A. Yes, sir. I was the sergeant on patrol.

19 Q. And you weren't in narcotics then; is that correct?

20 A. No, sir, I was not.

21 Q. Did you end up in Pardue Street Apartments concerning
22 a shooting event?

23 A. Yes, sir, I did.

24 Q. And explain to the jury, how come sheriff's deputies
25 go to city calls?

ERIC JAILLETTE

1 A. Sometimes the city are short-manned when they're busy
2 or have a serious call and the sheriff's office will back
3 them up.

4 Q. And did you go backup the city police department on
5 this call?

6 A. Yes, sir, I did.

7 Q. Did you collect any evidence while you were there on
8 the scene?

9 A. Yes, sir, I did..

10 Q. What was it -- generally what was it?

11 A. A cellphone.

12 Q. I'm going to show you a bag which has some paper and
13 an object in it. Take a minute and look at that as long
14 as you need to and then I'm going to ask you a couple of
15 questions about it. Do you recognize, number one, the
16 markings and the bag?

17 A. Of the cellphone?

18 Q. On the evidence.

19 A. On the bag. Yes, sir, I do.

20 Q. And do you recognize the cellphone?

21 A. Yes, sir, I do.

22 Q. Is that a cellphone inside of that bag?

23 A. Yes, sir..

24 Q. And when did you first see that cellphone?

25 A. A female -- after we arrived on scene a Ms. Tanisha

ERIC JAILLETTE

1 Nelson came up to me --

2 Q. That's fine. Don't say what she said, just say what
3 Tanisha Nelson did when she came up to you.

4 A. She handed me a cellphone.

5 Q. And is that the cellphone that you have on the
6 counter in front of you?

7 A. Yes, sir, that's it.

8 Q. What did you -- and what time was that cellphone
9 taken into the possession of law enforcement?

10 A. 04:10 hours, 4:10 in the morning.

11 Q. What did you do with the cellphone after you got your
12 hands on it?

13 A. I held on to the cellphone for chain of custody
14 purposes, and since it was a city case I handed it over to
15 Sergeant Hall when he arrived on scene.

16 Q. And Sergeant Hall would be Sergeant Phillip Hall?

17 A. Phillip Hall.

18 Q. Is that who you gave it to?

19 A. Yes, sir.

20 Q. Did you have any further dealings with this
21 cellphone?

22 A. No, sir, I didn't.

23 MR. BARFIELD: Your Honor, at this time we offer the
24 cellphone in the evidence bag as State's Exhibit Number 33,
25 I believe, for identification purposes.

ERIC JAILLETTE

1 THE COURT: Okay. Just for ID purposes.

2 MR. BARFIELD: Just for ID at this point.

3 Q. Did you do anything with the phone other than take
4 possession of it and turn it over to Phillip Hall?

5 A. No, sir.

6 MR. BARFIELD: Thank you, sir. Answer anything Mr.
7 Steen or Mr. Jones has.

8 THE COURT: All right.

9 CROSS EXAMINATION

10 BY MR. STEEN:

11 Q. One question. Are you aware if Deputy Whitesides had
12 the phone at any point?

13 A. I can't hear very well, I'm sorry. I apologize.

14 Q. Are you aware if a Deputy Whitesides had the phone at
15 any point?

16 A. No, sir.

17 MR. STEEN: Thank you. No further questions, Your
18 Honor.

19 MR. BARFIELD: One redirect.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION

22 BY MR. BARFIELD:

23 Q. Is there a Deputy Whitesides that works for the
24 Lancaster County Sheriff's Office?

25 A. Yes, sir, there is.

ERIC JAILLETTE

1 Q. Do you have any recollection whether or not he was
2 there that night?

3 A. I do not believe he was.

4 MR. BARFIELD: Thank you, that's all.

5 THE COURT: All right. Thank you, sir, you can step
6 down, you are free to leave. Call your next witness.

7 MR. BARFIELD: Your Honor, I'm going to call Phillip
8 Hall for a brief matter. He will testify later in the
9 trial but I need to ask him about a couple of things today
10 to make it stick.

11 The witness, PHILLIP HALL, was first duly sworn
12 and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BARFIELD:

15 Q. Tell us your name, please.

16 A. Phillip Hall.

17 Q. By whom are you employed?

18 A. By the Lancaster City Police Department.

19 Q. How long have you been a police officer?

20 A. Since 1996.

21 Q. How long have you been a police officer for the City
22 of Lancaster?

23 A. Since 2000.

24 Q. What is your rank, number one, and your job with the
25 city police department today?

PHILLIP HALL

1 A. Today I'm the lieutenant over special operations
2 which is investigations, narcotics and gang units.

3 Q. What was your rank and job with the police department
4 on May 29th of 2011?

5 A. I was a detective sergeant with the special
6 operations unit at that time.

7 Q. And are you the primary investigator for this case
8 that we are here on this week?

9 A. I am.

10 Q. Did you go to the scene?

11 A. For a brief moment, yes.

12 Q. Did you see Eric Jaillette at the scene?

13 A. I did.

14 Q. Was Brad Whitesides ever at the scene?

15 A. He was not.

16 Q. Okay. I'm going to show you State's Exhibit Number
17 33 for identification purposes. Take a minute to look at
18 it and tell us if you can tell us what it is.

19 A. This is a cellphone that Sergeant Jaillette handed me
20 that morning and advised that he got it from Ms. Nelson.

21 Q. And is the evidence bag, does it have ink writing on
22 it?

23 A. It does.

24 Q. Is that your handwriting?

25 A. It is.

PHILLIP HALL

1 Q. And you indicated it was taken into custody or
2 evidence by the police department at what time?

3 A. 4:10 that morning.

4 MR. BARFIELD: Your Honor, at this time I would offer
5 the phone as Exhibit 33.

6 THE COURT: Any objection.

7 MR. STEEN: Without objection, Your Honor.

8 THE COURT: Without objection introduced as State's
9 Exhibit Number 33 into evidence.

10 (The cellphone was received as State's 33.)

11 Q. Lieutenant Hall, I'm going to hand you State's
12 Exhibit Number 28. Take a minute and look at that and
13 tell me if you can tell us what that is.

14 A. This is the open screen phone turned on that tells us
15 what phone number this cellphone actually uses to make
16 contact -- or its assigned cellphone number.

17 Q. And what was the telephone number for the cellphone
18 which is State's Exhibit Number 33?

19 A. Area code 803, 577-5387.

20 Q. All right, sir. I have got one more question, or
21 maybe two. Are you aware of the bologna?

22 A. Yes, sir, I am.

23 Q. What is the deal with the bologna? Where is the
24 bologna package?

25 A. Bologna don't do good in the refrigerator after a

PHILLIP HALL

1 long period of time and I think it mildewed and molded and
2 we had to get rid of it.

3 Q. We don't have it at this time; is that right?

4 A. We don't have it at this time.

5 MR. BARFIELD: Thank you. Answer anything Mr. Steen
6 or Mr. Jones has. Of course I reserve the right to recall
7 him.

8 THE COURT: Yes, sir. All right. Yes, sir,
9 Mr. Steen?

10 MR. STEEN: One second, Your Honor.

11 THE COURT: Yes, sir.

12 (Break in proceedings.)

13 MR. STEEN: No further questions, Your Honor.

14 THE COURT: All right. Thank you, sir, you can step
15 down.

16 MR. BARFIELD: Can I step out in the corridor for one
17 moment?

18 THE COURT: Yes, sir.

19 (Break in proceedings.)

20 MR. BARFIELD: That's all of the witnesses the State
21 intends to offer this afternoon, we are on schedule.

22 THE COURT: Okay. All right. Ladies and gentlemen of
23 the jury, we have reached the point today where we are
24 going to take a recess from the trial, we will reconvene
25 Wednesday morning at 9:30. So what time do y'all need to

I-N-D-E-X

	<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
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2			
3	Semaj Orlandus Barnette	Solicitor Barfield	171-180
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5		Mr. Steen	180-181
6	Jatoya Wright	Solicitor Barfield	182-191
7	Dawnetta Symone Montgomery	Solicitor Barfield	192-215
8		Mr. Jones	216-218
9	Justine Ethel Janae Gladden	Solicitor Barfield	219-243
10		Mr. Steen	244-247
11	Keith Wayne Benson	Solicitor Barfield	258-275
12			278-279
13		Mr. Steen	276-278
14	Timothy Jaquavis Nelson	Solicitor Barfield	282-289
15		In Camera	291-297
16		In Camera	300
17			311-320
18			327-328
19		Mr. Steen (in camera)	297-299
20			320-327
21	Otis Sleight	Solicitor Barfield	329-336
22		Mr. Jones	336
23	Glen Crawford	Solicitor Barfield	337-340
24		Mr. Jones	340-341
25	Janice Ross	Solicitor Barfield	342-351

I-N-D-E-X - CON'T

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
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	Solicitor Barfield	354-359 (In Camera)
		388-398
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	Mr. Steen	359-360 (In Camera)
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Tanisha Nelson	Solicitor Barfield	366-375 (In Camera)
		379-381 (In Camera)
		418-442
		450
	Mr. Steen	375-379 (In Camera)
		381 (In Camera)
		443-450
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Mauricio Richardson		
	Solicitor Barfield	404-411
Kristen Grant	Solicitor Barfield	411-414
Larry Adams	Solicitor Barfield	452-458
Melissa Skipper Wallace		
	Solicitor Barfield	457-484
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	<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
1			
2	Diego Nova	Solicitor Barfield	497-504
3	Brenner Hartley	Solicitor Barfield	505-509
4			513-514
5		Mr. Jones	510-512
6	Chris Nunnery	Solicitor Barfield	515-519
7		Mr. Steen	519-520
8	Phillip Hall	Solicitor Barfield	520-544
9		Mr. Steen	544-545
10	Quintus Young	Solicitor Barfield	549-555
11	Ida Simmons	Solicitor Barfield	554-561
12	Paul Meeh	Solicitor Barfield	563-567
13	Ken Whitler	Solicitor Barfield	568-578
14	Kimberly Ingram	Solicitor Barfield	579-581
15	Closing Argument	By Solicitor Barfield	591-615
16		By Mr. Steen	615-626
17	Charge to the Jury		627-642
18	Verdict		646
19	Sentence		647-654
20	Court Reporter's Certificate Page		655
21	Jury Voir Dire/Batson Sheet		
22	Clerk of Court's Random Strike Sheet		
23			
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25			

I N D E X - C O N ' TE X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Et.1	Stipulations		
Ct.1	Photo lineup 5/29/11 (Bigger's hearing)		
Ct.3	CD-Nelson & Montgomery interviews (Bigger's hearing)		
Ct.4	Jury Note @ 05:30 p.m..		P.643
St.1-26	Photos		
St.27	To scale drawing (apt's.)		
St.28	Photo - cell phone & messages		
St.29	Mobile cell records		
St.30	Amy Stephens affidavit 10/20/14		
St.31	SLED verified record/chain of custody (1-19 pages.)		
St.32	Aerial view incident location		
St.33	Gray cell phone		
St.34	Photo - electrical pole		P.214
St.35	Bullet removed from victim	P.348	P.534
St.36	Blood vile - Terrance Jones	P.350	P.534
St.37	Court's 1 (Bigger's hearing.)		P.444
St.38	Clear Plastic cup		P.468
St.39	Red Plastic cup		P.468

I N D E X - C O N ' TE X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
ST.40	Swab sample		P.467
St.41	Swab sample		P.467
St.42	SLED Crime Scene		
	Rreport 6/30/11		P.471
St.43	GSR Kit - Terrance Jones		P.474
St.44	Fired Bullet		P.478
St.45	Fired Bullet		P.478
St.46	Fired bullet		P.478
St.47	.357 Smith & Wesson		
	Firearm		P.532
St.48	Buccle swab from		
	Quanell McIlwain		P.536
St.49	SLED toxicology report		
	Terrance Jones		P.554
St.50	SLED toxicology report		
	Terrance Jones		P.567
St.51	SLED DNA analysis from		
	victim and defendant		P.578
St.52	SLED Firearm forensic		
	report.		P.578
Reporter's Note: All Exhibits were filed with the			
Lancaster County Clerk of Court's Office.			

1 (COURT BACK IN SESSION WEDNESDAY, NOVEMBER 12, 2014 AT
2 09:42 A.M..)

3 THE COURT: All right, anything before we bring the
4 jury in?

5 SOLICITOR BARFIELD: Nothing from the State.

6 THE COURT: Mr. Steen?

7 MR. STEEN: Nothing from the defense, Your Honor.

8 THE COURT: All right. Thank you.

9 Bring in the jury.

10 (JURY REENTERS COURTROOM AT 09:41 A.M..)

11 THE COURT: All right, all members of the jury are
12 present. Good morning, ladies and gentlemen. I hope you
13 had a nice day off yesterday. We'll get right down to
14 business this morning.

15 Solicitor, you can call your next witness.

16 SOLICITOR BARFIELD: Semaj Barnette.

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

19 (WHEREUPON, SEMAJ BARNETTE,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 SOLICITOR BARFIELD: You're gonna have to slide that
22 chair up so you can get to that microphone. We need to get
23 longer stems on that microphone.

24 DIRECT EXAMINATION

25 SEMAJ BARNETTE BY SOLICITOR BARFIELD:

-SEMAJ BARNETTE: DIRECT BY SOLICITOR BARFIELD

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1 Q. Tell us your name please, sir.

2 A. Semaj Barnette.

3 Q. And how do you spell your first name?

4 A. S-e-m-a-j.

5 Q. Mr. Barnette, do you live here in Lancaster County?

6 A. Yes.

7 Q. How long have you lived in Lancaster County?

8 A. Forever.

9 Q. Forever? All right, now, again, we're gonna have
10 trouble hearing you. I'm gonna try to get this thing down.
11 You get right in that microphone.

12 A. Okay.

13 Q. Where were you living back on May 29th of 2011?

14 A. In Lancaster.

15 Q. And where in Lancaster were you living then? I don't
16 need an address.

17 A.

18 Q. Okay.

19 Q. Are you familiar with Pardue Street Apartments I
20 think now called Palmetto Place?

21 A. Yeah. I used to stay there.

22 Q. Okay. I'm gonna ask you about some people whether
23 you know those people or not. Do you know a guy named
24 Keith Benson?

25 A. Yes, sir.

1 Q. And back in May of 2011 where did he live?

2 A. Pardue.

3 Q. Do you remember what apartment number he lived in?

4 A. Uh-huh.

5 Q. Did you know a young lady named Justine Gladden?

6 A. No I don't know Justine Gladden.

7 Q. Did you know a young lady named Dawnetta Montgomery?

8 Dora, Symone?

9 A. Yeah, I met her the other day.

10 Q. Okay. Did you know a guy named Timothy Nelson? Quay

11 Nelson or Q-Black Nelson, did you know him?

12 A. I heard the name before.

13 Q. Did you know him?

14 A. I said I heard the name before.

15 Q. You just heard the name?

16 A. Yes.

17 Q. Did you know a fellow by the name of Quanell McIlwain?

18 A. Yeah. That's my home boy.

19 Q. Quanell is your home boy?

20 A. Uh-huh.

21 Q. And you got to say yes or no.

22 A. Yes, sir.

23 Q. Do you see Quanell in the courtroom today?

24 A. The a --

25 Q. Where is Quanell sitting and what's he wearing?

SEMAJ BARNETTE: DIRECT BY SOLICITOR BARFIELD

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1 A. A stripe shirt.

2 Q. Raise your hand, Mr. McIlwain.

3 (DEFENDANT RAISED HIS RIGHT HAND.)

4 Q. Is the person with his hand raised to you you say is
5 Quanell McIlwain?

6 A. Yes, sir.

7 Q. Okay. Were you in Pardue Apartments on the early
8 morning hours of May 29th of 2011?

9 MR. STEEN: Objection?

10 SOLICITOR BARFIELD: Pardon?

11 MR. STEEN: Withdrawn.

12 THE COURT: Okay.

13 A. I hadn't been there most of the majority of the day
14 from about three o'clock I guess around that time.

15 Q. Three o'clock in the day time?

16 A. Yeah.

17 Q. And where were you hanging out starting at three
18 o'clock in the day time?

19 A. I was at Keith Benson's house. Keith Benson. Keith
20 Benson's house.

21 Q. That's fine. Do you know what building Keith
22 Benson's house was in then?

23 A. Yeah I know the building but I don't know the
24 apartment number.

25 Q. Do you know the building number?

SEMAJ BARNETTE: DIRECT BY SOLICITOR BARFIELD

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1 A. No. Huh-huh.

2 Q. Okay. Who else was at Keith Benson's house that
3 afternoon?

4 A. I only recall me, Dora - You talking about - I only
5 recall is me --

6 Q. Let me ask you this question first. You just told us
7 you were at Keith Benson's startin maybe three o'clock in
8 the afternoon.

9 A. Uh-huh.

10 Q. How long did you stay in Pardue Apartments that day
11 into the night into the next morning?

12 A. Oh. Until the situation that had happened that I
13 had left after that.

14 Q. All right. When you say situation, what's situation
15 are you talking about?

16 A. They said somebody was shootin or whatever and then
17 I left.

18 Q. Okay. Did you hear a shootin in Pardue?

19 A. Yeah I heard shots.

20 Q. Okay. Were you there when all of that occurred?

21 A. Yeah. Inside an apartment.

22 Q. All right. Now let me go back. You're at Keith
23 Benson's.

24 A. uh-huh.

25 Q. Who all was at Keith Benson's up in the day time on

1 that Saturday? That you recall.

2 A. Uh - just me and Keith. His old lady and other people
3 in and out. I mean like people just in and out all day so
4 can't say who it was all or anything like that.

5 Q. Did you see Quanell McIlwain in Pardue Apartments
6 that day?

7 A. Yeah earlier that day yes, sir.

8 Q. Okay. And where did you see him that day?

9 A. He was with us.

10 Q. At Keith's?

11 A. Yeah.

12 Q. And you talked about Dora. You know Dora I think.
13 You said you met her that day?

14 A. I met her that day.

15 Q. Where did you meet Dora Montgomery?

16 A. At Pardue. I guess at Keith's house.

17 Q. Did you find out - Did you know where Dora lived?

18 A. I didn't - I ain't never been to the apartment.

19 Q. Did you find out where Dora lived?

20 A. I ain't never looked. I ain't never tried to find
21 out.

22 Q. Did you go to where Dora lived?

23 A. No.

24 Q. Did you go to anybody's apartment other than Keith
25 Benson's that day or that night? Let me ask you this.

SEMAJ BARNETTE: DIRECT BY SOLICITOR BARFIELD

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1 Back up, I withdraw that question.

2 When you heard shots where were you?

3 A. In the apartment.

4 Q. Which apartment?

5 A. I think it was in Keith's apartment. We was - Yeah
6 It was Keith's apartment. Somebody's. I'm trying to
7 think. It was a long day we had been - It was in Keith's
8 apartment like next door. I don't now whose apartment it
9 is.

10 Q. All right. I'm gonna show you State's Exhibit Number
11 Thirty-two, just show it to you for a minute and then I'm
12 gonna maybe ask you to step down. Take a look at that for
13 a minute and tell me if you know what that's a picture of.

14 A. That's the apartments.

15 Q. You got to talk loud.

16 A. Yeah. It's Pardue ain't it? I - 1704 Woodward I
17 think. We was at 1701.

18 Q. Okay. Permission for the witness to step down?

19 THE COURT: All right, permission granted.

20 SOLICITOR BARFIELD: Come down here. Wait right here
21 for me just a minute.

22 (WITNESS LEAVES WITNESS STAND.)

23 Q. Now step to the side of that over there for just a
24 minute so that you're not blocking anybody's view.

25 Do you see Keith Benson's apartment on that picture

1 and point to it if you do?

2 A. I think it's this one right here.

3 Q. You got to talk loud, okay.

4 A. I said I think its this one right here if I ain't
5 mistaken.

6 Q. Okay. Did you go to any other - Tell me where you
7 were when you heard gun shots.

8 A. In 1701.

9 Q. All right. You can take your seat. Thank you.

10 (WITNESS RETURNS TO WITNESS STAND.)

11 Q. Do you know where Dora Montgomery lived? Or did you
12 find out where Dora Montgomery lived that night?

13 MR. STEEN: Ask and answered.

14 THE COURT: Objection over ruled.

15 A. No.

16 Q. Who was in 1701 when you were there and you heard
17 shots?

18 A. Me, Dora, and Keith Benson and I think his girlfriend
19 from what I recall.

20 Q. Do you know Keith Benson's girlfriend's name?

21 A. I don't know her name.

22 Q. That's fine. Do you remember anybody else that was
23 in 1701 when you heard shots?

24 A. No, sir.

25 Q. Where was Quanel McIlwain when you heard shots?

SEMAJ BARNETTE: DIRECT BY SOLICITOR BARFIELD

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1 A. To my knowledge he had been gone. I hadn't seen him
2 for a little while before the shots went off.

3 Q. All right. Was Quanell McIlwain in 1701 when you
4 heard shots?

5 A. No.

6 Q. When you heard shots do you recall where you were in
7 1701?

8 A. Nothing. I was sittin down.

9 Q. Do you remember what room in 1701 you were sittin
10 down in?

11 A. I guess in the living room, in the front room.

12 Q. All right. And again, talk loud please.

13 THE COURT: Yes, sir. You got to talk. I can barely
14 hear you over here ---

15 SOLICITOR BARFIELD: We ain't --

16 THE COURT: --- and I'm closer to you than the jury
17 is.

18 SOLICITOR BARFIELD: We ain't fussin at you but you
19 got to talk loud.

20 A. I understand.

21 Q. You said you were in the living room. Is that
22 upstairs or downstairs?

23 A. Downstairs.

24 Q. Could you tell where the shots were coming from?

25 A. Outside.

- 1 Q. Could you tell whether they were close or far
2 away?
- 3 A. Uh - They couldn't a been too far cause I heard 'em.
- 4 Q. Okay. When you heard the shots what did you do?
- 5 A. I just kept sittin down.
- 6 Q. Did you ever get up?
- 7 A. Yeah after probably about a few minutes after the
8 shots they went off.
- 9 Q. When you got up what did you do?
- 10 A. Looked outside.
- 11 Q. What did you look out of, a door or a window or what?
- 12 A. I looked out the front door.
- 13 Q. What did you see when you looked out the front door?
- 14 A. I saw somebody laying on the ground.
- 15 Q. Do you know who that - Did you know then who that
16 person was?
- 17 A. No, sir.
- 18 Q. Did you know Terrance Antonio Jones?
- 19 A. I remember Tony from back in the day like come from
20 what we say the Project Valley.
- 21 Q. Okay.
- 22 A. And I think he stayed there too.
- 23 Q. Did you know that was him that morning?
- 24 A. No.
- 25 Q. Do you recall - Can you tell us what time it was

SEMAJ BARNETTE: DIRECT BY SOLICITOR BARFIELD
CROSS BY MR. STEEN

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1 that you went from 1704 to 1701?

2 A. No I don't remember.

3 Q. Was it night time or daytime?

4 A. Probably I think nighttime.

5 Q. Do you know - Do you recall what time it was when
6 you heard the shots?

7 A. No, sir.

8 Q. Was it nighttime or daytime?

9 A. Nighttime.

10 Q. Do you recall how many shots you heard?

11 A. I don't remember it's so long ago.

12 Q. Was it one or more than one?

13 A. I think I heard about at least two. At least two.

14 SOLICITOR BARFIELD: Thank you, sir. Answer anything
15 Mr. Steen or Mr. Jones has.

16 THE COURT: All right. Mr. Steen.

17 MR. STEEN: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 SEMAJ BARNETTE BY MR. STEEN:

20 Q. Mr. Barnette, you stated that it was you, Dora, Keith
21 Benson and Keith Benson's girlfriend were in 1701 during
22 the shooting?

23 A. Yes, sir.

24 Q. And you stated that Qua - You say you do not know
25 Quay Nelson?

SEMAJ BARNETTE: CROSS BY MR. STEEN
REDIRECT BY SOLICITOR BARFIELD

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1 A. No I didn't know nothin about his name.

2 Q. And you stated that Quanel McIlwain had been gone
3 by the time the shooting occurred?

4 A. Yes, sir.

5 MR. STEEN: No further questions.

6 Thank you, Mr. Barnette.

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

8 Any redirect?

9 SOLICITOR BARFIELD: Give me one second.

10 REDIRECT EXAMINATION

11 SEMAJ BARNETTE BY SOLICITOR BARFIELD:

12 Q. In 1701 were there any people there that you did
13 not know?

14 MR. STEEN: Objection. I didn't open up anybody else.

15 THE COURT: Sustain.

16 SOLICITOR BARFIELD: Thank you.

17 That's all from this witness.

18 THE COURT: Thank you, sir, you may step down. You're
19 free to leave.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 SOLICITOR BARFIELD: I need Jatoya Wright.

23 Thank you, Mr. Barnette.

24 Walk up to where that fellow is up there please,
25 ma'am.

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD

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1 THE BAILIFF: Place your left hand on the Bible and
2 raise your right.

3 (Whereupon, Jatoya Wright,
4 being first called and duly sworn, testified as follows:)

5 DIRECT EXAMINATION

6 JATOYA WRIGHT BY SOLICITOR BARFIELD:

7 Q. Ms. Wright, you got to talk real loud and you got to
8 talk into that microphone, okay?

9 A. Okay.

10 Q. And if you're not talking loud enough I'm gonna tell
11 you to start talking louder. All right?

12 A. Okay.

13 Q. Tell us your name.

14 A. Jatoya Wright.

15 Q. Do you live here in Lancaster?

16 A. Yes.

17 Q. How long have you lived in Lancaster?

18 A. More like twenty-one years.

19 Q. How old are you?

20 A. I'm twenty-one.

21 Q. Do you live - Where do you live? I don't want an
22 address but generally where do you live now?

23 A. Pardue.

24 Q. How long have you lived in Pardue?

25 A. For like fifteen years.

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD

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1 Q. Were you living in Pardue on May - on Sunday
2 morning May 29th of 2011?

3 A. Yes.

4 Q. What apartment were you living in then?

5 A. 1808.

6 Q. Is that the one you're living in now?

7 A. No.

8 Q. Okay. I'm going to ask you about some people.

9 Well let me ask you this first. Well we'll come back
10 to that. Do you know Justine Gladden?

11 A. Yes.

12 Q. How do you know her?

13 A. That's my cousin.

14 Q. Do you know where she lived on Sunday morning May
15 29th of 2011?

16 A. Yes.

17 Q. Where?

18 A. 1701.

19 Q. Do you know Dawnetta Symone Montgomery?

20 A. Yes. I know of her.

21 Q. Okay. Do you know how if anyway she is connected to

22 --

23 MR. STEEN: Objection. Ask for a narrative response.

24 THE COURT: Well objection over ruled.

25 Just rephrase your question.

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD

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1 BY SOLICITOR BARFIELD:

2 Q. Do you know of any connection between Dawnetta
3 Montgomery and Justine Gladden?

4 A. Yeah. I think they're like cousins or something like
5 that.

6 Q. Do you know Quanell McIlwain?

7 A. I don't know him. I know of him.

8 Q. Do you know him by face and by name?

9 A. Right. No not really.

10 Q. Well do you see Quanell McIlwain in the courtroom
11 today?

12 A. I see him. I mean that's the only person that's in
13 here like --

14 Q. Well I'm just asking if you see the person you know
15 as Quanell McIlwain in the courtroom today.

16 A. Yeah.

17 Q. And where is the person that you know as Quanell
18 McIlwain in the courtroom?

19 A. To the left.

20 SOLICITOR BARFIELD: Raise your hand, Mr. McIlwain.

21 (DEFENDANT COMPLIED.)

22 Q. Is that who you know as Quanell McIlwain?

23 A. I've seen him before yeah.

24 Q. That's fine. I'm just gonna throw some names out
25 there and ask you if you know some other people.

- 1 A. Uh-huh.
- 2 Q. Do you know Tanisha Nelson?
- 3 A. No.
- 4 Q. Do know Timothy Nelson?
- 5 A. It would --
- 6 Q. Quay Nelson or Q-Black Nelson?
- 7 A. Yes.
- 8 Q. How do you know who he is?
- 9 A. I mean in passin cause they stayed at Pardue.
- 10 Q. That's fine.
- 11 A. Just passin.
- 12 Q. Did you know the Benson fellows Keith Benson and his
- 13 family?
- 14 A. Yeah. I've just seen 'em in passin and the like.
- 15 I don't really know everybody like that so.
- 16 Q. That's fine. Do you know where the Benson's lived
- 17 back in May of 2011?
- 18 A. No, sir.
- 19 Q. That's fine.
- 20 Q. Were you in Pardue early Sunday morning May 29th of
- 21 2011?
- 22 A. Yes.
- 23 Q. Where were you?
- 24 A. At 1701.
- 25 Q. And what was going on at 1701?

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD

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1 A. I mean it was just a little get together but I wasn't
2 concerned. I was watching TV.

3 Q. Okay. That's fine. Who all - that you remember -
4 was in 1701?

5 A. From what I remember Justine, myself, Dora, Symone.

6 Q. Do you know his last name?

7 A. No I don't know his last. I know his first name is
8 Symone.

9 Q. Have you seen Symone here today?

10 A. Yeah.

11 Q. Where did you see him here today?

12 A. It was outside.

13 MR. STEEN: Objection. I don't know where she saw
14 him at today.

15 THE COURT: She just said he was outside.

16 Over ruled.

17 SOLICITOR BARFIELD: That's fine.

18 Q. How about Quanell?

19 A. I seen him but I didn't know who it was at the time.

20 Q. Well let me ask the question this way. The fellow
21 that raised his hand a minute ago, did you see him in
22 Pardue on May 29th of 2011?

23 A. Yes.

24 Q. Where was he?

25 A. I mean when I seen him he was outside. I don't really

- 1 --
- 2 Q. Outside of what?
- 3 A. Outside like he was walking up with Symone.
- 4 Q. And walking up to what?
- 5 A. To 1701.
- 6 Q. Did anything happen when you were in 1701?
- 7 A. Yes.
- 8 Q. What happened?
- 9 A. I was watching TV and I heard a gun shot.
- 10 Q. All right. Where were you watching TV in 1701?
- 11 A. In the living room.
- 12 Q. Is that downstairs or upstairs?
- 13 A. Downstairs.
- 14 Q. You heard shot?
- 15 A. Uh-huh.
- 16 Q. You got to say yes or no.
- 17 A. Yes.
- 18 Q. Do you know - Do you remember how many shots?
- 19 A. It was like six, seven shots.
- 20 Q. Was Quanell McIlwain inside 1701 when you heard those
- 21 shots?
- 22 A. He already had left.
- 23 Q. Okay. How long had Quanell been gone when you heard
- 24 those shots?
- 25 A. Maybe like four or five minutes.

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1 Q. What did you do when you heard the shots?

2 A. I got down on the floor and after the shots happened
3 I waited like three, four minutes and I left out to go
4 check on my mother when I stayed at where I resided at and
5 I walked past a body.

6 Q. All right. Did you know Terrance Antonio Jones?

7 A. No.

8 Q. Did you know - You said you walked past a body. Where
9 was the body?

10 A. It was like - like when you walk out of 1701 you go
11 slightly to the left right there on the ground before you
12 get to the parking lot.

13 SOLICITOR BARFIELD: Permission for the witness to
14 step down?

15 THE COURT: Yes, ma'am.

16 Q. Meet me right there at the microphone. Okay.

17 (WITNESS LEAVING WITNESS STAND.)

18 Q. Step in front of this and look at it for a minute.

19 I'm referring to State's Exhibit Number Thirty-two.

20 Just look at it as long as you need to and when you're
21 done looking at it I'll ask you a couple of questions.

22 A. Okay.

23 Q. Do you know what that's a picture of?

24 A. Yeah.

25 Q. What is it? And you've got to talk loud. What is

1 that a picture of?

2 A. The second section at the back of Pardue.

3 Q. Okay.

4 A. Lower Pardue.

5 Q. Now that front button, can you make that work for me?

6 And step to the side so these people can see. You can
7 step over here if you need to.

8 Now, do you see the apartment that you refer to as
9 1701 on that picture?

10 A. Yes, sir.

11 Q. Point to it with that laser pointer.

12 A. Right here.

13 Q. And keep your voice up. When you walked out and saw
14 a body, can you show the jury on that map, on that picture,
15 where the body was?

16 A. It was right there.

17 Q. Okay. All right, you can take your seat again. Thank
18 you.

19 (WITNESS RETURNS TO WITNESS STAND.)

20 Q. When you heard the shots could you tell where they
21 were coming from?

22 A. No they were loud.

23 Q. Loud?

24 A. Yes, sir.

25 Q. Where they close or were they far off?

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1 A. They sound like they were close.

2 Q. About how many people were in or around 1701 before
3 all this happened?

4 A. Four.

5 Q. During the time that the gathering was going on was
6 my question.

7 A. I mean someone I could remember like five people from
8 what I remember.

9 Q. Did you know all of 'em?

10 A. No.

11 SOLICITOR BARFIELD: Beg the Court's indulgence one
12 moment.

13 (PAUSE AT 10:10 A.M..)

14 THE COURT: Okay.

15 Q. The fellow I ask you about a little bit ago, Nelson,
16 I think I said Qua or Que Black. Do you remember seeing
17 him around at all that night or that morning?

18 A. Yeah I seen him. He was sittin on the floor listening
19 to music but other than that that was the last time I seen
20 him.

21 Q. Sittin in the floor listening to music where?

22 A. At 1701.

23 SOLICITOR BARFIELD: Thank you, ma'am. Answer
24 anything Mr. Steen or Mr. - Hold on one second.

25 Q. When was he in the floor listening to music?

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1 A. I mean that night when a few people were over there.

2 Q. Okay. Where was he when you heard the shots?

3 A. When I heard the shots he was on the floor. He was
4 still on the floor.

5 SOLICITOR BARFIELD: Thank you, ma'am. Answer
6 anything

7 Mr. Steen or Mr. Jones has.

8 THE COURT: All right. Counsel.

9 MR. STEEN: One moment, Your Honor.

10 No further questions. Thank you, Ms. Wright.

11 THE COURT: All right. Thank you, ma'am, you may step
12 down. You're free to leave.

13 SOLICITOR BARFIELD: Thank you.

14 (WITNESS LEAVING WITNESS STAND.)

15 THE COURT: Call your next witness.

16 SOLICITOR BARFIELD: Call Dawnetta Montgomery.

17 Walk up there to where that bailiff is please, ma'am.

18 THE BAILIFF: Place your left hand on the Bible and
19 raise your right.

20 (WHEREUPON, DAWNETTA

21 MONTGOMERY, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
22 FOLLOWS:)

23 SOLICITOR BARFIELD: Talk real loud please.

24 A. Okay.

25

DIRECT EXAMINATION

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1 DAWNETTA MONTGOMERY BY SOLICITOR BARFIELD:

2 Q. Tell us your name.

3 A. Dawnetta Montgomery.

4 Q. Do people call you other things?

5 A. Dora.

6 Q. What's your middle name?

7 A. Symone.

8 Q. Does anybody ever all you Symone?

9 A. Yes, my family.

10 Q. What are we calling you today?

11 A. Dora.

12 Q. Okay. Do you live in Lancaster now?

13 A. Yes, sir.

14 Q. Do you live in Pardue now?

15 A. No, sir, I live in

16 Q. Have you ever lived in Pardue?

17 A. Yes, sir.

18 Q. Where were you living on Sunday morning May 29th of

19 2011?

20 A. 1701 Pardue Street.

21 Q. Who were you living there with?

22 A. My sister Justine Gladden.

23 Q. Does she live out there now?

24 A. No, sir.

25 Q. Where does she live now?

1 A. She lives in Texas.

2 Q. Is she out in the hall today?

3 A. Yes, sir.

4 Q. Who else lived in 1701 with you and Justine back in
5 May of '11?

6 A. Just Justine and the two kids.

7 Q. I'm going to ask you if you know some people.

8 A. Okay.

9 SOLICITOR BARFIELD: I beg the Court's indulgence
10 just one second.

11 THE COURT: Yes, sir.

12 Q. Did you know Terrance Antonio Jones?

13 A. No, sir.

14 Q. Did you know a young lady named Tanisha Nelson?

15 A. Yes, sir.

16 Q. How do you know Tanisha?

17 A. We went to school together.

18 Q. Okay. Do you know where Tanisha lived back in May
19 of 2011?

20 A. Yes, sir.

21 Q. Where did she live?

22 A. 1706 or 7. I don't know the address.

23 Q. Did she live in the same building or a different
24 building than you and Justine lived in?

25 A. She lived in the same building.

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- 1 Q. In relation to 1701 where did she live?
- 2 A. The last apartment.
- 3 Q. On the other end?
- 4 A. Yes, sir.
- 5 Q. Did you know a fellow by the name of Qua Stevens?
- 6 A. Yes.
- 7 Q. Or Edrickis Marquavis - I think it's Marquavis
- 8 Stevens?
- 9 A. Her baby's daddy is.
- 10 Q. Whose baby's daddy?
- 11 A. That's Little One. Well, Tanisha's baby.
- 12 Q. All right, let's get to that. Does Tanisha have a
- 13 nickname?
- 14 A. Yes, sir.
- 15 Q. What is it?
- 16 A. Little One.
- 17 Q. And who is Qua Stevens?
- 18 A. That's her baby's daddy.
- 19 Q. Do you know a fellow named Quanel McIlwain?
- 20 A. No I don't.
- 21 Q. Did you --
- 22 A. I don't know him but yeah.
- 23 Q. Well, explain that.
- 24 A. I just met him one time.
- 25 Q. And when did you meet him?

- 1 A. That day. That night or morning.
- 2 Q. Where did you meet Quaneil McIlwain?
- 3 A. At - In my house 1701 Pardue Street.
- 4 Q. All right. What was going on - I'm gonna jump a
- 5 way ahead and then we gonna come back and move up to the
- 6 point that I'm fixin to take you to. Did anything happen
- 7 when you were in 1701?
- 8 A. No, sir.
- 9 Q. Anytime that morning?
- 10 A. Uh-huh.
- 11 Q. Well, --
- 12 A. What you mean?
- 13 Q. Did the police - Did you see police that night?
- 14 A. Yes.
- 15 Q. Before you saw police, did anything happen?
- 16 A. Yes. We heard gun shots and that's when I had shut
- 17 the door.
- 18 Q. All right. We gonna get to all the detail in a
- 19 minute.
- 20 A. Okay.
- 21 Q. But about what time it was was it that you heard gun
- 22 shots?
- 23 A. I think it was like four something.
- 24 Q. Four something?
- 25 A. Yes.

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1 Q. Afternoon or morning?

2 A. Morning.

3 Q. And where were you when you heard gun shots?

4 A. In the living room?

5 Q. Of?

6 A. 1701 Pardue Street.

7 Q. What was going on in 1701 Pardue before you heard
8 gun shots?

9 A. Well we was in there watching TV. We was outside
10 and then we ended up coming back in the house and I was in
11 there watching Little Man.

12 Q. Watching what?

13 A. Little Man. The movie.

14 Q. Okay. Describe - How many doors are there on 1701
15 from the inside to outside doors?

16 A. Two.

17 Q. And one of them is where?

18 A. In the front.

19 Q. And the other one is where?

20 A. In the back.

21 Q. And what at the back door? I mean is there a porch,
22 is there a deck, is there a stoop or steps or what?

23 A. Just a little porch.

24 Q. Okay. Tell us who was at 1701. Well let me ask you
25 this. How would you describe what was going on at 1701? A

1 party, a gathering, or what was it?

2 A. It was like a little kick back. That's what we call
3 it.

4 Q. A kick back?

5 A. Uh-huh.

6 Q. And tell the jury about when the kick back started
7 and about when the kick - Well, when did the kick back end
8 I guess?

9 A. It ended I guess when everybody was drinkin enough.

10 Q. All right. And about when was that in relation to
11 the gun shots?

12 A. That was like 12:30. Probably like thirty minutes
13 after.

14 Q. Okay. And when did the kick back start?

15 A. It was already going on when I came home.

16 Q. And what time did you come home?

17 A. Probably like eleven something. I just got back from
18 Georgia.

19 Q. At night?

20 A. Uh-huh.

21 Q. During that period of time how many people were in
22 and out of 1701?

23 A. It was a good bit.

24 Q. Four or five or ten or twelve?

25 A. Maybe about ten.

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1 Q. Okay. Did you know them all?

2 A. No, sir.

3 Q. Where was the kick back happening in 1701?

4 A. We was like in the inside then we were on the back
5 porch and we came back in like everywhere. We was all
6 over.

7 Q. Was anything happening on the front porch?

8 A. No, sir.

9 Q. Okay. Who do you remember - Let's go to the time
10 you heard shooting?

11 A. Uh-huh.

12 Q. Who do you recall was there when you heard shooting?

13 A. What you mean? Like in the house with me?

14 Q. Who was in the house when you heard shooting?

15 A. It was - -

16 Q. That you recall.

17 A. Okay. My sister and her boyfriend, ex-boyfriend, was
18 upstairs.

19 Q. And let's use names. Your sister?

20 A. Justine and L.J. was upstairs and the kids in the bed.

21 Q. L.J.'s name if you know it.

22 A. I don't know.

23 Q. And L.J. is what in relation to Justine your sister?

24 A. That's her ex-boyfriend.

25 Q. Okay. And you said a baby.

1 A. Yeah. The two kids. Her two kids.

2 Q. How young were her two kids?

3 A. Her little girl she was a new born.

4 Q. Okay.

5 A. It was like - I know the little boy he was probably
6 almost one.

7 Q. Okay.

8 A. He was real little.

9 Q. All right. And who else was in - And you said they
10 were upstairs?

11 A. Yes, sir.

12 Q. Who else was in the apartment?

13 A. And then it was me, Dora, and Semaj was on the couch
14 and - -

15 Q. Stop right there.

16 A. Okay.

17 Q. Saman.

18 A. Uh-huh.

19 Q. Do you know his last name?

20 A. No, sir.

21 Q. Okay. Have you seen him here today?

22 A. Uh-huh.

23 Q. Where did you see him?

24 A. Outside in the hallway.

25 Q. Okay. And when had you - When did you first know

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1 him?

2 A. When I came in the house cause I had just met him
3 on Facebook.

4 Q. Okay. Like then, like when this was happening is
5 when you had just met him; is that what you're saying?

6 A. I had met him the day before on Face book.

7 Q. Okay. All right, so you and Justine and L.J., and the
8 two kids and Semaj and who else was there?

9 A. It was Toya and -

10 Q. Toya who?

11 A. Wright.

12 Q. Okay. Go ahead.

13 A. What you call him? Que-Black, he was in there.

14 Q. Do you know his real name?

15 A. No. I think his name is Quavis.

16 Q. Do you know anybody named Timothy Nelson?

17 A. Timothy Nelson? I don't know him. I probably know
18 the nickname.

19 Q. All right. Let me back up. Que-Black, do you know
20 the last name for the person that you said Que-Black was?

21 A. Keith Nelson, right?

22 Q. Pardon?

23 A. He's a Nelson.

24 Q. Well you can't ask me. I get to ask you.

25 A. I think he's a Nelson.

1 Q. Okay. That's fine. He was there?

2 A. Uh-huh.

3 Q. All right. Other than Justine and L.J., and the
4 babies, was anybody else upstairs?

5 A. No, sir.

6 Q. All right. Where were the people downstairs? Leading
7 up to the shooting, where were the people downstairs?

8 A. We was in the living room.

9 Q. Okay. And where was Que Black?

10 A. I think he was on the floor.

11 Q. Do you know what he was doing?

12 A. Uh - On his phone or something.

13 Q. At any time during - The kick back, is that what you
14 said it was?

15 A. Uh-huh.

16 Q. Was Quaneil McIlwain around?

17 A. No, sir, not - I recall seeing him but I don't recall
18 knowing if he was there or not.

19 Q. Well, when did you see him is my question.

20 A. When I got home that's when I knowed everybody was
21 there.

22 Q. Okay.

23 A. That's when I seen him.

24 Q. And do you remember where he was when you saw him?

25 A. I think I had been on the outside. Outside on the

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1 back porch.

2 Q. All right. Do you know any of the Benson folks?

3 A. Yes, sir.

4 Q. Do you know Keith Benson?

5 A. Yes, sir.

6 Q. Was he around?

7 A. Yes.

8 Q. Did he have a girlfriend?

9 A. Yes.

10 Q. Do you know his girlfriend's name?

11 A. Shawanda.

12 Q. Do you know her last name?

13 A. I think it's Mingo.

14 Q. Okay. Was she around? At some point. I'm just
15 saying at some point.

16 A. Yes.

17 Q. Was Quanell - When you heard gun shots, first of all,
18 about how many gun shots did you hear?

19 A. It was like five or six.

20 Q. Could you tell where they were coming from?

21 A. No. I just snowed they was real loud and that's why
22 I shut the door cause it felt like they were on the front
23 porch.

24 Q. All right. You shut the door?

25 A. Uh-huh.

1 Q. When you heard the gun shots was the door open or
2 closed?

3 A. It was open.

4 Q. Was Quanell McIlwain inside when you heard the
5 gunshots?

6 A. No, sir, not that I recall.

7 Q. When you heard the gunshots what did you do?

8 A. I immediately shut the door and ran upstairs.

9 Q. Why upstairs?

10 A. Cause my sister and my - Well Justine and the kids
11 was up there.

12 Q. What did you do after you went upstairs?

13 A. I think L.J. came downstairs. That's when he was like
14 somebody dead out there and that's where it went from.

15 Q. Did you go back downstairs?

16 A. After I went upstairs yes, sir.

17 Q. And after you got back downstairs did you ever leave,
18 go outside the apartment?

19 A. No.

20 Q. Did you ever look outside the apartment?

21 A. I was scared.

22 Q. Did you ever see anybody outside the apartment?

23 You got to say yes or no.

24 A. I didn't look out there.

25 Q. Did you ever see a person out there?

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1 A. After the fact when the police came I did.

2 Q. All right. Talk to me about that. Did you see
3 anybody out there that - Tell me about the person you saw
4 out there. First of all, where was he? Was it a he or a
5 she?

6 A. It was a he.

7 Q. And where was he?

8 A. He was laying out in front right like two doors down
9 on the sidewalk.

10 Q. Okay. Did you know who it was?

11 A. No, sir.

12 Q. Now let's go back to Tanisha Nelson and Qua Stevens.
13 Did you see them that night?

14 A. Yes, sir.

15 Q. Did Tanisha have any children then?

16 A. Yes, sir.

17 Q. Do you know how many she had with her in Pardue that
18 night?

19 A. She only had one if I'm not mistaken.

20 Q. And how young or old a child was that?

21 A. She was a couple a months.

22 Q. Okay. Did you interact with Tanisha Nelson and Qua
23 Stevens while the kick back was going on?

24 A. No, sir, not while it was going on I didn't.

25 Q. Did you interact with them at some point?

1 A. Yes, sir.

2 Q. When in relation to when the kick back was going on?

3 A. That's when everything really stopped when she came
4 over to the house cause they was arguing.

5 Q. Okay. And don't tell me what Tanisha Nelson said or
6 what Qua Stevens said, but just tell me what you observed
7 going on between the two of them.

8 A. She was running from him and he started chasing her so
9 that's when everything got crazy.

10 Q. All right.

11 A. After that.

12 Q. And how do you mean it got crazy? What do you mean
13 by that?

14 A. That's when we had - I went to go make sure the baby
15 was okay.

16 Q. Whose baby?

17 A. Her - Tanisha's baby.

18 Q. And where was Tanisha's baby?

19 A. She was in the house.

20 Q. In whose house?

21 A. In her house. Tanisha's house.

22 Q. And when you went to check on the baby did you do
23 anything with or for the baby?

24 A. I brought the baby to the house with me ---

25 Q. To which --

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1 A. --- and she came and got the baby.

2 Q. To which house?

3 A. 1701 Pardue Street.

4 Q. Okay. When you went and got Tanisha's baby do you
5 know where Tanisha was?

6 A. She was being chased by Qua Stevens.

7 Q. Did Qua Stevens and Tanisha Nelson ever physically
8 fight? That you saw.

9 A. Not that I seen.

10 Q. Okay. After you got Tanisha Nelson's baby and brought
11 him or her to 1701 did you see Tanisha Nelson again?

12 A. Yes. She came back and got the baby.

13 Q. All right. And don't tell me what she said, but
14 where did she come to get the baby?

15 A. From 1701.

16 Q. When she came and got the baby did she go somewhere
17 else?

18 A. She went back to her address.

19 Q. With the baby?

20 A. Yes, sir.

21 Q. At what point in all of that - When did that occur
22 in relation to when you heard gun shots?

23 A. It seemed like as soon as she left like a couple of
24 seconds that's when I heard it.

25 Q. As soon as who left?

1 A. As soon as Tanisha left the house I heard it.

2 Q. Heard what?

3 A. I heard the gun shots.

4 Q. Do you know where Quaneil McIlwain was when you heard
5 the gun shots?

6 A. No, sir.

7 Q. Do you know where Qua Stevens was when Tanisha
8 Nelson came and got her baby?

9 A. I'm really not sure.

10 Q. Did you see him moving anywhere that night?

11 A. I can't recall.

12 Q. Well did Tanisha Nelson own a car or have a car?

13 A. Yes, sir.

14 Q. Do you remember what kind of car it was?

15 A. She had a black car.

16 Q. Did you see that car that night?

17 A. Yes.

18 Q. What was going on with that car that night or that
19 morning?

20 A. You talking about Qua Stevens. Is that what you
21 said? Is that who you talking about? I don't know his real
22 name.

23 Q. During - Yes, ma'am, Qua Stevens you said was
24 Tanisha's boyfriend?

25 A. Uh-huh.

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1 Q. Her baby's father?

2 A. Uh-huh.

3 Q. And you've been describing the little situation
4 between Qua Stevens and Tanisha Nelson.

5 A. Uh-huh.

6 Q. During the time any of that was going on did you see
7 Tanisha Nelson's black car?

8 A. Yes, sir.

9 Q. What was going on with the car?

10 A. He was - I think she had took the keys from him and
11 they was arguing or whatever and it was a stick so he ended
12 up backing it up and driving it anyway and left.

13 Q. Left?

14 A. Yes, sir.

15 Q. Left what? Left where?

16 A. He left from Pardue Street. I didn't see him any more
17 after that.

18 Q. All right. Did you - Was Qua Stevens around Pardue
19 at the time you heard the gun shots?

20 A. No, sir, he was already gone.

21 Q. If I have ask you this I apologize. But about what
22 time was it that you heard the shots?

23 A. It was like four something.

24 Q. Now, after the shots, before the shots had you seen
25 a gun that night?

1 A. I think - No.

2 Q. All right. After the shots did you see a gun that
3 night or that morning?

4 A. Yes, sir.

5 Q. Where did you see a gun? Not who had it first but
6 where did you see a gun?

7 A. It was - I was either in the kitchen or the living
8 room.

9 Q. Of what apartment?

10 A. 1701 Pardue Street.

11 Q. And who had a gun?

12 A. Que Black.

13 Q. Okay. Last name?

14 A. Nelson.

15 Q. And where did he have the gun?

16 A. He had it in his hand.

17 Q. And what was he doing with the gun?

18 A. I think he - I don't know what he was doing with it.

19 Q. How did you know that he had a gun?

20 A. Cause when we seen it we told him to get out.

21 Q. Okay. Had the police gotten there by that time?

22 A. I don't think so.

23 Q. Okay. Describe the gun if you recall anything about
24 it.

25 A. I don't even know what it looked like. I remember

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1 seeing one though.

2 Q. All right. Was it a long gun like a rifle or ---

3 A. No.

4 Q. --- or was it a pistol or a handgun?

5 A. It was little.

6 Q. That kind of gun?

7 A. Yeah it was a handgun.

8 Q. Do you remember what color it was or anything about
9 it?

10 A. It was silver. It had a brown handle on it or
11 something like that.

12 Q. Okay.

13 A. I'm not sure.

14 Q. Did Que Black Nelson and the gun stay in 1701?

15 A. No, sir.

16 Q. Where did they go?

17 A. I'm not sure.

18 Q. Okay. Did you see him leave?

19 A. Uh-huh.

20 Q. You've got to say yes or no.

21 A. Yes, sir.

22 Q. Okay. At any time after you heard the shots did you
23 see Quanell McIlwain any more that morning?

24 A. No, sir.

25 Q. Now, do you know anything about a shirt and a hat?

1 A. Yes.

2 Q. Tell me about the shirt and the hat. First of all,
3 describe the shirt and the hat.

4 A. It was a black shirt and I think it was a black hat
5 if I'm not mistaken.

6 Q. Okay.

7 A. But when I seen it I was asking my sister what to do
8 with it and she didn't know and I didn't know so I threw it
9 in the trash.

10 Q. Where?

11 A. At the apartments.

12 Q. Okay.

13 A. Before I went to church.

14 Q. That same morning?

15 A. Yes, sir.

16 Q. Do you know whose shirt and hat they were?

17 A. No, sir.

18 Q. Where were they in the apartment when you first
19 became aware that they were in 1701?

20 A. What, the shirt and the hat?

21 Q. Yes.

22 A. I think it was in a closet.

23 Q. Okay. You remember - I'm gonna show you a picture
24 and ask you if you can identify what's showing in the
25 picture.

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD.

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1 A. That is a light pole behind 1701.

2 Q. Of Pardue?

3 A. Pardue yes, sir.

4 Q. Which end of 1700 block is that light pole at?

5 A. What you mean which end?

6 Q. Well, you talk about your end and you talk about
7 Tanisha Nelson's end. Which end is that light pole at?

8 A. It's at my end.

9 Q. Okay.

10 A. 1701 end.

11 Q. And was that light pole there and was that light
12 working back in May - on May 29th of 2011?

13 A. Yes, sir, I think so.

14 SOLICITOR BARFIELD: Your Honor, at this time I'd
15 offer the photograph as I guess State's Thirty-four.

16 THE COURT: Any objection?

17 MR. STEEN: Objection, Your Honor. I believe that
18 picture was taken yesterday. This incident occurred three
19 years ago.

20 SOLICITOR BARFIELD: It was taken yesterday and I can
21 - she said the pole was there then.

22 THE COURT: Just establish a little bit - Just ask her
23 some more questions and I will allow it in - just establish
24 a better foundation. That will be over Defense's
25 objection. Go ahead.

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD

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1 BY SOLICITOR BARFIELD:

2 Q. Well, again, was this pole back there back in May
3 of 2011?

4 A. Yes, sir.

5 Q. And again was the light working back in May of 2011?

6 A. Yes, sir, that I recall. I'm not sure though.

7 Q. You're not sure whether it was or not?

8 A. I think it was.

9 Q. Okay.

10 A. I don't want to lie.

11 Q. That's fine. Nobody's asking you to and certainly
12 don't want you to.

13 And if you're looking in this picture, where is the
14 back porch of 1701?

15 A. Its right here.

16 (WITNESS INDICATES.)

17 Q. How close to the corner where the bricks are shown?

18 A. It's like a little bit off from the brick.

19 Q. Well lets do it this way. They're not looking at the
20 picture but you are.

21 A. Uh-huh.

22 Q. Right here. Let's say that's that corner of brick.

23 A. Uh-huh.

24 Q. The back wall goes that way; is that correct?

25 A. Uh-huh.

JATOYA WRIGHT: DIRECT BY SOLICITOR BARFIELD

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1 Q. How far down the wall is the porch? If this is the
2 corner of back of 1701 and that's going toward 1706 on
3 the back, how far from here down the wall is the back porch
4 of 1701?

5 A. It's not far.

6 Q. Well, on this rail, is it way over yonder at the wall
7 or is it right here? How close is it to the corner?

8 A. It's like right here. I don't know. I ain't been
9 back there in a long time.

10 Q. That's fine. That's fine. All right.

11 Thank you, ma'am.

12 SOLICITOR BARFIELD: I'd reoffer the exhibit.

13 THE COURT: All right. Over objection admitted into
14 evidence as State's Thirty-four.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-FOUR,
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 BY SOLICITOR BARFIELD:

18 Q. Do you have any recollection of what Quanell McIlwain
19 was wearing that night? Any general description of what he
20 was wearing that night?

21 A. No, sir, not really.

22 Q. Okay.

23 SOLICITOR BARFIELD: Thank you, ma'am. Answer
24 anything Mr. Steen or Mr. Jones has.

25 THE COURT: All right, counsel.

DAWNETTA MONTGOMERY: CROSS BY MR. JONES

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MR. JONES: Yes, sir, Your Honor.

CROSS-EXAMINATION

DAWNETTA MONTGOMERY BY MR. JONES:

Q. Ms. Montgomery, you mentioned your relationship to Tanisha Nelson a little bit. Is it fair to say you all are pretty good friends?

A. Yes.

Q. You went to her house to check on the baby?

A. Uh-huh.

Q. And you were concerned about the baby?

A. Yes.

Q. And are you friends with the family in general or just her?

A. Just her really.

Q. Let's see. We go back to the night in question. Do you remember giving a statement that next day the 29th?

A. Yes.

Q. To police officers. And then you remember you gave a statement to Detective Philip Hall. When you first spoke to detectives you told them - You told Detective Hall that you heard the gun shots go off. Correct? And that you went upstairs to check on your sister and then you went downstairs and closed the door; isn't that right?

A. No. I closed the door before I went upstairs.

Q. You closed the door before you went upstairs?

DAWNETTA MONTGOMERY: CROSS BY MR. JONES

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1 A. Yes.

2 Q. But then after you came back downstairs you told
3 them that was pretty much the end of the relative
4 information; isn't that correct?

5 A. Yes.

6 Q. But when you gave an interview a couple of days later
7 you gave some more information didn't you?

8 A. Yes, sir, about the hat and shirt.

9 Q. About the hat and the shirt. And isn't that the first
10 time that you mentioned the gun also?

11 A. I'm really not sure.

12 Q. Do you recall giving an interview to Detective
13 Hartley?

14 A. I'm sorry?

15 Q. To a Detective Hartley.

16 A. I don't. I probably don't know his name but
17 probably so.

18 Q. I'll give you - -

19 MR. JONES: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 Q. If you could just take a look at this for me and see
22 if it refreshes your memory here.

23 A. Yes I had one of these.

24 Q. So you remember giving this interview?

25 A. Uh-huh. Yes.

1 Q. And when you talked to her didn't you tell her
2 the first time you left out some information?

3 A. Yes.

4 Q. And you left out the information about there being
5 a gun at your house that night?

6 A. Yes. And the shirt and the hat.

7 Q. And the shirt and the hat?

8 A. Uh-huh.

9 Q. And you said your sister told you that you should
10 get rid of the shirt and the hat?

11 A. Uh-huh.

12 Q. And you said that it was in the closet?

13 A. I think so yeah.

14 Q. Do you remember which closet that it was?

15 A. I think it was the one in the kitchen.

16 Q. The one in the kitchen. So it wasn't immediately
17 in the door? You had to kind of come in the house and
18 get in that closet?

19 A. Right.

20 Q. Thank you. And during the shooting you said that it
21 was you, Semaj, and Toya; is that right?

22 A. Yes, sir. And the Que Black dude was on the floor.

23 Q. Now did you tell police that Que Black was on the
24 floor when you first spoke to them?

25 A. I don't think so I did.

DAWNETTA MONTGOMERY: CROSS BY MR. JONES

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1 Q. So you didn't tell them at the time that Que Black
2 was on the floor. And Que Black, again, this is the person
3 that you saw with the gun? The only person that you saw
4 with the gun night. Correct?

5 A. Yes.

6 Q. One second.

7 MR. JONES: No further questions.

8 THE COURT: Any redirect?

9 SOLICITOR BARFIELD: No, sir.

10 THE COURT: All right. Thank you, ma'am, you may
11 step down. You are free to leave.

12 (WITNESS LEAVING WITNESS STAND.)

13 THE COURT: Mr. Foreman, you all want a break right
14 now or do you want to try to go with one more witness?

15 Okay.

16 Call your next witness.

17 SOLICITOR BARFIELD: Justine Gladden.

18 THE COURT: Let's all stand up and stretch while the
19 next witness is coming in.

20 (ALL JURORS COMPLIED WITH COURT'S INSTRUCTIONS.)

21 THE COURT: All right, ma'am, just come on up here.

22 THE BAILIFF: Place your left hand on the Bible and
23 raise your right.

24 (WHEREUPON, JUSTINE GLADDEN, BEING
25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 THE COURT: All right.

2 DIRECT EXAMINATION

3 JUSTINE GLADDEN BY SOLICITOR BARFIELD:

4 Q. Talk real loud please, ma'am, and use that microphone.

5 Tell us your name.

6 A. Justine Gladden.

7 Q. Do you live in Lancaster County now?

8 A. No, sir.

9 Q. Where do you live now?

10 A. In Texas.

11 Q. Did you live in Lancaster County back on May 29th
12 of 2011?

13 A. Yes I did.

14 Q. Where did you live then?

15 A. At 1701 Pardue Street.

16 Q. How long had you lived there?

17 A. For a couple a weeks. I moved there on May the 9th
18 of 2011.

19 Q. And where did you move there from?

20 A. Um -

21 Q. Okay. Is that the first time that you lived in
22 Pardue?

23 A. Yes, sir.

24 Q. I'm gonna ask you about some people.

25 A. Okay.

1 Q. Dawnetta Montgomery, do you know her?

2 A. Yes.

3 Q. How do you know her?

4 A. That's my sister.

5 Q. Where was she living on May 29th of 2011?

6 A. 1701 Pardue Street.

7 Q. Tanisha Nelson. Do you know her?

8 A. Yes.

9 Q. Do you know her by a nickname?

10 A. Little One.

11 Q. How do you know her?

12 A. Just the neighbor. She was a neighbor.

13 Q. Where was she - Where did she live in May of 2011?

14 A. 1705, 1706.

15 Q. That's fine. Same building you're in?

16 A. Yes.

17 Q. And you've got to keep your voice - -

18 A. Opposite end.

19 Q. Opposite end. Was she in the last one or next to
20 the last?

21 A. The last one.

22 Q. Same building?

23 A. Yes, sir.

24 Q. And you've got to talk real loud. You're fine.

25 Did you know Edrickis Stevens or somebody named

- 1 Qua Stevens?
- 2 A. Yes.
- 3 Q. How did you know him?
- 4 A. I just know him from that's Little One baby daddy.
- 5 Q. Okay. Did you know a guy named Timothy Nelson?
- 6 A. Yes.
- 7 Q. Did you know him by any nickname?
- 8 A. Qua.
- 9 Q. Okay. Had you ever heard the nickname Que Black?
- 10 A. That night yes.
- 11 Q. And whose nickname was that that you heard that night?
- 12 A. Qua.
- 13 Q. Nelson?
- 14 A. Yes.
- 15 Q. Did you know Quanell McIlwain?
- 16 A. I did.
- 17 Q. Do you see Quanell McIlwain in the courtroom today?
- 18 Just answer yes or no first.
- 19 A. I do.
- 20 Q. Raise your hand, Mr. McIlwain?
- 21 I'm sorry. Is that who you say is Quanell McIlwain?
- 22 A. Yes, sir.
- 23 Q. How do you know Quanell?
- 24 A. We all grew up in Great Falls. Him and my brother
- 25 is good friends and we all went to school together.

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 Q. All right. Before May of 2011 how long had you known
2 Quanell?

3 A. I left Great Falls in 2010. In 2000 - Like a year. It
4 might a been a year. It might a been like a little more
5 than a year.

6 Q. Okay.

7 A. I didn't see him at school no more.

8 Q. Okay. Let me ask you this question. How long before
9 you left Great Falls in 2010 had you known him?

10 A. We went to school together.

11 Q. Okay. How far back in school I guess. I'm not
12 picking at you, I'm just trying to get a time frame on it.

13 A. Like middle school.

14 Q. Okay. Between you leaving Great Falls - I'm gonna
15 jump ahead. On May 29th of 2011 did you see Quanell
16 McIlwain?

17 A. On that day?

18 Q. Yes.

19 A. Yes.

20 Q. How long had it been since you had seen him?

21 A. That was my first time seeing him since Great Falls.

22 Q. 2010?

23 A. No. Maybe 2009.

24 Q. Okay. Had he changed any?

25 A. Yes.

1 Q. How had he changed?

2 A. His weight.

3 Q. How had his weight changed?

4 A. He got big.

5 Q. When you saw him on May 29th of 2011 did you have any
6 conversation with him about that?

7 A. Yes I did.

8 Q. What did you say to him?

9 A. I said you done picked up a little weight.

10 Q. Did he respond?

11 A. Yeah.

12 MR. STEEN: Objection.

13 SOLICITOR BARFIELD: That's fine.

14 THE COURT: All right.

15 Q. Were you at your apartment Saturday night May 28th
16 into Sunday morning May 29th of 2011?

17 A. Sir?

18 Q. Were you home Saturday night and Sunday morning May
19 28th and 29th of 2011?

20 A. I was.

21 Q. Did you have a boyfriend then?

22 A. I did.

23 Q. His name? His name and then his nickname.

24 A. Lewis Bell which is L.J.

25 Q. Did you have any children with you at 1701 on May

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 29th of 2011?

2 A. I did.

3 Q. How many children were with you? Your children.

4 A. Two.

5 Q. Okay. How young or old were they?

6 A. My little boy was one and my little girl she was
7 three months.

8 Q. Okay. Do you know Keith Benson?

9 A. I do.

10 Q. How do you know Keith Benson?

11 A. He was a neighbor.

12 Q. Which neighbor was he? You're countin apartments, I
13 can see it.

14 A. 1703.

15 Q. Okay. That's fine. Same building?

16 A. Yes, sir.

17 Q. Did you - Were you ever at Keith Benson's apartment
18 Saturday, Saturday night or into Sunday morning?

19 A. Saturday night just for like a little bit.

20 Q. Okay. Who all was over there then?

21 A. It was me, Symone.

22 Q. Symone meaning?

23 A. Dora.

24 Q. Dora.

25 A. Jatoya Wright, Samar.

- 1 Q. Do you know his last name?
- 2 A. No, sir.
- 3 Q. Have you seen him here today?
- 4 A. Yes sir.
- 5 Q. Where did you see him?
- 6 A. Outside.
- 7 Q. All right. Go ahead. Saymar. Who else?
- 8 A. Timothy Nelson.
- 9 Q. Okay.
- 10 A. Keith Benson.
- 11 Q. Okay.
- 12 Q. Que - Que B. Que. I don't know him really.
- 13 Q. Which one you talking about?
- 14 A. The guy from Rock Hill.
- 15 Q. Okay. That's fine.
- 16 A. And Quanell.
- 17 Q. Quanell was at Keith Benson's?
- 18 A. Yes.
- 19 Q. And what was going on at Keith Benson's?
- 20 A. We was just standing outside just having conversation.
- 21 Q. Out the back or the front?
- 22 A. The back.
- 23 Q. Is there a back to 1701 when you were living there?
- 24 A. Yes.
- 25 Q. Is there a porch or anything out the back door?

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 A. Just a - Yes.

2 Q. Like a stoop?

3 A. Just a stoop.

4 Q. Is it covered? Do you know if it's - Does it have a
5 cover over it like a little roof or did it?

6 A. No.

7 Q. Okay. How long did you stay at 1704?

8 A. A - I don't know. I didn't have a watch on.

9 Q. That's fine. Did you go somewhere after you were at
10 1704?

11 A. To 1701 which is my apartment.

12 Q. And what was going on t 1701?

13 A. The same. We just all left and just went to my
14 apartment.

15 Q. All meaning all of whom? Not names but all of what
16 group are you talking about?

17 A. The group who was at 1701. I mean 1703.

18 Q. Okay. The Benson's?

19 A. Yes.

20 Q. And what did the group do at your place?

21 A. We was standing outside. Might a had a couple of
22 drinks.

23 Q. Okay. Was there some drinking going on?

24 A. Yes.

25 Q. Okay. Sitting outside. Front, back?

- 1 A. Back door.
- 2 Q. Okay. Were there people inside?
- 3 A. My kids.
- 4 Q. Okay.
- 5 A. At first it was my kids.
- 6 Q. Okay. And then what?
- 7 A. And then like a little bit after that it was me,
- 8 Dawnetta, Jatoya, Keith.
- 9 Q. Keith?
- 10 A. Benson.
- 11 Q. Benson. Go ahead.
- 12 A. Semaj.
- 13 Q. Semaj?
- 14 A. Benson?
- 15 Q. Barnett?
- 16 A. Yes.
- 17 Q. Okay. And who else?
- 18 A. Qua Nelson.
- 19 Q. Okay. It was us meaning us were where?
- 20 A. Inside the apartment. In L.J.'s.
- 21 Q. L.J.'s your boyfriend?
- 22 A. Yes.
- 23 Q. Where in your apartment were you all? Was this -
- 24 Where you all in your apartment when it was that
- 25 group?

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 A. Me, Dawnetta, and Jatoya and Semaj was in the living
2 room. L.J., Keith and Qua Nelson was in the kitchen.

3 Q. Okay.

4 A. They was having their own conversation.

5 Q. That's fine.

6 A. While we was listening to music.

7 Q. All right. I'm gonna jump ahead and then we'll come
8 back. Did anything happen later on that morning while you
9 were at your apartment?

10 A. No.

11 Q. Let me ask you a different question. Did you see
12 blue lights any time that morning? Police? Did the police
13 come?

14 A. That morning? Which morning?

15 Q. The morning of this event that we're all - that we're
16 talking about. Let me regroup here.

17 Sometimes Sunday morning did you see police in Pardue
18 apartments?

19 A. Yes.

20 Q. Before that had anything happened?

21 A. Yes.

22 Q. What?

23 A. A shooting.

24 Q. Okay. About what time was the shooting? Was it
25 daylight or dark?

1 A. It was dark.

2 Q. Okay. Was it after midnight or before?

3 A. After.

4 Q. Okay. And if you don't know what time - I ain't
5 trying to trick you - if you don't know you don't know but
6 do you have any idea what time it was the shooting
7 happened?

8 A. No. I was in the bed.

9 Q. That's fine. Now, I'm gonna back up. Who went
10 upstairs? You said you were in the bed. Who was upstairs?

11 A. Me, Lewis Bell which is L.J., and my kids.

12 Q. Okay. Where was Dora? The last time -

13 MR. STEEN: Calls for speculation. Withdrawn.

14 THE COURT: What's that?

15 MR. STEEN: I'll let the Solicitor finish his
16 question.

17 THE COURT: Okay. Objection withdrawn.

18 BY SOLICITOR BARFIELD:

19 Q. Where was Dora the last time you saw her before you
20 went upstairs?

21 A. She was downstairs.

22 Q. Where was Timothy Nelson the last time you saw him
23 before you went upstairs?

24 A. He was downstairs in the living room listening to
25 music.

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. Where was Quaneil McIlwain the last time you
2 saw him before you went upstairs?

3 A. He wasn't in my apartment.

4 Q. Okay. When you went upstairs was Qua - Quaneil
5 McIlwain in your apartment?

6 A. No, sir.

7 Q. Okay. Now I'm gonna go back and ask you some
8 questions about Tanisha Nelson and Qua Stevens. Before you
9 went upstairs to go to bed did you see them and interact
10 with one or both of them?

11 A. I just seen 'em.

12 Q. Okay. And describe what was going on with the two
13 of them.

14 A. After we left 1703 which is the Benson house we
15 always sit in 1701 which is my house on the back porch.

16 Q. Okay. Go ahead.

17 A. And Tanisha Nelson which is Little One came over there
18 and wanted to use the phone.

19 Q. Did she use somebody's phone?

20 A. She did.

21 Q. Do you know whose phone she used?

22 A. She used my sister Dawnetta.

23 Q. Okay. Go ahead. And don't tell me what was said
24 by Tanisha or Qua Stevens or anybody else but just tell me
25 what happened, what you saw happen.

1 A. She just wanted to use the phone. Dawnetta came in
2 the house to get the phone but I had her phone sittin on
3 the back porch and I ask her - she was like let me have the
4 phone, can I use the phone, Little One wants to use the
5 phone. I gave her the phone then walked to the side of my
6 apartment which is 1701.

7 Q. Was this going on out the back of the apartment or
8 out - or off the front of the apartment?

9 A. The side.

10 Q. Okay. But I mean did Tanisha come in the front door
11 or the back door?

12 A. The back.

13 Q. Go ahead.

14 A. And she wanted to use the phone. They stepped to the
15 side and she was using the phone and I just heard someone
16 screaming and it was Little One. I stepped on the side and
17 I seen Little One and Qua running towards the 1600 block.

18 Q. All right. Little One again by name is who?

19 A. Tanisha Nelson.

20 Q. Okay. Did you ever see any physical violence between
21 Tanisha Nelson and Qua Stevens?

22 A. No, sir.

23 Q. Okay. Did you see either Tanisha Nelson or Qua
24 Stevens after you saw the two of them running off toward
25 the 1600 building?

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes.

2 Q. Who did you see and where?

3 A. Tanisha she showed back at my apartment.

4 Q. Front or back? If you remember. If you don't it's
5 fine.

6 A. I don't remember.

7 Q. That's fine. She showed back up. How long after
8 you saw them running off toward 1600?

9 A. Like fifteen, ten or fifteen minutes.

10 Q. Okay. Then what?

11 A. She was in the living room and she called her - Qua
12 which is her baby daddy until - -

13 Q. All right, don't quote her.

14 A. Okay.

15 Q. Don't quote her. Let's go back and talk about
16 Tanisha's baby, or babies. Did she have children that you
17 were aware of?

18 A. Yes.

19 Q. Did you see a child or children of Tanisha Nelson
20 that night while these things are going on that you're
21 describing?

22 A. I did.

23 Q. One child or more than one child?

24 A. More than one.

25 Q. All right. And where did you see Tanisha's child or

1 children?

2 A. At her house.

3 Q. Okay. Did you ever ---

4 A. No, sir.

5 Q. --- pick up one - her child or children?

6 A. No, sir.

7 Q. Did her child or her children ever end up in 1701
8 in your apartment?

9 A. No, sir.

10 Q. Did you ever see them in your apartment?

11 A. No, sir.

12 Q. Okay. Do you know if Dora - Do you personally know
13 whether Dora, your sister, had any interaction with her
14 child or her children?

15 A. No, sir. They was asleep.

16 Q. Okay. All right. You said Tanisha came back. What
17 happened - You said she came back and she was on the phone
18 again. Correct?

19 A. Yes, sir.

20 Q. Did she stay at 1701 after she was back that second
21 time?

22 A. For a little bit.

23 Q. Okay. And after a little bit did she go somewhere?

24 A. Home.

25 Q. Okay. All right. Was that before - Did those things

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD

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1 occur before or after or after you heard gun shots?

2 A. Before.

3 Q. Okay. Now about how many - Did you hear one shot or
4 more than one shots - more than one shot?

5 A. More.

6 Q. Do you recall how many or approximately how many?

7 A. Maybe four or five.

8 Q. Okay. Could you tell where they were coming from?

9 A. The front.

10 Q. Of what?

11 A. The 1700 block.

12 Q. Could you tell whether they were close or far away?

13 A. Close.

14 Q. When you heard shots what did you do?

15 A. I jumped up out of my bed.

16 Q. Did anybody move first of all from downstairs to
17 upstairs?

18 A. Yes.

19 Q. Who moved from downstairs to upstairs?

20 A. Dawnetta.

21 Q. And after that did anybody move from upstairs to
22 downstairs?

23 A. Yes.

24 Q. Who?

25 A. Me, Dawnetta, L.J., and my baby.

1 Q. And where did you all go?

2 A. We went downstairs and out the door.

3 Q. Which door?

4 A. The front door.

5 Q. When you went out the front door did you see anything?

6 A. A body.

7 Q. Did you know Terrance Antonio Jones?

8 A. From around the way.

9 Q. From around you said?

10 A. Yes. I didn't know him personally.

11 Q. Okay. If you had seen his face is it somebody that
12 you would have recognized? Well let me ask the question
13 this way. Did you know - Well let me back up.

14 You saw a body. Where was the body?

15 A. It was in front of 1703.

16 Q. Okay.

17 A. And 1704.

18 Q. Did you know who the body - Did you see the body to
19 be able to recognize who it was?

20 A. I seen a body. At that time I did not know his name.

21 Q. That's fine. Did you recognize the body, the person
22 of the body? Even if you didn't know the name did you
23 recognize ---

24 A. Yes.

25 Q. --- that it was somebody you knew or knew of?

JUSTINE GLADDEN: DIRECT BY SOLICITOR BARFIELD.

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1 A. Yes.

2 Q. Okay. And when you first saw the body, were police,
3 fire, or EMS on the scene when you first saw the body?

4 A. No.

5 Q. Okay. And at some point were you at the back door
6 of your apartment?

7 A. Yes.

8 Q. After shots I mean. After shots were fired were you
9 ever at the back door of your apartment?

10 A. Yes.

11 Q. Did that occur before you went out the front door or
12 after you went out the front door?

13 A. After I went out the front door.

14 Q. And what happened at the back door?

15 A. I seen someone go over the fence.

16 Q. All right. Can you say who the someone was?

17 A. I cannot say cause I don't know.

18 Q. When you say over the fence, fence where?

19 A. At the back of 1700 block.

20 Q. And where in relation to 1701 - Well let me ask you
21 this. Which end of the 1700 building was it?

22 A. It was in the middle.

23 Q. Okay.

24 A. But closer to my end.

25 Q. All right. You were looking at this thing, just....

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1 let me go ahead and bring it over here and let you look
2 at it closer.

3 SOLICITOR BARFIELD: Permission for the witness to
4 step down?

5 THE COURT: Yes, sir.

6 And you may want to step down please.

7 (WITNESS LEAVES WITNESS STAND.)

8 Q. All right. Now look at that for a minute and then I'm
9 gonna ask yo some questions about it and give you a pointer
10 and let you step to the side. My question in a minute is
11 gonna be, do you know what that shows? And you tell me
12 when you're ready to answer that question.

13 Are you familiar with what's shown in that picture?

14 A. Yes.

15 Q. All right. Now, step to the side so that you're not
16 blocking any of the views of those folks.

17 Laser pointer, okay. Get where you can point to
18 some things. Let me ask you, where was - where is your
19 apartment? Is your apartment shown on that picture?

20 A. Right here.

21 (WITNESS INDICATED.)

22 Q. All right. Now, talk loud cause you don't have a
23 microphone.

24 A. Right here.

25 Q. Okay. When you saw the body outside, where was it?

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1 A. Right here.

2 (WITNESS INDICATED.)

3 Q. Okay. When you're out your back door, you see
4 somebody going over the fence. Where is that happening?

5 A. Right here.

6 (WITNESS INDICATING.)

7 Q. All right. Now you can step back up to the witness
8 chair now.

9 (WITNESS RETURNS TO WITNESS STAND.)

10 Q. Describe anything you can about the person that you
11 saw jumping over the back fence.

12 A. He just had on a white shirt.

13 Q. Okay. Did you see anybody else back there on the back
14 on the back near the fence?

15 A. I did.

16 Q. Who?

17 A. Timothy Nelson.

18 Q. Where was Timothy Nelson near the back fence?

19 A. Right in front of the fence.

20 Q. Where in relation to where the fellow that was over
21 the fence was? Let me ask the question this way.

22 Were they at the same point along the fence on
23 opposite sides or were there some up and down distance
24 between the two of them? Did that make any sense to you
25 the way I'm asking the question?

1 A. It was close.

2 Q. Okay. And are you sure it was Timothy Nelson?

3 A. Yes.

4 Q. You could tell who he was?

5 A. Yes.

6 Q. What side of the fence was Timothy Nelson on?

7 A. Closer to the door.

8 Q. Okay. What side of the fence in relation to the
9 apartments versus the woods was he on is my question?

10 Was he inside the fence or outside the fence?

11 A. Inside.

12 Q. Okay. Did you see anything occur when you saw
13 Timothy Nelson on one side of the fence and the person in
14 the white shirt on the other side of the fence?

15 A. A gun was tossed.

16 Q. Tossed from which side - From whom to whom?

17 A. From the white shirt to Timothy Nelson.

18 Q. Okay. Was there any - That's fine. Did you see -
19 What did you do after you saw that?

20 A. Came back in the house.

21 Q. Did you see Timothy Nelson any more that night or
22 that morning?

23 A. Yes.

24 Q. How soon after you saw him - Well you said a gun was
25 tossed. Did Timothy Nelson take possession of the gun?

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1 A. He did.

2 Q. How soon after you saw Timothy Nelson take possession
3 of the gun at the fence behind your house did you see him
4 back in your house?

5 A. A couple a minutes later.

6 Q. Okay. And where was he in your house when you saw him
7 with that gun?

8 A. In the kitchen.

9 Q. Did you see the gun in the kitchen?

10 A. I did.

11 Q. What did it - Do you know anything about guns?

12 A. No.

13 Q. What did the gun look like? Was it a rifle type gun
14 or was it a handgun?

15 A. A handgun.

16 Q. What did it look like?

17 A. It was silver.

18 Q. What was --

19 A. And black.

20 Q. Silver and black?

21 A. Yes.

22 Q. And what was going on with the gun, what was Timothy
23 Nelson doing with the gun when you saw him with it? You
24 said in the kitchen; is that right?

25 A. Yes.

1 Q. What was he doing with it? Do you know?

2 A. I was in the living room and I just heard a clicking
3 noise.

4 Q. Okay.

5 A. It just kept clicking. So I walked to the kitchen
6 when I seen him like mess'n around with it and I told L.J.
7 that he had the go.

8 Q. And did Timothy Nelson go?

9 A. He did.

10 Q. Did the gun go?

11 A. It did.

12 Q. Did you see either one of them again that morning?

13 A. I didn't.

14 Q. Did Timothy Nelson and the gun get gone before police
15 arrived?

16 A. I'm not sure.

17 Q. That's fine. Any time earlier that night, any time
18 earlier Saturday night until after midnight into Sunday
19 morning all the way up until the time you heard the gun
20 shots, had you seen Timothy Nelson with a gun before you
21 saw him catching one over the fence?

22 A. I didn't.

23 Q. You did not; is that right?

24 A. Yes, sir.

25 Q. Sunday morning, daylight, what were you doing around

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1 your apartment that Sunday morning after sun rose,
2 daylight?

3 A. Cleaning.

4 Q. Did you - Anything unusual discovered by you while
5 you were cleaning?

6 A. Yes.

7 Q. What?

8 A. A black hat and a black shirt. It was in the kitchen
9 closet.

10 Q. Had you seen that - Before you find them in your
11 closet had you seen that black hat and that black shirt at
12 any time earlier than that?

13 A. I did.

14 Q. Where did you see them earlier?

15 A. On Quanell.

16 Q. And where was Quanell when you saw him with those
17 two articles of clothing on earlier?

18 A. The back porch.

19 Q. At what apartment?

20 A. 1704.

21 Q. Okay. What happened to the hat and the shirt?

22 A. Dawnetta took it.

23 Q. And why did she take 'em? Let me ask you this.

24 You hear gun shots, you see Timothy Nelson catch a
25 gun across the fence, you see Timothy Nelson in your

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1 kitchen with a gun. Is that a problem for you?

2 A. Yes.

3 Q. You see a black hat and a black shirt in your kitchen
4 closet that Quannell had been wearing earlier. Was that a
5 problem for you?

6 A. Yes.

7 Q. Why was all that stuff a problem for you?

8 A. I didn't want no gun in my house.

9 Q. Okay.

10 A. And I didn't want no shirt or a hat in the house
11 also.

12 Q. Okay.

13 A. I didn't want nothing else in the house that didn't
14 belong in the house because of my kids.

15 Q. Okay. That's fine.

16 SOLICITOR BARFIELD: I beg the Court's indulgence one
17 moment please.

18 THE COURT: Okay.

19 (PAUSE.)

20 SOLICITOR BARFIELD: Thank you, ma'am. Answer
21 anything Mr. Steen or Mr. Jones has.

22 THE COURT: All right, counsel.

23 MR. STEEN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 JUSTINE GLADDEN BY MR. STEEN:

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1 Q. And, Ms. Gladden, on May 29th, 2011 right after this
2 incident you spoke to law enforcement?

3 A. Yes.

4 Q. And you spoke to Investigator Hall with the Lancaster
5 Police Department?

6 A. Yes.

7 Q. And you told him at that point that you heard the
8 shots but did not see anything. Correct?

9 A. Correct.

10 Q. At that same time when you gave your statement did
11 Investigator Hall also speak with your sister and Ms.
12 Wright the other residents of 1701?

13 A. He did.

14 Q. And it was on May - I mean it was on June the 3rd,
15 2011 that you spoke with Investigator Hall again?

16 A. Yes.

17 Q. And at that point you told him about Qua Nelson having
18 the gun?

19 A. Yes.

20 Q. And about your sister disposing of the black shirt
21 and the black hat?

22 A. Yes.

23 Q. Going back to that night. You stated earlier that
24 it was you, Dora, Jatoya, and Semaj that were in the living
25 room?

1 A. Yes.

2 Q. And it was Keith, Qua Nelson, and L.J., Lewis Felt
3 were in the kitchen?

4 A. Yes.

5 Q. And that was earlier in the night. That was where
6 they were when you went to bed?

7 A. Before.

8 Q. You went to bed, when you went upstairs that was the
9 location of those individuals?

10 A. No, sir.

11 Q. Where were they at when you went to bed?

12 A. Semaj and Qua was in the living room and me and L.J.
13 went upstairs.

14 Q. Sorry. I thought you testified to that.

15 At what time did you go to bed that night?

16 A. I don't know.

17 Q. About how long prior to the shooting had you gone to
18 bed that night?

19 A. Maybe thirty minutes.

20 Q. And you said you never saw Tanisha's baby at 1701?

21 A. Correct.

22 Q. And you never saw your sister with Tanisha's baby at
23 1701?

24 A. Correct.

25 Q. And you said your sister was asleep at that point

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1 also?

2 A. No.

3 Q. Okay. You didn't see Qua Nelson dispose of any
4 cartridges in a baby's diaper while he was in 1701 after
5 the incident?

6 A. No.

7 Q. But there were babies diapers in your residence I'm
8 assuming since you got kids?

9 A. Yes.

10 Q. Okay. And you testified that you did not see Qua
11 Nelson with a gun earlier that night. Correct?

12 A. Correct.

13 Q. Are you positive he didn't have a gun?

14 A. Positive.

15 Q. How are you positive he didn't have a gun?

16 A. Cause I didn't see a gun on him.

17 Q. And no one else that night was wearing black itself
18 or Mr. McIlwain?

19 A. Keith Benson he might a had on a black shirt but he
20 did not have on a black hat.

21 Q. And your testimony is you saw the clothes in the
22 closet after the incident. Correct?

23 A. Correct.

24 Q. And the only person that left your apartment and came
25 back into your apartment after the incident was Qua Nelson?

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1 A. Correct.

2 Q. So you saw Qua run to the fence catch the gun and come
3 back inside the house. Correct?

4 A. Correct.

5 MR. STEEN: One moment, Your Honor.

6 THE COURT: Yes, sir.

7 (PAUSE AT 11:18 A.M..)

8 BY MR. STEEN:

9 Q. You testified that Ms. Nelson came over to use a
10 phone?

11 A. Yes, sir.

12 Q. Whose phone did she use?

13 A. Dawnetta.

14 Q. So Dawnetta's cell phone?

15 A. Yes, sir.

16 MR. STEEN: No further questions. Thank you, Ms.
17 Gladden.

18 THE COURT: Any redirect?

19 SOLICITOR BARFIELD: No, sir.

20 THE COURT: All right. Thank you, ma'am, you may
21 step down and you're free to leave.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: We're gonna take a break. You all don't
24 talk about the case, don't talk about anything, you haven't
25 heard everything yet. I'll give you instructions at the

1 end of the trial as to when you can actually discuss it.

2 Okay. We'll see you back here shortly.

3 SOLICITOR BARFIELD: Would you remain on the bench for
4 a minute?

5 THE COURT: Yes, sir.

6 (JURY EXITS COURTROOM AT 11:19 A.M..)

7 THE COURT: All right, the jury's gone.

8 Yes, sir.

9 SOLICITOR BARFIELD: Your Honor, I have two more
10 witnesses that I intend to call this morning, maybe three,
11 but I think probably just two. One of the them I will tell
12 you straight up has been served, has appeared but he and I
13 have had multiple phone conversations about this case and
14 he, I believe, is going to come in the courtroom but
15 probably refuse to answer questions. Before I just pop
16 that up in front of a jury I would like some guidance about
17 what the Court thinks. I've been told by him directly,
18 Phillip Hall has been told by him this morning that he's
19 here, he's complied with his subpoena but he ain't gonna
20 talk so we just need to kind of flesh out how we want to
21 handle that. That is a witness I want to call this
22 morning.

23 He is a witness who gave a written statement and I
24 think just isn't gonna tell - -

25 THE COURT: Well I guess you can introduce the

1 statement through other means if you wish to introduce that
2 statement or introduce that evidence.

3 SOLICITOR BARFIELD: Well my normal - I've had
4 reluctant witnesses many times. I've had witnesses who get
5 on the stand and they'll answer questions and they'll deny
6 that they said this or denied that that's what they saw or
7 heard and then I'll impeach them with their statements.

8 I anticipate I'm gonna call this witness and he's
9 gonna say - I'm gonna ask him a question and he ain't gonna
10 say anything so just be aware that that might occur. I do
11 intend to impeach him with the statement if he denies that
12 the facts --

13 THE COURT: What's the name of this witness?

14 SOLICITOR BARFIELD: Keith Benson. K.B., Keith
15 Benson.

16 THE COURT: All right. Mr. Steen, any thoughts, any
17 ideas or anything else?

18 MR. STEEN: No, Your Honor, he's not the top of the
19 list, witness list.

20 THE COURT: What's this witness supposed to say?

21 SOLICITOR BARFIELD: He is the top of the list for me.
22 He's gonna --

23 THE COURT: What does the statement say?

24 SOLICITOR BARFIELD: Well I'll tell you what it says.
25 The statement says three or four bullets that are to

1 me very important. He's there, he's the Keith Benson that
2 lived in 1704. I think Ms. Justine Gladden incorrectly said
3 1703 but he's the Keith Benson of 1704. He says several t
4 things. He said that he was in - When the shooting
5 occurred he said he was in the kitchen and Quavious Nelson
6 was in the kitchen with him - when the shooting occurred.
7 He said that there was good lighting behind 1701. He said
8 right after --

9 THE COURT: Who did he give this statement to?

10 SOLICITOR BARFIELD: He gave it to Phillip Hall I
11 believe.

12 THE COURT: Okay. Well I believe you're gonna be able
13 to get the statement in through Mr. Hall's testimony if he
14 refuses to testify.

15 MR. STEEN: May I interject, Your Honor?

16 THE COURT: Yes, sir.

17 MR. STEEN: This is a violation of my client's - I
18 mean it's in violation of the confrontation clause.

19 THE COURT: I mean you can have - You know we can have
20 a hearing on that but how is that a violation of his
21 confrontational rights under the US Constitution?

22 MR. STEEN: Because Mr. Benson will be testifying to
23 evidence that's gonna be used against my client and I can't
24 cross him on that testimony.

25 THE COURT: But he also gave a written statement.

1 MR. STEEN: Which I could not cross him on either.
2 The State's the only person that's had any - They ask the
3 questions not me.

4 THE COURT: All right. Mr. Solicitor, what's your
5 position?

6 SOLICITOR BARFIELD: Well my position - Normally,
7 again, the way this works is I call the witness; let's
8 assume a witness tells the police A B C and D and I talk to
9 that witness and I send that witness a subpoena and that
10 witness appears for the trial and I put the witness on the
11 witness stand and the witness starts telling me E F G and
12 H. Then I produce the written statement and give the
13 witness an opportunity to examine the written statement and
14 then I get to ask the witness did you provide this
15 statement? Yes. Did you talk to Phillip Hall on such and
16 such a date? Yes. And is this the statement that you gave
17 and did you sign it and is this what you told Phillip Hall?
18 And then I get to publish the statement. I get to go
19 through the statement with him.

20 It's basically I'm impeaching my own witness. But
21 he's got to be responsive in some way for me to be able to
22 do that.

23 THE COURT: I understand Bruton and I understand co-
24 defendant and non-testifying co-defendant's statement and I
25 understand all of that.

1 MR. STEEN: He's testifying, Your Honor. I mean I
2 don't have the confrontation issue. But going back to the
3 previous if he doesn't testify at all I have - I won't be
4 able to cross him at all. I mean if he testifies like the
5 Solicitor just said then I mean I can cross him. But if he
6 doesn't say anything I can't cross him.

7 THE COURT: If the witness is ask did you give a
8 statement and he doesn't answer at all, he refuses to
9 answer, Detective Hall can testify that yes he gave the
10 statement. And then he can offer - I don't see how -
11 Thinking out loud right now I don't see how that would
12 violate the confrontation clause.

13 MR. STEEN: At that point it would be hearsay, Your
14 Honor, if Investigator is testifying to the statement.

15 THE COURT: No it would not be hearsay. It may
16 technically be hearsay but it would be an exception which I
17 cannot articulate the exact exception it would be.

18 The witness is available, the witness is capable of
19 testifying.

20 SOLICITOR BARFIELD: Let me look at the rule real
21 quick.

22 THE COURT: I guess the more - The real question is
23 what you want me to do with him if he refuses to testify.
24 That's the question. Every person has the right not to
25 testify. You all seeking some type of sanction from the

1 Court, Solicitor?

2 SOLICITOR BARFIELD: No. I just want the testimony.

3 THE COURT: Okay.

4 SOLICITOR BARFIELD: Or evidence of the prior
5 statement. I'm not looking to lock anybody up.

6 THE COURT: All right. Let's do this. You all get
7 your thoughts together and let's take a brief comfort
8 recess and then I'll come back in and you all can finish
9 arguing your ideas. I got to go to the bathroom.

10 I can't speak for the court reporter but I see her
11 moving around a lot as well. All right, ten minutes.

12 (COURT IN RECESS AT 11:26 A.M..)

13 (COURT BACK IN SESSION AT 11:36 A.M..)

14 THE COURT: All right. Go ahead.

15 SOLICITOR BARFIELD: Your Honor, I'm intending to
16 proceed under Rule 613, Rules of Evidence 613.

17 THE COURT: Okay. Let me get there. Okay.

18 SOLICITOR BARFIELD: And I'll just let everybody read
19 the rule and then - That's how I intend to proceed.

20 (PAUSE.)

21 THE COURT: All right, well I mean Rule 613(b) says
22 "if a witness does not admit" - for example what you're
23 telling me is that the witness is not gonna answer any
24 questions. We don't know that yet cause he hasn't
25 testified but let's assume he just refuses to even answer

1 whether or not he gave a statement. 613(b), Mr. Steen,
2 says "if a witness does not admit that he has made the
3 prior inconsistent statement." All right. And I guess the
4 definition what would inconsistent mean. The fact that
5 he's not testifying now as to what he said then.
6 "Extrengent evidence of such a statement is admissible."
7 Okay.

8 Is that what you're doing?

9 SOLICITOR BARFIELD: Yes, sir.

10 THE COURT: Okay.

11 SOLICITOR BARFIELD: If he admits he made the
12 statement then I can go through the statement with him and
13 if he says yes that's what I told Phillip Hall. And if he
14 says I did not make that statement then I get to call
15 Phillip Hall up and introduce the statement.

16 THE COURT: Yes, sir, that's the way I read the rule.
17 Mr. Steen.

18 MR. STEEN: I mean, Your Honor, if he doesn't admit to
19 making the statement declaring it's unavailable and under
20 804 --

21 THE COURT: Declaring it's unavailable if he refuses
22 he did this?'

23 MR. STEEN: Yes, sir. It's only former testimony
24 under oath that is allowed under the section even if he's -
25 with him being unavailable under 804.

1 SOLICITOR BARFIELD: I don't think he makes himself
2 unavailable by denying he made the statement.

3 THE COURT: Okay. Under Rule 801 though the hearsay
4 rule this is what it says. It says "a declarate --

5 Pull that up again. All right, Rule 804(a)(2) says
6 "Unavailability as a witness includes situations where the
7 declarant persist in refusing to testify concerning the
8 subject matter of his statement despite an order of the
9 court to do so."

10 So I'm gonna order the guy - If he refuses an answer
11 I'm gonna order that he answer the question, okay, cause
12 that's what the rule says I do. Okay. And then if he
13 refuses the answer he's in contempt of court and I can lock
14 him up for a while to see if he changes his mind. Or
15 through the advisement of the contempt powers of the court
16 and see what he wants to do, okay, if he violates a direct
17 order of the court. If he still continues to refuse to
18 answer then he's deemed unavailable under Rule 804. Then
19 that's when there is a discussion as to whether or not the
20 statement comes in regardless as an exception to hearsay.

21 And let me hear you on that.

22 MR. STEEN: There is no exception for that to come in
23 under 804(b).

24 THE COURT: All right. Why would it not be 803(5) or
25 803(1), the hearsay exception where whether or not the

1 declarants are available doesn't matter? A presence sense
2 impression.

3 MR. STEEN: I'm sorry, Your Honor, 8 0 -

4 THE COURT: 803(1). Hearsay exception: Availability
5 of declarant immaterial.

6 MR. STEEN: Number one, Your Honor, this statement was
7 given a significant - at least a week after the incident.

8 THE COURT: Okay. What about 803(5) Recorded
9 Recollection: A memorandum or record concerning a matter
10 about which a witness once had knowledge.

11 MR. STEEN: He would have to admit to the statement.

12 THE COURT: Okay. See, the problem I have is that if
13 I rule otherwise it would seem to be rewarding those who do
14 not comply with law enforcement. I hate to put it that way,
15 but you know if they made a statement and then come to
16 court and then refuse to testify at all it seems to impede
17 what otherwise would be an unlawful investigation. And of
18 course I put that in quotation marks because I hadn't made
19 that decision. But you understand the Court's concern?

20 MR. STEEN: Yeah, Your Honor, but my client's concern
21 is under Crawford - US v. Crawford he's entitled to - -

22 THE COURT: You're absolutely right he is entitled to
23 confront witnesses against him but if the witness - He's
24 not entitled to intimidate a witness.

25 MR. STEEN: There has been no --

1 THE COURT: I understand but that's everybody knows
2 that that's what the allegation would be. Okay.

3 MR. STEEN: How can I test the truth and veracity of
4 the statement he gave to Investigator Hall without crossing
5 him? We all know people lie to law enforcement all the
6 time.

7 THE COURT: You're exactly right. Okay.

8 SOLICITOR BARFIELD: I think we just need to see how
9 he's going to respond.

10 THE COURT: Well let's see where it goes and we'll
11 just deal with it as it goes.

12 SOLICITOR BARFIELD: That's all we can do.

13 THE COURT: One way or another we'll be reading about
14 it again I guess.

15 MR. STEEN: Yes, sir.

16 SOLICITOR BARFIELD: Or maybe not.

17 THE COURT: Well maybe not. It's a novel issue
18 honestly and I looked through my various case notes and
19 having the clerk check on it and I've never had that issue
20 come up in all my years so we'll just see how it goes.

21 All right. Let's bring the Defendant in.

22 (DEFENDANT REENTERS COURTROOM.)

23 THE COURT: All right, you all ready for the jury?

24 SOLICITOR BARFIELD: Yes, sir.

25 THE COURT: All right. Bring the jury in.

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1 (JURY REENTERS COURTROOM AT 11:45 A.M..)

2 THE COURT: All right, all members of the jury are
3 present.

4 Solicitor, call your next witness.

5 THE BAILIFF: Place your left hand on the Bible and
6 raise your right.

7 (WHEREUPON, KEITH BENSON, BEING
8 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 THE COURT: All right, thank you, sir. Just lean up
10 and make sure your testimony is in the microphone.

11 DIRECT EXAMINATION

12 KEITH BENSON BY SOLICITOR BARFIELD:

13 Q. Mr. Benson, I'm Barfield. We haven't met, we've
14 talked but we haven't met. Tell us your name please.

15 A. Keith Benson.

16 Q. And do you live here in Lancaster now?

17 A. Something like that. We had that conversation.

18 Q. Okay. That's fine. And you got to talk real loud.

19 Do you know Quanell McIlwain?

20 A. Yes, sir.

21 Q. How long have you known him?

22 A. For some years.

23 Q. How do you know him?

24 A. Went to school together.

25 Q. Okay. Do you know Shawanda Mingo?

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1 A. Yes, sir.

2 Q. How do you know her?

3 A. That's my baby's mother.

4 Q. Are you all still an item or not?

5 A. Yes, sir.

6 Q. Good. Do you know Justine Gladden?

7 A. Yes, sir.

8 Q. Do you know Dawnetta or Dora or Symone Montgomery?

9 A. Yes, sir.

10 Q. Do you know Timothy Nelson?

11 A. Yes, sir.

12 Q. Okay. Back in - On May 29th of 2011 where were you
13 living?

14 A. In Lancaster in Pardue Street.

15 Q. And who were you living there with?

16 A. I was actually staying at my mother's residence.

17 Q. And what's your momma's name?

18 A. Annette Benson.

19 Q. What apartment were you all living in?

20 A. 1704.

21 Q. Did you know then where Justine Gladden lived?

22 A. She was staying on the end apartment. I couldn't tell
23 you the number but it was the end apartment.

24 Q. Okay. And if you're standing - If you're standing
25 on the front door - at the front door of 1704, your

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1 apartment, looking --

2 A. It's to the left.

3 Q. To the left or the right?

4 A. To the left.

5 Q. Well let me --

6 A. But if I'm facing the door it's gonna be to my left.

7 If I'm standing away from the door it's gonna be to the
8 right.

9 Q. Okay. We'll do it this way. Well let's do the easy
10 way. Step down.

11 SOLICITOR BARFIELD: Permission for the witness to
12 step down.

13 THE COURT: Yes, sir. If you'll just step down, you
14 can point on that.

15 (WITNESS LEAVES WITNESS STAND.)

16 A. It would a been over in this area.

17 MADAM COURT REPORTER: Just a minute, Mr. Barfield.

18 Judge, can I walk around next to the witness?

19 THE COURT: Yes, ma'am. Can you carry your mask that
20 far?

21 MADAM COURT REPORTER: I got it.

22 THE COURT: All right.

23 SOLICITOR BARFIELD: Come on this side.

24 Q. Mr. Benson,

25 MADAM COURT REPORTER: I need him over here, Mr.

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1 Barfield. I'm gonna back up to him.

2 SOLICITOR BARFIELD: All right.

3 MADAM COURT REPORTER: Thank you, sir.

4 SOLICITOR BARFIELD: Everybody hang on just a minute.

5 SOLICITOR BARFIELD: The first thing is you got to
6 talk real loud cause you ain't got a microphone right now.

7 Q. The first question is, do you know what that's a
8 picture of?

9 A. Of the area where we were standing in. We was at this
10 apartment here.

11 Q. All right. Here we go. Use that. High tech.

12 Where were you living?

13 A. I was standing right here.

14 Q. And what's the number of your apartment?

15 A. 1704.

16 Q. And where was Justine Gladden's apartment?

17 A. 1701.

18 Q. Okay. Go ahead. You can take your seat again now.

19 Thank you.

20 (WITNESS RETURNS TO WITNESS STAND.)

21 THE COURT: Thank you, sir.

22 Q. Sometimes Saturday night, maybe even Saturday
23 afternoon, were you at your apartment 1704?

24 A. Yes, sir.

25 Q. Were there other people there?

KEITH BENSON: DIRECT BY SOLICITOR BARFIELD

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1 A. During the time I was there no, sir.

2 Q. Okay.

3 A. My mother and them was there but me and my baby
4 mother wasn't.

5 Q. Okay. Did you at any time see Quanell McIlwain out
6 in Pardue that night? Or into the next morning.

7 A. Not as much as into the next morning but I seen him
8 at night.

9 Q. Okay. And where did you see - First of all, do you
10 see Quanell McIlwain in the courtroom today?

11 A. Yes, sir.

12 SOLICITOR BARFIELD: Raise your hand, Mr. McIlwain.

13 (DEFENDANT RAISED HIS HAND.)

14 Q. Is that who you are describing as Quanell McIlwain?

15 A. Yes, sir.

16 Q. And where did you see Quanell McIlwain that night?

17 A. He came by to talk to me for a little while.

18 Q. And where were you when he came by to talk to you?

19 A. In front of the apartments. Actually right there on
20 the sidewalk where you could see.

21 Q. In front of which apartments?

22 A. All the apartments, sir. We was standing in the road
23 there.

24 Q. That's fine. At any time that night or into Sunday
25 morning did you go to 1701?

1 A. Yes, sir.

2 Q. What was going on at 1701?

3 A. We was gettin drunk.

4 Q. That's fine.

5 A. Intoxicated.

6 Q. Who all was over there?

7 A. Me, a couple of guys I hadn't met before. I couldn't
8 really get their names cause I don't know them. Me and my
9 baby mother, my brother, Timothy Nelson.

10 Q. Is Timothy your brother? You said your brother, is
11 Timothy your brother?

12 A. Not each other's brothers. We been close like that
13 for a -

14 Q. That's fine. He was there?

15 A. Yeah. Justine, Dora, Quanell was there for a while.
16 That's about it.

17 Q. All right. Were you - Did something happen out there
18 in Pardue that morning?

19 A. Somebody was killed that morning.

20 Q. Were you present? I'm not asking you if you saw it
21 but were you in Pardue when that occurred?

22 A. Yes, sir.

23 Q. Did you hear anything related to that?

24 A. Gun shots. That's it.

25 Q. All right. Where were you when you heard gun shots?

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1 A. I was in the kitchen. I couldn't actually see outside
2 but about like I am to the judge now. It was a wall here
3 so I couldn't see anybody outside.

4 Q. In the kitchen of what apartment?

5 A. Justine's apartment.

6 Q. 1701?

7 A. Yes, sir.

8 Q. Where was Timothy Nelson or Qua Nelson when you
9 heard the shots?

10 A. He was sittin to the right of me.

11 Q. In the same kitchen?

12 A. Yes, sir.

13 Q. Was Quanel McIlwain anywhere around when you heard
14 the shots?

15 A. No. Quanel McIlwain actually left which is even in
16 my statement that he left thirty minutes before any of the
17 situation went off.

18 Q. Okay.

19 A. At that point in time like - Well that's not what you
20 ask me but Quanel McIlwain didn't deal with too many
21 people over there so after the thirty minutes of being
22 outside we took it as he left and went home cause he didn't
23 be around too many people.

24 Q. All right. I'm kind of going back over what you said.

25 Is it your testimony Quanel was gone out of 1701 for

1 about thirty minutes before the shots got fired?

2 A. Thirty minutes period. Like I didn't see him after
3 the shots was fired.

4 Q. Okay.

5 A. I didn't see him any more.

6 Q. Well that's my next question. After the shots were
7 fired did you see Quaneil McIlwain again that night?

8 A. Not any more after that right there. Well as me
9 and Mr. Phillip Hall talked about, and even in there when
10 we had went after thirty minutes he left, me and my baby
11 mother went to the house cause I had my daughter with me
12 and she was gettin a little feisty and I had been
13 intoxicated so we was going to do - -

14 Q. Okay. You and your baby and your baby's mom - -

15 A. Shawanda Mingo.

16 Q. You and Ms. Mingo and your baby left?

17 A. Yeah. Well she actually left a little while before
18 any of this. She probably left about an hour and half
19 before all of that to go put my little girl to bed.

20 Q. All right. Where were you when you heard the shots
21 though again?

22 A. In the kitchen at 1701.

23 Q. 1701. Not - The leaving and going back to your house
24 occurred --

25 A. But I wasn't there yet, I was still in 1701.

KEITH BENSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. About how many shots did you hear?

2 A. Somewhere to five or six shots. Four. I'm not sure.

3 Q. Could you tell where the shots were coming from?

4 A. No, sir, I couldn't. I knew they was outside but
5 that's just as much as I can tell you as far as that.

6 Q. All right. Did they sound to be close or far away?

7 A. Sir, you see that area we in? That's Pardue. It's
8 hard to say whether it's close, far.

9 Q. That's fine.

10 Q. It's a lot of shots so I can't really say whether they
11 were close or distant.

12 Q. After you heard shots what did you do?

13 A. After I heard shots I got up and I went home. Once I
14 got in the front - in my back door that's when I heard from
15 the front door that someone was saying that somebody had
16 been shot.

17 Q. Did you ever - Did you know Terrance Antonio Jones?

18 A. Not - We stayed in the same area but as far as
19 actually knowing him personally no, sir.

20 Q. Well when you saw his face did you know that's who it
21 was?

22 A. Yes, sir.

23 Q. Did you recognize the face?

24 A. Well yes, sir. Actually I never did go outside to
25 see.

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1 Q. I'm not talking about that night. When I say Terrance
2 Antonio Jones ---

3 A. Yes, sir.

4 Q. --- is that somebody you knew and recognized by
5 face?

6 A. I knew of him like if I seen him in the area and
7 somebody would a mentioned his name I knew that was him.

8 Q. Okay. That's all I'm asking. Did you ever see a dead
9 body in Pardue that night?

10 A. The more people crowed around I didn't actually
11 see the literal body it was too many people crowded around
12 by the time he said it so I had went upstairs and woke my
13 mother up. Well actually she was up already and that's
14 when we called the police.

15 Q. And tell us again, what apartment - You went back to
16 your mom's apartment at 1704?

17 A. 1704.

18 Q. And when you went to 1704 did you go out the back
19 door of 1701 to the back door of 1704 or did you go out the
20 front door?

21 A. Yes, sir. I went out the back door.

22 Q. Do you remember what Quanell was wearing that night?

23 A. No, sir.

24 Q. Now earlier at any time that night did you see
25 Quanell with a gun?

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1 A. Yes, sir.

2 Q When and where did you see Quanell with a gun?

3 A. Well I actually seen him with the gun earlier that
4 day but later on that night - Later on that night actually
5 - If I actually think about it I can't really say that I
6 seen him with a gun that night as of that night.

7 Q. Well ---

8 A. So it was --

9 Q. --- sometime - I'm sorry. Go ahead.

10 A. No you go ahead.

11 Q. At some time Saturday into Saturday night into Sunday
12 morning during that time frame did you see Quanell McIlwain
13 with a gun?

14 MR. STEEN: Compound question.

15 THE COURT: What?

16 MR. STEEN: Test --

17 THE COURT: Over ruled. Objection over ruled.

18 A. Yes, sir.

19 Q. And was it daylight or dark?

20 A. At one time when I seen him it was actually a little
21 - it was gettin into the dark evening of the day.

22 Q. And where was Quanell when you saw him with a gun?

23 A. That's when he was still in a car. That's when I
24 talked to him up the road.

25 Q. Okay. And where did he have a gun?

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1 A. I mean the gun was just sittin in the car.

2 Q. Okay. What kind of gun was it?

3 A. It was actually when he was in the car the gun I seen
4 him have was a .9 millimeter then.

5 Q. All right. Let me ask you a couple of things.

6 Did you - Did you see at any time see Quanell McIlwain
7 with a gun at the back of 1701 during the dark hours?

8 A. During the dark hours? Well it wasn't a gun back
9 there during that time but I can't say that it was
10 Quanell's gun.

11 Q. Did you see him with it?

12 A. That gun? No actually during that time - Well I can
13 actually say everybody had the gun so I can't really just
14 say that Quanell McIlwain had the gun.

15 Q. All right. Did you on June 3rd of 2011 - Do you know
16 Phillip Hall?

17 A. Yeah I know Mr. Hall.

18 SOLICITOR BARFIELD: Raise your hand, Phillip.

19 (MR. HALL AT SOLICITOR'S TABLE RAISES HIS HAND.)

20 Q. Is that who you know to be Phillip Hall?

21 A. Uh-huh.

22 Q. Did you get interviewed by him on June 3rd of 2011?

23 A. Yes, sir.

24 Q. And did you give him a statement?

25 A. Yes, sir.

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1 Q. I'm gonna hand you - It's actually four pages in
2 these little sleeves, front and back. Take all the time
3 you need, look over those pages and then I'm going to ask
4 you some questions about them.

5 (WITNESS REVIEWING DOCUMENTS.)

6 A. Okay.

7 Q. And you can keep those copies up there.

8 Do you remember where you and Phillip Hall were
9 talking to each other?

10 A. Yes, sir.

11 Q. Where was it?

12 A. I was actually - I had just turned myself in.

13 Q. Don't worry about that. Don't worry about that.

14 Where did it occur? I don't know need - We don't
15 need to know why you were there but where did you talk to
16 Phillip Hall?

17 A. At the police station.

18 Q. All right. And are those four pages the written
19 statement that you and he produced as a result of your
20 conversation?

21 A. Yes, sir.

22 Q. And did you initial each one of the pages?

23 A. Yes, sir.

24 Q. Did you sign your name back on - Actually the first
25 page is the Miranda warning. Correct?

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1 A. Yes, sir.

2 Q. Let me jump ahead and ask you this. Did you get
3 charged with anything relating to the shooting that we're
4 talking about here today?

5 A. Uh - During the time of questioning - -

6 Q. Well let me ask you this question again.

7 MR. STEEN: Objection. Let the witness answer the
8 question.

9 THE COURT: All right.

10 SOLICITOR BARFIELD: That's fine.

11 THE COURT: Sustain.

12 Go ahead and answer the question, sir.

13 BY SOLICITOR BARFIELD:

14 Q. The question again is did you get charged with
15 anything relating to the shooting that occurred out there
16 in Pardue?

17 A. No I was not charged for anything but I was under
18 the impression that I was being charged.

19 Q. Okay. You were not though; is that correct?

20 A. After later in time founding out no, sir, I wasn't.

21 Q. Okay. Now on the last page of the statement did you
22 sign the statement?

23 A. Yes, sir.

24 Q. I'm going to refer to a couple of particular points
25 in the statement. Look over on the second page of it

KEITH BENSON: DIRECT BY SOLICITOR BARFIELD

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1 please, sir.

2 The bottom question, what did Phillip Hall ask you?

3 The last question on that page?

4 A. Which one?

5 Q. I'm on the second page. Not the Miranda warning but
6 the second page of the statement itself.

7 Right there. No, let me see. Let me look at it just
8 a minute. I'm messin you up. That's Miranda and that's
9 Page One, that's Page Two and that's Page Three.

10 Now Page Two, bottom of Page Two, what's the last
11 question Phillip Hall ask you, at the bottom of Page Two?

12 A. Say the night of the murder did you see Quanell with
13 a gun?

14 Q. And did you give him an answer that's written out in
15 your statement?

16 A. Yes, sir.

17 Q. And read your answer to the jury please.

18 A. "Yes I saw him when we was outside of 1701 and he
19 stood up and walked away and reached into the front of his
20 pants and moved the gun from his left side to his right
21 side. He pulled his shirt down and he came back and sat
22 down."

23 Q. The second question on the third page, read it.

24 A. "Did you see the gun?"

25 Q. And your answer.

1 A. "Yes."

2 Q. And then the next question on the third page.

3 A. I said "it's a silver chrome brown handle 357
4 revolver?"

5 Q. And how else did you describe it?

6 A. "A big ass gun."

7 Q. Okay. Did Phillip Hall ask you anything about how
8 the lighting was back there behind 1701?

9 A. Yes, sir.

10 Q. Read the question.

11 A. I said "No" --

12 Q. Read the question first.

13 A. He said "Where were you sitting at? Was there a
14 working street light?" And I said, "Yes there was a light
15 behind 1701 near the fence. The area was real lite up and
16 you could see good."

17 Q. Did you see Tanisha Nelson in 1701 anytime that
18 night? Do you know Tanisha Nelson? Do you know a person
19 who has the nickname Little One?

20 A. Yes, sir.

21 Q. Did you see Little One in 1701 that night?

22 A. No, sir. She actually let him come in while I was
23 there. She was outside. She had a argument with her baby
24 father she never came in.

25 Q. Okay. Thank you. I'm gonna take this back. Hang on.

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1 just a minute.

2 I'm gonna hand you the statement back and I'm gonna
3 ask you one more question from the statement. Again let me
4 try to put it in order.

5 Again, the second page, the second - not the Miranda
6 rights but the second page of the statement. Did Phillip
7 Hall ask you what Quannell was wearing that night? About
8 the middle of the page.

9 MR. STEEN: Objection. This is hearsay at this point.
10 He can testify to what he said - -

11 THE COURT: You all approach.

12 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
13 THE JURY AT 12:04 P.M..)

14 THE COURT: All right, objection over ruled.

15 Ask the question again.

16 BY SOLICITOR BARFIELD:

17 Q. Mr. Benson, again, the middle of the second page did
18 Phillip Hall ask you what Quannell had been wearing that
19 night?

20 A. Yes, sir.

21 Q. And read your answer please.

22 A. I'm still trying to find out where - -

23 Q. Well let me put my finger on it for you.

24 I'm gonna read the question and your read the answer.

25 Okay.

1 A. Can I answer this question first?

2 Q. Yeah.

3 A. Before - Just - Sir, I can't really say even though
4 it's here during the point in time of questioning like it's
5 two problems with me answering this question here about
6 what he was wearing that night one being the time of
7 evening. I told you once after I first came in here that
8 we was intoxicated, so actually me telling you one thing,
9 now I'm telling you a thing again would be me sittin up
10 here lying after I just took a oath of me not lying.

11 So far as me actually being able to sit here and tell
12 you the same thing that he was wearing that night today it
13 wouldn't be possible as in here it says he was wearing a
14 black tee and jeans and shorts yellow design. But being
15 under intoxication yellow and orange can be the same thing
16 just the same as black can be mistaken as a blue.

17 Q. And I understand. I'm asking you, I'm simply asking
18 you today what you told Phillip Hall on June 3rd of 2011.
19 I'm not asking you from your memory.

20 A. Can I talk to you?

21 Q. Well you can't really. We can't have this private
22 conversation.

23 THE COURT: Sir, just read what your statement says.

24 A. "Solid black shirt, jean shorts with yellow design on
25 both rear pockets, white socks, hat, black; air force one."

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1 Q. All right. That's all.

2 SOLICITOR BARFIELD: Thank you, sir. Answer any
3 questions Mr. Jones or Mr. --

4 THE COURT: All right, counsel.

5 CROSS-EXAMINATION

6 KEITH BENSON BY MR. STEEN:

7 Q. Mr. Benson.

8 A. Sir.

9 THE COURT: All right, Mr. Steen.

10 MR. STEEN: Thank you, Your Honor.

11 Q. Mr. Barfield just ask you to read off a statement
12 concerning the gun that you allegedly saw on Mr. McIlwain.

13 Correct?

14 A. Yes, sir.

15 Q. The statement you read said that you saw him walking
16 away and moved the gun from one pocket to the other?

17 A. Something like that yes, sir.

18 Q. How were you able to see his front pockets if he
19 was walking away?

20 A. I mean like I just told Mr. Barfield we all actually
21 had the gun that night. The gun wasn't just - it wasn't
22 just saying with one person had the gun, it was one single
23 gun back there during the time of the night frame. I mean
24 with all due respect to the court this is Pardue Street
25 we're talking about here. Right? You can't just - You

KEITH BENSON: CROSS BY MR. STEEN

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1 don't sit around late at night like that it's too much
2 stuff going on over there as it is. I'm pretty sure
3 everyone in the courtroom knows what I mean when I say it's
4 too much stuff going on there as it is. So as far as that
5 night goes when I say I seen him with the gun I know for a
6 fact cause Mr. Parnel wasn't the only one that held the
7 gun.

8 Q. So did you see Qua Nelson holding the gun?

9 A. Qua Nelson held the gun. I held the gun. You know
10 the guy was passing it around sittin down. It wasn't just
11 like Mr. McIlwain was the only one holding the gun which is
12 the same thing I told Mr. Barfield.

13 Q. Did you know if any of the females held the gun?

14 A. No, sir, no. As far as I know none of the females.
15 It was more the dudes cause we all hung together so we
16 was all together so no, sir, as far as any of the females
17 no, sir, none of the females there.

18 Q. And this hanging out holding the gun all happened
19 prior to the shooting?

20 A. Yes, sir. It's been prior to before any of the gun
21 shots had been taken.

22 Q. And you testified it was getting dark at the time?

23 A. Yes, sir.

24 Q. Okay. When the shooting happened around 4:00 a.m. --

25 A. Somewhere in there. I can't really say now.

KEITH BENSON: CROSS BY MR. STEEN
REDIRECT BY SOLICITOR BARFIELD

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1 Q. And you said that - You testified that Mr. McIlwain
2 left thirty minutes prior, approximately thirty minutes
3 prior to the shooting?

4 A. Yes, sir.

5 MR. STEEN: One moment, Your Honor.

6 THE COURT: Yes, sir.

7 (PAUSE AT 12:09 P.M..)

8 Q. And Mr. Barfield also had you to read off his
9 statement about what Mr. McIlwain was allegedly wearing
10 that night. Do you remember anyone - what anyone else was
11 wearing?

12 A. Currently not at this time. It's been so long ago I
13 can't really say what anyone was wearing as far as that
14 night.

15 Q. That's it.

16 MR. STEEN: No further questions. Thank you, Mr.
17 Benson.

18 THE COURT: All right. Thank you, Mr. Steen.

19 SOLICITOR BARFIELD: Just one more.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 KEITH BENSON BY SOLICITOR BARFIELD:

23 Q. Mr. Steen ask you if you remember what anybody else
24 was wearing. Did Phillip Hall ask you what anybody else
25 was wearing?

KEITH BENSON: REDIRECT BY SOLICITOR BARFIELD

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1 A. No, sir.

2 Q. When you were being talked to by Phillip Hall?

3 A. Yes, sir.

4 Q. Okay. But when Phillip Hall was questioning you, did
5 you know Quanell McIlwain was the suspect?

6 A. Uh - Everyone knew that that's who they was supposed
7 to be looking at that point in time - - -

8 Q. Okay. Thank you.

9 A. - - - yes, sir.

10 Q. Thank you.

11 SOLICITOR BARFIELD: Thank you. That's all.

12 THE COURT: All right, thank you, sir, you can step
13 down. You are free to leave.

14 (WITNESS LEAVING WITNESS STAND.)

15 SOLICITOR BARFIELD: Your Honor.

16 THE COURT: Yes, sir.

17 SOLICITOR BARFIELD: I know what you're thinking
18 about.

19 THE COURT: Well, I know what they're thinking about.

20 SOLICITOR BARFIELD: Can we approach?

21 THE COURT: Yes, sir.

22 SOLICITOR BARFIELD: Thank you, Mr. Benson. You can
23 go.

24 THE COURT: You are free to leave. Thank you, sir.

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF

1 THE JURY AT 12:11 P.M..)

2 THE COURT: All right, ladies and gentlemen of the
3 jury, we're going to take our lunch recess now. I want you
4 back in your jury room ready to go at 1:45. That's right
5 at an hour and half which is normally what we break for so
6 we're breaking a little bit earlier today but be back at
7 1:45 for subsequent testimony.

8 Remember, during the break don't talk to anybody about
9 this case, not even your fellow jurors. Don't let anybody
10 talk to you about this case. If you see anybody that you
11 recognize in this courtroom out at lunch don't talk to 'em.
12 Okay. Remember, an innocent conversation can easily be
13 misconstrued. In addition don't read any reports about
14 this case or do any independent research on the case. That
15 is forbidden, okay. Other than that have a great lunch and
16 we'll see you back in an hour and half.

17 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:12 P.M..)

18 THE COURT: All right.

19 SOLICITOR BARFIELD: I just want you to sort of
20 explain that we're breaking early so that the witnesses
21 know that they - -

22 THE COURT: Are we dealing with any non-jury issues
23 before we call this witness?

24 SOLICITOR BARFIELD: Not before but probably toward
25 the tail end of Mr. Nelson's testimony we will.

1 THE COURT: Mr. Nelson, I have just taken a lunch
2 recess - Who is Mr. Nelson? Where is she?

3 SOLICITOR BARFIELD: This is Timothy Nelson this is
4 the mom's baby's aunt.

5 THE COURT: Okay. I know you all been here since this
6 morning ready to testify, the Solicitor told me you just
7 worked third shift last night, sir. I want to let you know
8 you -

9 Was he subpoenaed to be here?

10 SOLICITOR BARFIELD: Yes.

11 THE COURT: All right. Your subpoena survives lunch
12 so you need to be back ready to go at 1:45. I ordered a
13 early lunch recess today, some of the jurors appear to be
14 hungry so just stick around and you all go eat something.
15 I'll see you back at 1:45. Okay.

16 All right, anything else before we adjourn for our
17 recess for lunch?

18 SOLICITOR BARFIELD: No, sir.

19 MR. STEEN: No, Your Honor.

20 THE COURT: All right. Recess.

21 (COURT IN LUNCH RECESS AT 12:14 P.M..)

22 (COURT BACK IN SESSION AT 01:44 P.M..)

23 THE COURT: We are on the record. Bring in the jury.

24 THE BAILIFF: The jury's coming in.

25 (JURY REENTERS COURTROOM AT 01:45 P.M..)

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 THE COURT: All right, all members of the jury are
2 present. I hope you all had a good lunch. We will go
3 right into business this afternoon.

4 Solicitor, you may call your next witness.

5 SOLICITOR BARFIELD: Timothy Nelson.

6 THE BAILIFF: Place your left hand on the Bible over
7 here and raise your right.

8 (WHEREUPON, TIMOTHY NELSON, BEING
9 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 THE COURT: All right, slide right up into the
11 microphone. You are good to go.

12 Yes, sir.

13 DIRECT EXAMINATION

14 TIMOTHY NELSON BY SOLICITOR BARFIELD:

15 Q. Tell us your name please, sir.

16 A. Timothy Jaquavis Nelson.

17 Q. Mr. Nelson, do you have nicknames?

18 A. Yeah. Que-Black and Quack.

19 Q. And do some people call you Qua?

20 A. Que.

21 Q. Do you live here in Lancaster now?

22 A. Yes, sir.

23 Q. Where do you work?

24 A. I was working with Mark Black Construction. I recently
25 found a job at Pilgrim Pride.

- 1 Q. And what do you do at Pilgrim's Pride?
- 2 A. Shoulder cut.
- 3 Q. Okay. Do you live here in Lancaster now?
- 4 A. Yes, sir.
- 5 Q. Where do you live now? I don't - Where do you live
- 6 now?
- 7 A. I stay with my mother for the time being.
- 8 Q. Okay. And what's your momma's name?
- 9 A. Betty Nelson.
- 10 Q. And where does she live?
- 11 A. Pardue Street. Palmetto Street.
- 12 Q. Where were you living back on May 29th of 2011?
- 13 A. 2606.
- 14 Q. Pardue?
- 15 A. Pardue Street.
- 16 Q. I'm going to ask you about some people. Do you know
- 17 somebody named Tanisha Nelson?
- 18 A. Yes, sir.
- 19 Q. Do you know her by a nickname?
- 20 A. Little One.
- 21 Q. How do you know Little One?
- 22 A. She's my cousin.
- 23 Q. Do you know a fellow by the name of Qua Stevens?
- 24 A. Yes, sir.
- 25 Q. How do you know him?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. That was my Little One baby daddy.

2 Q. Did you know a young lady named Justine Gladden?

3 A. Yes, sir.

4 Q. How did you know her?

5 A. She recently moved to the neighborhood and we all
6 just connected together.

7 Q. All right. When you say recently, you mean recently
8 in relation to when this event happened?

9 A. She stayed there about a few months ---

10 Q. Okay.

11 A. --- before the incident.

12 Q. Are you talking about 2011 though?

13 A. Yeah.

14 Q. Did you know a fellow by the name of Terrance
15 Antonio Jones?

16 A. No not by that name. Got a nickname?

17 Q. Let me just jump ahead. Well, do you know anybody by
18 that name Terrance Antonio Jones or Tonio Jones?

19 A. No.

20 Q. Okay. That's fine. Do you know a fellow named
21 Quanell McIlwain?

22 A. Yes, sir.

23 Q. All right. Were you in Pardue Street early Sunday
24 morning May 29th of 2011?

25 A. Yes, sir.

1 Q. I'm gonna jump ahead and then we'll come back.

2 Did you hear anything or did anything happen while
3 you were in Pardue that night or that morning?

4 A. That morning there was an altercation between my
5 cousin and her baby daddy.

6 Q. All right. After that?

7 A. After that when the incident happened? Repeat the
8 question.

9 Q. Okay. Did an incident occur in Pardue while you
10 were there?

11 A. Yes, sir.

12 Q. And what was the nature of the incident?

13 A. As far as I know there was a shootin and somebody got
14 killed.

15 Q. Okay. And were you in Pardue when that occurred?

16 A. Yes, sir.

17 Q. Where in Pardue were you when that occurred?

18 A. In the apartment watching TV, listen to music.

19 Q. Which apartment?

20 A. Justine.

21 Q. Do you know the apartment number for Justine's
22 apartment?

23 A. Not by heart.

24 Q. All right. How many - How many people were in
25 Justine's apartment when this event occurred?

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1 A. If I had to count about four or five people.

2 Q. And did you know them all?

3 A. Did I know them all? No I didn't know 'em all.

4 Q. All right. Who was there that you knew in Justine's
5 apartment?

6 A. As far as I knew it was me, Justine, Symone and that's
7 as far as I knew that was all there at the time that we
8 was there.

9 Q. All right. And Symone is who?

10 A. Symone, well they call Dora.

11 Q. Okay. What was going on in Justine's apartment that
12 morning?

13 A. That morning at the time I'm saying we was all
14 chillin?

15 Q. Chillin? Is that what you said?

16 A. Yes, sir.

17 Q. Okay.

18 A. We was all chillin and having a good time you know.
19 We all had been drinkin and smoking. Little One came.
20 There was an incident between her and her baby daddy.

21 Q. All right. Stop right there. Were you a witness to
22 any of the events between Little One and her baby's daddy
23 who you identified as Qua Stevens?

24 A. No I was not a witness.

25 Q. Okay. Did you become aware that there was some

1 problem between them?

2 A. Yeah I was aware there was a problem.

3 Q. Did you see Little One or Tanisha Nelson that
4 morning? Did you see her around out there?

5 A. In the house. She came in the house but yes, sir.

6 Q. All right. She came into which house?

7 A. Justine.

8 Q. Did you see Qua Stevens out there at any time that
9 night or that morning?

10 A. He also came in Justine's house too.

11 Q. All right. Was Qua Stevens present at Justine's when
12 the shooting occurred?

13 A. No.

14 Q. Do you know where he was?

15 A. No, sir.

16 Q. Did you ever see him leave?

17 A. Yes I seen him leave the house from Justine. From
18 there I do not know where he went to.

19 Q. All right. And when he left from Justine's how did
20 he leave is my question?

21 A. He left. He left.

22 Q. Did he leave walking or did he leave ---

23 A. Walking.

24 Q. --- driving?

25 A. He left walking.

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1 Q. This person that you knew as Quanell McIlwain, did
2 you know him by any nickname or anything?

3 A. Yes, sir. S.K.

4 Q. S.K.?

5 A. Yes, sir.

6 Q. Did you see him in Pardue that night or that morning?

7 A. Yes, sir, he was there.

8 Q. Was S.K. inside 1701 when the shooting happened?

9 A. At Justine apartment number?

10 Q. Yes, sir.

11 A. No.

12 Q. Not my first but a stupid question of the day.

13 How did you know a shooting had happened?

14 A. They heard shots.

15 Q. Where were you when you heard shots?

16 A. Inside Justine house watching TV.

17 Q. About how many shots did you hear?

18 A. Three - First three then three more.

19 Q. Could you tell where the shots were coming from?

20 A. Yes, sir. Outside the front door of Justine
21 apartment.

22 Q. Were they close or far away?

23 A. They were pretty close.

24 Q. When you heard shots, what did you do?

25 A. I ran outside and yelled this is B S cause you know

1 what I'm saying we all having a descent time so.

2 Q. All right. You ran outside. Which door did you run
3 out?

4 A. I ran out the front door at first.

5 Q. And did you notice or see anything when you ran out
6 the front door?

7 A. No, sir.

8 Q. Did you know anybody had been shot?

9 A. No, sir.

10 Q. And why did you think it was B S that had happened?
11 What was the problem for you that gun shots had rung out?

12 A. Cause you know what I'm saying we was having fun and
13 no police was interrupting our time you know. And by the
14 shootin there was a reason for them to come.

15 Q. Okay. What did you do after you ran out to the front?

16 A. I ran to the front and yelled more B S and then by
17 that time happened I ran towards the back. By that time
18 --

19 Q. Hold on. Just tell me where you ran first.

20 A. I ran to the front and then after that I ran towards
21 the back.

22 Q. Okay.

23 SOLICITOR BARFIELD: Can we approach briefly?

24 THE COURT: Yes.

25 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING

1 OF THE JURY AT 01:55 P.M..)

2 THE COURT: All right, ladies and gentlemen of the
3 jury, at this point in time, remember I told you at the
4 outset of the trial there may be a time or two when I have
5 to send you out of the room to deal with matters of law,
6 now is one of those times. When you go back to your jury
7 room don't speculate about what we're talking about or why
8 we're talking about it; again, I'll give you the law at the
9 end. And don't talk about the case because you haven't
10 heard everything yet. Okay. So just head on back to your
11 jury room, we'll come get you when we need you. Thank you.

12 (JURY EXITS COURTROOM AT 01:56 P.M..)

13 SOLICITOR BARFIELD: Your Honor, I want to just
14 continue this line of questioning. I don't want to risk
15 the - you know a bad identification.

16 THE COURT: Let's go ahead and proffer this witness,
17 then again to the ID issue, then I will allow you to cross
18 examine just on the ID issue and then we'll - Not the ID
19 issue but in addition - Is this the witness on the other
20 one?

21 SOLICITOR BARFIELD: No. No.

22 THE COURT: Okay. All right. Go ahead.

23 SOLICITOR BARFIELD: We're gonna continue and then
24 we're gonna bring the jury back in and do it in front of
25 the jury in just a little bit so we got to kind of do it

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 twice but it's no big deal.

2 DIRECT EXAMINATION - IN CAMERA

3 TIMOTHY NELSON BY SOLICITOR BARFIELD:

4 Q. All right. You ran to the back - You said you ran
5 to the back of the apartment. Did you run to the back
6 through the apartment?

7 A. The apartment.

8 Q. And, again, keep speaking up. Why did you go to the
9 back?

10 A. I ran to the back cause first I heard somebody say
11 that he ran around - this person ran toward the back. So
12 at that time when I ran towards the back -

13 Q. Did you go out the back?

14 A. Yes, sir.

15 Q. And where did you go when you got out to the back?

16 A. Uh - By that time I ran towards the back; Mr. McIlwain
17 was already over the fence and I yelled out throw the gun
18 and I caught it with my shirt.

19 Q. You got to slow down a little bit and speak loud.

20 A. Oh. I ran towards the back. After I ran towards the
21 back he was already over the fence at the time.

22 Q. All right, stop right there. Who was it that was -
23 Let me ask you this first. What is behind 1701?

24 A. You got a patio, grass, and there is a fence.

25 Q. And what's on the other side of the fence?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 A. On the other side of the fence you got trees.

2 Q. Okay. What apartment were you behind when you saw
3 somebody already over the fence?

4 A. Justine.

5 Q. Who did you see already over the fence?

6 A. Mr. McIlwain.

7 Q. The person you referred to as S.K.?

8 A. Yes, sir.

9 Q. Do you remember what he was wearing? Did you notice
10 anything about what he was wearing?

11 A. I didn't.

12 Q. Did he have anything with him?

13 A. Uh - Yes, sir.

14 Q. What?

15 A. A gun.

16 Q. What happened with the gun?

17 A. I yelled out throw it and I caught it with my shirt.

18 Q. Now, why in the world would you yell out throw the
19 gun?

20 A. The instance not thinking. At the time I was thinking
21 that he was gonna shoot in the air. Really wasn't thinking
22 at the time.

23 Q. Did the gun end up in your possession?

24 A. Yes, sir.

25 Q. Now, what kind of lighting - How long had you known

1 Quanell McIlwain?

2 A. Uh - Probably a little longer than about a month,
3 two months and a half.

4 Q. Had you been around him before?

5 A. Yes, sir.

6 Q. Had you ever - Did you have any - Did you go to school
7 with him or anything?

8 A. No, sir.

9 Q. Okay. What was the lighting behind 1701?

10 A. There was a street light post behind the building.

11 Q. Was it working?

12 A. Yes, sir.

13 Q. Was the area lite up?

14 A. Yes, sir.

15 Q. Did you have any trouble seeing?

16 A. No, sir.

17 Q. And are you sure it was Quanell McIlwain who was on
18 the other side of the fence?

19 A. Yes, sir.

20 Q. After you got the gun ---

21 A. Uh-huh.

22 Q. --- where did Quanell McIlwain go?

23 A. He took off through the woods.

24 Q. And between then and today have you ever seen
25 Quanell McIlwain again?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 A. Besides when I got locked up for the - my charge
2 with possession of a stolen vehicle.

3 Q. So you saw him in the detention center?

4 A. In the detention center.

5 Q. Have you seen him other than any time other than
6 that between the night this shooting - the morning this
7 shooting happened and today?

8 A. No, sir.

9 Q. Now, ---

10 SOLICITOR BARFIELD: I'm not gonna get into all of his
11 factual information. I'm going into the ID stuff now.

12 Q. --- at some point did I believe --

13 SOLICITOR BARFIELD: Phillip Hall, raise your hand.

14 (PHILLIP HALL RAISES HIS HAND.)

15 Q. Do you recognize that guy?

16 A. Yes, sir.

17 Q. Did you know him before this case occurred?

18 A. Did I know of him? I might a --

19 Q. Okay, that's fine. Did he come talk to you about this
20 case maybe a week or so later after it occurred?

21 A. Yes, sir.

22 Q. Is that the first time --

23 A. Uh --

24 Q. Go ahead.

25 A. Well he didn't come talk to me, I came toward to him.

1 Q. How did you end up going to him?

2 A. My mother reported that they was looking for me. My
3 name came about so she told me I needed to get up there and
4 talk to him.

5 Q. Okay. And did you go talk to Phillip Hall a week or
6 so after this shooting had occurred?

7 A. Yes, sir, I walked in there.

8 Q. Okay. And did you give him a written statement?

9 A. Yes, sir.

10 Q. Did you take him somewhere and show him something?

11 A. Yes, sir.

12 Q. Did you go back to the station after showing him
13 something and giving him a additional written statement?

14 A. Yes, sir.

15 Q. And at some point during that process did he ask you
16 whether you could identify the person that you had said was
17 Quaneil McIlwain, S.K., the guy that went over the fence
18 and tossed you the gun?

19 A. Yes, sir.

20 Q. And did he show you some pictures?

21 A. Yes, sir.

22 Q. Did he at any point tell you that you should pick
23 anybody out of those pictures?

24 A. No.

25 Q. Did he ever tell you that McIlwain or the person that

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 did the shooting was actually one of the pictures?

2 A. No, sir.

3 Q. Did he in any way suggest to you whether you should
4 pick anybody or who you should pick if you pick somebody?

5 A. No, sir.

6 Q. And did you pick somebody?

7 A. Yes, sir.

8 Q. Who did you pick?

9 A. Mr. McIlwain.

10 Q. How sure were you at that time that the person you
11 picked was the person you identified as Quanell McIlwain,
12 S.K., the guy over the fence who threw you the gun?

13 A. Pretty sure.

14 Q. Okay. Did you have any doubt about it at all?

15 A. No, sir.

16 SOLICITOR BARFIELD: Your Honor, I think that's the -
17 all the questions I have of this witness concerning the
18 proffer on the identification.

19 THE COURT: Okay. Cross examination.

20 MR. STEEN: Thank you, Your Honor.

21 THE COURT: Just on the proffer for --

22 SOLICITOR BARFIELD: Well let me ask him one more
23 first of all.

24 THE COURT: Okay.

25 SOLICITOR BARFIELD: Just to kind of wrap this up.

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA
CROSS BY MR. STEEN - IN CAMERA

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1 THE COURT: All right.

2 Q. The person that you say is Quanell McIlwain, do you
3 see him here today?

4 A. Yes, sir.

5 Q. Where is he sitting?

6 A. Sittin over there.

7 SOLICITOR BARFIELD: Raise your hand, Mr. McIlwain.

8 (DEFENDANT, QUANELL MCILWAIN, RAISES HIS HAND.)

9 Q. Is that the person you're referring to as Quanell
10 McIlwain, S.K., the guy over the fence?

11 A. Yes, sir.

12 Q. The guy that tossed the gun?

13 A. Yes, sir.

14 Q. Do you have any doubt about that?

15 A. No, sir.

16 Q. Okay.

17 SOLICITOR BARFIELD: Thank you.

18 THE COURT: Yes, sir.

19 MR. STEEN: Thank you, Your Honor.

20 CROSS EXAMINATION - IN CAMERA

21 TIMOTHY NELSON BY MR. STEEN:

22 Q. The woods, you see the woods behind the 1700 block
23 apartments. Is that where the fence is?

24 A. May I?

25 Q. Yeah. You can come up. Let me bring it --

TIMOTHY NELSON: CROSS BY MR. STEEN - IN CAMERA

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1 A. You said the fences? The fence is back here.

2 (WITNESS INDICATED TO PHOTO.)

3 Q. Okay. Were you on the patio or - Were you on the
4 patio when you first saw him?

5 A. Yes I was on the patio as I run out the back door.

6 Q. Yeah.

7 A. Yeah.

8 Q. So he was already over the fence?

9 A. He was already over the fence.

10 Q. Can you point out to me where he jumped over the fence
11 at?

12 A. Right here. He jumped over the fence right here.

13 THE COURT: You got to speak up. I can't hear a word

14 --

15 A. Oh, I'm sorry, sir.

16 I was right - He was right over around in this area
17 here, go to the light poles right over in here. And you
18 had another light pole right there. And I was right here
19 behind 1700 block when he came out at a angle and by that
20 time he was already over.

21 Q. And he threw you the gun?

22 A. I ran. I ran to the fence so it ain't like he threw
23 me the gun from there to there even though I ran up to the
24 fence while he was already over it.

25 Q. At what point did you yell throw me the gun?

TIMOTHY NELSON: CROSS BY MR. STEEN - IN CAMERA

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1 A. By the time he was over the fence getting ready to
2 take off I yelled. I seen him take off and I yelled out.

3 Q. So he waited for you?

4 A. He didn't wait for me to get back there no he did not
5 wait for me. As he jumped over I seen him getting ready to
6 run. I stopped him and yelled out throw me the gun, he
7 turned around and tossed it and I caught it with my shirt.

8 Q. Now just talk to me about the line up done with
9 Investigator Hall. Did you identify the person who jumped
10 over the fence as S.K. or Quanell?

11 A. S.K.

12 Q. So at that point you gave the statement to
13 Investigator Hall you didn't know his name was Quanell
14 McIlwain?

15 A. No I did not.

16 Q. So at that - on that day when Investigator Hall ask
17 you do you know Quanell McIlwain did you know Quanell
18 McIlwain on that day?

19 A. At that time no. On that day I didn't know that
20 was his government name.

21 Q. At what point did you become aware that S.K.'s
22 government name is Quanell McIlwain?

23 A. When they served me the subpoena.

24 MR. STEEN: That's all the questions. Thank you, Your
25 Honor.

TIMOTHY NELSON: REDIRECT BY SOLICITOR BARFIELD - IN CAMERA -300-

1 THE COURT: Any further on the issue of ID?

2 SOLICITOR BARFIELD: No, sir.

3 THE COURT: All right, let me hear argument then first
4 from you, Mr. Steen, as to identification of this witness?

5 SOLICITOR BARFIELD: Your Honor, let me ask him one
6 further question?

7 THE COURT: Okay.

8 SOLICITOR BARFIELD: Very brief.

9 REDIRECT EXAMINATION - IN CAMERA

10 TIMOTHY NELSON BY SOLICITOR BARFIELD:

11 Q. And I think you addressed this with Mr. Steen but I
12 was thinking about something else and looking at something
13 else. How close were the two of you all when you were on
14 opposite sides of the fence I guess is my question?

15 A. How close?

16 Q. Yes.

17 A. No further than - Wasn't all the way up to the fence.
18 Like close to the fence.

19 Q. Well you're you and I'm Quanell. You tell me how close
20 or far I got to be.

21 A. A little closer.

22 Q. Okay.

23 A. About that far I guess is about when he tossed it
24 and I caught it with my shirt.

25 THE COURT: Ten feet.

1 SOLICITOR BARFIELD: Thank you.

2 THE COURT: Okay. Anything else?

3 All right, let me hear argument then.

4 Mr. Steen, first from you.

5 MR. STEEN: Thank you, Your Honor. Based on the
6 transcript as provided by the Solicitor's office, he
7 identified Quanell McIlwain. Do you know Quanell McIlwain?
8 I know of him. If I showed you - Could you identify him?
9 If I showed you a photo lineup of these individuals on it?
10 Yes. He was ask do you know Quanell McIlwain and then
11 showed the lineup. He just testified he didn't know his
12 name was Quanell. He identified Quanell - -

13 THE COURT: All right, talk to me, let's say that I
14 agree with you that that was unduly suggestive. Why would
15 the - Why would the out of court identification not be
16 reliable then?

17 MR. STEEN: Well, Your Honor, you saw the picture,
18 it's four o'clock in the morning, five apartments away from
19 - You saw a ten feet -

20 THE COURT: I mean I got to look at all the factors,
21 the factors of reliability. The first thing I would have
22 to do is make a finding that police officers, Investigator
23 Hall's tactics were unduly suggestive and unnecessary. So
24 if I make that finding then I have to determine whether or
25 not none the less the out of court ID was so reliable that

1 he could make an in court identification. So that's kind
2 of what I'm asking.

3 Let's assume I agree with you, that the way that the
4 detective approached it was unduly suggestive. You know
5 Quaneil McIlwain? Well here's the lineup. Let's say I
6 agree with you on that. Give me your argument then for the
7 record as to looking at the reliability factors as to
8 whether or not this in court ID should not be suppressed or
9 should be suppressed.

10 MR. STEEN: Your Honor, based on the fact there is -
11 on the length of time between the crime and the
12 identification it was seven, eight days later; his failure
13 to identify the defendant on any previous occasion because
14 he ran with the murder weapon away. The other factors
15 aren't met because he didn't talk to law enforcement on the
16 scene so I can't prove that the difference between what he
17 said then versus what he said at the lineup. This was his
18 first - Nine days later was the first time he gave a
19 statement so I can't compare it.

20 Based on him leaving the scene without giving any
21 identification to the person I can't argue that it's
22 unreliable based on that because he left the scene. And
23 based on what he provided law enforcement - based on just
24 the lineup he was ask to identify someone he didn't know.

25 THE COURT: So the crux of your argument hangs on the

1 time, the timing aspect of the factors.

2 MR. STEEN: Yes.

3 THE COURT: The timing between when the actual event
4 happened and the time the out of court ID was made.

5 MR. STEEN: Yes, Your Honor.

6 THE COURT: Okay. Anything else for the record, Mr.
7 Steen? Okay.

8 Solicitor.

9 SOLICITOR BARFIELD: Your Honor, the first argument I
10 make is that there's no evidence that the lineup itself or
11 the lineup procedure was suggestive. A suggestive lineup
12 can be because of the nature of the pictures. There's been
13 no showing or no argument made that this particular lineup
14 is suggestive on it's face. There is no evidence, I
15 submit, that the lineup procedure was suggestive. Phillip
16 Hall testified yesterday, I think, that he didn't tell
17 either of the witnesses' that are involved in lineups that
18 a suspect was in the lineup or that they should pick
19 anybody out of the lineup or that they should pick any
20 particular person out of the lineup.

21 THE COURT: What about what Mr. Steen said when he
22 said something - -

23 What did you say, Mr. Steen?

24 MR. STEEN: Do you know Quanell McIlwain?

25 THE COURT: Do you know Quanell --

1 MR. STEEN: I --

2 THE COURT: And then they show it to them. Tell me
3 how that's not unduly suggestive.

4 SOLICITOR BARFIELD: Beg the Court's indulgence for
5 a moment.

6 THE COURT: Okay.

7 SOLICITOR BARFIELD: First of all we're talking about
8 - We're not talking about - Well first of all we're talking
9 about somebody that this witness knew beforehand. Neither
10 one of these lineups involve for example an armed robbery
11 at a convenient store by someone unknown to the witnesses.
12 Both of these witnesses are gonna tell you, and one has,
13 that he knew the person that he ultimately identified; had
14 known the person that he ultimately identified prior to the
15 event that he attributes to the person.

16 THE COURT: Okay.

17 SOLICITOR BARFIELD: When Phillip Hall - and I don't
18 recall what Phillip Hall said, do you know Quanell
19 McIlwain? Can you pick him out of a lineup? I don't think
20 that's the way it came out. But Phillip Hall didn't tell
21 him Quanell McIlwain's picture's in this lineup. The way
22 they're gonna do a lineup is they basically hand them a set
23 of six pictures and say do you see the person among these
24 pictures that you're talking about; is the perpetrator of
25 this event.

1 THE COURT: Right. That's in Court Exhibit Two I
2 believe.

3 SOLICITOR BARFIELD: Yes, sir. Yes, sir. I don't
4 think the fact that he used Quanell McIlwain's name makes
5 it suggestive unless he tells him I'm gonna hand you a
6 sheet of pictures that's got Quanell McIlwain's picture in
7 it can you tell me which one's Quanell McIlwain?

8 THE COURT: Okay.

9 SOLICITOR BARFIELD: That's not how this happened.

10 THE COURT: All right.

11 SOLICITOR BARFIELD: The name had been out there --

12 MR. STEEN: May I interject?

13 THE COURT: I'm gonna come back to you.

14 MR. STEEN: Yes, Your Honor.

15 THE COURT: Go ahead.

16 SOLICITOR BARFIELD: And I might be missing the point.
17 I might not be following along where you're following
18 along. And the statement - And we'll put the statement in
19 if you need to. What Mr. Steen's talking about is do you
20 know Quanell McIlwain? I know of him. And then he said if
21 I showed you a photo lineup could you identify him?

22 He didn't say if I show you a photo lineup with
23 Quanell McIlwain's picture in it can you identify him.

24 THE COURT: I understand.

25 MR. STEEN: The question was ask who was him. Do you

1 know Quanell? I know of him. If I showed you a photo
2 lineup could you identify him? The previous question
3 identified him as Quanell and they ask him to identify him
4 on the photo lineup.

5 THE COURT: Well let's say I agree with you for
6 argument sake, okay. Let's say I agree that under due
7 process analysis that that is unduly suggestive, you still
8 got to get past the reliability factors and your argument
9 to me on that is that since this statement or since this
10 out of court ID was given a week later that makes it
11 unreliable.

12 MR. STEEN: Yes, Your Honor. The Solicitor brought up
13 the fact that they - he knew of him outside this incident.
14 The only question the solicitor ask him how do you know
15 him, did you go to school with him? No. According to his
16 statement is, I know him because I went to school with him.
17 The only argument to the solicitor's benefit is not what
18 the statement says.

19 THE COURT: Okay. I understand where you're coming
20 from, Mr. Steen. I understand perfectly. Let me let the
21 solicitor make his argument counter.

22 SOLICITOR BARFIELD: All right, as to the violation of
23 due process based on the factors: The witnesses'
24 opportunity to view the subject at the time of the crime.
25 He said number one, there were two light poles back there.

1 He says they were across the fence from each other. He
2 says they were the distance of about ten feet from each
3 other. Well lite. Somebody that he already knew and had
4 already been around that night, not some stranger who
5 popped up out of nowhere. Said he was certain and the
6 length of time between the crime and the confrontation a
7 week or nine days or whatever it is it was May 29th of 2011
8 to June 6th of 2011 I think, but a little over a week I
9 don't think that's a period of time that is so long that it
10 makes it a violation of due process especially when we are
11 talking about a person known to the witness prior to the
12 commission of the crime.

13 THE COURT: Okay. The witnesses' degree of attention,
14 accuracy of the prior description, do you want to talk
15 about those?

16 SOLICITOR BARFIELD: Well he didn't give him - Again,
17 I think that the prior - He didn't give a description of
18 the clothing. He said he couldn't remember what clothing he
19 had on but I think again the description is more
20 significant when a witness is being ask whether he can
21 identify somebody who is a stranger to him. If I know you
22 and the police come to me about something that happened
23 that I saw you involved in, it doesn't really matter what
24 the description is at that point because you're somebody
25 known to me.

1 THE COURT: I understand. All right, final arguments,
2 Mr. Steen.

3 MR. STEEN: Yes, Your Honor. Based on I guess the
4 first prong - I mean based on Investigator Hall asking him
5 to identify someone he didn't know is unduly suggestive.
6 The irreparable ability to Mr. McIlwain is he's identifying
7 someone else for the possession of a gun that he has and
8 based on the factors which he didn't - The Solicitor said
9 he didn't give a description, he didn't actually observed
10 the crime. This is I guess the subsequent act. Statements
11 made by the investigator any time regarding that creates
12 irreparable harm, Your Honor, so based on the time, the
13 lack of description and the investigator's tactics I would
14 ask for it to be excluded.

15 THE COURT: All right. Well based upon what I've
16 heard, the proffered testimony, as well as my understanding
17 of the law I make the following findings. Number One: The
18 first question I have to decide was whether or not the
19 identification was - the out of court identification which
20 if it's tainted that would make the in court identification
21 suppressible so that's what we're dealing with here.

22 So the first issue is was the ID a result of
23 unnecessary and unduly suggestive police procedures? This
24 court finds it was not. Okay. Even assuming arguendo I
25 found that it was. I would find that the out of court ID

1 was none the less so reliable that it was a good ID which
2 would allow the in court ID to stand as well so I'm gonna
3 respectfully deny you're motion. You're protected in the
4 record and allow this witness to - use the out of court
5 identification to identify the defendant in court.

6 MR. STEEN: And, Your Honor, may I be allowed - I
7 guess be allowed full latitude of questions.

8 THE COURT: Absolutely.

9 MR. STEEN: Thank you, Your Honor.

10 THE COURT: All right. Anything else before we bring
11 the jury back in?

12 SOLICITOR BARFIELD: No, sir.

13 MR. STEEN: Your Honor, just only on his statement
14 given, I'd ask for him - for the court to exclude the
15 statement I heard someone say he ran around back as
16 hearsay. And the fact that he knew my client from the
17 detention center.

18 SOLICITOR BARFIELD: I don't intend to get into that.

19 THE COURT: Yeah. All right, that's good.

20 SOLICITOR BARFIELD: You understand that, Mr. Nelson?

21 THE COURT: You understand that?

22 SOLICITOR BARFIELD: You can't say - May I address the
23 witness?

24 THE COURT: Yes, sir.

25 SOLICITOR BARFIELD: You can't say that you ran around

1 back cause somebody said he ran around back. That's
2 hearsay so I'm not gonna ask you that and don't say that.
3 And then also don't say that you and Quanell McIlwain were
4 in the detention center together. Okay? Just don't say
5 those two things.

6 THE COURT: Do you understand, sir?
7 You have to say yes or no.

8 THE WITNESS: I got a problem with it. Say again.

9 SOLICITOR BARFIELD: All right, let me say it again.

10 THE COURT: Don't say - Listen to me. Don't say that
11 you know Quanell McIlwain because you all were at the
12 detention center together.

13 THE WITNESS: Okay. I understand.

14 THE COURT: Okay. Because Number One it makes him
15 look real bad and Number Two it makes you look real bad so
16 just don't say it. Okay. And secondly don't say that I
17 heard somebody say that he ran around back. Okay. That's
18 called hearsay. Okay. You got that?

19 THE WITNESS: Okay. Yes, sir.

20 THE COURT: That sounds good. All right, let's bring
21 the jury in.

22 (JURY REENTERS COURTROOM AT 02:22 P.M..)

23 THE COURT: All right, all members of the jury are
24 present. Thank you, ladies and gentlemen.

25 Solicitor, you may proceed.

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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DIRECT EXAMINATION - CONTINUES

TIMOTHY NELSON BY SOLICITOR BARFIELD:

Q. I might over lap where we were when we stopped a minute ago. You said earlier you went out the front door.

A. Yes, sir.

Q. When you went out the front door did you know that anybody had been shot?

A. No, sir.

Q. Where did you go from the front door?

A. To the back.

Q. When you got to - Did you go around on the outside to get to the back or did you go through the apartment to get to the back?

A. I ran through the apartment.

Q. When you got to the back where did you go?

A. I was standing on the patio and I seen him over the fence so I ran toward the fence.

Q. Stop right there. I'm gonna stop you from time to time. You ran toward the fence after you saw him over the fence. Who is him?

A. Mr. McIlwain, S.K. S.K.

Q. Do you see S.K. in the courtroom today?

A. Yes, sir.

Q. Where is S.K. sitting in the courtroom today?

A. Sittin right over there, sir.

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 SOLICITOR BARFIELD: Raise your hand please.

2 (DEFENDANT QUANELL MCILWAIN RAISES HIS HAND.)

3 Q. Describe where he's sitting and what he's wearing.

4 A. Black and white shirt with dreads.

5 Q. At the table with the two fellows with the neckties
6 and suits?

7 A. Yes, sir.

8 Q. Okay. Anybody else at that table got dreads?

9 A. No, sir.

10 Q. Are you sure that's the guy you saw over the fence?

11 A. Positive.

12 Q. When you saw him over the fence what did you do?

13 A. I yelled out to him throw me the junk.

14 Q. Slow down. Throw me what?

15 A. The junk. The gun.

16 Q. How did you know there was a --

17 A. I yelled out to him.

18 Q. How did you know he had a gun?

19 A. I didn't know. I didn't know.

20 Q. Okay.

21 A. Further I heard the shots, you know.

22 Q. Okay. That's fine. How close were you to the fence
23 when you held - when you held throw me the junk?

24 A. We was about ten feet apart.

25 Q. And what side of the fence was he on?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. He was on the opposite side.

2 Q. Okay. When you yelled that what did he do?

3 A. He tossed me the gun and I caught it with my shirt.

4 SOLICITOR BARFIELD: Permission for the witness to
5 step down?

6 THE COURT: Yes, sir.

7 All right, go on down there, sir.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Just talk loud, sir, okay.

10 A. Okay.

11 THE COURT: I want to make sure I can hear you.

12 BY SOLICITOR BARFIELD:

13 Q. Stand to the side so everybody over there can see.

14 I'm gonna give you a laser pointer, okay.

15 First of all are you - Don't point to anything yet.

16 Do you know what that's a picture of?

17 A. Yes, sir.

18 Q. What is it a picture of? And yell as loud as I'm
19 yelling.

20 A. Uh - The complex of the whereabouts where we all
21 live at.

22 Q. All right. And does that picture show the apartment
23 that you were in that you described as Justine's apartment?

24 A. Yes, sir.

25 Q. Where is it?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. Uh - Right here.

2 (WITNESS INDICATED.)

3 Q. All right. Move your hand back. Come here.

4 Stand back over here. That thing will go all the way
5 across this room. You ain't got to be right on it.

6 Point to the apartment that you were in when you heard
7 the shots.

8 A. Right there.

9 (WITNESS INDICATED.)

10 Q. All right. Point to - Does that picture show the
11 back of those apartments?

12 A. Yes, sir.

13 Q. Does that picture show - And you might not can
14 actually see a fence but does it show where the fence is?

15 A. Yes, sir.

16 Q. Point to where at the fence you saw S.K., over the
17 fence.

18 A. About right in the area right here.

19 (WITNESS INDICATED.)

20 Q. All right. You can step back up to the chair.

21 (WITNESS RETURNED TO THE WITNESS STAND.)

22 Q. What was the lighting behind apartment 1701 at the
23 time you saw what you described?

24 A. A light pole.

25 Q. How many light poles back there?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. It was two of 'em.

2 Q. Where were they?

3 A. One all the way on the opposite side of the fence
4 towards the left and there was one right behind the
5 apartment complex that - behind Justine's house -

6 Q. Did you have any trouble seeing back there?

7 A. No I had no problem.

8 Q. After you had - First of all describe the gun.

9 A. Uh - It was a .357. It was silver, wood handle.

10 Q. Talk loud.

11 A. It was silver, wooden grip, .357.

12 Q. What did you do after you took possession of the gun?

13 A. I ran back in Justine's house.

14 Q. Why?

15 A. Wasn't thinking. Was not thinking, going off
16 instincts. Like I said we was all intoxicated. I was
17 intoxicated so I wasn't really thinking, you know, I really
18 can't say why I did it.

19 Q. When you got inside Justine's apartment with the gun,
20 what did you do with it?

21 A. I sat at the table. Like I said I did not touch the
22 gun. I opened it up put the bullets in my shirt. Seen an
23 empty diaper and disposed of the bullets in the diaper
24 threw it away.

25 Q. Stop right there. You said you took the bullets out.

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes, sir.

2 Q. What did you actually take out?

3 A. Six shell cases.

4 Q. Where there - And you say shell casings. Were they -
5 Are they bullets that had been fired?

6 MR. STEEN: Objection. Lay person testifying to
7 scientific evidence.

8 THE COURT: Sustained.

9 BY SOLICITOR BARFIELD:

10 Q. Describe what it looked - what you took out of that
11 gun looked like?

12 A. Bullets.

13 Q. Whole bullets or part of bullets?

14 A. Shot bullets.

15 Q. Shot bullets?

16 A. Fired bullets.

17 Q. Okay.

18 MR. STEEN: Objection. Motion to strike fired
19 bullets.

20 SOLICITOR BARFIELD: I don't think that's --

21 THE COURT: I'm gonna over rule the objection.

22 BY SOLICITOR BARFIELD:

23 Q. Where there any unshot bullets in the gun?

24 A. No, sir.

25 Q. How many shot bullets were in the gun?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. Six.

2 Q. Did you count to know how many the gun held?

3 A. It was a six shooter.

4 Q. What happened next as you're inside that apartment?

5 A. As I said before I took 'em out put 'em - seen an
6 empty diaper. I disposed of 'em in the diaper. After that
7 that's when Justine and them seen me with it and they told
8 me I needed to get out of her apartment and I left her
9 apartment and went to my mother house.

10 Q. Did you leave the apartment? Where was the gun when
11 you left the apartment?

12 A. In my - Still in my shirt.

13 Q. What did you ultimately do with the gun?

14 A. Threw it in the river.

15 Q. What river?

16 A. On Linwood.

17 Q. When did you - Did you at some point talk to the
18 police about what you've just described to us?

19 A. Yeah.

20 Q. Who did you talk to?

21 A. Phil Hall.

22 SOLICITOR BARFIELD: Raise your hand Phillip Hall.

23 (PHILLIP HALL RAISES HIS HAND.)

24 Q. Is that who you talked to?

25 A. Yes, sir.

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Do you know how long - Do you recall how long after
2 the morning of the shooting it was that you talked to
3 Phillip Hall?

4 A. I'm assuming a week later after the accident happened.
5 A week later when I knew that they was looking for me.

6 Q. And how did you end up talking to Phillip Hall?

7 A. I walked in myself.

8 Q. To where?

9 A. The City.

10 Q. Did you and Phillip Hall that day and maybe some
11 other people go somewhere?

12 A. Yes, sir.

13 Q. Where did you all go?

14 A. We went to Linwood Drive when I told 'em where I put
15 the gun at.

16 Q. Did you see the gun that day when you went back out
17 to Linwood Drive with the police?

18 A. Did I see the gun? Yes, sir.

19 Q. Okay. And who had it when you saw it that day?

20 A. The police had it.

21 Q. The morning of the shooting other than the .357 that
22 you got tossed over the fence to you, did you have any
23 other gun in your possession ---

24 A. No, sir.

25 Q. --- when these events occurred?

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. No, sir.

2 Q. Let me ask you about McIlwain. The person that you
3 pointed to in the courtroom a minute ago, what did you him
4 by back when this event occurred?

5 A. S.K.

6 Q. And are you sure that the person you know as S.K. is
7 the fellow you pointed out a minute ago?

8 A. Yes, sir.

9 Q. Back when all this occurred did you know his real
10 name?

11 A. No, sir.

12 Q. And how did you know S.K. back when all this occurred?

13 A. From you know what I'm say the blood of the hood you
14 know. He wasn't a person to take --

15 Q. That's all right.

16 MR. STEEN: Objection.

17 SOLICITOR BARFIELD: Hold on. That's fine.

18 THE COURT: Sustain.

19 Q. That's all you need to say about that. That's fine.

20 When you left 1701 with the gun, other than the fired
21 bullets and the dirty diaper in the trash can, did you
22 leave anything that there you had brought with you?

23 That might not a been a good question. When you left
24 1701 did you take everything you had with you?

25 A. Yeah. To me yeah.

TIMOTHY NELSON: DIRECT BY SOLICITOR BARFIELD
CROSS BY MR. STEEN

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1 Q. Did you take off any clothes and leave them at 1701
2 or anything?

3 A. I hadn't took off no clothes or anything.

4 SOLICITOR BARFIELD: Answer anything Mr. Steen or Mr.
5 Jones has please, sir. These two fellows right here.

6 THE COURT: Counselor.

7 MR. STEEN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 TIMOTHY NELSON BY MR. STEEN:

10 Q. Mr. Nelson, what did you have on that night?

11 A. I can't even recall to remember that night. That
12 was three years ago I can't remember exactly what I had on.

13 Q. Okay. You disposed of the fired bullets in a used
14 diaper. Correct?

15 A. Yes, sir.

16 Q. At Justine's house?

17 A. Yes, sir.

18 Q. Who was around when that happened?

19 A. At that time Justine. Justine and Dora. That's at
20 the time that's who was in the house when we was there.
21 That's who seen me.

22 Q. And --

23 A. They didn't seen me unload but they seen the weapon so
24 when they seen the weapon they started and they told me to
25 get out.

1 Q. So you disposed of the fired bullets prior to them
2 seeing you with ---

3 A. The gun.

4 Q. --- the weapon? Okay. And you testified that the
5 - that S.K. said throw - You said to S.K. throw me the
6 junk.

7 A. Yeah I yelled that out to him.

8 Q. I think you testified before you gave a statement
9 to Investigator Hall. Correct?

10 Do you remember answering that question with him?

11 A. Yeah I remember him ask me question later what did
12 I do and that's what I told him I said I done.

13 Q. "When he ask if you threw the gun up did he say
14 anything to you? No he didn't say anything to me. When I
15 first saw him he was already over the fence and I yelled at
16 him bro what you doing? He was like here. That's when he
17 threw the gun and I caught it." Did you ask him for the
18 gun?

19 A. I yelled it out. If you - What I'm saying read the
20 statement that's three versions of that saying. So in one
21 of 'em I did say that I yelled out to him so I can admit
22 and say that I yelled to him saying bro throw me the junk.

23 Q. You testified - Let me make sure - Tanisha Nelson is
24 your cousin?

25 A. Yes, sir.

TIMOTHY NELSON: CROSS BY MR. STEEN

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1 Q. And you were at Dawnetta's and Justine's apartment?

2 A. Yes, sir.

3 Q. Why did you run to the fence?

4 A. Like I said when I ran out the incidence I wasn't
5 thinking you know. Like I'm saying at the time of that
6 like I said I didn't have no anything happened or occurred.
7 I thought he was just shootin in the air just to scare some
8 people off and try to get away, you know, and we ran off
9 instincts from there.

10 Q. So you heard shooting you ran out front then you ran
11 out back.

12 A. Like I said ---

13 Q. At that point you saw someone over behind the fence.
14 You ran up to the fence ---

15 A. --- I yelled --

16 Q. --- and yelled hey give me the gun, throw me the
17 junk.

18 A. Yes, sir.

19 Q. Didn't you testified that you didn't know he had
20 a gun before you ran over there?

21 A. Did I testify - I testified I didn't know he had the
22 gun on him you know. It could a been a possibility that he
23 could a threw the gun before he even got over the fence.

24 Q. If you knew he didn't have the gun why did you say
25 throw me the junk?

TIMOTHY NELSON: CROSS BY MR. STEEN

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1 A. It was running off instincts so you know what I'm
2 saying it was off instincts so when I heard the shots and
3 seen him move and you know came out there with him you
4 know. So in the end I had possession and ran back into the
5 house.

6 Q. And you only know the person over the fence as S.K.?

7 A. As S.K.

8 MR. STEEN: One moment, Your Honor.

9 (PAUSE AT 02:40 P.M..)

10 Q. Mr. Nelson.

11 A. Yes, sir.

12 Q. So you're nicknamed Jaqua?

13 A. Jaquavis.

14 Q. Jaquavis?

15 A. Yes, sir.

16 Q. People call you Qua?

17 A. Qua, Que-Black or Quack.

18 Q. And who is Simone?

19 A. Simone is Dora.

20 Q. Who is your God baby?

21 A. Uh - That is K.B. daughter.

22 Q. Keith Benson's daughter?

23 A. Yes, sir.

24 Q. Do you recall her legal name?

25 A. Minor .

TIMOTHY NELSON: CROSS BY MR. STEEN

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1 Q. Who is Wisdom?

2 A. I don't know him by his government name. I just knew
3 him by Wisdom.

4 Q. From around Pardue?

5 A. Just around the neighborhood and Lancaster.

6 Q. What about Hook?

7 A. Hook. He was another person I don't know his
8 government name. He was another person that you know what
9 I'm saying familiar with from around the neighborhood.

10 Q. And all of those people were inside when the shooting
11 took place?

12 A. Yeah at that time it was it was all in the place.

13 Q. But your testimony is S.K. was not?

14 A. No he was not in the area, in the house you know
15 what I'm saying. In the house it was me, Symone. It was
16 me, Simone, and Dora that was all in the house that I can
17 recall at this time but it could a been some more people
18 you know. But them were all the people that was there that
19 I knew of that was all there in the area where I was at.

20 MR. STEEN: May I approach, Your Honor.

21 THE COURT: Yes, sir.

22 Q. I want to show you this statement that you did with
23 Investigator Hall.

24 A. Go ahead.

25 Q. Can you read just that first question and answer for

1 me?

2 A. "Can you tell me who was in the apartment when the
3 shooting took place? Me, Simone, Dora, Justine God baby,
4 S. K., my friend Hook, Justine boyfriend, and me and my God
5 baby mother."

6 Q. Did you read S.K's name?

7 A. Yeah.

8 Q. Justine. Is that the apartment where the shooting
9 took place?

10 A. Not in Justine apartment when the shooting took place.

11 Q. Which apartment do you think you're referring to?

12 A. He was not in Justine. When you said was he at
13 Justine house when the shooting took place no he was not at
14 the apartment when the shooting took place cause I was in
15 the house when the shooting took place.

16 Q. So the statement you gave them was incorrect?

17 A. It had to be cause I'm saying he was not in the
18 house at the time of the shootin.

19 Q. So you took the gun.

20 A. Uh-huh.

21 Q. You threw it over into the water the next day. A few
22 days later Investigator Hall questions you. Correct?

23 A. Uh - He didn't come to question me I came to him.

24 Q. Sorry. You gave a statement to Investigator Hall?

25 A. Yes, sir.

TIMOTHY NELSON: CROSS BY MR. STEEN

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1 Q. Did you not know that by throwing a gun into the
2 water that it would destroy any chance of shooting the
3 person - I mean catching the person who shot the person?

4 A. Like I say when I had it they told me to go out and
5 bring it to my mother's house. After the incident the
6 reason I didn't go to the police cause like I said I didn't
7 want to be accused of the shooter so my instincts told me to
8 get rid of it so I went to my mother's house put it up
9 there. My mother found it she told me I needed to get it
10 out of the house so I took it to Linwood in a duffle bag
11 and nobody knew and that was the end of that. I think
12 about a week later my mother told me that the police was
13 there looking for me.

14 Q. So you were afraid to turn the gun in because you
15 thought the police would accuse you of it?

16 A. Yes, sir.

17 Q. If you knew you didn't have the gun why would they
18 accuse you of it?

19 A. Like I said I was running on instinct. Wasn't
20 thinking you know. At the time wasn't thinking just going
21 off what you know what I thought could have happened. I
22 didn't want to think that I could have been accused of it so I
23 got rid of it. In the end it came to bite me in the butt.

24 Q. So you waited to confess to having possession of the
25 gun until after any evidence that could put you with the

TIMOTHY NELSON: CROSS BY MR. STEEN
REDIRECT BY SOLICITOR BARFIELD

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1 gun was destroyed?

2 A. Correct. I didn't - you know what I'm saying when it
3 comes to that case I mean I was wrong in having it in the
4 first place.

5 Q. Just one more question. You were the only person that
6 left that apartment that came back in that night. Correct?

7 A. Came - What you mean came back in?

8 Q. That left - That was inside, the shooting happened,
9 left, and ran back in.

10 A. When I left - Yes, sir, when the shooting happened I
11 ran outside and ran out back yes I was the only one that
12 did that.

13 MR. STEEN: Thank you. No further questions, Your
14 Honor.

15 SOLICITOR BARFIELD: Just a couple - A couple of
16 redirect.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 TIMOTHY NELSON BY SOLICITOR BARFIELD:

20 Q. When you took the gun over the fence, did you know
21 anybody had been shot?

22 A. No, sir.

23 Q. Before you left 1701 with the gun ---

24 A. Yes, sir.

25 Q. --- to your knowledge how many people in 1701 had

TIMOTHY NELSON: REDIRECT BY SOLICITOR BARFIELD

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1 seen you with the gun?

2 A. As far as I know was two.

3 Q. Okay. Who were they?

4 A. Symone and Dora.

5 Q. All right.

6 SOLICITOR BARFIELD: Thank you. That's all.

7 THE COURT: All right, thank you, sir. You may step
8 down.

9 THE WITNESS: You all have a blessed day.

10 THE COURT: All right.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: All right, we're gonna take a brief
13 comfort recess. Let's reconvene in about ten minutes.
14 Okay. Don't talk about the case. You all are free to go
15 back to your jury room.

16 (JURY EXITS COURTROOM AT 02:48 P.M..)

17 THE COURT: All right, the court is in recess.

18 (COURT IN RECESS AT 02:48 P.M..)

19 (COURT BACK IN SESSION AT 02:56 P.M..)

20 (DEFENDANT QUANELL MCILWAIN REENTERS COURTROOM.)

21 THE BAILIFF: The jury's coming in.

22 THE COURT: Okay.

23 (JURY REENTERS COURTROOM AT 02:58 P.M..)

24 THE COURT: All right, all members of the jury are
25 present.

DOCTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD

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1 Solicitor, you can call your next witness.

2 SOLICITOR BARFIELD: Doctor Sleight.

3 Now the witness is on the way back from the restroom
4 and will be here in just a second.

5 THE COURT: Okay.

6 THE BAILIFF: Place your left hand on the Bible and
7 raise your right.

8 (WHEREUPON, OTIS SLEIGHT, BEING
9 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 THE COURT: All right.

11 DIRECT EXAMINATION

12 DOCTOR OTIS SPEIGHT BY SOLICITOR BARFIELD:

13 Q. Tell us your name please, sir.

14 A. Otis Donnell Sleight.

15 Q. And spell your last name please.

16 A. S-p-e-i-g-h-t.

17 Q. Doctor Speight, by whom are you employed?

18 A. Team Health at Springs Memorial Hospital.

19 Q. What is your job at Springs Memorial Hospital?

20 A. I'm currently the medical director and physician on
21 staff in the emergency department.

22 Q. How long have you been a medical doctor?

23 A. Since I graduated from medical school in 1985.

24 Q. And where did you graduate from medical school?

25 A. University of North Carolina in Chapel Hill.

DOCTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD

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1 Q. Where did you get your undergraduate degree?

2 A. University of North Carolina, Chapel Hill. I have a
3 Bachelor's Degree in Chemistry.

4 Q. Do you have a speciality?

5 A. Yes. Emergency Medicine.

6 Q. Are you board certified in Emergency Medicine?

7 A. Yes. Diplomate of the American Board of Emergency
8 Medicine.

9 Q. How long have you been board certified?

10 A. Since 1985.

11 Q. Okay.

12 SOLICITOR BARFIELD: Your Honor, at this time I would
13 offer Doctor Sleight as an expert in emergency medicine.

14 THE COURT: Any further voir dire?

15 MR. STEEN: No, Your Honor.

16 THE COURT: All right. Thank you.

17 Ladies and gentlemen, I have just qualified Doctor
18 Speight as an expert in emergency medicine. Normally when a
19 witness testifies they only testify as to what they see or
20 what they have heard or what they smell, that type of
21 thing. However when a witness is qualified through either
22 by education or specialized training, they may be declared
23 an expert in a particular field. That doesn't mean you
24 have to agree with their opinion, it's simply something for
25 you to consider with the weight of all the evidence when

DOCTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD

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1 you decide to start deliberating this case. Okay.

2 Solicitor.

3 BY SOLICITOR BARFIELD:

4 Q. Doctor Speight, where you on duty at the Springs ER
5 the early morning of May 29th of 2011?

6 A. Yes, sir.

7 Q. And did you receive a gun shot wound patient?

8 A. Yes, sir.

9 Q. What was the patient's name?

10 A. According to the record here - Is Quanell Marquan
11 McIlwain the defendant?

12 Q. Yes.

13 A. Okay. I don't have a copy of my official medical
14 records. This is the cardiac arrest sheet.

15 Q. Okay.

16 A. But I don't have a copy of my official medical
17 record.

18 Q. Let me hold what you got there and look at it a
19 minute.

20 A. Okay. When patients come in cardiac arrest we do
21 what we call a code sheet. Patient named Terrance A.
22 Jones, J-o-n-e-s.

23 Q. And do you recall what the presenting problem for Mr.
24 - Well first of all, how did Mr. Jones get to the ER? Do
25 you recall?

LECTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD

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1 A. It was by EMS and the chief complaint at that time was
2 a gun shot wound.

3 Q. Okay. And did you determine whether in fact Mr.
4 Jones had a gun shot wound?

5 A. Yes we did.

6 Q. Did he have one or more than one gun shot wound or do
7 you recall?

8 A. I don't recall. I have to refer to the official
9 medical records. Again what I have here is the cardiac
10 arrest sheet and this the sheet that documents medications
11 and interventions when a patient presents in trauma or a
12 cardiac arrest event.

13 SOLICITOR BARFIELD: Bear with me just one second.

14 (PAUSE.)

15 Q. I'm gonna hand you a document and ask you to take a
16 minute to look over that and tell me if you recognize what
17 that is. Just that one page I think is the only thing
18 that's relevant there.

19 A. Yes. Mr. Barfield, do you have the official
20 documentation on -

21 Q. Hang on just a minute.

22 A. The reason I say that is because that documentation
23 gives more of the specifics of where the gun shot wound
24 was. This again is the cardiac arrest sheet but list what
25 we did in intervening. It does not have the physical

1 examination on there..

2 Q. Okay. Well from that record can you tell us what
3 the patients problem was?

4 A. He arrived to the emergency room at 04:39 by EMS. At
5 that time there was no blood pressure or any pulse.

6 Q. Do you know whether EMS had done anything to try to
7 keep the patient going before arrival at the ER?

8 A. Yes. They had put a .18 gauge in in the right tibia
9 enter OCS IB fib line to give IV fluids in order to try to
10 maintain a blood pressure.

11 Q. Okay. And what was the patient's condition when you
12 first treated the patient?

13 A. He was extremely guarded. There was no blood pressure
14 or pulse as evidenced by PEA, pluseless electrical
15 activity, meaning that the heart at that time had no
16 activity at that time.

17 Q. Okay.

18 A. And that would be the equivalence of what we see on
19 TV as flat lining.

20 Q. All right. Were there efforts made in the ER to
21 revive the patient or keep the patient going?

22 A. Yes, sir. CPR was in the progress at the time he
23 arrived and continued until the time we pronounced him. He
24 was given IV fluids, cardiopulmonary resuscitation and
25 chest compressions were there. The ossuary resuscitation

DOCTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD

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1 is air breathed in circulation. He was intubated twenty-
2 six centimeters at the left lip and that's to maintain
3 oxygenation to preserve the brains activity during the
4 initial phase of resuscitation. He was given a hundred
5 percent oxygen at that time to maintain intake of
6 oxygenation to the brain such that we get survival and help
7 preserve the brain.

8 If the brain goes for a short period of time without
9 oxygen the brain is dead so you essentially have a patient
10 even if you're able to retain cardiac evidence with no
11 brain function so we did the oxygenation a hundred percent
12 to maintain his oxygenation. He had a ET tube,
13 endotracheal tube that was placed - size 8 - which is a
14 fairly large size tube to deliver as much oxygen as you
15 possibly can at that time.

16 Q. Down the throat?

17 A. Down the throat into the air way ---

18 Q. Okay.

19 A. --- and with direct access to the lungs. Again PEA
20 activity: He was given epinephrine which is adrenaline as
21 we know it here in common terms and that's the chemical we
22 give to stimulate the heart to start beating again. So he
23 had carpio pulmonary resusscitation in the process. He got
24 epinephrine, he received IV fluids and despite all the
25 heroics he was pronounced expired by myself.

DOCTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD

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1 Q. Did the heart every start beating again?

2 A. No. Never had a single beat. Documented here:

3 Pulse less rhythm, PEA, pulseless electrical activity,

4 meaning there is no activity in the heart for the duration

5 of his presentation to our facility.

6 Q. And did you make a determination at the ER whether to
7 continue medical efforts or to discontinue medical efforts?

8 A. Yes I did.

9 Q. And then what was the decision that was made?

10 A. The decision was made with no activity at this point
11 in time even in transit the survival rate is usually less
12 than one tenth of one percent and the efforts we decided to
13 clinically terminate the activities. We had no chance of
14 survival in this incident.

15 Q. About what time was that the activities were
16 terminated?

17 A. At 045 according to the documentation.

18 Q. Okay. Was the patient deceased?

19 A. The patient was deceased. Expired. Dead as we know
20 it.

21 Q. And to a reasonable degree of medical certainty did
22 you make the call that he was deceased?

23 A. Yes I made the decision with no activity in your
24 heart, no spontaneous respiration on his own, pupils being
25 fixed and dilated, no evidence of any cardiac activity I

DOCTOR OTIS SLEIGHT: DIRECT BY SOLICITOR BARFIELD
CROSS BY MR. JONES

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1 clinically - he was clinically dead and we made that
2 clinical decision at 045.

3 Q. Okay. Do you know the name Crawford? The Deputy
4 Coroner for Lancaster County?

5 A. Yes I do.

6 Q. And do you recall seeing him out there that morning?

7 A. Yes I do remember seeing him at the scene.

8 Q. Thank you, sir. Answer anything Mr. Jones has.

9 THE COURT: Any questions?

10 CROSS-EXAMINATION

11 DOCTOR OTIS SLEIGHT BY MR. JONES:

12 Q. Doctor Sleight, outside of being able to say that
13 the - that Mr. Jones was deceased when he arrived at the
14 hospital, can you tell us anything about - anything else
15 about the nature of the shooting?

16 A. No I have no specifics at this time and again I
17 would have to refer to the official medical records for any
18 documentation of what they specifically - that's based off
19 the physical examination. But from a purely mechanical
20 perspective there is no evidence of cardiac or respiratory
21 activity on arrival or at any time throughout the
22 resuscitation efforts.

23 Q. Thank you, sir.

24 MR. JONES: No further questions.

25 THE COURT: All right.

GLEN CRAWFORD: DIRECT BY SOLICITOR BARFIELD

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1 SOLICITOR BARFIELD: Nothing further. I ask that he
2 be excused.

3 THE COURT: All right, thank you, sir, you may step
4 down and you're free to leave.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: Call your next witness.

7 SOLICITOR BARFIELD: Glen Crawford.

8 THE BAILIFF: Place your left hand on the Bible and
9 raise your right.

10 (WHEREUPON, GLEN CRAWFORD, BEING
11 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 DIRECT EXAMINATION

13 GLEN CRAWFORD BY SOLICITOR BARFIELD:

14 Q. Tell us your name please, sir.

15 A. Glen Crawford.

16 Q. Mr. Crawford, by whom are you employed as a primary
17 occupation?

18 A. Lancaster County Coroner's Office.

19 Q. All right. And are you a deputy coroner for Lancaster
20 County?

21 A. Yes, sir.

22 Q. Generally speaking - not in a lot of detail - but
23 generally speaking what is the coroner's duty?

24 A. To determine the cause of death and assist with
25 autopsies and things of that nature.

GLEN CRAWFORD: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. And what kinds of deaths does the coroner's
2 office respond to?

3 A. Any type of death that happens outside the realm of
4 the hospital within a twenty-four hour period.

5 Q. All right. Do you have - Does the coroner's office
6 have anything to do with determining whether an autopsy
7 will be performed on a deceased person?

8 A. Yes, sir.

9 Q. Now, did you as deputy coroner get called out on the
10 morning of May 29th of 2011?

11 A. I did.

12 Q. And what was the nature of the call?

13 A. A victim was in the Lancaster ER suspected had gun
14 shot wound.

15 Q. And do you get a little bit of history in conjunction
16 with doing your work as coroner in preparing your coroner's
17 report?

18 A. Yes, sir.

19 Q. Did that history include anything about where this
20 event occurred that led to you being called out?

21 A. Yes, sir.

22 Q. And your understanding was it occurred where?

23 A. Pardue Apartments.

24 Q. Okay. And did you have a - I'm gonna call him
25 patient. Did you have a patient - a patient's name

1 given to you as the person that you were called out
2 concerning?

3 A. Yes, sir, I did.

4 Q. And who was that person?

5 A. Terrance Jones.

6 Q. Did you - Did you ever respond to Pardue Street?

7 A. No, sir, I didn't.

8 Q. Where did you respond?

9 A. To the Spring's ER.

10 Q. And at Springs' ER what was going on when you got to
11 the ER?

12 A. I was informed that a black male that was in one of
13 the trauma rooms there in the hospital that had passed away
14 from a suspected gun shot wound. I went in I did an
15 assessment of the situation and went on ahead and scheduled
16 for an autopsy.

17 Q. And did you determine that the patient, Mr. Jones, in
18 fact was deceased?

19 A. Yes, sir, he was.

20 Q. Based on the history of this case that you had gotten
21 did you make a determination yea or nae whether to order an
22 autopsy?

23 A. Yes, sir, I did.

24 Q. And what was your decision about an autopsy?

25 A. To go ahead and to schedule one for Mr. Jones.

GLEN CRAWFORD: DIRECT BY SOLICITOR BARFIELD
CROSS BY MR. JONES

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1 Q. And was Mr. Jones sent for autopsy?

2 A. Yes, sir, he was.

3 Q. And where was the autopsy performed?

4 A. Newberry Pathology Associates in Newberry, South
5 Carolina.

6 SOLICITOR BARFIELD: Thank you, sir. Answer anything
7 Mr. Jones has.

8 CROSS-EXAMINATION

9 GLEN CRAWFORD BY MR. JONES:

10 Q. Mr. Crawford, the cause of death you said was a loss
11 of blood? Exsanguination.

12 A. Exsanguination yes, sir.

13 Q. And how many - about how many wounds were there? Gun
14 shots wounds.

15 A. I would have to refer to the autopsy report.

16 Q. Yes, sir, that's fine.

17 A. I'm thinking that it's a total of three wounds here.

18 Q. Three wounds?

19 A. Yes, sir.

20 Q. Can I refer - -

21 MR. JONES: Can I approach, Your Honor?

22 THE COURT: Yes, sir.

23 Q. This is the report right here.

24 A. No, sir, this is just the autopsy order to perform.

25 Q. Order to perform?

GLEN CRAWFORD: CROSS BY MR. JONES

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1 A. Yes, sir.

2 Q. Yes, sir. In looking at this order how many gun
3 shot wounds does it say?

4 A. Two.

5 Q. Two?

6 A. Yes, sir.

7 Q. And you said he went to Newberry?

8 A. Yes.

9 Q. Were there any drugs or alcohol in his system?

10 A. Yes, sir.

11 Q. Which? Either or both?

12 A. Judging from my toxicology report here no alcohol
13 was found but there was THC present.

14 Q. There was THC in his system?

15 A. Yes, sir.

16 MR. JONES: Nothing further. Thank you.

17 SOLICITOR BARFIELD: Nothing further. Ask that he
18 be excused.

19 THE COURT: All right. Thank you, sir, you can step
20 down and you may - you are free to leave.

21 (WITNESS LEAVING WITNESS STAND.)

22 SOLICITOR BARFIELD: Doctor Ross.

23 THE COURT: Call your next witness.

24 THE BAILIFF: Place your left hand on the Bible and
25 raise your right.

DOCTOR JANICE ROSS: DIRECT BY SOLICITOR BARFIELD

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(
1 (WHEREUPON, JANICE ROSS, BEING
2 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 DIRECT EXAMINATION

4 DOCTOR JANICE ROSS BY SOLICITOR BARFIELD:

5 Q. Tells us your name please, ma'am.

6 A. Janice Edwards Ross, R-o-s-s.

7 Q. And, Doctor Ross, by whom are you employed?

8 A. Newberry Pathology Associates.

9 Q. And what do you do for Newberry Pathology Associates?

10 A. We do autopsies for coroner's of the State. About
11 twenty-two counties out of forty-six.

12 Q. You are a licensed medical doctor?

13 A. Yes.

14 Q. Where did you to undergraduate school?

15 A. University of South Carolina.

16 Q. When did you - When did you go to medical school?

17 A. I started in Charleston at MUSC and finished at
18 Upstate Medical Center in Syracuse, New York where I
19 received my M.D.

20 Q. And when did you receive your M.D.?

21 A. 1972.

22 Q. Did you do a internship somewhere?

23 A. I did ---

24 Q. A residency or internship.

25 A. --- a residency in pathology, the study of --

1 pathologist.

2 Q. Okay. Where did you do your residency?

3 A. In Syracuse, New York Upstate.

4 Q. Are you board certified in forensic pathology?

5 A. Yes.

6 Q. How long have you been board certified in forensic
7 pathology?

8 A. Since 1985.

9 Q. Have you been - How many autopsies have you done over
10 the course of your career?

11 A. Over nine thousand.

12 Q. How many times have you testified in the court's of
13 this state as an expert in forensic pathology?

14 A. Over a hundred.

15 Q. Okay.

16 SOLICITOR BARFIELD: Your Honor, at this time I'd
17 offer Doctor Ross as an expert in forensic pathology?

18 THE COURT: Any further questioning of the doctor?

19 MR. STEEN: No, Your Honor.

20 THE COURT: All right. So you all stipulate she's an
21 expert?

22 MR. STEEN: Yes, sir.

23 THE COURT: All right, ladies and gentlemen of the
24 jury, remember my previous instruction regarding expert
25 witnesses. An expert witness can testify in the form of an

DOCTOR JANICE ROSS: DIRECT BY SOLICITOR BARFIELD

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1 opinion where normally lay witnesses or normal witnesses
2 can't. Just because an expert may offer an opinion does
3 not mean you have to accept the opinion. That is solely
4 for you the jury to determine in considering any weight and
5 credibility of the evidence. Okay.

6 Thank you.

7 BY SOLICITOR BARFIELD:

8 Q. Doctor Ross, in your field what is the purpose of a
9 forensic autopsy?

10 A. A forensic autopsy is to identify and ultimately find
11 the cause of death and the manner of death. During that
12 process - during the autopsy we identify and document
13 patterns of injury. Take fluids for toxicology purposes and
14 take photographs for the court of law. A cause of death is
15 just what it means, what caused the death of that person.
16 The manner of death is how that cause of death came about.
17 Was it a homicide, was it a suicide, an accident or a
18 natural.

19 Q. Okay. In performing a forensic autopsy do you get
20 some history of the event that led this deceased person to
21 be in your presence?

22 A. Yes.

23 Q. Okay. And in performing a forensic autopsy do you
24 do an external examination of the body?

25 A. Yes.

1 Q. Did you do an internal examination of the body?

2 A. Yes.

3 Q. If there is some evidence of some injury in addition
4 to that are you interested to know whether there is any
5 disease process going on with the person which also could
6 have contributed to the death?

7 A. Yes. We do an external examination with the clothing
8 on and the clothing off. For instance this case we saw
9 evidence of gun shot wounds so we further studies including
10 x-rays to look for bullets.

11 Q. Okay. And are you also interested to know whether
12 this person who had some injury had also - was also sick
13 and maybe had some disease going on that could have
14 contributed to the death?

15 A. Yes. We look at each organ to identify any kind of
16 heart problems or cancer or anything like that.

17 Q. Now, did you on or about I believe May 30th of 2011
18 get called upon to perform an autopsy on a body from the
19 Lancaster Police Department?

20 A. Yes.

21 Q. And the name of the deceased person?

22 A. Terrance Jones.

23 Q. The autopsy was done at the request of whom?

24 A. Glen Crawford the Deputy Coroner.

25 Q. And about what time that day did you do that autopsy?

DOCTOR JANICE ROSS: DIRECT BY SOLICITOR BARFIELD

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1 A. 8:30 in the morning.

2 Q. All right. Did you do an external examination of
3 Mr. Jones' body?

4 A. Yes.

5 Q. Was there clothing with the body?

6 A. Yes.

7 Q. We're gonna get to injuries in just a minute but
8 were there any defects in clothing consistent with injuries
9 that you later determined had occurred?

10 A. There were holes over in the shirt over lying gun
11 shot wounds.

12 Q. Okay. Was there any property in the clothing of the
13 defendant? Of the deceased. Excuse me. And I'm probably
14 skipping around.

15 A. Let me make sure. There was one lighter. That's all.

16 Q. Like a cigarette lighter?

17 A. Yes.

18 Q. Were there any cigarettes on or with the body that
19 you're aware of?

20 A. I don't have any documented.

21 Q. Okay. That's fine. Where there injuries to the body
22 externally discovered?

23 A. Yes.

24 Q. Describe the injuries.

25 A. There were two entrance gun shot wounds and one

1 exit wound.

2 Q. All right. Do you label them gun shot wound One
3 and Two?

4 A. Yes. We just generally - It doesn't mean that's the
5 order that we receive them but we - I organize our
6 paperwork from top to bottom, front to back, so gun shot
7 wound number one for instance in this case was in the chest
8 and gun shot wound number two was in the abdomen,

9 Q. Now, gun shot wound number one was in the chest.
10 Where? And if you will on your front show where about
11 approximately the gun shot wound was?

12 A. It was in the left chest high just close to the
13 midline.

14 Q. Okay. Are you interested in measuring the diameter
15 of the entrance gun shot wound for any particular purpose?

16 A. Yes.

17 Q. And did you measure this entrance wound?

18 A. Yes.

19 Q. And what was the measurement for the entrance wound?

20 A. Point four inches in diameter.

21 Q. Are you interested in determining the path of the
22 bullet once it makes entry into the body?

23 A. Yes.

24 Q. And this gun shot wound number one, what was the path
25 - pathway of the projectile?

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1 A. It went from front to back. It went downward and it
2 went slightly more to the left. It was found - The bullet
3 was found underneath the skin at the back.

4 Q. Did you recover the bullet?

5 A. Yes.

6 Q. I'm gonna show you a sealed up envelop with contains
7 a little - looks like a medicine bottle and some other
8 items in it. Can you identify what's shown - what is
9 contained in that package?

10 A. Yes. This is the way we package the projectiles that
11 we recover from autopsies. We - It's put into this little
12 bottle and then sealed in plastic, signed, and sent to SLED
13 for further testing.

14 Q. And is that the projectile that you recovered from
15 the body of Terrance Jones?

16 A. Yes it is.

17 Q. All right.

18 SOLICITOR BARFIELD: Your Honor, at this time I'd
19 offer for identification purposes this package.

20 THE COURT: Number Thirty-five?

21 SOLICITOR BARFIELD: Thirty-five I believe.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-FIVE,
23 PREMARKED FOR IDENTIFICATION.)

24 THE COURT: Okay.

25 Q. I'm kind of skipping around but while I'm doing it

1 let me get into this.

2 Do you collect fluids from the body for various
3 purposes?

4 A. Yes.

5 Q. And did you collect fluids from the body of Mr. Jones?

6 A. Yes.

7 Q. Specifically did you collect some blood to be handed
8 back over to the police?

9 A. Yes.

10 Q. I'm gonna show you another package and ask you if you
11 can identify what that is?

12 A. This is just one tube of blood from Terrance Jones we
13 collected at the autopsy.

14 Q. All right.

15 SOLICITOR BARFIELD: Your Honor, at this time I'd
16 offer the tube of blood, State's Number Thirty-six, for
17 identification purposes.

18 THE COURT: All right.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-SIX,
20 PREMARKED FOR IDENTIFICATION.)

21 Q. I apologize for skipping around but we're back to
22 gun shot wound number one. You gave us the path of the
23 bullet and you gave us the recovery of the bullet. What
24 damage did that bullet do internally to Mr. Jones?

25 A. It went through and lacerated perforated two of the

DOCTOR JANICE ROSS: DIRECT BY SOLICITOR BARFIELD

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1 main blood vessels coming off the heart. Went through the
2 heart itself. It also went through the cervical - I'm
3 sorry, the spinal cord in the thoracic cavity.

4 Q. Thoracic is up high?

5 A. Chest.

6 Q. Chest. Okay.

7 A. Cervical and then thoracic.

8 Q. All right.

9 A. Then it caused - that caused a lot of bleeding
10 internally and it would have caused paralysis at the level
11 of that thoracic spine.

12 Q. All right. Gun shot wound number two, where was it?

13 A. That was located in the left abdomen.

14 Q. If you don't mind would you stand and show the jury
15 on you where that one was?

16 A. Sure. That would be right in here.

17 (WITNESS STOOD AND DEMONSTRATED.)

18 A. Maybe just below and left of the belly button.

19 Q. Did you measure the diameter of that entrance wound?

20 A. Yes. I believe that was also point four inches.

21 Q. What was the path of that bullet once it entered the
22 body?

23 A. That one went front to back, left to right, and back
24 and downward. And it exited basically through the right
25 upper buttock area.

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1 Q. Was any fired bullet recovered from that gun shot
2 wound?

3 A. No.

4 Q. Did that gun shot wound do any damage internally to
5 Mr. Jones?

6 A. It lacerated part of the colon but it didn't cause
7 a lot of hemorrhage.

8 Q. Was that a potentially fatal gun shot wound?

9 A. It was yes.

10 Q. Okay. Were there any injuries to the body other
11 than the two gun shot wounds?

12 A. No, sir.

13 Q. Was there any disease process going on with Mr.
14 Jones that in any way contributed to his death?

15 A. No.

16 Q. Did you to a reasonable degree of medical certainty
17 determine the cause of death for Terrance Antonio Jones?

18 A. Yes.

19 Q. And what was that?

20 A. Exsanguination which means to bleed out due to the
21 laceration of blood vessels and heart due to the gun shot
22 wound to the chest.

23 SOLICITOR BARFIELD: Thank you, ma'am. Answer
24 anything Mr. Jones has.

25 THE COURT: Counsel.

1 MR. JONES: We don't have any questions of this
2 witness, Your Honor.

3 THE COURT: All right. Thank you, ma'am, you're free
4 to step down and free to leave.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: All right, call your next witness.

7 SOLICITOR BARFIELD: Qua Stevens.

8 Come up there to where that fellow with the badge is
9 please.

10 MR. STEEN: Your Honor, may we approach?

11 THE COURT: Yes, sir.

12 Hang on one second. Stay right there, sir.

13 (BENCH CONFERENCE OFF THE RECORD AT 03:27 P.M..)

14 THE COURT: All right, ladies and gentlemen of the
15 jury, I'm going to ask that you go back to your jury room,
16 I need to deal with a matter of law with the attorneys and
17 we'll get you back out here just as soon as possible.
18 Again don't speculate what we're talking about. Nobody's
19 trying to hide anything from you; it's just procedure all
20 court's use. Don't talk about the case.

21 (JURY EXITS COURTROOM AT 03:28 P.M..)

22 THE COURT: All right, sir, place your left hand on
23 the Bible and raise your right.

24 (WHEREUPON, EDRICKIS STEVENS,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

1 THE COURT: Thank you. Step around there and have a
2 seat.

3 And, gentlemen, it's my understanding we're proffering
4 this witness for - and the objection there has been a
5 motion filed, Mr. Steen, concerning this witnesses'
6 reported testimony under Lyle. Is that correct?

7 MR. STEEN: Yes, Your Honor.

8 THE COURT: And 404(b)?

9 MR. STEEN: Yes, Your Honor.

10 THE COURT: All right.

11 SOLICITOR BARFIELD: And could I just in the interest
12 of brevity just sort of summarize what of what I think we
13 agree on and then we'll just get to the nuts and bolts of
14 this.

15 THE COURT: Yes, sir. All right.

16 SOLICITOR BARFIELD: Mr. Stevens is the boyfriend of
17 Tanisha Nelson. These are the two who were arguing outside
18 before the shooting occurred. Mr. Stevens' expected to
19 testify in a minute that after he argued with Ms. Nelson
20 his girlfriend he and Mr. McIlwain had a confrontation at
21 which point Mr. McIlwain pulled out a pistol and threatened
22 him not directly pointing the pistol at him but simply
23 threatened him while holding a pistol.

24 And that is what is objectionable I believe. And
25 again my argument we'll get into arguments later but my

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 argument is its not really prior bad acts; it's part of the
2 ongoing series of events that ended up in a shooting a
3 short time later.

4 THE COURT: Okay. Mr. Steen, is that your
5 understanding as to the witnesses' purported testimony and
6 as to the breath of what your motion is?

7 MR. STEEN: Yes, Your Honor.

8 THE COURT: Okay. Why don't we go ahead and establish
9 it. Well go ahead and establish that testimony
10 understanding that we got the jury sitting out there.

11 SOLICITOR BARFIELD: All right. Slide up so you're
12 talking into that microphone. We're not gonna go through
13 the whole ten yards right now; just a little bit of it,
14 okay..

15 DIRECT EXAMINATION - IN CAMERA

16 EDRICKIS STEVENS BY SOLICITOR BARFIELD

17 Q. Tell us your name.

18 A. Edrickis Stevens.

19 Q. You have a nickname?

20 A. Qua.

21 Q. Do you know Quaneil McIlwain?

22 A. Yes, sir.

23 Q. Do you see him in the courtroom today?

24 A. Yes, sir.

25 SOLICITOR BARFIELD: Mr. McIlwain, would you raise

1 your hand?

2 (DEFENDANT QUANELL MCILWAIN RAISES HIS HAND.)

3 Q. Is that the person you know as Quanell Mcilwain?

4 A. Yes, sir.

5 Q. Do you know Tanisha Nelson?

6 A. Yes, sir.

7 Q. How do you know her?

8 A. My baby momma.

9 Q. Are you all boyfriend girlfriend now?

10 A. No, sir.

11 Q. And you got to keep talking loud. Don't rock. Get
12 way up in that microphone.

13 A. No, sir.

14 Q. Were you all boyfriend girlfriend on May 29th of 2011?

15 A. Yes, sir.

16 Q. Were you in Pardue on May 29th of 2011?

17 A. Yes, sir.

18 Q. Did you and she get into a little fist a cuffs?

19 Well, a little argument.

20 A. Yes, sir.

21 Q. Was there ever any physical fight between you and
22 Tanisha Nelson?

23 A. No, sir.

24 Q. When and where did that occur?

25 A. In her apartment.

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 Q. Did any of it occur outside or to the view or
2 hearing of people outside?

3 A. No, sir.

4 Q. At some point did something occur outside between
5 you and Tanisha?

6 A. No, sir.

7 Q. Did you see Quanell McIlwain out there that morning?

8 A. No, sir.

9 Q. Never?

10 A. Yeah I did. Yeah when me and her went back outside.

11 Q. Well, tell us about you and her being outside when
12 Quanell McIlwain is in the picture.

13 A. Me and her had got into a little argument. We was
14 about to fight so she took off running and I was running
15 behind her and he was running behind me.

16 Q. Okay. Did you ever catch her?

17 A. No, sir.

18 Q. Did he ever catch you? Quanell, did he ever catch
19 you?

20 A. No I stopped running.

21 Q. Did you and he talk?

22 A. Yes, sir.

23 Q. What was the nature of the conversation?

24 A. He was basically saying he couldn't - you know what
25 I'm saying - sit out there and watch me jump on my baby's

1 momma cause - you know - he's saying when he was coming up
2 he seen his momma get jumped on and he say he ain't liked
3 that kind of stuff.

4 Q. Did you respond when he said that to you?

5 A. Oh yes, sir. I was like well who's gonna stop me?
6 And he was like I stop you now.

7 Q. And did anything occur when he said I'll stop you now?

8 A. No. He pulled out the gun and I was like go ahead
9 and he put it back up and I left.

10 Q. All right. He pulled out the gun. What kind of gun
11 was it?

12 A. A .357.

13 Q. What did the gun look like?

14 A. I think it was chrome.

15 Q. Okay. And what did he do with the gun when he pulled
16 it out?

17 A. He had it by his side.

18 Q. Did he ever --

19 A. No he never pointed it at me.

20 Q. Did he ever - Never pointed it at you?

21 A. No, sir.

22 Q. Did you and he ever come into physical contact with
23 each other?

24 A. No, sir.

25 Q. After that happened what did you do?

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 A. I got in Tanisha's car and left.

2 Q. Did you at any point subsequent to that have
3 contact with Quanell McIlwain after you left?

4 A. Yes, sir. I called his phone and ask him to let
5 me talk to Tanisha.

6 Q. What number did you call his phone from? What was
7 your number?

8 A. 235-0935.

9 Q. And how did you know Quanell McIlwain's phone number?

10 A. Cause I had it. We had hung together a few times
11 before the incident.

12 Q. Okay. Did Tanisha have a telephone?

13 A. No, sir.

14 Q. Did you get to talk to Tanisha after you called
15 Quanell?

16 A. Yes, sir.

17 Q. And do you know how you ended up talking to her?

18 A. He gave her the phone. He took her the phone.

19 Q. Now, from the time Quanell pulled the pistol out of
20 his pocket ---

21 A. Uh-huh.

22 Q. --- until you're on the phone with Tanisha, about
23 how long was all that?

24 A. About fifteen minutes after I had left. Fifteen,
25 twenty minutes after I had left.

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD - IN CAMERA
CROSS BY MR. STEEN - IN CAMERA

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1 Q. Okay. Were you present in Pardue when anybody got
2 shot?

3 A. No, sir.

4 SOLICITOR BARFIELD: Thank you, sir. Answer anything
5 Mr. Steen or Mr. Jones has.

6 THE COURT: All right, Mr. Steen.

7 MR. STEEN: Thank you, Your Honor.

8 CROSS-EXAMINATION - IN CAMERA

9 EDRICKIS STEVENS BY MR. STEEN:

10 Q. So it's your testimony that Mr. McIlwain did not
11 point the gun at you? Did he present the gun at you?

12 A. Yeah he pulled it out but he didn't point it at me.

13 Q. And this was over - And this was when he stated to
14 you - What was his reason behind this again?

15 A. Cause he thought I was about to jump on my baby
16 momma and he was like he didn't like that cause I guess
17 when he was coming up his momma used to get jumped on I
18 guess and he said - He was basically saying like I can't
19 sit here and let you jump on your baby momma. That's what
20 the whole thing was over.

21 Q. And this was fifty or twenty minutes prior to the
22 shooting?

23 A. Oh yes, sir.

24 Q. Was Tanisha present when this occurred?

25 A. No, sir.

EDRICKIS STEVENS: CROSS BY MR. STEEN - IN CAMERA

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1 Q. Do you remember giving a statement on May 29th to a
2 Sergeant Greenly? That would be the day of the incident.
3 That morning.

4 A. Yeah later on that day.

5 Q. And you wrote me and my baby mother Tanisha Nelson
6 was having a disagreement and S.K. pulled out his gun and
7 tell you I would do such. Did that not say that you were
8 with Tanisha when S.K. pulled the gun?

9 A. What you say now?

10 Q. When you wrote me and my baby mother ~~Tanisha Nelson~~
11 was having a disagreement and S.K. pulled out his gun.

12 SOLICITOR BARFIELD: I would ask that Mr. Steen allow
13 the witness to examine the statement that he's asking him
14 about.

15 THE COURT: All right.

16 MR. STEEN: All right, sir.

17 (WITNESS REVIEWING DOCUMENT.)

18 A. Yeah I wrote that.

19 Q. So was Tanisha there?

20 A. No she wasn't there he pulled out the gun.

21 MR. STEEN: No further questions at this time, Your
22 Honor. Thank you.

23 THE COURT: Any further questions of this witness?

24 SOLICITOR BARFIELD: No other questions.

25 THE COURT: All right. The other witness dealing

1 with the other - the out of court ID, is that your next
2 witness?

3 SOLICITOR BARFIELD: Yes, sir.

4 THE COURT: All right. I want to go ahead and deal
5 with that while the jury is out. I don't want them to hop
6 up and leave again so for the purpose of this in camera
7 hearing, sir, if you will step down and just have a seat
8 over there.

9 (WITNESS LEAVING WITNESS STAND.)

10 THE COURT: And let me hear argument then as to your
11 404(b) argument.

12 MR. STEEN: Yes, sir. As State v. Smith Sawyer,
13 Honor, if the State is trying to produce evidence of a
14 prior bad act they must prove so by clear and convincing
15 evidence. Based on Mr. Steven's testimony the statement
16 reads one witness was there. We're about to hear from her
17 so we'll hear what she has to say with regards to the
18 matter. But while I will consent - I would say that that's
19 clear and convincing evidence that Mr. McIlwain did it. But
20 now the Solicitor must show that if one of the Lyle factors
21 with intent, common scheme, identity, then must show that
22 it's not - that is not outweighed by the prejudicial
23 nature.

24 My remaining argument deals with the 403 connection
25 and that the State is creating - is going to use his

1 statement that his momma - you shouldn't be treating a
2 woman that way as a motive for the murder when these
3 incidents had nothing combined. Different victims,
4 different incidents, different motives; that's going to
5 confuse the jury to have the - him testify that Quanell
6 pulled a gun because of this then from the statement later
7 use that he pulled a gun on the victim.

8 THE COURT: Okay. I follow you.

9 All right, Solicitor.

10 SOLICITOR BARFIELD: Your Honor, I'm not offering
11 evidence of this event as a prior bad act. I'm offering
12 evidence of this event to show that Quanell McIlwain - Let
13 me say this first.

14 My understanding is Tanisha Nelson will testify that
15 as she is on the phone with Mr. Stevens, the phone that
16 Quanell McIlwain gave her, that's when the shootin occurs.
17 So Steven's testifies a gun gets produced, fifteen minutes
18 later he's on the phone with Tanisha Nelson and so fifteen
19 minutes later is when the shooting occurred. So the time
20 frame is fifteen minutes. I'm not offering the evidence of
21 this gun incident fifteen minutes earlier as a prior bad
22 act. I'm simply offering it to show as evidence of Quanell
23 McIlwain being armed with a gun showing it before somebody
24 got shot and killed in a party.

25 THE COURT: Okay.

1 SOLICITOR BARFIELD: It is - It is no different than
2 testimony that came in without objection earlier today by
3 Keith Benson that he saw Quanell McIlwain with a gun moving
4 it from one side of his waist to the other behind 1701.
5 It's simply - It's illegal because possession of a gun but
6 I'm not offering it as a prior bad act. I'm offering it to
7 show the man was armed.

8 THE COURT: Okay. Mr. Steen.

9 MR. STEEN: The difference between those is Mr.
10 McIlwain was not charged with that crime as he is charged
11 with pointing and presenting here today.

12 SOLICITOR BARFIELD: But the jury ain't gonna know
13 that. I cautioned Mr. Stevens not to talk about Mr.
14 McIlwain being a defendant with him as a victim in this
15 case.

16 THE COURT: Yes, sir.

17 MR. STEEN: But see on the cases that have to do with
18 res gestae, Your Honor, its always the same victim over
19 time. The same victim over time with the same crime. The
20 bad act and the current charge are the same thing. The
21 victim in both situations are the same thing.

22 THE COURT: Wouldn't you agree though that your client
23 or the defendant allegedly if the jury were to believe his
24 testimony you know showing this weapon which identification
25 matches the other identification of the weapon, wouldn't

1 that show the propensity toward committing this act?

2 MR. STEEN: Yes, Your Honor, which was - which is
3 what 404 --

4 THE COURT: Which is why it come in. I understand
5 that. The question is though of course I'm the gate
6 keeper, I have to do the balancing test. All right.

7 Here's what I'm gonna do. I'm gonna allow the
8 testimony in. Let me put my basis - my basis for allowing
9 that testimony to come in the record. Assuming *arguendo*
10 again just like I did in your *Biggers* analysis that this is
11 a prior bad act, that was not subject of a conviction, I do
12 find that the State has met a clear and convincing evidence
13 standard. I find that the testimony is logically relevant
14 and as far as to take it to it's conclusion for the trier
15 of fact. And lastly I find that the approbative value of
16 the testimonies substantially outweighs the prejudicial
17 effect under the 403 analysis.

18 But I tend to agree with the State so if I weren't
19 gonna take it that far under the 404(b) analysis that would
20 be my finding. But I'm not basing my ruling on that. I'm
21 basing my ruling on the State's contention that it's not
22 offering it as a prior bad act; it's just part of the whole
23 situation that was happening that night considering the
24 fact that it only happened fifteen minutes or so or right
25 before the actual act of violence occurred. Okay. So

1 that's the ruling of the Court on that. All right.

2 Now, as to the other proffered testimony I want to go
3 ahead and deal with that so we don't have to keep having
4 the jury go back and forth. Let's go ahead and call that
5 witness just for --

6 Go ahead.

7 SOLICITOR BARFIELD: Tanisha Nelson. Mr. Steven's
8 probably doesn't need to hear her testify.

9 THE COURT: No.

10 SOLICITOR BARFIELD: You go back out and wait.

11 THE COURT: Sir, you step outside and wait, you're not
12 done yet. Okay. Thank you.

13 (WITNESS EDRICKIS STEVENS LEAVES COURTROOM.)

14 SOLICITOR BARFIELD: Tanisha Nelson.

15 Has the Court viewed the in-car camera of ---

16 THE COURT: I have viewed all that.

17 SOLICITOR BARFIELD: --- the photo process?

18 THE COURT: Yeah. I did that this morning.

19 You got that on your record, Wanda?

20 Good. I viewed in camera the actual video of the out
21 of court ID.

22 All right, ma'am, come on up, place your left hand on
23 that Bible and raise your right hand for me.

24 (WHEREUPON, TANISHA NELSON,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 THE COURT: Thank you. Just step around and have a
2 seat there.

3 All right, Solicitor.

4 DIRECT EXAMINATION - IN CAMERA

5 TANISHA NELSON BY SOLICITOR BARFIELD:

6 Q. Ms. Nelson, tell us your name first. And you are
7 going to have to talk real real loud cause your soft
8 spoken. Use that microphone. Get up in there in it.

9 A. Tanisha Nelson.

10 Q. And do you know Qua Stevens?

11 A. Yes.

12 Q. How do you know him?

13 A. That's my kids father.

14 Q. Okay. Do you know Quanell McIlwain?

15 A. I know of him around the way.

16 Q. Okay. How do you know Quanell McIlwain?

17 A. I rode the bus with him when I was going to the
18 high school.

19 Q. Okay. Do you know if Qua Stevens knows Quanell
20 McIlwain?

21 A. Yes.

22 Q. Do you know how close they are or were?

23 A. They weren't that close.

24 Q. Okay. Were you - Where did you live in - On May
25 29th of 2011 where did you live?

- 1 A. Pardue.
- 2 Q. What apartment?
- 3 A. 1706, Pardue Street.
- 4 Q. Were you in Pardue early morning May 29th of 2011?
- 5 Were you home that morning?
- 6 A. Yes.
- 7 Q. Was Qua Stevens around that morning?
- 8 A. Yes.
- 9 Q. I don't want all the details but did you all have some
- 10 problems between the two of you that morning?
- 11 A. Yes.
- 12 Q. Was Quanell McIlwain around Pardue early that morning?
- 13 A. Yes.
- 14 Q. At any point were you in 1701 Pardue?
- 15 A. Yes.
- 16 Q. Whose apartment was that?
- 17 A. A girl Justine.
- 18 Q. Justine? Do you know her last name?
- 19 A. Dawnetta.
- 20 Q. I'm sorry.
- 21 A. Justine. I don't know her last name.
- 22 Q. And who was the other girl you said?
- 23 A. Dawnetta.
- 24 Q. Okay. Was Quanell in 1701 when you were there?
- 25 A. Yes.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 Q. At some point did you leave 1701?

2 A. When I was going home.

3 Q. And did you have anybody with you when you were
4 going home?

5 I. Me and my baby, get my baby and we were going to the
6 house.

7 Q. Where was Qua Stevens when you were leaving 1701 with
8 your baby to go to your house at 1706?

9 A. He was gone.

10 Q. How did he get gone? Do you know?

11 A. He left in my car.

12 Q. Okay. Did you talk to Qua Stevens at any time after
13 he got gone?

14 A. Yeah.

15 Q. How did you talk to Qua Stevens?

16 A. He called Quanell's phone and Quanell brought me the
17 phone and I got on the phone and I talked to Quanell on the
18 phone.

19 Q. All right. You got to talk loud.

20 A. I was talking to Qua on the phone.

21 Q. And when you're talking to Qua Stevens on the phone
22 where is Quanell?

23 A. Quanell walked off. He walked off on the sidewalk.

24 Q. Where were you talking to Qua on the phone? Where
25 were you?

- 1 A. I was at 1705 on the porch.
- 2 Q. Okay.
- 3 A. Right below my house in the front door.
- 4 Q. Did you know Terrance Antonio Jones?
- 5 A. Yeah. Terrance? Terrance Jones.
- 6 Q. Did anything happened while you were out there?
- 7 A. Yes.
- 8 Q. What happened?
- 9 A. I didn't know Terrance Jones.
- 10 Q. Okay. Did something happen to somebody while you
- 11 were out there?
- 12 A. Yes.
- 13 Q. Do you know who it was that it happened to?
- 14 A. No I didn't know who it happened to.
- 15 Q. Okay. What happened as you're talking to on the
- 16 phone to Qua Stevens?
- 17 A. When I was on the phone with Qua Stevens I seen shots
- 18 go past me. I seen shots going towards me but it was going
- 19 toward the sidewalk. I was looking at the shots coming out
- 20 the gun.
- 21 Q. Who had the gun?
- 22 A. Quaneil.
- 23 Q. When Quaneil brought you the phone how close were
- 24 you and Quaneil to each other?
- 25 A. About eight or ten feet.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 Q. And how - Did he throw you the phone or did he hand
2 you the phone?

3 A. He handed me the phone and so I could hear it I
4 walked to the sidewalk.

5 Q. Okay. And where did the guy that got shot come from?

6 A. Off the hill where I stayed.

7 Q. Okay. Near what building?

8 A. Near 1706.

9 Q. Okay. How close had you been to Quanell inside
10 1701? Were there other people in 1701?

11 A. There was other people in there with him.

12 Q. All right.

13 A. I didn't see him when I walked out. I know when I
14 walked he walked behind me.

15 Q. Okay. And how did he end up approaching you?

16 A. Here, Qua wants you on the phone.

17 Q. And how did he get your attention? Did he holler at
18 you or how did he get your attention?

19 A. No. He just "Little One, Qua want you on the phone."
20 And I came and I got the phone and I was walking back to
21 the porch on 1705. When I got on the porch right there I
22 seen shots coming out a gun.

23 Q. All right. And where did Quanell McIlwain go after
24 he handed you the gun? After he handed you the gun, before
25 any shooting, after he handed you the phone.

1 A. Oh.

2 Q. Excuse me. After he handed you the phone what did
3 Quanell do?

4 A. After he handed me the phone he walked off and I seen
5 him shootin the dude.

6 Q. Okay. Where did the dude come from?

7 A. Off the hill from near by 1706.

8 Q. How close were you to the shooting when it was going
9 on?

10 A. About ten feet away.

11 Q. And you said you saw the gun shooting. What do you
12 mean you saw the gun shoot?

13 A. I seen the fire coming out the gun.

14 Q. And who was holding the gun?

15 A. Quanell.

16 Q. What did you do when the gun shots started?

17 A. I stood right there and I was looking at it and when
18 he stopped shootin I ran.

19 Q. Did you see where Quanell went?

20 A. No. After he stopped shootin I ran.

21 Q. Did you talk to - Do you recognize this fellow right
22 here?

23 (SOLICITOR INDICATED TO PHILLIP HALL.)

24 A. Yes.

25 Q. Phillip Hall?

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 A. Yes.

2 Q. Did you talk to him sometime that morning?

3 A. Yes I did.

4 Q. Did you give a written statement?

5 A. Yes.

6 Q. Did you talk to him a second time that morning or that
7 day?

8 A. I don't remember.

9 Q. Did he come see you somewhere?

10 A. He came to see me in my mother in law house.

11 Q. And where were you and he talking when he came to
12 see you at your momma in law's house?

13 A. In the car.

14 Q. Did you know whether he was video taping you in
15 the car?

16 A. Yeah.

17 Q. Did he show you some pictures in the car?

18 A. Yes.

19 Q. Did he tell you that Quanell McIlwain's picture was
20 among those pictures?

21 A. No.

22 Q. Did he tell you that you should pick one of those
23 pictures?

24 A. Yes.

25 Q. Did he tell you to pick a picture or did he ask you -

1 Just explain how that worked?

2 A. He ask me to pick which one I think that would show in
3 the pictures.

4 Q. Okay. Were you able to pick somebody that was the
5 shooter?

6 A. Yes.

7 Q. Were you sure of who you picked?

8 A. Yes.

9 Q. And who did you pick?

10 A. I picked Quanell McIlwain.

11 Q. Any doubt about that at all?

12 A. No.

13 Q. Had you - Had you seen Quanell McIlwain anywhere other
14 than in Pardue before this night before these events
15 happened?

16 A. No.

17 Q. Had you ever seen him anywhere else out in the
18 community is what I'm saying?

19 A. I seen him one time.

20 Q. And where was that?

21 A. It was like up there in my section where I stayed. He
22 was like gettin out a car gettin another car and that was
23 it.

24 Q. Okay. And how soon was that before this shootin
25 occurred?

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 A. It was probably like two or three weeks.

2 Q. Okay. Did you ever see him anywhere other than
3 Pardue?

4 A. No.

5 Q. Did you ever see him --

6 A. I never seen him in Pardue.

7 Q. No. No this is my question. Other than seeing him
8 in Pardue, had you seen him anywhere out else out in the
9 community?

10 A. No.

11 Q. Okay. Did you know where he lived?

12 A. I know he stayed over there near the hospital.

13 Q. Had you ever seen him over there?

14 A. No. Yeah I seen him sittin on the porch. Every time
15 I ride by I see him standing outside.

16 Q. Okay. That was my question. Had you seen him
17 somewhere other than in Pardue?

18 A. Yeah.

19 Q. And what is your answer to that?

20 A. Yes.

21 Q. And where else had you seen him?

22 A. I seen him standing outside in front of the hospital.

23 Q. Okay. Is there any - Do you have any doubt at all
24 that the man who handed you the phone is the same one who
25 pulled out the gun and started shooting?

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD - IN CAMERA
CROSS BY MR. STEEN - IN CAMERA

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1 A. No.

2 Q. And do you remember what time of the day it was that
3 Sunday when you and Phillip Hall were out in your mother
4 in law's house?

5 A. It was probably like - about eight or nine o'clock
6 in the morning.

7 Q. And about what time did this shootin happen?

8 A. Like four or five in the morning.

9 Q. Okay. Were you able to see okay when things were
10 going on at the time of the shooting?

11 A. Yes.

12 Q. SOLICITOR BARFIELD: Thank you, ma'am. Answer
13 anything

14 Mr. Steen has.

15 THE COURT: Mr. Steen.

16 CROSS-EXAMINATION - IN CAMERA

17 TANISHA NELSON BY MR. STEEN:

18 Q. Thank you, Ms. Nelson. You just talked about giving
19 a statement to Mr. Hall at the police department. That was
20 on the morning of the incident of the shooting?

21 A. I gave him one through his department and I gave him
22 one in my mother - in my mother in law house.

23 Q. And you talked - I'm sorry, ma'am, I didn't mean to
24 interrupt you.

25 A. Go ahead.

TANISHA NELSON: CROSS BY MR. STEEN - IN CAMERA

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1 Q. I'm sorry. You spoke to officers at the scene too
2 didn't you at 1700 block at 4:08. Correct?

3 A. Yeah I spoke to somebody.

4 Q. And at that point you were only about to identify
5 the shooter as K. Correct?

6 A. I know they call him S.K.

7 Q. I'm saying you didn't know his name was Quanell at
8 that point?

9 A. No.

10 Q. Then - Okay. When you gave that statement was Qua
11 Stevens there at the same time?

12 A. I gave a statement at the police department.

13 Q. After the shooting?

14 A. After the shooting?

15 Q. Uh-huh.

16 A. Yeah he was there the first time. Yeah.

17 Q. When did he get back from leaving right before the
18 shooting to go to his mom's house to get back before the
19 shooting?

20 A. No he didn't never come back.

21 Q. And he was not at - He wasn't at the crime scene at
22 all after the shooting?

23 A. After the shooting? Yeah he came back and his mother
24 took me to the police.

25 Q. So you can't - How long after the shooting was he back

1 at?

2 A. How long? It was probably about fifteen minutes. It
3 wasn't that long. Probably about ten minutes. When I was
4 on the phone I was on the phone talking to him I had told
5 him they was out there shootin they came right back.

6 Q. Okay. Did you all two travel together to the police
7 department?

8 A. Yes.

9 Q. And that's when you spoke to Investigator Hall?

10 A. Yes.

11 Q. Did you give Investigator Hall the name Quanell
12 McIlwain at that point?

13 A. Can you repeat that?

14 Q. When you spoke to Investigator Hall at the police
15 department, when you gave the written statement, did you
16 know his name was Quanell McIlwain at that time?

17 A. No.

18 Q. So if you got ask do you know who the shooter was and
19 your answer was Quanell McIlwain?

20 A. Yes. After they had told me what his name was I told
21 'em it was Quanell McIlwain. They looked in a book with a
22 picture.

23 Q. So you were told that it was Quanell McIlwain?

24 A. Yeah. He told me. The police.

25 Q. When you were in a little bit later at Baker Place and

TANISHA NELSON: CROSS BY MR. STEEN - IN CAMERA

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1 then Investigator Hall's police car, that' where you did
2 the photo lineup?

3 A. Yes.

4 Q. Do you remember who you were ask to identify on the
5 pictures? Were you ask to identify S.K.?

6 A. No.

7 Q. Were you ask to identify Quanell?

8 A. I identified the person that I think killed the man.

9 Q. That was the terminology who killed the man?

10 A. They told me to identify the person I think was the
11 shooter and I pointed him out on the paper.

12 Q. Do you remember which number you picked out?

13 A. No I don't know the number.

14 Q. And you stated - How many times had you know Quanell?
15 You said you saw him in front of the hospital once before?

16 A. Yes.

17 Q. Just one time before?

18 A. No I seen him a couple of times. When I ride by I
19 can see sittin on the porch. They wasn't paying no
20 attention.

21 Q. And are you all friends?

22 A. No.

23 Q. Have you ever had any contact outside of this night?

24 A. No not me and him. Him and my baby daddy had.

25 Q. So the only way you knew him that night was mainly

TANISHA NELSON: CROSS BY MR. STEEN - IN CAMERA
REDIRECT BY SOLICITOR BARFIELD - IN CAMERA

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1 through Mr. Stevens?

2 A. Yes.

3 MR. STEEN: No further questions.

4 Thank you, Ms. Nelson.

5 THE COURT: All right. Redirect?

6 REDIRECT EXAMINATION - IN CAMERA

7 TANISHA NELSON BY SOLICITOR BARFIELD:

8 Q. The - What did you know? The shooter. Did you -

9 What did you know him as or by?

10 A. I know they called him S.K., and Marq.

11 Q. S.K. and Marq?

12 A. Yeah.

13 Q. At the time this all occurred, did you know his name
14 was Quanell Marquan McIlwain? Did you know that was his
15 name?

16 A. No. At the time of the shooting no I didn't.

17 Q. Okay. At the time you talked to Phillip Hall did you
18 know that - When you went to first talk to Phillip Hall,
19 did you know that was his name?

20 A. No I didn't know.

21 Q. When you were sittin in Phillip Hall's car in your
22 momma in law's yard, did you know that was his name?

23 A. I know - I knowed it then cause I had one of the cops
24 told me at the police department.

25 Q. Okay.

TANISHA NELSON: REDIRECT BY SOLICITOR BARFIELD - IN CAMERA -380-

1 A. But when he came and talked to me in the car I knowed
2 his name then.

3 Q. Okay. And - All right.

4 SOLICITOR BARFIELD: That's all. Thank you.

5 THE COURT: All right. Any further questions before
6 we do argument?

7 Mr. Steen?

8 MR. STEEN: Yeah, Your Honor, we're done with the Lyle
9 issue also?

10 THE COURT: Yeah, we're gonna do the Lyle issue as
11 well while she's in here. We filed a motion at to her for
12 her Lyle testimony but do you have any other questions
13 about that? Did you have any more questions for her?

14 SOLICITOR BARFIELD: Well I don't know what the Lyle
15 issue is with her. Let me ask her this question and maybe
16 we'll resolve it.

17 Q. Did you see --

18 SOLICITOR BARFIELD: You talking about the incident
19 with Qua and the gun?

20 MR. STEEN: Yes, sir.

21 REDIRECT EXAMINATION - IN CAMERA

22 TANISHA NELSON BY SOLICITOR BARFIELD:

23 Q. Were you present with Qua Stevens when Quaneil
24 McIlwain allegedly pulled out a gun and threatened him or
25 made some comments to him?

TANISHA NELSON: REDIRECT BY SOLICITOR BARFIELD - IN CAMERA
RECROSS BY MR. STEEN - IN CAMERA

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1 A. No I didn't see that.

2 Q. You didn't see any of that?

3 A. No.

4 Q. Okay.

5 SOLICITOR BARFIELD: I don't think there is a Lyle
6 issue as her.

7 THE COURT: And do you want to ask her some questions?

8 CROSS-EXAMINATION - IN CAMERA

9 TANISHA NELSON BY MR. STEEN:

10 Q. Well how did you know that happened?

11 A. He told me. My baby daddy told me. Quavious told me.

12 Q. When did he tell you?

13 A. He told me when I went to the police department.

14 Q. Okay.

15 THE COURT: All right?

16 MR. STEEN: No further questions, Your HONOR.

17 THE COURT: All right. Thank you, ma'am, I need you
18 to step down and go outside but you can't leave yet. Okay.
19 Thank you.

20 SOLICITOR BARFIELD: I think for the record, Your
21 Honor, we need to have - Of course I'm gonna argue to you
22 in a little bit that the video tape of the identification
23 process speaks for itself.

24 Wait back out in the hall.

25 But I think we got to have that in evidence.

1 THE COURT: I've viewed that. We can make it a
2 Court's Exhibit. I've already looked at it but we already
3 have Court's Exhibit One and Court's Exhibit Two.

4 Any objection to making that Court's Exhibit Three?

5 SOLICITOR BARFIELD: I'm talking about the interview
6 of Tanisha Nelson by Phillip Hall in her mother in law's
7 yard in the car when she does the identification process.

8 THE COURT: Well I looked at them on your laptop
9 in chambers this morning.

10 MR. STEEN: Yes, sir.

11 SOLICITOR BARFIELD: As a Court's Exhibit; not for the
12 jury.

13 MR. STEEN: Oh. Yes, sir, that's fine.

14 SOLICITOR BARFIELD: For this hearing.

15 THE COURT: Mark that as Court's Exhibit Number Three.

16 We did Bigger's One, Bigger's Two. This is gonna be
17 Bigger's Three. Mark that Bigger's Three. Okay.

18 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE IDENTIFIED
19 AND MARKED, RECEIVED INTO EVIDENCE AT BIGGER'S HEARING.)

20 SOLICITOR BARFIELD: With one quick thing. The
21 Court's Exhibit Three, or whatever, is actually ---

22 THE COURT: It's Three.

23 SOLICITOR BARFIELD: --- two interviews. One of them
24 is not relevant to this issue. I think the record just
25 needs to reflect that it's being offered as a Court's

1 Exhibit simply for the interview with Tanisha Nelson not
2 for the interview with Dawnetta Montgomery.

3 THE COURT: Correct. This is Bigger's Three.

4 The Bigger's motion has not been filed as to Dawnetta
5 Montgomery.

6 SOLICITOR BARFIELD: That's correct. But it's just
7 two interviews on the same disc and we don't need the
8 second interview.

9 THE COURT: Yes, sir.

10 Do you understand that, Mr. Steen?

11 MR. STEEN: Yes, Your Honor.

12 THE COURT: Okay. Bigger's Three is what that Court's
13 Exhibit is. All right. Any other evidence relating to
14 this single issue?

15 MR. STEEN: No, Your Honor.

16 THE COURT: From the State? Mr. Barfield, anything
17 else?

18 SOLICITOR BARFIELD: No, sir. I do - No, sir.

19 THE COURT: Okay. Arguments.

20 MR. STEEN: Your Honor, this is mainly based on when
21 I listened to the video it was a little inaudible. I
22 didn't understand what she said to Investigator Hall. When
23 she identified him based on her testimony I'll withdraw my
24 objections to from the identification.

25 THE COURT: All right. Objection withdrawn as to

1 identification. For the record I would have denied your
2 Biggers motion on that anyway cause based upon the same
3 findings that I made in regards to the previous Biggers
4 issue. Okay.

5 Now as to the Lyle issue.

6 MR. STEEN: Yes, Your Honor.

7 THE COURT: She said she didn't see anything.

8 MR. STEEN: Yes, Your Honor. And I was just confused
9 based on the statement. Now it's cleared up.

10 THE COURT: Right. So that's moot?

11 MR. STEEN: Yes. I would ask that she not be able to
12 testify to what --

13 THE COURT: She cannot testify to what somebody else
14 told her.

15 MR. STEEN: That's it, Your Honor. Thank you.

16 THE COURT: All right. We don't need to proffer
17 anybody else? Okay. Let's all run --

18 SOLICITOR BARFIELD: Let me --

19 THE COURT: Yeah..

20 SOLICITOR BARFIELD: Before you fly off let me.

21 THE COURT: I'm going to the restroom. What do you
22 want to say?

23 SOLICITOR BARFIELD: Well maybe I ought to let you go.

24 THE COURT: Go ahead.

25 SOLICITOR BARFIELD: Mauricio Richardson is going to

1 testify this afternoon and he is the guy that knows Quanell
2 McIlwain and said Quanell McIlwain came to him the morning
3 of the shooting basically we allege on his way out of town.
4 There was some elicited testimony that they are co-
5 defendant's in a case from sometime in the past. I do not
6 anticipate - I do not plan to elicit from Mauricio
7 Richardson that he knows Quanell McIlwain because they both
8 got locked up for the same thing.

9 THE COURT: Yes, sir.

10 SOLICITOR BARFIELD: I ain't gonna ask him that.

11 THE COURT: Well we dealt with that pretrial.

12 SOLICITOR BARFIELD: But I don't know if it got
13 resolved or not. I don't know.

14 THE COURT: Yes, sir, it did. You said you weren't
15 gonna ask that.

16 SOLICITOR BARFIELD: Then I'm good.

17 MR. STEEN: Yes, Your Honor.

18 THE COURT: Okay. All right, sounds good. All right,
19 we're gonna take a three minute recess. Everybody run to
20 the restroom if you need to do and come in. We're not
21 gonna do anything else outside the jury's presence today.

22 (COURT IN RECESS AT 04:05 P.M..)

23 (COURT BACK IN SESSION AT 04:08 P.M..)

24 THE COURT: Go ahead and get your witness back in
25 here, Solicitor.

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD

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1 SOLICITOR BARFIELD: May Mr. Steen and I approach
2 very briefly?

3 THE COURT: Yeah, but their on their way.

4 SOLICITOR BARFIELD: That's good.

5 THE COURT: What y'all got?

6 SOLICITOR BARFIELD: Ought to make everybody happy.

7 (BENCH CONFERENCE OFF THE RECORD AT 04:08 P.M..)

8 THE COURT: All right, bring 'em in.

9 Who was the gentleman you had? What was his name?
10 Go ahead and get him in here.

11 SOLICITOR BARFIELD: Edrickis Stevens. Qua Stevens.

12 THE BAILIFF: Jury coming in.

13 (JURY REENTERS COURTROOM AT 04:09 P.M..)

14 THE COURT: All right, all members of the jury are
15 present. Thank you, ladies and gentlemen. Cold fronts
16 moving in. It's gonna be cold in the morning. You all be
17 ready.

18 All right, sir, if you'll be sworn in.

19 THE BAILIFF: Place your left hand on the Bible and
20 raise your right.

21 (WHEREUPON, EDRICKIS STEVENS,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 DIRECT EXAMINATION

24 EDRICKIS STEVENS BY SOLICITOR BARFIELD:

25 Q. Tell us your name please, sir?

1 A. Edrickis Stevens.

2 Q. Mr. Stevens, you got to use that microphone and you
3 got to talk real loud. Okay.

4 A. Yes, sir.

5 Q. You live here in Lancaster now?

6 A. Yes, sir.

7 Q. Do you know Tanisha Nelson?

8 A. Yes, sir.

9 Q. How do you know her?

10 A. My baby momma.

11 Q. How many children you all got together?

12 A. Three.

13 Q. Are you all romantic any more?

14 A. No, sir.

15 Q. Are you all friendly with each other?

16 A. Yeah I talk to her every now and then.

17 Q. All right. She's been sittin out there this
18 afternoon. You all been fightin out there?

19 A. Naw.

20 Q. Do you know Quanell McIlwain?

21 A. Yes, sir.

22 Q. How do you know Quanell McIlwain?

23 A. We chilled together a few times.

24 Q. Do you know any nicknames for Quanell McIlwain?

25 A. S. K..

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD

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1 Q. When you referred to him how do you refer to him?

2 A. S. K..

3 Q. Did you all do anything - You said you all chilled
4 a few times.

5 A. Uh-huh.

6 Q. Did you all go to school together or anything like
7 that?

8 A. Yes, sir.

9 Q. Where?

10 A. Lancaster High School.

11 Q. Did you know his phone number? Well I'm referring
12 back to May of 2011.

13 A. Yes, sir.

14 Q. I'm not asking you what it is but - or what it was
15 but back then did you know what Quanell McIlwain's phone
16 number was?

17 A. Yes, sir.

18 Q. What was your phone number back then?

19 A. 235-0935.

20 Q. Was that a cell phone?

21 A. Yes, sir.

22 Q. When you say you and Quanell chill together did you
23 ever - Where did you all hang together?

24 A. I had been by his house a couple of times.

25 Q. Okay. Did you know Terrance Antonio Jones?

1 A. I knew of him.

2 Q. And how did you know of Terrance Jones?

3 A. I aunt use to hang with him.

4 Q. Okay. Do you know where Terrance - Well never mind.

5 When you saw him did you know that's who it was?

6 A. Yeah. If I did see him I would know who he was.

7 Q. And did you know what his name was when you saw him?

8 A. Yeah. Antonio.

9 Q. Where was - Where was Tanisha living back in May of
10 2011?

11 A. Pardue.

12 Q. Do you remember what apartment?

13 A. 1706.

14 Q. Were you with her Saturday - Saturday night into
15 Sunday morning on May 29th of 2011?

16 A. Yes, sir.

17 Q. Where did you and she meet up?

18 A. At her apartment.

19 Q. Well let me back up. Back then were you living with
20 her in Pardue?

21 A. Yes, sir.

22 Q. Were you supposed to be?

23 A. No, sir.

24 Q. Had you been with her at her apartment on Saturday
25 and into Sunday May 29th of '11?

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes, sir.

2 Q. How were you all gettin along that Saturday night
3 into Sunday morning?

4 A. We was arguing. We was having a argument.

5 Q. What time were you all arguing?

6 A. It was about four, four. It was in the morning early
7 in the morning.

8 Q. And where were you all arguing?

9 A. At her apartment.

10 Q. Now, before that had you been out and about in Pardue?

11 Let me ask you. Had you been out socializing with
12 other people in Pardue before you were with Tanisha and you
13 all were arguing?

14 A. No.

15 Q. That night or that morning?

16 A. No, sir.

17 Q. Did anything occur between you and Tanisha outside
18 her apartment?

19 A. No, sir.

20 Q. Okay. I'm gonna jump way ahead. Did you and she
21 ever physically fight out there?

22 A. No, sir.

23 Q. Was there any running around out there?

24 A. Not - not - Like I was - Like you talking about when-
25 What you talking about?

1 Q. Did any of your problem with her carry on outside?

2 A. Not - You talking about she took off running?

3 Q. Well tell me about her taking off running. Tell them
4 about her taking off running.

5 A. Me and her had got into an altercation and we was
6 about to fight so she left out the apartment running.

7 Q. Do you know where she ran?

8 A. She was running to her cousin's house.

9 Q. All right.

10 A. And I was - I started chasing her and I looked back
11 and Quanell was chasing me so I stopped chasing her and ask
12 Quanell what he was chasing me for.

13 Q. Time out. You're saying Quanell.

14 A. Yeah.

15 Q. Do you see the person you're referring to as Quanell
16 in the courtroom today?

17 A. Yes, sir.

18 SOLICITOR BARFIELD: Mr. McIlwain, please raise your
19 hand.

20 (DEFENDANT QUANELL MCILWAIN RAISES HIS HAND.)

21 Q. Is that the person you know as Quanell McIlwain?

22 A. Yes, sir.

23 Q. Is that the person you referred to a few minutes ago
24 as S.K.?

25 A. Yes, sir.

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD

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1 Q. Where did you and Quanell end up? You're running
2 behind Tanisha and Quanell is running behind you. Did you
3 stop?

4 A. Yeah I stopped running.

5 Q. Did you ever catch Tanisha?

6 A. No, sir.

7 Q. Was there any butt whooping going on or anything?

8 A. No, sir.

9 Q. Did - When you stopped where was Quanell?

10 A. Behind me.

11 Q. And how close did you and Quanell get?

12 A. About - Like right about face to face.

13 Q. Was there an exchange of words between - Did you and
14 Quanell ever get physical with each other?

15 A. No, sir.

16 Q. Was there any exchange of words between you and
17 Quanell?

18 A. Yeah we had a few words.

19 Q. Who said what?

20 A. I said - I ask him what he was texting me for and he
21 said he couldn't sit out there and let me do my baby momma
22 like that. So I was like who gonna stop me. And then he
23 pulled out the gun and was like well I'll stop you right
24 now. So I was like man go ahead with that. And I turned
25 around and I left he put the gun up.

- 1 Q. All right. He pulled out a gun?
- 2 A. Yes, sir.
- 3 Q. From where did he pull out a gun?
- 4 A. From off his waist.
- 5 Q. What kind of gun did he pull out?
- 6 A. A .357.
- 7 Q. What did it look like?
- 8 A. A chrome .357.
- 9 Q. Had you ever seen that gun before?
- 10 A. Yes, sir.
- 11 Q. Where?
- 12 A. At his house when we was chillin one time before.
- 13 Q. That's all. That's enough. You said you left?
- 14 A. Yes, sir.
- 15 Q. How did you leave?
- 16 A. I left in Tanisha's car.
- 17 Q. Did you talk to Tanisha - Are you aware that a shootin
- 18 occurred out there?
- 19 A. Yes. I was on the phone.
- 20 Q. Just answer yes or no first.
- 21 A. Uh?
- 22 Q. Are you aware that somebody got shot out there that
- 23 morning?
- 24 A. Yes, sir.
- 25 Q. Were you in Pardue apartments when somebody got shot

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD

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1 that morning?

2 A. No, sir.

3 Q. After you left in Tanisha's car, what kind of car did
4 she have?

5 A. A Neon. A black Neon.

6 Q. After you left in her car did you talk to her again
7 that morning?

8 A. Yes, sir.

9 Q. Did she have a phone?

10 A. No, sir.

11 Q. How did you talk to her?

12 A. I called Quanell's phone, S.K.'s phone and told him
13 to take her the phone.

14 Q. Why in the world would you call S.K.'s phone?

15 A. Cause like I said I already knew of him before the
16 arrest happened. I knew his phone number and all and I
17 knew if I could call him he would go give her the phone.

18 Q. And why did you want to talk to Tanisha?

19 A. I just wanted to talk to her.

20 Q. Okay. Did you dial the number you knew to be
21 Quanell's number?

22 A. Yes, sir.

23 Q. Who answered the phone?

24 A. He did.

25 Q. Any question about that?

- 1 A. No, sir.
- 2 Q. What did you tell Quanell?
- 3 A. I ask him could he take Little One the phone.
- 4 Tanisha.
- 5 Q. And did you end up talking to Tanisha?
- 6 A. Yes, sir, he took her the phone.
- 7 Q. From the time Quanell answers your call ---
- 8 A. Uh-huh.
- 9 Q. --- till the time you're talking to Tanisha how
- 10 long lapsed?
- 11 A. About - It was about like I said about fifteen to
- 12 twenty minutes from the time I left.
- 13 Q. Now let me ask the question again. You're punching
- 14 numbers.
- 15 A. Uh-huh.
- 16 Q. Quanell answers the phone.
- 17 A. Uh-huh.
- 18 Q. From when Quanell answered the phone and you and he
- 19 are talking, how long is it before you're on the phone with
- 20 Tanisha?
- 21 A. Oh we wasn't on there but about four or five minutes.
- 22 Q. Okay. Did you and Tanisha talk?
- 23 A. Yes, sir.
- 24 Q. You can't quote anybody; I'm not asking you what
- 25 anybody told you but did you find out that there has been

EDRICKIS STEVENS: DIRECT BY SOLICITOR BARFIELD

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1 shots fired in Pardue?

2 A. Yes, sir.

3 Q. Not by telling me who told you something but when
4 did you find out there was shootin in Pardue?

5 A. When I was on the phone.

6 Q. With whom?

7 A. Tanisha.

8 Q. And were you in Pardue when you learned that there
9 had been a shootin in Pardue?

10 A. No, sir.

11 Q. From the time you got in Tanisha's black Neon and
12 left.

13 A. Uh-huh.

14 Q. Until you're on the phone with Tanisha and find out
15 there is a shootin, how long was that? Do you understand
16 the question?

17 A. Yes, sir. It was like - like - like - Like ten
18 minutes after I got on the phone with her. Five or ten
19 minutes. It wasn't long.

20 Q. All right. How long after you had left Pardue were
21 you on the phone with Tanisha? That's my question.

22 A. Oh I called her like I say about ten or fifteen
23 minutes I left Pardue. Called his phone.

24 SOLICITOR BARFIELD: Thank you, sir. Answer anything
25 Mr. Steen has.

EDRICKIS STEVENS: CROSS BY MR. STEEN

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1 THE COURT: Mr. Steen.

2 CROSS EXAMINATION

3 EDRICKIS STEVENS BY MR. STEEN:

4 Q. Mr. Stevens, how many phone calls did you make to Mr.
5 McIlwain's phone?

6 A. Oh I don't remember.

7 Q. More than five?

8 A. I can't say. I don't remember. It's been so long
9 about a few years ago.

10 Q. I'm just a little bit confused about the timing.
11 About what time did you leave Pardue Apartments?

12 A. Probably like four. Four, 4:14, 4:30 or somewhere in
13 between them times.

14 Q. And at that point you drove Tanisha's car to where?

15 A. My momma's house.

16 Q. You drove straight to your momma's house?

17 A. Yes, sir.

18 Q. To Baker Place?

19 A. Yes, sir.

20 Q. About how long did that take?

21 A. About ten or fifteen minutes.

22 Q. So you were at your mom's house at Baker Place when
23 you called?

24 A. Yeah I was about pulling in the yard when I called
25 his phone.

EDRICKIS STEVENS: CROSS BY MR. STEEN

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1 Q. At what time did you arrive back at Pardue Street
2 after that then?

3 A. After when it happened probably like five, something,
4 little bit after five something.

5 Q. But law enforcement was still there when you got
6 there?

7 A. Yes, sir.

8 Q. And you spoke with one of the investigators or the
9 police out there?

10 A. Yes, sir.

11 Q. And you told them at that time that you gave, you
12 called Mr. McIlwain to talk to Tanisha?

13 A. Yes, sir.

14 Q. And that was the only basis for the phone call at
15 that point was for you to talk to Tanisha?

16 A. Yes, sir.

17 Q. It took for you to call him almost that soon
18 afterwards. You didn't take the gun incident too
19 seriously?

20 A. No.

21 Q. Mr. Stevens, I'm gonna show you what is marked
22 State's Exhibit Twenty-nine. These are the cell phone
23 records based on the shooter's phone that was given to -
24 the cell phone that you allegedly called?

25 A. Uh-huh.

EDRICKIS STEVENS: CROSS BY MR. STEEN

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1 Q. First on the last column do you see the heading?

2 A. Uh-huh.

3 Q. And what's that heading say?

4 A. Calling party number.

5 MR. STEEN: One second, Your Honor. I'll just use
6 the over head, it will be easier.

7 THE COURT: Okay. Are you all's screen's lightened
8 up?

9 Okay.

10 MR. STEEN: Maybe I won't, Your Honor.

11 Q. Will you read me that last column again?

12 A. Calling party number.

13 Q. Okay. Can you read this column for me? It's easier.

14 A. Caesar.

15 Q. Can you read, just read the letters out for me?

16 A. D-D-T-M.

17 Q. And can you just read that column for me?

18 A. Dialed digit number.

19 Q. Okay. And that night your phone number ended in
20 0-9-3-5?

21 A. Yes, sir.

22 Q. And you were calling the number ending in 5-3-8-7?

23 A. Yes, sir.

24 Q. Do you see your phone number anywhere in that?

25 In this area do you see your phone number?

LORICKIS STEVENS: CROSS BY MR. STEEN

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1 A. Yes, sir.

2 Q. Would it be fair to say that that's your number?

3 A. Yes, sir.

4 Q. And you wouldn't disagree that number's calling
5 the shooter's phone at that time?

6 A. Yes, sir.

7 Q. Pick one of those out and tell me when your number
8 is right here what time you called.

9 A. 3:41.

10 Q. And - So 3:41?

11 A. 3:43.

12 Q. 3:43. And do you see another one about 3:50?

13 A. Yes, sir.

14 Q. Do you see another one - Well you see two at 3:50?

15 A. Two yes, sir.

16 Q. You see another one at 3:51?

17 A. Yes, sir.

18 Q. You see another one at 3:53?

19 A. That's all I see. The last one is 3:51.

20 Q. And you on this last page do you see your number any
21 more after that?

22 A. Huh-huh.

23 Q. Thank you, Mr. Stevens. So the last time your
24 phone call to the shooter's phone was at 3:53 a.m..

25 Assuming these records are true, how long did you

EDRICKIS STEVENS: CROSS BY MR. STEEN

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1 talk to Ms. Nelson on the phone?

2 A. Uh - Like I said I don't remember. It's been a
3 while but I probably say about twenty to thirty minutes or
4 something like that.

5 Q. You spoke - You're on the phone with Tanisha Nelson
6 on the shooter's phone for twenty or thirty minutes that
7 night?

8 A. Like I say it's been a while ago but yeah. It's been
9 about three years ago.

10 Q. Let's just go with twenty minutes. There's what,
11 sixty seconds in a minute?

12 A. Uh-huh.

13 Q. So a hundred and - Twelve hundred seconds ---

14 A. Yes.

15 Q. --- if the math is correct. Will you look at this
16 record again and see if there is any number anywhere for
17 this call duration which is this column right here?

18 Do you see a duration call right beside the dates.

19 A. Uh-huh.

20 Q. You know how this works now? You know where your
21 number's at. You see - What's the longest phone call you
22 see that you had on the shooter's phone?

23 A. Got 213.

24 Q. 213 seconds.

25 A. Yeah on here. Yeah.

EDRICKIS STEVENS: CROSS BY MR. STEEN

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1 Q. Less than twenty minutes.

2 A. I said its been three years ago though.

3 Q. Yes, sir. But you were on the phone when this
4 shooting occurred. Correct?

5 A. Yes, sir.

6 Q. Okay. Going back. You stated that Tanisha was
7 running to her cousin's house.

8 A. Uh-huh.

9 Q. What cousin was that?

10 A. Porsche Cloud. I don't know. She's got plenty of
11 cousins that stayed over there when she run to - I know she
12 run to one of her family members.

13 Q. Yeah, I gotcha.

14 MR. STEEN: One moment, Your Honor.

15 THE COURT: All right.

16 Q. You traveled with Tanisha to the police department?

17 A. Yeah I think I did. I think I did, sir.

18 Q. From Pardue Street Apartments?

19 A. Yes, sir.

20 Q. And during that drive did you tell her who S.K. was?

21 A. I'm not sure she already knew who he was.

22 Q. She knew him as Quanell McIlwain?

23 A. No she didn't know him by that. She know him as S.K.

24 Q. Did you give a statement to Investigator Hall at
25 that time?

EDRICKIS STEVENS: CROSS BY MR. STEEN
REDIRECT BY SOLICITOR BARFIELD

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1 A. No, sir. I gave my statement the next morning.

2 Q. And that mainly had to do with the incident with
3 Tanisha?

4 A. Yes, sir.

5 Q. Just one final question, Mr. Stevens. You do have a
6 prior conviction for lying to the police. Correct?

7 A. Yes, sir.

8 Q. Thank you.

9 MR. STEEN: No further questions.

10 THE COURT: Solicitor, any redirect.

11 SOLICITOR BARFIELD: Just a couple of real quick ones.

12 REDIRECT EXAMINATION

13 EDRICKIS STEVENS BY SOLICITOR BARFIELD:

14 Q. That was Magistrate Court or big court that
15 false information was on?

16 A. It was Magistrate.

17 SOLICITOR BARFIELD: No further questions.

18 THE COURT: All right, thank you, sir, you can step
19 down. You're free to leave.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: You can call your next witness.

22 SOLICITOR BARFIELD: Maurico Richardson. Maurico
23 Richardson.

24 THE BAILIFF: Place your left hand on the Bible and
25 raise your right.

MAURICIO RICHARDSON: DIRECT BY SOLICITOR BARFIELD

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(WHEREUPON, MAURICIO RICHARDSON,
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

MAURICIO RICHARDSON BY SOLICITOR BARFIELD:

Q. Talk real loud please, sir, and use that microphone.

Tell us your name please.

A. Mauricio Richardson.

Q. All right. That ain't gonna work. You got to talk
louder than that. Use the microphone and speak up for me.

A. Mauricio Richardson.

Q. Do you live in Lancaster County?

A. I don't.

Q. Do you know Quanell Marquan McIlwain?

A. I do.

Q. Do you see Quanell Marquan McIlwain in the courtroom
today?

A. I do.

SOLICITOR BARFIELD: Raise your hand, Mr. McIlwain.

(DEFENDANT MARQUELL MCILWAIN RAISED HIS HAND.)

Q. Is that the person you know as Quanell Marquan
McIlwain?

A. Yes, sir.

Q. Do you know him by any nicknames?

A. Marq.

Q. Okay. Any other nicknames?

1 A. I call him Marq.

2 Q. And again keep talking loud for us.

3 How long have you know Mr. McIlwain?

4 A. Since we went to school.

5 Q. How many years ago was that?

6 A. Uh --

7 Q. Well how old are you?

8 A. Twenty-five.

9 Q. First of all, how close are you all - were you all?

10 A. We was pretty close.

11 Q. Were you in Pardue Street Apartments in Lancaster,

12 South Carolina Saturday night May 28 of 2011 on into

13 Sunday, May 29th of 2011?

14 A. No, sir.

15 Q. Okay. Where were you that Saturday night and Sunday
16 morning?

17 A. Home.

18 Q. And where was home? Not an address but what county
19 was your home in?

20 A. York County.

21 Q. You still live in York County?

22 A. I do.

23 Q. On Sunday May 29th of 2011 did you see Quaneil

24 Marquan McIlwain?

25 A. I did.

MAURICIO RICHARDSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Where?

2 A. At my house.

3 Q. What time that Sunday did he - was he at your house?

4 A. That morning.

5 Q. About what time if you know?

6 A. I'm not sure. About ten maybe.

7 Q. What were you doing when he came?

8 A. I was asleep.

9 Q. How did you know he was there?

10 A. I answered the door.

11 Q. Do you know how he got there?

12 A. I think he drove.

13 Q. Was there a car there when he was there?

14 A. Yeah.

15 Q. Do you remember what kind of car it was?

16 A. No I don't recall.

17 Q. Did you know him to have a car?

18 A. Yeah but I don't think he drove his car.

19 Q. Okay. Did he drive some car?

20 A. Maybe.

21 Q. Was anybody with him?

22 A. No.

23 Q. Do you remember what he was wearing when he came to
24 your house ten o'clock that Sunday morning?

25 A. I think black shorts and t-shirt.

1 Q. What color t-shirt?

2 A. White.

3 Q. Did he tell you why he was there?

4 A. Kind a.

5 Q. Tell us - Tell the jury what he told you?

6 A. He got into some - He was defending somebody and
7 they got into an argument with their friend, a boyfriend I
8 guess, and he shot somebody.

9 Q. Did he tell you who he shot?

10 A. No.

11 Q. Did he tell you any of the circumstances under
12 which he shot somebody?

13 A. What you mean?

14 Q. Well you said something about an argument and a
15 friend. Tell the jury what he told you about those things.

16 A. He was taking up for somebody. I guess he thought the
17 person was coming back and retaliate on him I guess.

18 Q. Do you know why he came to your house? Did he tell
19 you why he was there?

20 A. No.

21 Q. Let's go back to what he told you about shooting
22 somebody. Did he describe what had been going on before
23 the shootin?

24 A. No.

25 Q. Did he talk any - Did he say anything about the person

MAURICIO RICHARDSON: DIRECT BY SOLICITOR BARFIELD

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1 that he shot?

2 A. No.

3 Q. Well - Did he stay at your house?

4 A. No.

5 Q. What was going on in your life then?

6 A. I was fixin to have a baby.

7 Q. And did you have a baby right after that?

8 A. I did.

9 Q. Where were you after your baby was born?

10 A. What you mean?

11 Q. Well were you staying at home after your girlfriend
12 had the baby or where you somewhere else?

13 A. I was at the hospital with her. Is that what you're
14 asking?

15 Q. Yes. That's my question.

16 A. Okay.

17 Q. How long was your girlfriend in the hospital after
18 she had the baby?

19 A. Uh - I think we went in that Thursday and she came
20 out that next Wednesday.

21 Q. Okay. Well let me ask you this. Sunday morning is
22 when Quanell's at your house.

23 A. Uh-huh.

24 Q. From Sunday when did she have the baby?

25 A. She had - Well she went into the hospital that next

1 Monday. That Monday.

2 Q. The day after?

3 A. Yeah.

4 Q. And what's your baby's birthday?

5 A. June 6.

6 Q. Okay. And she was in the hospital from when to when?

7 A. From that Monday until I think the 8th.

8 Q. And the baby's birth was June 6?

9 A. Yes, sir.

10 Q. Did you tell - Did you give Quanell any instructions
11 or say anything to him after he told you he shot somebody?

12 MR. STEEN: Objection. Leading.

13 THE COURT: I'm gonna over rule that objection.

14 Q. He told you he shot somebody. What - what's - What
15 are you thinking?

16 A. I told him to leave.

17 Q. And as far as you know did he?

18 A. Yeah.

19 Q. Until now - Excuse me. Until now have you seen him
20 since then?

21 A. No, sir.

22 Q. At any time after he left did you try to make contact
23 with him by telephone?

24 A. No. Well yeah. That day, that same day he came but
25 after that night I haven't talked to him.

1 Q. No, I understand. I'm not accusing you of talking
2 to him. Did he leave your house that Sunday morning?

3 A. Yeah.

4 Q. How long was he there?

5 A. Not long. About ten or twenty minutes.

6 Q. After he left did you attempt to contact him?

7 A. I did.

8 Q. Do you remember the number that you had for him back
9 then?

10 A. I don't.

11 Q. Were you able to get him on the phone?

12 A. No.

13 SOLICITOR BARFIELD: Thank you, sir. Answer anything
14 Mr. Steen has.

15 THE COURT: Counsel.

16 MR. STEEN: Thank you, Your Honor.

17 I don't have any further questions for this witness,
18 Your Honor.

19 THE COURT: All right. Thank you, sir. Step down.

20 You're free to leave.

21 Call your next witness.

22 SOLICITOR BARFIELD:

23 THE BAILIFF: Place your left hand on the Bible and
24 raise your right.

25 (WHEREUPON, KRISTEN GRANT,
26 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

~~MARSHEN BRAMARDSON DIRECT BY SOLICITOR BARFIELD~~
KRISTEN GRANT: DIRECT BY SOLICITOR BARFIELD

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1 THE COURT: All right.

2 DIRECT EXAMINATION

3 KRISTEN GRANT BY SOLICITOR BARFIELD:

4 Q. Tell us your name please, ma'am.

5 A. Kristen Grant.

6 Q. Mr. Grant, by whom are you employed right now?

7 A. South Carolina Law Enforcement Division.

8 Q. Commonly known as SLED I believe they say.

9 A. Yes.

10 Q. How long you been employed by SLED?

11 A. Two years.

12 Q. What do you do for SLED?

13 A. I'm a regional investigator, agent.

14 Q. What did you do before you went to work for SLED?

15 A. I was a lieutenant with the Lancaster Police
16 Department.

17 Q. Were you a - an investigator as a lieutenant with
18 the Lancaster Police Department in May of 2011?

19 A. I was.

20 Q. Are you aware of the shooting death of Terrance
21 Antonio Jones in Pardue Street Apartments on May 29th of
22 '11?

23 A. I am.

24 Q. Did you to some degree participate in the
25 investigation of that matter?

KRISTEN GRANT: DIRECT BY SOLICITOR BARFIELD

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1 A. I did.

2 Q. Were you the primary investigator?

3 A. No.

4 Q. At some point did you receive information and pass
5 it along to the people you now work for, SLED, concerning a
6 telephone number?

7 A. I did.

8 Q. Let me back up. When the events you're about to
9 describe occurred, how far into the investigation was the
10 police department?

11 A. My involvement was on June the 7th, 2011.

12 Q. And your understanding is the incident happened when?

13 Was it May 29th? Is that -

14 A. Yes.

15 Q. All right. Was there a suspect between May 29th and
16 June 7th when you got involved in this?

17 A. I believe there was information to who the suspect
18 was.

19 Q. Okay. And did you know who the suspect was?

20 A. Yes.

21 Q. And was the suspect Quanell McIlwain?

22 A. Yes.

23 Q. Did you receive information concerning a phone
24 number? Did you receive information concerning a phone
25 number?

1 A. I did.

2 Q. From where did the information come?

3 A. From an informant that I had.

4 Q. Okay. And the phone number was what?

5 A. 803-810-4423.

6 Q. Now did you at that time have any idea whose number
7 that was?

8 A. I did not.

9 Q. And what was the - Why was the number significant?
10 What was supposed to be important about that number?

11 A. That Mr. McIlwain had been using that phone to make
12 contact with people.

13 Q. Okay. What did you do with that phone number?

14 A. I contacted SLED and ask the Fusion Team to step in
15 and assist us with locating that phone.

16 Q. And without giving away a bunch of secrets, what's
17 the Fusion Team?

18 A. They can go through those numbers and figure out who
19 they belong to and they can track those phones.

20 Q. Okay. Did you at some point talk to a fellow named
21 Diega Nova?

22 A. I did.

23 Q. Who did he work for?

24 A. SLED.

25 Q. Did you have - And what part of SLED did he work?

KRISTEN GRANT: DIRECT BY SOLICITOR BARFIELD

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1 A. He worked for the Fusion Team.

2 Q. Did you have any further involvement in the analysis
3 of phone records or tracking of phones or anything like
4 that?

5 A. I did not.

6 SOLICITOR BARFIELD: Thank you, ma'am. Answer
7 anything

8 Mr. Steen or Mr. Jones has.

9 THE COURT: Counsel.

10 MR. JONES: No questions of this witness, Your Honor.

11 THE COURT: Thank you, ma'am, step down. You're free
12 to leave.

13 (WITNESS LEAVING WITNESS STAND.)

14 THE COURT: Ladies and gentlemen, let's stand up and
15 stretch a little bit. Gettin kind of late in the
16 afternoon.

17 Solicitor, you can call your next witness.

18 SOLICITOR BARFIELD: I think they can probably stand
19 up and walk out. I think I'm probably stand up and walk
20 out. I think I'm probably done for the afternoon.

21 THE COURT: You can go on.

22 That's it for the afternoon?

23 SOLICITOR BARFIELD: Yes, sir. The other witnesses
24 that we were talking about I think I'm just gonna hold off
25 on until in the morning.

1 THE COURT: Okay. All right, well ladies and
2 gentlemen, its now right before five so now would be a good
3 time to stop. We'll go ahead and stop for the evening.
4 I'd like you back in the jury room tomorrow morning 9:00
5 a.m.. Is that okay? People who may live in the outlying
6 areas. All right, you all be here at nine and ready to
7 roll.

8 State and Defense you all be here at nine ready to
9 roll. Okay. See you in the morning. You all have a good
10 evening. Don't talk about the case; don't do any
11 independent research; don't talk to anybody about it.
12 Okay. Thank you.

13 (JURY EXITS COURTROOM AT 04:49 P.M..)

14 THE COURT: The jury is gone. Anything before we
15 leave for the day?

16 MR. STEEN: Nothing from the defense.

17 THE COURT: All right, we're in recess for the day.
18 See you all tomorrow morning.

19 SOLICITOR BARFIELD: Thank you, Judge.

20 (COURT IN RECESS AT 04:50 P.M..)

21 (LANCASTER COUNTY GENERAL SESSIONS COURT BACK IN
22 SESSION THURSDAY, NOVEMBER 13, 2014 AT 09:07 A.M..)

23 THE COURT: All right, you may be seated.

24 Solicitor, you ready?

25 Mr. Steen, you seen the solicitor?

1 Mr. Steen, you have any proposed request to charge?

2 MR. STEEN: I have one, Your Honor, outside the normal

3 --

4 THE COURT: You just want to hand it up to me?

5 MR. STEEN: Yes, sir.

6 THE COURT: We're crafting the charges; I know we're
7 no where near that but we're going ahead and crafting
8 things. Okay.

9 Somebody want to go get the solicitor? I'm ready.
10 The jury is ready and ready to come in.

11 All right, gentlemen, anything before we bring the
12 jury in?

13 SOLICITOR BARFIELD: Nothing from the State?

14 MR. STEEN: No, Your Honor.

15 THE COURT: Mr. Steen handed up a request to charge on
16 spoilation of evidence. He left a copy there. He request
17 specifically request the charge. The State anything you
18 want to hand up?

19 SOLICITOR BARFIELD: I just saw this. I don't know.

20 I would just inquire exactly what evidence he says
21 that pertains to.

22 THE COURT: A package of bologna?

23 MR. STEEN: Yes, Your Honor.

24 SOLICITOR BARFIELD: Anything else?

25 THE COURT: Anything else that pertains to it?

1 MR. STEEN: The gun.

2 THE COURT: The gun.

3 MR. STEEN: The cartridges.

4 SOLICITOR BARFIELD: The gun itself or - -

5 THE COURT: Well I haven't decided whether I'm
6 charging that yet. He just handed it up. I guess some
7 other stuff's gonna be developed through cross examination
8 of the investigator Hall.

9 SOLICITOR BARFIELD: Well I mean I'll just have to
10 kind of talk to you about this after we see where we - -

11 THE COURT: Right. At this point in time you have me
12 a request to charge?

13 SOLICITOR BARFIELD: Oh, no, I do not. I'm sorry.

14 THE COURT: All right. Bring the jury in.

15 (JURY REENTERS COURTROOM AT 09:12 A.M..)

16 THE COURT: All right, all members of the jury are
17 present. Good morning, ladies and gentlemen, I hope you
18 had an enjoyable evening last night. We're ready to get
19 right down to business this morning.

20 Solicitor, you may call your next witness.

21 SOLICITOR BARFIELD: The State calls Tanisha Nelson.

22 Ms. Nelson, if you would come back up.

23 THE BAILIFF: Place your left hand on the Bible and
24 raise your right.

25 THE COURT: Thank you, ma'am. Just have a seat there.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Ladies and gentlemen, I have been advised by the Clerk
2 that one of your monitors may not be working or something.
3 They're having some AV issues so you all just look around -
4 there should be plenty for you all to see whatever you're
5 gonna see. Okay. Thank you.

6 (WHEREUPON, TANISHA NELSON,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION

9 TANISHA NELSON BY SOLICITOR BARFIELD:

10 Q. Tell us your name please, ma'am.

11 A. Tanisha Nelson.

12 Q. Ms. Nelson, do you live here in Lancaster?

13 A. Yes I do.

14 Q. Where do you live in Lancaster now?

15 A. 1706 Pardue Street.

16 Q. How long have you lived in Lancaster?

17 A. All my life.

18 Q. How long have you lived in 70 - 1706 Pardue?

19 A. Three years.

20 Q. Okay.

21 A. A couple of months.

22 Q. Were you living in 1706 Pardue back on May 29th of
23 2011?

24 A. Yes.

25 Q. I'm gonna ask you about some people. Do you know

1 Qua Stevens?

2 A. Yes.

3 Q. How do you know him?

4 A. My kids father.

5 Q. How long have you all been associated with each other?

6 A. About ten years.

7 Q. Okay. Did you know a fellow by the name of Terrance
8 Antonio Jones?

9 A. No.

10 Q. Did you know a girl named Justine Gladden?

11 A. Yes.

12 Q. Did you know a girl named Dawnetta Montgomery?

13 A. Yes.

14 Q. Do you know of a young man named Timothy Nelson?

15 A. Yes.

16 Q. Are you related to him or do you know?

17 A. I'm related to him.

18 Q. Okay. And other than being related to him how do you
19 know Timothy Nelson?

20 A. Family.

21 Q. Do you know - Okay. Do you know where he lives?

22 A. Yeah.

23 Q. Okay. And where did he live back in May of '09?

24 A. I don't know where he was staying at then but I know
25 he stays with his mother now.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. And where does his mother live?

2 A. On Pardue. In Pardue Street.

3 Q. Okay. Do you know somebody named Quanell Marquan
4 McIlwain?

5 A. Yes.

6 Q. Okay. And how do you know McIlwain?

7 A. I rode the bus with him when I was going to school in
8 middle school. And my - Quavis is my kids father was
9 friends with him.

10 Q. Okay. Do you see - Did you know Quanell McIlwain by
11 any other names?

12 A. S.K., and Marq.

13 Q. Okay. Do you see the person you know as S.K., or
14 Marq or Quanell McIlwain here in the courtroom today?

15 A. Yes.

16 SOLICITOR BARFIELD: Mr. McIlwain, - I'm sorry.
17 Raise your hand please.

18 (DEFENDANT MARQUELL MCILWAIN RAISES HIS HAND.)

19 Q. Is that the person you know as Quanell Marquan
20 McIlwain or Marq or S.K.?

21 A. Yes.

22 Q. Thank you, ma'am. Had you ever seen Quanell McIlwain
23 in Pardue - Well let me back up. Did you see Quanell
24 McIlwain in Pardue Sunday morning May 29th of 2011?

25 A. Yes.

1 Q. Prior to then had you ever seen him in Pardue?

2 A. Uh - One time.

3 Q. Okay. And about how soon before May 29th of '11 had
4 you seen Quanell in Pardue?

5 A. Probably about two weeks before it happened.

6 Q. Did you know where Quanell McIlwain lived?

7 A. I know he stayed over there in front of the hospital.

8 Q. Did you ever see him over there?

9 A. Yeah.

10 Q. All right. Where did Qua Stevens live back - When
11 I'm asking you these questions I'm always referring to May
12 29th of 2011 so I won't have to keep ---

13 A. All right.

14 Q. --- peppering you with that date. Where did Qua
15 Stevens live back then?

16 A. Back close to his mother.

17 Q. Saturday night or early Sunday morning when this
18 happened were you and Qua Stevens together?

19 A. Yes.

20 Q. When did you all first get together?

21 A. When I came from my grandmother's house probably
22 like two or three o'clock.

23 Q. In the afternoon or in the morning?

24 A. Morning.

25 Q. Okay. Did you have a car back then?

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes.

2 Q. What kind of car did you have?

3 A. Black Dodge, Neon.

4 Q. Did Qua have a car?

5 A. No.

6 Q. How did Qua get to Pardue two or three o'clock that
7 morning?

8 A. I went and picked him up.

9 Q. All right.

10 SOLICITOR BARFIELD: Permission for the witness to
11 step down?

12 THE COURT: Yes. Ma'am, if you will please step down.

13 SOLICITOR BARFIELD: Come down here and I'm gonna show
14 you a picture.

15 (WITNESS LEAVING WITNESS STAND.)

16 Q. Now, lets get up this way a little bit.

17 I'm gonna tell you a couple of things. First of all
18 you got to talk loud now cause you don't have a microphone
19 with you. The same thing is you got to stand up there to
20 the side so the people behind you can see what you're
21 talking about when we're looking at this picture.

22 A. Okay.

23 Q. The first thing is, this is a laser pointer. See if
24 you can make that work in just a minute.

25 Now look - I'm showing you State's Exhibit Number

1 Thirty-two. Look at that and tell me if you know what
2 that's a picture of.

3 A. A picture of Pardue where I stay at.

4 Q. Okay. Now step back just a little bit, over that
5 way just a little bit ---

6 A. Okay.

7 Q. --- so that fellow in the corner can see. Now with
8 that pointer do you see your apartment on that picture?

9 Show the jury if you see where your apartment is on
10 that picture.

11 (WITNESS INDICATED.)

12 Q. Okay. That's good enough. At some point that night
13 or that morning did you go to Justine Gladden's apartment?

14 A. Yes.

15 Q. And - That's fine. Show the jury if it's shown on that
16 picture show the jury where Justine Gladden's apartment is?

17 (WITNESS INDICATED.)

18 Q. All right. Do you see - Do you know where the 1800
19 building is in Pardue, from looking at that picture?

20 A. Probably somewhere in here. Yeah.

21 (WITNESS INDICATED.)

22 Q. Okay. Do you know where the 1600 building is in
23 Pardue from looking at that picture?

24 (WITNESS INDICATED.)

25 Q. All right. Now you got to answer out. You got to

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 say yes or no.

2 A. Yes.

3 Q. Okay. That's fine. All right, you can have a seat
4 back up there for right now.

5 (WITNESS RETURNS TO WITNESS STAND.)

6 Q. When - Do you have children? Did you have children?
7 Do you have children?

8 A. Yes.

9 Q. And were any of your children - Where were your
10 children when you and Qua Stevens were at Pardue that
11 morning?

12 A. I just had my baby. My five year old ---

13 Q. Okay.

14 A. --- she was with my grandmother in Fort Lawn.

15 Q. And how old was your baby that was with you?

16 A. She was eight months.

17 Q. All right. Where were you and Qua Stevens when you
18 all got together at Pardue?

19 A. At my house.

20 Q. What were you and Qua Stevens doing?

21 A. We was arguing at the house and we was talking.

22 Q. Okay. Keep talking loud.

23 A. We was talking.

24 Q. And did you say you were arguing?

25 A. Yeah.

1 Q. What were you all arguing about?

2 A. Over something that happened in the past.

3 Q. At any time that night was there anything physically
4 violent between you and Qua Stevens?

5 A. No.

6 Q. Did you lay your hands on him or did he ever lay his
7 hands on you?

8 A. No.

9 Q. Did you ever see Qua Stevens with a gun that night?

10 A. No.

11 Q. Where were you all arguing?

12 A. In the house.

13 Q. Did anything between the two of you all ever occur
14 outside the house?

15 A. I went out the back door and he was coming after me.

16 Q. Why did you go out the back door?

17 A. Cause I thought we was gonna get into a fight.

18 Q. And again, did you ever get into a fight?

19 A. No.

20 Q. And you went out the back door. How were you going
21 when you went out the back door?

22 A. I was going towards 1700 going around the building.

23 I mean 1701.

24 Q. Okay. And you went out your back door?

25 A. Yes.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Can you see what I'm doing from here? Is that
2 where you went?

3 A. Yeah.

4 Q. And how - Now I don't mean where you were going but
5 how were you moving?

6 A. I was walking pretty fast.

7 Q. And what was Qua doing?

8 A. He was coming after me.

9 Q. And how was he moving?

10 A. Pretty fast I guess.

11 Q. All right. Where did you go as you - Where did you
12 end up after you walked pretty fast out your back door
13 around 1701?

14 A. I ended up in 1701.

15 Q. Okay. Is that the first time you had been in 1701
16 that night?

17 A. Uh-huh.

18 Q. You got to say yes or no.

19 A. Yes.

20 Q. Did you know if anything was going on in 1701 before
21 you went into 1701?

22 A. Like they was chillin and drinkin.

23 Q. And --

24 A. Have a good time.

25 Q. Could you tell how many people were in or around

1 1701?

2 A. Probably about ten.

3 Q. Where were the people in and around 1701?

4 A. They was in the house and a couple was outside on the
5 back porch.

6 Q. Did you know any of those people? Before you went in
7 there did you know who was out there?

8 A. No.

9 Q. When you went into 1701, where was your baby?

10 A. My baby was in the house.

11 Q. Which house?

12 A. In 1706.

13 Q. Okay. And did your baby move from 1706 to somewhere
14 else?

15 A. Dawnetta was staying in 1701 and she went over there
16 and got my baby.

17 Q. And where were you when Dawnetta went and got your
18 baby?

19 A. I was still in 1701.

20 Q. Okay. Do you know where Qua was when you got into
21 1701?

22 A. He left in my car.

23 Q. Did you see him leaving in your car?

24 A. I opened up the door and I seen him going out -
25 going out Palmetto Place.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Now, I'm gonna jump way ahead. Did you see a
2 shootin in Pardue that morning?

3 A. Yes.

4 Q. Now, from the time Qua left in your car until the
5 shootin, was he ever back in Pardue?

6 A. No.

7 Q. Who - When you went into 1701, when you were in 1701,
8 did you see anybody you knew?

9 A. I knew Justine and Dawnetta.

10 Q. Okay. Anybody else that you knew?

11 A. I know my cousin Chavis, Terrance Nelson, Timothy
12 Nelson.

13 Q. Timothy Nelson. Was he in 1701?

14 A. Yes.

15 Q. Did you see anybody else in or around 1701 that you
16 knew?

17 A. No.

18 Q. Did you ever see Quanell McIlwain in our around 1701?

19 A. Yes.

20 Q. Where was he?

21 A. He was in the house.

22 Q. In 1701?

23 A. Yes.

24 Q. What did you do? Did you go from 1701 to somewhere
25 else?

1 A. I was going home.

2 Q. Did you have anybody with you when you went home?

3 A. Yeah. My baby. I was in 1701 and I was going home.

4 After everything had died down I was on my way home.

5 Q. All right. And when you say everything had died

6 down, everything meaning what?

7 A. When Qua was leaving and I was going home.

8 Q. All right. And how - What path did you - What door

9 did you go out of 1701 to go home?

10 A. I went out the front door.

11 Q. And where did you walk to get to your apartment 1706?

12 A. I was walking on the sidewalk and then I going on
13 the porch to go in my front door. I was on my neighbor's
14 porch so I was about to go in the front door.

15 Q. Okay.

16 A. I didn't get to make it to my front door.

17 Q. All right. Did you at any time after you walked out
18 the front door of 1701 see Quanell McIlwain outside?

19 A. When I walked out 1701 he walked by 1701 behind me
20 and walked from -

21 Q. All right, stop right there. Had there been any
22 conversation between you and Quanell McIlwain inside 1701
23 about anything including your difficulties with Qua
24 Stevens?

25 A. No.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Do you have any idea why he walked out behind you?

2 MR. STEEN: Objection. Calls for speculation.

3 A. Yes.

4 SOLICITOR BARFIELD: That's fine. That's fine.

5 THE COURT: Sustain.

6 SOLICITOR BARFIELD: I withdraw it.

7 Q. Did you and Quanell McIlwain have any conversation?

8 A. No.

9 Q. What - Just tell the jury what occurred as you're
10 outside and Quanell McIlwain is walking out behind you.
11 Just walk us through it and I'll stop you if I need to to
12 ask more detailed questions.

13 A. As I walked out of 1701, the front door, I was walking
14 out and I had got to 1704 and he brought me the phone and
15 told me that Qua wanted me on the phone. And I grabbed the
16 phone.

17 Q. All right, stop right there. What kind of phone did
18 he bring?

19 A. It was a flip up phone.

20 Q. I'm showing you State's Exhibit Number Thirty-three.
21 Is that familiar to you?

22 A. Yes.

23 Q. What is that?

24 A. It's a flip phone.

25 Q. Okay. And is that - Can you say whether that's the

1 phone he brought you or not?

2 A. Yes.

3 Q. Did you have a phone? Did you have a phone that
4 was working then?

5 A. No.

6 Q. All right. Where were you - I'm gonna get you down
7 here and we gonna go back through this with a pointer in a
8 minute. I just want you to tell from up there first, but
9 where were you when Quanell brought you the phone?

10 A. I was on 1705 right walking on the porch I was on the
11 phone.

12 Q. Was there any - Were there any words between Quanell
13 and you when he brought you the phone?

14 A. Here Qua want you on the phone.

15 Q. Who said that?

16 A. Quanell.

17 Q. And he said what?

18 A. "Here, Qua wants you on the phone."

19 Q. What did you do when he handed you the phone?

20 A. I was talking to Qua on the phone.

21 Q. Did you take the phone?

22 A. Yeah I took the phone.

23 Q. When?

24 A. I took the phone and walked off. I walked to the
25 porch when I did want to hear what Qua had to say.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. When Quanell handed - gave you the phone how close
2 were the two of you all in relation - I mean --

3 A. He gave me the phone and walked off.

4 Q. Well how close were the two of you all at the time
5 he handed you the phone? In relation to you and me were
6 you --

7 A. We were like right here and he gave me the phone and
8 walked off.

9 Q. And what did you do when he gave you the phone?

10 A. I was talking to Quavis on the phone.

11 Q. Did you move from 1705 or --

12 A. No.

13 Q. Okay. You're out there; Quanell's out there. Was
14 anybody else out there?

15 A. No.

16 Q. Did anybody else appear?

17 A. No I didn't see nobody outside.

18 Q. Okay. What happened next?

19 A. After he brought me the phone I was talking on the
20 phone.

21 Q. To whom?

22 A. To Quavis.

23 Q. Go ahead.

24 A. And I seen fire coming from a gun.

25 Q. All right now, before you saw fire coming from the

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 gun, did you see anybody else?

2 MR. STEEN: Objection and answered.

3 THE COURT: I over rule.

4 BY SOLICITOR BARFIELD:

5 Q. You can answer.

6 A. Can you repeat that?

7 Q. Yes ma'am. You're out there; Quanell's out there.

8 Is anybody else out there?

9 I. I seen somebody walk pass me.

10 Q. All right. Did you know who that somebody was that
11 walked past you?

12 A. No. It was dark like a shadow walked pass me.

13 Q. Okay. What happened next?

14 A. I seen fire coming from a gun.

15 Q. Who had the gun?

16 A. Quanell.

17 Q. Did you hear anything?

18 A. No I didn't hear nobody say anything.

19 Q. Did you hear anything - Well let's get into that.

20 This person that walked past you, did he ever say
21 anything?

22 A. No.

23 Q. Quanell. Did he ever say anything when this person
24 walked past you?

25 A. No I didn't hear nobody say nothin.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Did you see anything physical between Quanell and this
2 person that walked past you?

3 A. No.

4 Q. You said you saw fire from the gun.

5 A. Yes.

6 Q. Did you hear anything?

7 A. I didn't hear nothing. All I heard was fire coming
8 from the gun shootin.

9 Q. How many gun shots did you hear?

10 A. Like five.

11 Q. Where were you when you heard the gun shots?

12 A. I was standing on 1705 lookin at bullets come out -
13 the fire come out the gun.

14 Q. Where was your baby when you were hearing and seeing
15 what you just described?

16 A. I had her in my hands about to go out.

17 Q. Where was the phone that Quanell had given you?

18 A. I was on the phone with Quavis.

19 Q. Let's talk about the phone again for a minute.

20 Did you - What did you do with that phone after all
21 this happened?

22 A. After all of it happened I ran to my front door. I
23 tried to get in the front door and my front door was
24 locked. Somebody had to come out the back door anyway and
25 I went to the back door. I locked the back door ran

1 upstairs and ran to the bathroom. I was still on the
2 phone.

3 Q. All right. My question is, ultimately what happened
4 to the phone?

5 A. I gave it to the police.

6 Q. Did the police - Did you see the police sometime
7 that morning?

8 A. When the police came and he was laying on the ground
9 and the police came and I came back out the house I seen
10 that the man was dead so I gave the police his phone.

11 Q. All right, let's go back to that. Did you - When
12 you saw the gun shots, when you heard the shots and saw the
13 flashes, what happened to the man that walked by you?

14 A. I seen him fall.

15 Q. Okay. Where did he fall?

16 A. On the sidewalk.

17 Q. When you came back out, when you came back out had
18 the police or the EMS people gotten there when you came
19 back out?

20 A. No.

21 Q. What did you see when you came back out?

22 A. When I came back out I seen people surrounding the man
23 and they was saying that he was dead.

24 Q. All right. Did you even then know who the man was?

25 A. No.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. After you heard the shots and saw the flashes do you
2 know where Quanell went?

3 A. No.

4 Q. Did you ever see Quanell again that night?

5 A. No.

6 Q. At the time you're out there and Quanell's out there,
7 and the man walks by you, was anybody else out there where
8 this happened?

9 A. No.

10 Q. Are you sure?

11 A. Yes.

12 Q. Are you sure it was Quanell shootin the gun?

13 A. Yes.

14 Q. You have any doubt about that at all?

15 A. No.

16 Q. About how long after Qua Stevens left in your car
17 did the shootin happen?

18 A. About ten minutes.

19 Q. Okay.

20 SOLICITOR BARFIELD: I beg the Court's indulgence
21 please.

22 THE COURT: Yes, sir.

23 (PAUSE AT 09:40 A.M..)

24 Q. About how long did you stay in 1701? After you and
25 Qua had your little thing and you went to 1701 to get your

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 baby, how long were you in 1701?

2 A. About ten minutes.

3 Q. When you were in 1701 did you see Timothy Nelson?

4 When you were in there getting your baby did you see
5 Timothy Nelson?

6 A. Yes.

7 Q. And where was he when you saw him?

8 A. In the kitchen. I think he was in the kitchen.

9 Q. Was he in there when you left out?

10 A. Yes.

11 Q. Okay.

12 SOLICITOR BARFIELD: Permission for the witness to
13 step down again.

14 THE COURT: Yes, ma'am, if you will just --

15 (WITNESS LEAVING WITNESS STAND.)

16 Q. All right, we're gonna do the same thing. I'm gonna
17 ask you some questions again. Take the pointer if you
18 will. I'm gonna run back through a couple of things with
19 you.

20 When you came out of 1701 trace with your pointer the
21 path? When you got your baby and you're leaving 1701, show
22 with the pointer where you went.

23 (WITNESS INDICATED.)

24 Q. All right. And where did you stop when you and

25 Quanell were - Answer out and point too. Where did you

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 stop when Quanell handed you the phone?

2 A. At 1705.

3 Q. All right. Point to it and show me. Okay.

4 (WITNESS INDICATED.)

5 Q. Where were you when you heard gun shots and saw fire
6 out of the gun?

7 A. Right here at 1705.

8 (WITNESS INDICATED.)

9 Q. All right. The guy that came by, where did he come
10 from?

11 A. He came off the hill right here.

12 (WITNESS INDICATED.)

13 Q. Okay. And where did he go as he came off the hill?
14 Show the jury where he went.

15 A. He walked on the sidewalk.

16 (WITNESS INDICATED.)

17 Q. Okay. Where did he fall after the shots?

18 A. He falled -

19 Q. Talk loud.

20 A. Right here in front of 1704.

21 (WITNESS INDICATED.)

22 Q. Okay. And where did you go after you heard the shots?
23 Show them with the pointer and describe where you're
24 going.

25 A. This is me, I went to the front door. Front door is

1 locked went back there behind to the back door.

2 (WITNESS INDICATED.)

3 Q. When you came back out before the police got there
4 where did you come out of?

5 A. I came out the front door of my ---

6 Q. Okay.

7 A. --- 1706.

8 Q. Now, I kind of did this for you a minute ago. Going
9 way back to when you and Qua were in the little foot race
10 out there, where did you go? Show the jury where you went
11 during the little foot race between you and Qua.

12 A. I was --

13 Q. And describe where you were going to.

14 A. I went out the back door.

15 (WITNESS INDICATED.)

16 A. I went this way and I went to 1701.

17 Q. Okay. Thank you, ma'am, you can take your seat again.

18 (WITNESS RETURNED TO WITNESS STAND.)

19 Q. Ms. Nelson, I'm gonna show you what's been marked as
20 Court's Exhibit Number One. I'm gonna hand it to you and
21 you take a minute to look over all that and then I'm gonna
22 ask you a few questions about it.

23 (WITNESS COMPLIES/PAUSE.)

24 Q. First of all do you recognize what that is?

25 A. Yes.

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. I'm gonna back up and ask you a couple of
2 questions leading up to that. The morning this happened,
3 did you ever talk to police that morning?

4 A. Yes.

5 Q. Where did you first talk to police?

6 A. At the police department.

7 Q. Did you talk to any police at the scene?

8 A. No.

9 Q. Well how do --

10 A. Well I handed the police the phone when my mother in
11 law told me she was taking me up there to the police
12 department.

13 Q. Okay. And when you got to the police department do
14 you remember who you talked to?

15 A. Yes.

16 Q. Who was it?

17 A. Phillip Hall.

18 SOLICITOR BARFIELD: Raise your hand.

19 (INVESTIGATOR PHILLIP HALL RAISES HIS HAND.)

20 Q. Is that who you talked to?

21 A. Yes.

22 Q. Was it - Had it gotten daylight or was it still dark
23 when that was going on? Do you remember?

24 A. Well it was kind of gettin daylight ---

25 Q. All right.

1 A. --- outside.

2 Q. That's fine. Did you talk to Phillip Hall any other
3 time about this case?

4 A. He came to Baker Place where I was.

5 Q. All right. And how did - And again, who were you with
6 at Baker Place?

7 A. Quavis Stevens.

8 Q. When did Phillip Hall come to Baker Place?

9 A. In the morning around nine. About eight or nine.

10 Q. Okay. Did you talk to Phillip Hall at Baker Place?

11 A. Yes.

12 Q. And where were you and Phillip Hall when you all
13 talked at Baker Place?

14 A. In the car.

15 Q. Now these three pages, what would you - What is that?
16 What is this document?

17 A. It's tellin me to pick a photo of the person
18 identified - to identify the person.

19 Q. And what person was this related to?

20 A. In a lineup.

21 Q. Well let me back up. Did you and Phillip Hall go
22 over this in his car?

23 A. Yes.

24 Q. All right. And did you pick somebody out of those
25 pictures?

TANISHA NELSON: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes.

2 Q. Which picture did you pick?

3 A. This one.

4 Q. And does it have a number on it?

5 A. Three.

6 Q. And how did you - Did you do anything on that piece
7 of paper that you're looking at to indicate that you picked
8 that one?

9 A. Uh - I circled it and put my initials.

10 Q. Okay. Now on this second page did yo do anything to
11 indicate which picture you picked?

12 A. I signed it.

13 Q. Okay. And anything else?

14 A. I checked photo number three.

15 Q. Okay. And is the number three that you circled and
16 put your initials on the picture in the number three box
17 the person that you identified as the shooter?

18 A. Yes.

19 Q. And do you have any doubt about that?

20 A. No.

21 SOLICITOR BARFIELD: Your Honor, at this time I'd
22 offer my document as State's Thirty-seven.

23 THE COURT: Any objection?

24 MR. STEEN: Objection for the previous reasons.

25 THE COURT: All right. Objection over ruled and

TANISHA NELSON: CROSS BY MR. STEEN

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1 introduced as State's Exhibit next in order.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-SEVEN,
3 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

4 SOLICITOR BARFIELD: Thank you, ma'am. Answer
5 anything Mr. Steen or Mr. Jones has.

6 CROSS-EXAMINATION

7 TANISHA NELSON BY MR. STEEN:

8 Q. Good morning, Ms. Nelson.

9 A. Good morning.

10 THE COURT: All right, Mr. Steen, go ahead.

11 Q. On May 29th, 2011 you lived at Pardue Street
12 Apartments. Correct?

13 A. Yes.

14 Q. At apartment 1706?

15 A. Yes..

16 Q. And your cell number was 803-287-5756?

17 A. I don't think so.

18 Q. Is that not the number you gave law enforcement?

19 A. No. I don't think I had a phone.

20 Q. And you and Qua Stevens were dating at that time.
21 Correct?

22 A. Yes.

23 Q. Do you recall what his cell phone number was?

24 A. I think it was 0935.

25 Q. Right after the shooting you went back, right after

TANISHA NELSON: CROSS BY MR. STEEN

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1 the shooting you went around to the back of your apartment.

2 Correct?

3 A. Yes.

4 Q. Did you see nothing - anything going on at the fence
5 line behind the 1700 block of the apartments when you ran
6 behind it?

7 A. I didn't see nothin going on at the fence. I seen
8 something going on on 1701 back porch.

9 Q. But you saw no - Did you see any people at the fence?

10 A. No.

11 Q. On either side?

12 A. No.

13 Q. Did you see people behind 1701 at that point?

14 A. Yes.

15 Q. Who did you see behind 1701 at that point?

16 A. I don't know who it was outside.

17 Q. But you didn't call the police after this incident
18 did you?

19 A. Not then.

20 Q. But not long you did meet with the police at your
21 apartment. Correct?

22 A. After I came outside from scared of being - seeing
23 gun shots I came outside when I seen people around the
24 person that was on the ground dead. So when the police
25 came I gave the police the gun and my mother in law she

1 took me to the police department.

2 Q. You mean the phone?

3 A. No. I gave the police the phone. They took the phone
4 up there. Brought the phone up there.

5 Q. And you identified the shooter as K to law enforcement
6 at that point didn't you?

7 A. S. K.

8 Q. As S. K.?

9 A. Yeah I snowed him from S.K. and Marq.

10 Q. Cause you didn't know him as Quaneil McIlwain at
11 that point did you?

12 A. No.

13 Q. And at this point also Qua Stevens is back from
14 wherever he was?

15 A. No. When?

16 Q. After the incident.

17 A. Yeah after the incident he came back with his mother.

18 Q. About what time did he get back to Pardue Street?

19 A. I don't know what time it was. What time did the
20 shooting happen?

21 THE COURT: Ma'am, just answer the question.

22 Q. About how long after the shooting happened did Qua
23 get back to the house- just to the apartments?

24 A. About five minutes.

25 Q. He was gone about ten minutes prior to the shooting?

TANISHA NELSON: CROSS BY MR. STEEN

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1 A. Yes.

2 Q. So he was gone for a total of fifteen minutes?

3 A. Yeah.

4 Q. And when you traveled from Pardue Street Apartments
5 to Lancaster Police Department, you rode with Qua Stevens?

6 A. And his mother.

7 Q. I mean you all discussed this incident?

8 A. No. We discussed it when we got to the police
9 department.

10 Q. But during this ride Qua didn't tell you that SK was
11 Quanell?

12 A. No.

13 Q. Well when you spoke to law enforcement, to
14 Investigator Hall at Lancaster Police Department, how did
15 you know that - how did you identify the person as Quanell
16 at that point?

17 A. Well they said I know his last name was McIlwain but
18 we brought us some pictures and they brought other pictures
19 in and got his name up some how but I pointed him out and
20 it was like the name was Quanell.

21 Q. I'm talking at the police department. But that
22 happened at the Baker Place, correct, where he showed you
23 the pictures. Or he showed you the pictures at the police
24 department?

25 A. At Baker Place.

TANISHA NELSON: CROSS BY MR. STEEN

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1 Q. So he didn't show you the pictures at the police
2 department?

3 A. No.

4 Q. At that point --

5 A. Yes. Yes he did.

6 Q. What pictures did he show you at the police
7 department?

8 A. It was the picture of Quanell.

9 Q. What picture of Quanell?

10 A. It was other pictures I guess from where he had
11 been in jail one time before.

12 Q. And this happened prior to you picking the person out
13 the lineup?

14 A. No.

15 Q. Okay. You have two statements. You got the first
16 statement at the incident but the crime scene you say SK.
17 You got the one at the Lancaster Police Department. You
18 have one at Baker Place.

19 A. Yeah. All of 'em was the same person.

20 Q. I'm saying, but you said they showed you a picture
21 of Quanell at the police department?

22 A. Yes. It's been a long time. I don't remember I was
23 so shocked when I went to the police department.

24 Q. And that same - And it was only that one picture at
25 the police department of Quanell and you knew that was him?

TANISHA NELSON: CROSS BY MR. STEEN

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1 A. No it was other pictures.

2 Q. Who told you that SK was Quanell?

3 A. I don't know how that got up with his name but it
4 came up and they showed me a picture of it - picture. And
5 when they told me his name was Quanell and I told 'em that
6 it was him.

7 Q. The law enforcement told you his name was Quanell?

8 A. Yeah. They brought up a picture.

9 Q. They showed you a picture of Quanell and said that's
10 Quanell?

11 A. Yes.

12 Q. At the police department?

13 A. His name was Quanell and I told them it was him
14 the one that was doing the shooting.

15 Q. Okay. Now you stated you had no prior knowledge
16 or prior contact with Mr. McIlwain prior to this incident?

17 A. No.

18 Q. But you said you did know where he lived?

19 A. Yeah I know where he live.

20 Q. Did you know where he lived when this incident
21 occurred?

22 A. Yes.

23 Q. Did you tell law enforcement where he lived?

24 A. I said I know he stayed in front of the hospital.

25 Q. And you said Ms. Qua Nelson is your blood cousin?

1 What kind of cousin is he to you?

2 A. He's my cousin.

3 Q. And you all are close to the same age?

4 A. No.

5 Q. And you and Ms. Montgomery are friends you would say?

6 A. Yes.

7 Q. You just - I apologize. And you and Justine?

8 A. Yes.

9 Q. You and Jatoya? Ms. Jatoya Wright?

10 A. No we wasn't friends. I snowed her but I didn't
11 know her like that.

12 MR. STEEN: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 Q. Sorry to bring this up again, but you said you did
15 know where Quanell lived?

16 A. I know - When I used to ride the school bus with him
17 the bus would drop him off right there in front of the
18 hospital.

19 MR. STEEN: May I approach, Your Honor.

20 THE COURT: Yes.

21 Q. Can you read this question and answer it for me,
22 Ms. Nelson?

23 A. "Where do McIlwain live? I don't know."

24 Q. Thank you, ma'am. And you also stated that 2875756 is
25 not your cell phone number?

TANISHA NELSON: CROSS BY MR. STEEN
REDIRECT BY SOLICITOR BARFIELD

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1 A. I don't remember. I had so many cell phones.

2 Q. If it's on here as a number given to law enforcement
3 would you assume you gave them the truthful number?

4 I'll let you see it again.

5 A. Yeah. That's so long ago I don't remember.

6 2875756?

7 Q. Yes, ma'am.

8 A. Yeah. I had the number but the phone no.

9 MR. STEEN: No further questions.

10 Thank you, Ms. Nelson.

11 THE COURT: All right. Thank you, Mr. Steen.

12 Any redirect?

13 SOLICITOR BARFIELD: Just followup.

14 REDIRECT EXAMINATION

15 TANISHA NELSON BY SOLICITOR BARFIELD:

16 Q. At the station, you said you talked to Phillip Hall.

17 A. Uh-huh.

18 Q. Was he the only guy you talked to at the station about
19 this case?

20 A. Yes.

21 Q. Okay. At the house later on that morning, at Baker
22 Place, you said you talked to Phillip Hall. Is he the only
23 one you talked to out there?

24 A. Yes.

25 Q. Okay. Did you give any statements or look at any

TANISHA NELSON: REDIRECT BY SOLICITOR BARFIELD
LARRY ADAMS: DIRECT BY SOLICITOR BARFIELD

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1 pictures that any other police officer ever showed you?

2 A. Repeat that again.

3 Q. Okay. Is he the only officer you dealt with on
4 this case?

5 A. Yes.

6 SOLICITOR BARFIELD: Thank you.

7 That's all.

8 THE COURT: All right. Thank you, ma'am, you can step
9 down.

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: You can call your next witness.

12 SOLICITOR BARFIELD: The State calls Larry Adams.

13 THE BAILIFF: Place your left hand on the Bible and
14 raise your right.

15 (WHEREUPON, LARRY ADAMS, BEING
16 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 LARRY ADAMS BY SOLICITOR BARFIELD:

19 Q. Tell us your name please, sir.

20 A. Larry Neal Adams.

21 Q. Mr. Adams, I don't want an address but where do you
22 live?

23 A. In Rock Hill.

24 Q. What do you --

25 A. Rock Hill in York.

LARRY ADAMS: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. What do you do for a living?

2 A. I'm a retired paramedic. I'm still working part-time
3 paramedic.

4 Q. And how long have you been a paramedic?

5 A. About eight or nine years.

6 Q. Have you ever worked for Lancaster County EMS?

7 A. Worked down here for eight years.

8 Q. Were you working for Lancaster County EMS as a
9 paramedic on Sunday morning May 29th of 2011?

10 A. Yes, sir, I was.

11 Q. Did you get dispatched to a call for which I
12 subpoenaed you here today?

13 A. Yes, sir, I did.

14 Q. And what unit were you in?

15 A. EMS II I believe.

16 Q. And who - Was anybody with you on EMS II?

17 A. Let's see. I had my partner and if I'm not mistaken
18 I think it was Martin Glenn.

19 Q. Okay. And was he a paramedic or something - -

20 A. He's what they call an EMT-I, he was an intermediate.

21 Q. All right. What was the nature of the call to Pardue?

22 A. We got dispatched to a gun shot.

23 Q. And did you all stage up somewhere before you moved
24 in?

25 A. Well the stations right over here.

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1 Q. Okay.

2 A. We kind of staged at the beginning of Pardue Street
3 and Number 9.

4 Q. All right. And at some point were you cleared to go
5 in?

6 A. Yes, sir.

7 Q. And what'd you find when you went in? First of all,
8 where did you go in Pardue when you were cleared to go in?

9 A. We were dispatched to - Excuse me a minute. Several
10 years ago, my memory is not what it used to be.

11 Q. And that's fine print too.

12 A. Yes it is. 1701 Pardue Street.

13 Q. All right.

14 A. Lancaster.

15 Q. Did you find a patient?

16 A. Yes, sir, I did.

17 Q. Who was the patient?

18 A. His name - Excuse me a minute and let me look.

19 Terrance Jones.

20 Q. And did you notice any trauma to the patient?

21 A. When I got to the patient he was found in supine on
22 the ground.

23 Q. Which means what?

24 A. That means his face was up ---

25 Q. Okay.

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1 A. --- and laying on his back.

2 Q. All right.

3 A. Looking up. They - The City PD told us that there
4 had been a gun - shooting and that this man had been shot.

5 Q. Okay. What did you do for the patient?

6 A. I checked for a pulse and I put him on my monitor and
7 on my monitor he indicated a rhythm of what we call PEA
8 which is just his heart was just quivering.

9 Q. Okay.

10 A. Pulse electrical activity.

11 Q. Okay.

12 A. And we immediately started PCR. We got him on a
13 back board with the help of City PD. Got him in my unit;
14 we immediately started - continued PCR, started two large
15 more IV's, continued to put him on the monitor and I give
16 him a dose of epinephrine.

17 Q. What's that supposed to do?

18 A. It's supposed to help generate electrical activity in
19 the heart.

20 Q. Okay. What else did you do for the patient?

21 A. I intubated the patient which means I put a tube down
22 his trachea's so I can actually get air and oxygen into his
23 lungs. But prior to that I put him on what we call BVM
24 which is a bag valve mask that we hook oxygen to and hold
25 the mask to his face and squeeze and breath for him until

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1 we get him intubated and then we just use the same bag.

2 Q. Now, you said he had heart quivering and I can't
3 remember the acronym.

4 A. PEA.

5 Q. PEA.

6 A. Pulseless Electrical Activity.

7 Q. Did he have any respiration when you first got to
8 the patient?

9 A. The patient was not breathing at all.

10 Q. Okay. Where did you end up?

11 A. At Springs Memorial Hospital.

12 Q. And was he taken in?

13 A. Yes, sir.

14 Q. And just describe what occurred once you call got
15 him off the truck and into the hospital.

16 Q. Well once we got him into the hospital into the trauma
17 room, we then - I give a patient report to the nurses and
18 the doctor. And I don't remember who the nurses or doctors
19 are or were. But I told them that we had found two wounds;
20 one in the chest wall, upper chest, and one in the abdomen.

21 Q. Okay. Did you continue to work with the patient once
22 he was in the ER or was he turned over --

23 A. Until the ER nurse and doctor's took over yes I did.

24 Q. Okay. And once they took over did you back out or did
25 you stay in?

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1 A. I took my equipment and backed out and got out of
2 their way.

3 Q. Okay. Did you stay until some disposition of the
4 patient was determined?

5 A. I don't remember how long I stayed but I went to
6 the report room and wrote the report.

7 Q. Okay. Did you know by the time you left there that
8 the patient was deceased?

9 A. I knew that he was not breathing on his own and I knew
10 that he had a pulse at one time in route to the hospital
11 and that was because we had give him epinephrine yes, sir.

12 Q. Okay. Now what time was the dispatch time for this
13 call?

14 A. Dispatch at 04:08.

15 Q. Which in my watch time is what time?

16 A. That's probably four - eight minutes after four in
17 the morning.

18 Q. What time did you all leave your station?

19 A. At nine minutes after four in the morning.

20 Q. What time did you get to the staging area?

21 A. We were on scene at around 04:13 a.m.

22 Q. Okay. And what time were you able to get to the
23 patient?

24 A. 04:14 a.m.

25 Q. All right.

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1 SOLICITOR BARFIELD: Thank you, sir. Answer anything
2 Mr. Steen and Mr. Jones.

3 MR. STEEN: No questions for this witness, Your Honor.

4 THE COURT: All right. Thank you, sir. You can step
5 down, you're free to leave.

6 MR. ADAMS: Thank you, sir.

7 THE COURT: Call your next witness.

8 SOLICITOR BARFIELD: Call Melissa Wallace.

9 THE BAILIFF: Place your left hand on the Bible and
10 raise your right.

11 (WHEREUPON, MELISSA WALLACE,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 SOLICITOR BARFIELD: I'll let you get your stuff out
14 and then we'll talk.

15 DIRECT EXAMINATION

16 AGENT MELISSA WALLACE BY SOLICITOR BARFIELD:

17 Q. Tell us your name please, ma'am.

18 A. Melissa Skipper Wallace.

19 Q. And, Agent Wallace, by whom are you employed?

20 A. I'm employed by the South Carolina Law Enforcement
21 Division commonly known as SLED.

22 Q. How long have you been a law enforcement officer?

23 A. About thirteen and a half years.

24 Q. How long have you been employed by SLED?

25 A. About nine and a half years.

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1 Q. Back in - What is your current job with SLED?

2 A. I'm assigned to investigative services within the
3 Piedmont Region.

4 Q. What would you be called, a field agent? Are you a
5 field agent or a special agent?

6 A. Yes, sir.

7 Q. What were you doing for SLED back in May of 2011?

8 A. At that time I was assigned to the crime scene latent
9 print department within the forensic laboratory.

10 Q. Were you a law enforcement officer as a crime scene
11 latent print employee of SLED?

12 A. Yes I was.

13 Q. Okay. Did you respond to Lancaster County on the
14 date of May 29 of 2011?

15 A. I did.

16 Q. What was the purpose in your response? What crime
17 scene agents or teams from SLED do, or what do they do?

18 A. They respond to primarily violent crimes; also
19 involves shootings, things like that when we are requested
20 by local agencies for assistance.

21 Q. And what does a crime scene agent or crime scene team
22 do when - What is your purpose in being here?

23 A. Process the scene. Gather any evidence that may be
24 there at the scene. Processing any additional scenes or
25 vehicles as necessary. Then the evidence is transported

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 back to the lab in Columbia and submitted to a laboratory.

2 Q. Now as a crime scene agent back then and perhaps maybe
3 even now, were you also part of the latent prints team at
4 SLED?

5 A. Yes I was.

6 Q. And were you a person who had been trained and
7 certified and qualified to do latent print examination?

8 A. I was.

9 Q. All right, we'll get to that in just a little bit.

10 What - Did you know the nature of the call that you
11 came up here to Lancaster for?

12 A. We had been requested to assist with a death
13 investigation.

14 Q. Okay. And where was the location that you were
15 directed to respond to?

16 A. Pardue Apartments in Lancaster.

17 Q. What time did you get here?

18 A. If I can refer to my notes?

19 Q. You may. Thank you.

20 A. I got here about 7:05 in the morning.

21 Q. Okay. Where did you respond to, directly to?

22 A. 1704 Pardue Court.

23 Q. Okay.

24 THE COURT: Solicitor, let me interrupt.

25 MR. BARFIELD: Okay.

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1 THE COURT: Ladies and gentlemen of the jury, we're
2 gonna take a brief recess at this point in time. I
3 understand we need to take a recess. Don't talk about the
4 case. We'll bring you back out here in ten minutes. Okay.
5 Madam Witness, you're fine.

6 (JURY EXITS COURTROOM FOR RECESS AT 10:10 A.M..)

7 THE COURT: All right, anything before we break?

8 SOLICITOR BARFIELD: No, sir.

9 THE COURT: Okay. Thank you. We're in recess.

10 (COURT IN RECESS AT 10:11 A.M..)

11 (COURT BACK IN SESSION AT 10:20 A.M..)

12 THE COURT: All right, bring the jury in.

13 (JURY REENTERS COURTROOM AT 10:21 A.M..)

14 THE BAILIFF: The jury's coming in.

15 THE COURT: All right, all members of the jury are
16 present.

17 Solicitor.

18 BY SOLICITOR BARFIELD:

19 Q. Agent Wallace, I think the last question and answer
20 were that I ask you where you responded to and you said
21 1701 Pardue I believe is what you said.

22 A. 1704.

23 Q. Four. Okay. Was there a victim on scene when you
24 got here?

25 A. No, sir.

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1 Q. Did you see - Did you determine - Did you know
2 whether EMS treated the victim at the scene?

3 A. I was advised that EMS responded and had already
4 left the scene and there was also EMS debris left behind.

5 Q. That's my question. Where was EMS debris?

6 A. Out front from 1704.

7 Q. All right. I'm gonna jump way ahead. Did you ever
8 see the victim in this case?

9 A. I did.

10 Q. And where did you see the victim?

11 A. At the Coroner's office.

12 Q. All right. When you got here did you get briefed?

13 A. Yes.

14 Q. Was it your job at all to go find out who did this?

15 A. No, sir.

16 Q. All right. What was your job for being at Pardue?

17 A. To process the scene, document the scene and collect
18 evidence from the scene.

19 Q. Now, did you at any time collect a weapon involved
20 in this case or believed to be involved in this case?

21 A. No, sir.

22 Q. Did you take any photographs?

23 A. I did.

24 Q. In the interest of time I'm gonna hand you - Excuse
25 me - a stack of photographs which are State's One through

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1 Twenty-six. And I think you probably already looked at
2 them, I'm not asking you to flip through all of them at
3 this point, but generally speaking what are State's
4 Exhibits One through Twenty-six.

5 Q. One through Twenty-six is - are photographs taken from
6 the scene.

7 Q. And those photographs taken by SLED?

8 A. Yes.

9 Q. Your photographs?

10 A. Yes, sir.

11 Q. All right. And are they accurate depicts of the
12 things that are shown in those photographs as of the
13 morning that you responded to this incident?

14 A. The ones with markers are markers that I placed but
15 other than that yes, sir.

16 Q. And when you say markers, describe in a picture what
17 a marker is. Just describe by looking at one of those
18 pictures to the jury what you mean by marker.

19 A. For instance in State's Thirteen there's a Marker
20 Three and Marker B. They're yellow placards to depict
21 evidence, makes it easy to see where things are in relation
22 to each other when documenting the scene.

23 Q. All right. How many markers did you place in this
24 particular case? We'll get to them one by one in a little
25 bit but . . .

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1 A. There were six total.

2 Q. All right. And are there photographs of all the
3 markers among that stack of twenty-six that I gave you?

4 A. Yes.

5 Q. Now, we'll come back and I'll talk to you about some -
6 separate pictures after while. But I'm also handing you
7 State's Exhibit Number Twenty-seven. Can you tell the jury
8 what that is?

9 A. State's Twenty-seven is an enlarged diagram of - a
10 diagram I prepared in this case.

11 Q. Concerning where stuff was out there?

12 A. Yes, sir.

13 Q. All right. Its not to scale I believe; is that
14 correct?

15 A. That's correct.

16 Q. All right. Now, let's just kind of run through what
17 you did. Did you collect any evidence at the scene?

18 A. I did.

19 Q. Did you collect anything that you believed to be -
20 Well back up. I'm gonna hand you a sealed up
21 envelop. Do you need something to open that up?

22 A. No, sir.

23 Q. We have scissors if you want 'em.

24 A. I have a knife.

25 Q. All right. Do you know what's in those two different

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 packages that were both contained in that big plastic
2 envelop?

3 A. Yes, sir.

4 Q. What is in those two packages?

5 A. One contains the clear plastic cup that I had marked
6 at the scene as Marker A. I collected it and it's packaged
7 in a paper bag. The second is a cup that was marked at the
8 scene with Marker E. I also packaged that in a paper bag.

9 Q. We're not gonna open them now, we might later.

10 Where was the clear solo cup Marker A found?

11 A. That was found out front of 1704.

12 Q. Where in relation to the EMS debris was it?

13 A. Right in the same area.

14 Q. Okay. Where was the red solo cup that you marked
15 with Marker E found?

16 A. It was sitting on a window unit outside of 1706.

17 Q. Why in the world would you pick up two solo cups?

18 A. They weren't consistent with anything else around the
19 area.

20 Q. Okay. Stood out?

21 A. Yes, sir. Based on information we were provided once
22 we arrived that there were some things going on outside so
23 that was some of the stuff that was left outside.

24 Q. Now, did you do any - First of all, serological
25 processing of the two solo cups.

1 A. I did swab them for any DNA that might be present.

2 Q. And would DNA present on a solo cup at a particular
3 location tell you?

4 A. If the DNA was identified it might give the
5 investigators some information as to who was present at the
6 scene during the incident.

7 Q. Now, I'm gonna hand you another sealed envelop that
8 contains two little manila envelops and slice open whatever
9 you need to and let me ask you about that.

10 Q. What are those?

11 A. These are the two sets of swabs I collected. One set
12 from each of the cups.

13 Q. Okay. For DNA testing if possible?

14 A. Yes, sir.

15 Q. And what did you do with those items ultimately once
16 you collected them?

17 A. I packaged them separately and I submitted them to our
18 DNA lab.

19 Q. You actually logged them in yourself?

20 A. Yes, sir.

21 Q. And was everything secure and properly maintained by
22 the time you logged it in?

23 A. Yes, sir. It's sealed and marked with my initials
24 and the date that it was sealed.

25 Q. And let me just ask you this real quick. Do the two

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1 solo cups when SLED gets something for work in the lab,
2 first of all, is there some number assigned to the over all
3 case?

4 A. Yes, sir.

5 Q. And - Stupid question. But what is that number
6 called?

7 A. It's called a Lab Number.

8 Q. And how are the lab numbers configured? What is the
9 lab number for this case in the SLED Lab?

10 A. The lab number is L11-060004.

11 Q. Now, when something - When a particular item is
12 logged into the lab at SLED, is there some number assigned
13 to it?

14 A. Yes.

15 Q. And what is that number called?

16 A. It's called Item Number.

17 Q. Are there Item Numbers associated with the two solo
18 cups?

19 A. Yes, sir.

20 Q. What are the Item - What are the SLED Item Numbers
21 for them?

22 A. The clear plastic cup for Marker A was SLED Item
23 Number 7. And the cup from Marker E was SLED
24 Item Number 8.

25 Q. And how about the two swabs or the two packages of

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1 swabs from each of those cups what item numbers did they
2 get?

3 A. The swabs from the Item 7 cup which was Marker A was
4 denoted as 7.1 of .1 as a sub sample of the Item 7. And
5 the two swabs from the cup from Marker E were Item 8.1.

6 Q. Now, if you will - Well if you will, just unseal the
7 packaging for the two cups. We don't need to take them out
8 but just unseal them if you will.

9 That's fine. They're opened up so they can be
10 acceptable. That's all I'm looking for.

11 SOLICITOR BARFIELD: Your Honor, at this time I'd
12 offer the two cups and the two packages of swabs as the
13 next consecutively numbered State's Exhibits.

14 MR. STEEN: Without objection.

15 THE COURT: Without objection introduced into evidence
16 as State's two next in order.

17 Give her just a second to mark them.

18 MADAM COURT REPORTER: Thirty-eight and Thirty-nine.

19 (WHEREUPON, STATE'S EXHIBITS THIRTY-EIGHT AND THIRTY-
20 NINE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 (WHEREUPON, STATE'S EXHIBITS FORTY AND FORTY-ONE
22 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

23 BY SOLICITOR BARFIELD:

24 Q. Did you do any further testing with the cup? Other
25 than something else with the cup did you do any further

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1 testing with the swabs?

2 A. No, sir.

3 Q. Now did you do any further testing with the cups?

4 A. I did.

5 Q. Tell us, how long have you been a fingerprint
6 examiner or latent prints examiner or identification
7 person?

8 A. I was a fingerprint examiner for eight years.

9 Q. Okay. Have you been called upon to testify in the
10 courts of this state before concerning fingerprint
11 identification, latent print identification?

12 A. I have.

13 Q. Have you always been qualified as an expert?

14 A. Yes, sir.

15 Q. The Court ever turn you down as an expert in finger
16 print identification or latent print identification?

17 A. No, sir.

18 SOLICITOR BARFIELD: Your Honor, at this time I'd
19 offer Agent Wallace as an expert in latent print
20 identification.

21 THE COURT: Any objection?

22 MR. STEEN: No objection.

23 THE COURT: All right, without objection she's
24 qualified as an expert.

25 Ladies and gentlemen, remember yesterday when I told

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1 you what an expert is, again an expert is authorized to
2 give an opinion in this court as to something that they
3 have special training or education in. Now just because
4 they're an expert doesn't mean you have to accept that
5 opinion. That's just something that you have to consider
6 or you must consider in determining the credibility and
7 weight of the evidence. Okay.

8 BY SOLICITOR BARFIELD:

9 Q. Did you have any interest in whether there were
10 fingerprints on these two cups, State's Exhibits Number
11 Thirty-nine and Forty?

12 A. Yes, sir.

13 Q. Did you make some effort to determine if in fact -
14 Thirty-eight and Thirty-nine, excuse me, did you examine
15 those cups for latent prints?

16 A. Yes, sir; they were processed for prints.

17 Q. Were you able to lift any latent prints from those
18 cups?

19 A. No, sir. They were insufficient for identification.

20 Q. Did you prepare a report to indicate that?

21 A. I did.

22 Q. I'm gonna hand you a copy of a two page stapled
23 document. Can you identify what that report is?

24 A. This is a copy of the report I issued concerning this
25 case.

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1 Q. Okay. In connection with doing latent print
2 identification, did you in this case obtain any what we
3 call major case prints or known fingerprints from anybody?

4 A. Yes, sir, from the victim.

5 Q. Was there any purpose in doing anything with those
6 major case prints from the victim in light of your
7 conclusions concerning these two cups?

8 A. No, sir.

9 Q. Nothing to compare to the victim's prints?

10 A. That's correct.

11 Q. Did you do any fingerprinting, any latent print
12 examinations of any other items in this case?

13 A. No, sir.

14 SOLICITOR BARFIELD: Your Honor, at this time I'd
15 offer what's labeled the Crime Scene Report concerning
16 latent prints as State's Exhibit - next.

17 Forty-two I believe.

18 THE COURT: Without objection?

19 MR. STEEN: Without objection, Your Honor.

20 THE COURT: All right. It's without objection
21 introduced as Defendant's next in order. Excuse me,
22 State's next in order.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-TWO,
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)
25 BY SOLICITOR BARFIELD:

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1 Q. While we're talking about prints and things from the
2 victim, were any other samples obtained from the victim in
3 this case by the SLED Crime Scene Team?

4 A. A GSR Kit was collected from it.

5 Q. And what is GSR first?

6 A. GSR stands for gunshot residue.

7 Q. And for what purpose do you collect gun shot residue
8 or attempt to from a victim?

9 A. In the event that they fired a weapon or possibly
10 had been in close range where they might obtain some of the
11 GSR on their hands from the shooting incident.

12 Q. Did you obtain a GSR Kit as I think you call it from
13 Terrance Antonio Jones?

14 A. We did.

15 Q. I can't remember if I ask you this or not, did you
16 have a victim's name in the course of this investigation?

17 A. I did.

18 Q. And who was the victim?

19 A. Terrance Antonio Jones.

20 Q. And where was the GSR Kit collected from Mr. Jones?

21 A. Off his hands.

22 Q. And where was he when they were collected from his
23 hands?

24 A. At the hospital.

25 Q. All right. I'm gonna show you a sealed up package

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1 which you don't need to open but can you identify what that
2 is?

3 A. This is the GSR Kit collected from Mr. Jones.

4 Q. Okay. And was there another crime scene agent with
5 you on this team for this investigation?

6 A. Yes it was.

7 Q. And who was that person?

8 A. Agent Kukila Stanley.

9 Q. And does her name appear on some of the paperwork
10 with the GSR samples?

11 A. Yes, sir.

12 Q. Okay. What did you all do with the - What was done
13 with the GSR samples collected from Terrance Antonio Jones?

14 A. She provided the GSR Kit to me when she arrived on
15 scene and I submitted it to our trace department in the
16 Forensic Laboratory.

17 Q. Was it sealed and properly maintained from the time
18 you got your hands on it from the time it was collected
19 through your hands and into the SLED Lab?

20 A. Yes.

21 SOLICITOR BARFIELD: Your Honor, at this time I'd
22 offer the GSR Kit as the next State's Exhibit which I
23 believe is Forty-three.

24 THE COURT: All right. Without objection introduced
25 in as State's next in order.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-THREE,
2 IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)
3 BY SOLICITOR BARFIELD:

4 Q. Was any ballistic or firearms evidence collected at
5 the scene out there in Pardue?

6 A. There were.

7 Q. Now, you said you did not collect a gun. Did you
8 ever see a gun associated with this case?

9 A. No, sir.

10 Q. How did you go about looking for - Let me back up.
11 As a police officer do you carry a side arm?

12 A. Yes, sir.

13 Q. Are you familiar with handguns?

14 A. Yes, sir.

15 Q. To some degree?

16 A. Yes, sir.

17 Q. Are you an expert in handguns?

18 A. No, sir.

19 Q. Okay. Are you able to say basically how many
20 different types generally speaking of handguns there are?

21 I don't know if you know. What kind of handgun do
22 you carry?

23 A. A glock.

24 Q. And what is the action of that handgun?

25 A. It's a semi-auto.

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1 Q. Are you aware of any other kinds of actions for
2 handguns?

3 A. Revolvers.

4 Q. All right. What's the difference?

5 A. Revolvers have a chamber that rotates whereas a
6 semi-automatic is magazine fit -

7 Q. And when you ---

8 A. --- and it ejects on it's own.

9 Q. Well that was my next question. When you fire a
10 semi-automatic what happens to the cartridge case from
11 which the bullet is projected?

12 A. Its ejected out of the weapon.

13 Q. When you fire a revolver with a cylinder what happens
14 to the cartridge case from which the bullet is ejected?

15 A. It's maintained in the cylinder until the cylinder is
16 actually opened and the cartridge case is ejected at that
17 point.

18 Q. Now, did yo find any fired cartridge cases anywhere
19 out and about at Pardue?

20 A. We did.

21 Q. I'm gonna show you a box in a envelop. Can you tell
22 me what that is?

23 A. This is the cartridge case that we found out at the
24 scene.

25 Q. And was it assigned a marker?

1 A. It was.

2 Q. What marker was that cartridge case?

3 A. It was Marker F.

4 Q. And is the cartridge case head stamped? Is there
5 any marking on the cartridge case to indicate the caliber
6 of the cartridge case?

7 A. Yes, sir. It's a CBC .380 auto.

8 Q. All right. Are you aware of any involvement of a
9 .380 auto in this case based on your part of the
10 investigation?

11 A. No, sir.

12 Q. Okay. And are you able to tell me anything about
13 this cartridge case from examining it today and examining
14 it back when it was picked up in May of 2011?

15 A. It looked old.

16 Q. Okay. Thank you. In the absence of any other fired
17 cartridge cases, first of all, at the time you were doing
18 this investigation did you know what caliber weapon was
19 believed to have been involved?

20 A. No, sir.

21 Q. In the absence of any other fired cartridge cases
22 what did you do to see if you could find any other fire
23 arms evidence out there in Pardue?

24 A. We looked for any bullet holes or bullet defects to
25 which we might be able to obtain a fired bullet.

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1 Q. Now, were there any bullet holes or defects in any
2 automobiles out there?

3 A. No, sir.

4 Q. Were there any bullet holes or bullet defects in any
5 buildings out there?

6 A. No, sir.

7 Q. Other than victim Terrance Antonio Jones were there
8 any other bullet holes or defects in any people out there?

9 A. No, sir.

10 Q. Any property at all that had bullet holes or defects
11 in it? Physical property, not ground and dirt, but
12 physical property.

13 A. No, sir, not that we saw.

14 Q. Did you find any evidence of bullets striking matter
15 there on the scene?

16 A. Yes, sir, we found some bullet holes in the ground.

17 Q. And what do you all call bullet holes in the ground?

18 A. Sometimes they look like bullet skips. A bullet skip
19 must be something referred to as like a ricochet off the
20 ground. You're really looking for any kind of tears in the
21 ground. They're usually pretty linear or straight.
22 Anything like that that looks like a skip is a good
23 indication of somewhere you should look.

24 Q. Did you find some?

25 A. Yes, sir.

1 Q. How many?

2 A. Three.

3 Q. Did you walk up to them and look at 'em?

4 A. We had to dig 'em up.

5 Q. Well, my question is when you looked at them
6 visually did - was there any bullet lying around that you
7 could see?

8 A. No, sir.

9 Q. How did you determine if there were bullets in those
10 bullet skips or bullet holes?

11 A. We dug 'em up.

12 Q. All right. Did you find any bullets?

13 A. Yes, sir.

14 Q. I'm gonna show you some more stuff. Can you tell me
15 what those sealed packages with prox - are?

16 A. These are the three bullets that we dug out of the
17 ground that day.

18 Q. What did you do with them when you found them?

19 A. We photographed them and we packaged them and they
20 were submitted to the firearms department or laboratory.

21 Q. And when you packaged them were they sealed up?

22 A. Yes, sir.

23 Q. And who submitted them to the lab at SLED and
24 specifically got them on their way to firearms?

25 A. I did.

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 Q. Any problem with the integrity of these fired bullets
2 or any of the other evidence that we've talked about by the
3 time you got it into the lab at SLED?

4 A. No, sir.

5 Q. Let me hold them back.

6 SOLICITOR BARFIELD: Your Honor, I'd offer these next
7 as Forty-four.

8 THE COURT: Any objection?

9 MR. STEEN: Without objection.

10 SOLICITOR BARFIELD: Forty-four, Forty-five and
11 Forty-six.

12 THE COURT: All right, introduced as State's Exhibits
13 next in order as stated.

14 (WHEREUPON, STATE'S EXHIBIT NUMBERS FORTY-FOUR,
15 FORTY-FIVE, FORTY-SIX, IDENTIFIED AND MARKED, RECEIVED INTO
16 EVIDENCE.)

17 BY SOLICITOR BARFIELD:

18 Q. Now I'm gonna let you tell us about some things on
19 some pictures.

20 SOLICITOR BARFIELD: Your Honor, these are pictures
21 that are previously introduced without objection to any.

22 I'm gonna put 'em up on the scene if that's possible;
23 if that's okay?

24 THE COURT: Okay. Yes, sir.

25 Q. Agent Wallace, I'm showing you State's Exhibit

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 Number Three. And I don't know how much glare you got on
2 yours but there is a lot of glare on this thing.

3 THE COURT: It's very glary. Is you all's glary over
4 there jury?

5 Is there a way you can reduce the glare?

6 Maybe I can do it? My fear is I'm gonna touch a button
7 and it's all gonna go off so I don't want to touch
8 anything.

9 SOLICITOR BARFIELD: If you don't do it I will.

10 THE COURT: Is there a brightness button?

11 SOLICITOR BARFIELD: Yes, sir, I'm working on that
12 right now.

13 The glare is from the over head lights. That's where
14 the glare comes from.

15 THE COURT: Turn the over head lights down.

16 THE BAILIFF: Yes, sir.

17 SOLICITOR BARFIELD: Let me see if can just manipulate
18 it so it shows . . .

19 THE COURT: The big round dot in the middle, what is
20 that? It's not the over head.

21 SOLICITOR BARFIELD: I don't know but I'll get it to
22 where we can see it.

23 THE COURT: Okay.

24 Q. Agent Wallace, I've been moving this thing all around
25 on the screen. What is that a picture of?

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 A. That is a photograph of the front exterior of
2 Apartment 1704 and 1703 with the EMS debris in the grass
3 there.

4 Q. And is the plastic cup shown in that picture?

5 A. I cannot tell.

6 Q. We'll get to it in a minute. We're gonna do it the
7 old fashion way, how about that.

8 THE COURT: You can turn the lights back up please.

9 Q. Generally speaking are you familiar -

10 SOLICITOR BARFIELD: Well, permission for the witness
11 to step down just a minute.

12 THE COURT: Yes, ma'am, if you will step down.

13 (WITNESS LEAVING WITNESS STAND.)

14 Q. Is that picture familiar to you?

15 A. It's a over head of the area where the scene was.

16 Q. Okay. Now I'm gonna pull it out and I'm gonna let
17 you step to the side a little bit so everybody behind you
18 can see. And there's a pointer and it's not a real big
19 blowup but if you will just identify general areas with the
20 pointer that you located these. Obviously we're talking
21 about - and I'll ask you about 'em one by one - the clear
22 solo cup, generally speaking was where? And, again, step
23 back just a little bit.

24 A. It was in this area.

25 (WITNESS INDICATED ON EXHIBIT.)

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. The red solo cup.

2 A. Was here out front of Apartment 1706.

3 Q. All right. The EMS debris.

4 A. Was in the same area out front of 1704.

5 Q. Okay. The fired .380 cartridge case.

6 A. Same area out front of 1704.

7 Q. Okay. The fired bullets, the three fired bullets,
8 where were they found?

9 A. Off the corner of this apartment. This is a separate
10 row of apartments, they were in the grassy area off of this
11 corner.

12 (WITNESS INDICATED ON PHOTO.)

13 Q. Now, were you able as a crime scene investigator
14 to make any determination about directionality of shots
15 from where you found fired bullets?

16 A. Yes, sir.

17 Q. What did you conclude about that?

18 A. Based on location of where the bullets were found,
19 the direction of those skips or tears in the ground,
20 generally speaking the bullets traveled from this area
21 towards this area.

22 (WITNESS INDICATED ON PHOTO.)

23 Q. Okay. All right. Okay, you can take a seat again.

24 (WITNESS RETURNED TO WITNESS STAND.)

25 Q. Thank you. I'm gonna ask you about a few more

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 pictures. State's Number Four, what is - Let me hold it up
2 this way. They'll see it later, have it in the jury room.

3 What is Picture Number - State's Number Four picture
4 of?

5 A. State's Four is a photograph of the area alongside
6 front of 1704. It also captures the corner of that
7 apartment where the fired bullets were located.

8 Q. And this view lines up how with respect to what you
9 believed to be the origin and determination of the shots?

10 A. It's similar to being where the shots were fired
11 from. It's a little bit - The shots actually paralleled to
12 the front of those buildings but its slightly angled toward
13 the apartment complex.

14 Q. State's Number Seven, you hold it and then I'll hold
15 it up.

16 What's that showing us?

17 A. This is a closer photograph of that same view. It's
18 more of the area specifically out in front of 704 going
19 towards the other apartment which it was 1801.

20 Q. And does Marker A appear in this picture?

21 A. Yes it does.

22 Q. And what is Marker A denoting?

23 A. Marker A is denoting clear cup.

24 Q. And do Markers B, C and D with a magnifying glass
25 appear in that picture?

- 1 A. Yes they do.
- 2 Q. And what are they marking?
- 3 A. Those are marking the bullet skips and ultimately
- 4 the fired bullets.
- 5 Q. State's Number Twelve. What's that a picture of?
- 6 A. That's a closeup photograph of the clear plastic cup.
- 7 Q. State's Number Thirteen. What's that a picture of?
- 8 A. Those are closeup photographs of Markers B and C
- 9 which are denoting those bullet skips in the ground.
- 10 Q. Pictures, State's Exhibits Fourteen and Fifteen,
- 11 what are they pictures of?
- 12 A. State's Fourteen and Fifteen is a close-up photograph
- 13 of the fired bullet which was recovered from Marker B.
- 14 Q. Two different pictures of that bullet?
- 15 A. Yes, sir.
- 16 Q. And is that in State's Exhibit Number Fourteen the
- 17 actual box that's in the bag over there?
- 18 A. Yes, sir.
- 19 Q. State's Numbers Sixteen and Seventeen. What are they
- 20 pictures of?
- 21 A. State's Sixteen and Seventeen are close-up photographs
- 22 of the fired bullet recovered from Marker C.
- 23 Q. State's Number Eighteen. What's that a picture of?
- 24 A. That is a photograph of Marker B in the flower bed
- 25 area outside of 1801.

AGENT MELISSA WALLACE: DIRECT BY SOLICITOR BARFIELD

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1 Q. And then State's Number Twenty. What's that a picture
2 of?

3 A. State's Twenty is a close-up photograph of the fired
4 bullet recovered from that bullet skip.

5 Q. State's Numbers Twenty-two and Twenty-three, what
6 are they pictures of?

7 A. State's Twenty-two and Twenty-three are photographs
8 of the red cup at Marker E which was the air conditioning
9 unit at 1706.

10 Q. State's Number Twenty-four, what's that a picture of?

11 A. That is a photograph of Marker A and Marker F facing
12 the parking lot area; denotes the relationship to each
13 other.

14 Q. And A, what was located at A?

15 A. A was the clear plastic cup.

16 Q. And what was located at F?

17 A. The cartridge case.

18 (PAUSE.)

19 SOLICITOR BARFIELD: Thank you, ma'am. Answer
20 anything Mr. Steen or Mr. Jones has.

21 THE COURT: Counsel.

22 MR. STEEN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 AGENT MELISSA WALLACE BY MR. STEEN:

25 Q. Agent Wallace, you stated that you all collect - you

AGENT MELISSA WALLACE: CROSS BY MR. STEEN

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1 all collect DNA and analyze it to determine who was on a
2 scene possibly?

3 A. I don't analyze.

4 Q. You don't analyze. You just collect evidence?

5 A. Yes, sir.

6 Q. The crime scene report I believe is State's Exhibit
7 Forty-two. You're assigned as the forensic scientist at
8 the end and it's based on - Did you take any photos of
9 behind 1700 block of Pardue Street?

10 A. I don't think so.

11 Q. Do you know you would not? Why did you not take
12 any photos of behind 1700 Pardue Street?

13 A. Everything appeared to have occurred out front.

14 Q. So at that point you had heard no evidence of anything
15 happening behind 1700 Pardue Street?

16 A. Right.

17 MR. STEEN: One moment, Your Honor.

18 THE COURT: Okay.

19 Q. And the solo cups, did they provide any - anything
20 to help the jury to decide this case?

21 A. I'm not aware of any DNA results. I didn't have any
22 latent print results.

23 MR. STEEN: Thank you.

24 THE COURT: Any redirect?

25 SOLICITOR BARFIELD: No, sir.

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD

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1 THE COURT: All right. Thank you ma'am, you can step
2 down. You're free to leave.

3 Call your next witness.

4 INVESTIGATOR WALLACE: Thank you, Your Honor.

5 THE COURT: Thank you.

6 THE BAILIFF: Place your left hand on the Bible and
7 raise your right.

8 (WHEREUPON, JASMINE TELL,
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 DIRECT EXAMINATION

11 JASMINE TELL BY SOLICITOR BARFIELD:

12 Q. Tell us your name please, ma'am.

13 A. Jasmin Tell.

14 Q. And, Ms. Tell, you're kind of soft spoken so you're
15 gonna have to get into that microphone.

16 A. Jasmin Tell.

17 Q. By whom are you employed?

18 A. Verizon Wireless.

19 Q. Where do you work for Verizon Wireless?

20 A. In Atlanta, Georgia.

21 Q. And are you a record's custodian for Verizon Wireless?

22 A. Yes I am.

23 Q. And what is Verizon Wireless's business? What do
24 you all do?

25 A. We provide cell phone service.

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD

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1 SOLICITOR BARFIELD: I'm wondering if that mic got
2 cut off. Okay, it's working.

3 A. We provide cell phone service.

4 Q. Okay. Does Verizon maintain records of phones with
5 telephone numbers in the Verizon system?

6 A. Yes.

7 Q. And does it maintain those records in their regularly
8 - regular course of it's conducted business?

9 A. Yes.

10 Q. Is data compiled about what phones are issued, what
11 numbers are assigned to 'em, sometimes what people or names
12 are associated with telephones?

13 A. Yes.

14 Q. Is call information maintained by Verizon?

15 A. Yes.

16 Q. Is cell tower site location maintained by Verizon?

17 A. Yes.

18 Q. Latitude and longitude information from time to time
19 maintained by Verizon?

20 A. Yes.

21 Q. And does Verizon keep all that information?

22 A. Yes we do.

23 Q. Does Verizon from time to time get legal process in
24 the form of search warrants included to provide information
25 to law enforcement?

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes.

2 Q. Concerning a - Is the information maintained by
3 Verison recorded as it is concurrent with it's - is it
4 realtime kind of information that is recorded?

5 A. Yes it is.

6 Q. And did Verison get a request for information pursuant
7 to a search warrant for a telephone number listed as 803-
8 577-5387?

9 A. Yes we did.

10 Q. And do you have a record of when that process - that
11 legal process - the search warrant came into Verison?

12 A. I believe I do.

13 Q. And you still got 'em? We got to get this mic
14 going for you. I don't mean to - -

15 A. That's okay. Yes I do have a copy of the search
16 warrant.

17 Q. And when was the search warrant issued?

18 A. Let me look for it. I don't see the date of the
19 actual search warrant.

20 Q. Do you have a copy of the search warrant in your
21 records?

22 A. I did but I don't know what I did with it.

23 Q. Okay. Did you receive the company correspondence
24 from the issuing agency which might give you a date for
25 that? At the time the search warrant was issued I guess is

1 my question.

2 A. I don't see a copy of the whole search warrant in the
3 packet.

4 Q. Okay.

5 A. I just had it. I'm sorry.

6 Q. Have you looked at the search warrant?

7 A. Yes I did.

8 Q. Well let me show you this. Take a look at that and
9 tell me if that refreshes your memory first.

10 A. This is a copy of the search warrant.

11 Q. All right. And when was the search warrant issued?

12 A. It shows June 8th of 2011.

13 Q. Okay. And from what agency did the search warrant
14 come?

15 A. From the Municipality of Lancaster.

16 Q. Okay. Thank you. Now, concerning the requested
17 number 803-577-5387, when you all got that search warrant
18 did you determine whether that was in fact a Verizon
19 telephone number assigned to a phone?

20 A. Yes.

21 Q. What is - When I say subscriber information what does
22 that mean to Verizon? What am I talking about?

23 A. The subscriber is the person that is responsible for
24 the phone or activated the phone.

25 Q. And how is that information normally recorded by

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD

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1 Verizon?

2 A. Well it's provided to Verizon by the customer that's
3 activating one.

4 Q. Okay. Is it always provided to Verizon for all
5 phones that are obtained in the Verizon system?

6 A. Well for prepaid phones customers are not required to
7 provide a name. Or sometimes they provide a name they can
8 provide any name so we can't validate the prepaid who is
9 the actual owner of that phone.

10 Q. And where can you get a prepaid phone in the Verison
11 system? Do you have to go to a Verison store?

12 A. No. You can get them from lots of places. Walmart,
13 Target, Best Buy, and the store Verizon Wireless.

14 Q. Now, concerning this phone or this phone number
15 803-577-5387 does Verison have subscriber information to
16 indicate whose phone that was?

17 A. No. It only indicates that it was a prepaid phone.

18 Q. Okay. Is there any record in the Verison system to
19 tell us whose phone that is or was?

20 A. No we don't know whose phone it was.

21 Q. Okay. Now did you provide the records concerning
22 activity on this phone to the Lancaster Police Department?

23 A. Yes.

24 Q. Did you bring those records here with you today?

25 A. Yes.

1 Q. Are there several different parts to the record I
2 guess, several different files in the record?

3 A. Yes.

4 Q. And is one of them something called cell site incoming
5 outgoing?

6 A. Yes.

7 Q. I'm showing you what's already been introduced into
8 evidence as State's Exhibit Number Twenty-nine in this
9 case. Take a minute to look over that and take all the
10 time you need and then I'm gonna ask you a couple of
11 questions about that.

12 A. I skimmed over it.

13 Q. Okay. And is that the record under cell site incoming
14 and outgoing? In the record is that what that's showing?

15 A. Yes.

16 Q. Now, and what is that record, what number is that
17 record for?

18 A. These are records for telephone number 803-577-5387.

19 Q. Now, was any other number provided to Verizon
20 concerning this search warrant for records? Any other
21 number we ask you all to check out concerning this
22 particular search warrant?

23 A. I'm only showing for this particular search warrant
24 the 803-577-5387.

25 Q. Okay. Does that record show calls made to and from

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD

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1 that phone over a particular period of time?

2 A. Yes.

3 Q. And generally speaking date wise, not time wise, what
4 dates are those records for?

5 A. They are for dates May 28th, 2011 through May 29th,
6 2011.

7 Q. Now, looking at the record I'm gonna ask you about
8 another phone number. Well let me ask you this first.

9 On the record and as your record - Well you got the
10 same copy that I do. Is it in the same format?

11 A. Yes. Mine has the lines on it but other than that -

12 Q. Well look at the exhibit then if that's okay with you.

13 A. That's fine.

14 Q. Looking at that exhibit, is there a column on that
15 exhibit that tells us what phone number initiated a call?

16 A. Yes.

17 Q. Which column on that exhibit is it?

18 A. The very last column called calling party number.

19 Q. Okay.

20 A. That will be who initiated the call.

21 Q. And is there a column - And you say the last column,
22 the column over on the right?

23 A. Yes.

24 Q. Is there a column on that record State's Exhibit
25 Number Twenty-nine that tells us what number got called?

1 A. Yes.

2 Q. Which column is that and how is it designated?

3 A. That's the third column and that is listed as
4 dialed digit number.

5 Q. Okay. Third column from the right, from the left?

6 A. Uh-huh.

7 Q. Now, I'm going to ask you if a particular phone
8 number - Well first of all, do all of the calls on this
9 list involve that 577-5387 number in one way or another?

10 A. Yes.

11 Q. I'm going to ask you about another phone number and
12 then some questions about it. Is there a phone number that
13 appears in those records which is 803-235-0935?

14 Let me ask you a different question before you burn
15 your eyes looking through that whole record. I'm
16 specifically gonna focus in a minute on May 29th of 2011
17 between two and four o'clock in the morning for example.

18 Now let me ask the question again. Does the number
19 803-235-0935 appear in those records?

20 A. Yes it does.

21 Q. Have you counted how many times in that two hour or
22 so time frame that number appears in that record?

23 A. I can count.

24 Q. Okay. Is it - Do you have a second to be able to do
25 that for us?

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD

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1 A. Now you want me to do it between what time?

2 Q. About two o'clock in the morning until about four
3 o'clock in the morning on May 29th of '11.

4 (PAUSE.)

5 A. Okay. I'm sorry. Tell me the end time again.

6 Q. Roughly 2:00 a.m., to 4:00 a.m..

7 A. On the 29th?

8 Q. On the 29th yes, ma'am.

9 A. Let me go over it one more time ---

10 Q. That's fine.

11 A. --- to make sure I counted it.

12 Q. And I don't have to have a precise number, but ball
13 park number how many times did those two numbers link up on
14 those records between two and four o'clock in the morning?

15 A. So far I just checked the calling party number.

16 Q. Okay.

17 A. And with the calling party number there were at
18 least twelve.

19 Q. Okay.

20 A. That I counted.

21 Q. And that's sufficient for these purposes. Now, do
22 you know anything about the 209 - excuse me - the 235-0935
23 number?

24 A. No I don't.

25 Q. Were you all ask to look and see if that was one

1 of your numbers?

2 A. No.

3 Q. Okay. It's just on the record?

4 A. It is on the record.

5 Q. Okay. All right. I'm going to hand you the exhibit
6 back. Can you tell me the last time the 235-0935 number
7 was connected to the 577 number, the time of that last
8 call?

9 A. That number again? Can you repeat that?

10 Q. The - Well the last time the 235-0935 number was
11 connected to the 577 number.

12 Let me ask you a different question. I can do it
13 this way. The calls are chronological by time and date.
14 At - Between - After 3:50 in the morning are those two
15 numbers connected?

16 A. Okay. After 3:50 on the 29th?

17 Q. Yes.

18 A. I don't see any more calls after that.

19 Q. All right. Let me hold your record just a minute.

20 A. Okay.

21 Q. On the next to the last page of State's Exhibit
22 Number Twenty-nine at the top are there any calls between
23 those two numbers? Again the two numbers are 235-0935 and
24 577-5387.

25 A. Okay. There was a call. There was a call from

JASMINE TELL: DIRECT BY SOLICITOR BARFIELD
CROSS BY MR. STEEN

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1 our target number --

2 Q. What time was the last call between those two
3 numbers in that time frame?

4 A. At 3:53 a.m..

5 Q. Okay. And look down and see if there are any after
6 3:53 going no later than four o'clock.

7 A. Okay. I see one at 3:54.

8 Q. Okay. That was the last one.

9 SOLICITOR BARFIELD: That's all the questions I have.

10 Thank you, ma'am. And I will take the exhibit back
11 and answer any questions Mr. Steen or Mr. Jones has please.

12 THE COURT: All right. Counsel, any questions?

13 MR. STEEN: Just one, Your Honor.

14 CROSS-EXAMINATION

15 JASMIN TELL BY MR. STEEN:

16 Q. Ms. Tell, do you see number 287-5756 ---

17 A. Do I see -

18 Q. --- on State's Exhibit Twenty-nine?

19 A. He took the exhibit.

20 Q. Sorry, I apologize. Turn back to the same area.

21 A. Okay.

22 Q. And do you see the number 803-287-5756 anywhere in
23 that?

24 A. Yes I do.

25 Q. At 3:53?

JASMINE TELL: CROSS BY MR. STEEN
DIEGO NOVA: DIRECT BY SOLICITOR BARFIELD

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1 A. I see that telephone number at 3:53 and at 3:54.

2 MR. STEEN: No further questions.

3 Thank you, MS. Tell.

4 THE COURT: All right, thank you, ma'am, you are free
5 to leave. You may step down.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: All right, you can call your next witness.

8 SOLICITOR BARFIELD: Diego Nova.

9 THE BAILIFF: Place your left hand on the Bible and
10 raise your right.

11 (WHEREUPON, DIEGO NOVA, BEING
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 DIEGO NOVA BY SOLICITOR BARFIELD:

15 Q. Tell us your name please, sir.

16 A. Diego Nova.

17 Q. Mr. Nova, Mr. Nova, by whom are you employed?

18 A. SLED, State Law Enforcement Division.

19 Q. What part of SLED do you work in?

20 A. Fusion Center, Team III Fusion Apprehension Team.

21 Q. And what is the Fusion Center at SLED?

22 A. It's an intelligence gathering unit within SLED.

23 Q. Okay. And how long have you been employed by SLED?

24 A. Four years next month.

DIEGO NOVA: DIRECT BY SOLICITOR BARFIELD

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1 Q. How long you been in the Fusion Center?

2 A. All four years.

3 Q. Were you working in the Fusion Center back in -
4 actually early June of 2011?

5 A. I was.

6 Q. And did you get called upon to assist the Lancaster
7 Police Department concerning finding somebody sought after
8 by them?

9 A. I did.

10 Q. Was information - Was information provided to you?

11 A. There was a phone number.

12 Q. All right. And that microphone is just not getting on
13 it too good.

14 A. Maybe closer?

15 Q. Yes.

16 A. That better?

17 THE COURT: Yell like this. See how loud I am.

18 A. Yes, sir.

19 THE COURT: Thank you.

20 Q. We either need to get a shorter counter or chairs that
21 slide up farther or longer stems on the mics.

22 What telephone number did you get?

23 A. I don't remember the exact number but it was a
24 phone number associated with Mr. McIlwain.

25 Q. And in connection with that number how do you

1 determine - Well what is your objective when a number is
2 provided to you as a Fusion Center SLED employee? What is
3 your objective with that number? What are you trying to
4 do?

5 A. My objective is to find that device.

6 Q. And how in the world can you find that device?

7 A. What I do is I type up a court order I get it signed.
8 Once it's signed by a judge I send that court order to the
9 telephone company, the cell phone company, and they in turn
10 will give me information about the location of that device.

11 Q. Now, how does the phone company give you the
12 information? Do they write you letters in the mail,
13 send you emails, send you digital information? What do
14 they send you?

15 A. Mostly digital information. In this case what was
16 given to me was a latitude longitude of a cell phone tower.

17 Q. All right. Let me ask you this. Do different phones
18 produce different kinds of records or do different carriers
19 produce different kinds of records?

20 A. Yes, sir.

21 Q. The basic two kinds of records that you could get to
22 locate a phone are what?

23 A. Right. Some companies will give us the latitude
24 longitude of the device itself within a certain amount of
25 accuracy.

DIEGO NOVA: DIRECT BY SOLICITOR BARFIELD

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1 Q. Meaning if I got my phone on my side what could you
2 maybe find out about where I am with my phone on my side?

3 A. I would get a latitude longitude. For example a
4 nine meter level accuracy so within nine meters I can find
5 - I can see where that phone is. Other carriers --

6 Q. Let me ask you this.

7 A. Sure.

8 Q. With the latitude longitude information about the
9 phone itself, ---

10 A. Yes.

11 Q. --- is it realtime stuff?

12 A. Yes.

13 Q. Do they send you a map showing the phone moving up
14 and down the ---

15 A. No.

16 Q. --- the grid?

17 A. What we normally get it fifteen meter intervals.

18 Q. Okay.

19 A. So its not a document with a screen moving around.

20 Q. Okay.

21 A. I get a ping - you call it - and then fifteen meters -
22 fifteen minutes later I'll get another one.

23 Q. Now when you say a ping, what about the phone allows
24 that to be done?

25 A. It's my understanding that it connects to the nearest

1 cell phone tower and that cell phone tower will produce a
2 range to that tower in a sector of that tower.

3 Q. Now what is the other type of information if its not
4 latitude longitude about the particular phone, what is the
5 other general information you get?

6 A. Yes, sir. The other general information is the tower
7 itself. So I would get the latitude longitude of the tower
8 that's connected to that phone. Sometimes it will be in a
9 sector. Most towers have three sectors and I'll know what
10 sector it's in and sometimes how far from the tower it's
11 located.

12 Q. If a cell phone tower is at the center how is
13 generally the area of the tower described?

14 A. If you can imagine three pieces of a pie ---

15 Q. Okay.

16 A. --- or a peace sign, if you put a peace sign in a
17 circle those are the three sectors in a cell phone tower.

18 Q. All right. Is cell phone tower site information as
19 good as longitude latitude for the phone itself?

20 A. No it's not because with the cell phone tower
21 information all I have is a general area whereas latitude
22 longitude the device itself it gives me a better - a better
23 accuracy for the device.

24 Q. All right. Now, again do you have the number that
25 you were working off of in your paperwork today?

DIEGO NOVA: DIRECT BY SOLICITOR BARFIELD

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1 A. I do.

2 Q. And give us the number. First of all before you give
3 me the number. Where did the number come to SLED Fusion
4 Center from? Who provided it?

5 A. Okay. This case is a little bit old.

6 Q. Okay. I had to refer back to a share point data base
7 that we have at SLED ---

8 Q. Okay.

9 A. --- in order to find out. I didn't keep notes or
10 anything like that.

11 Q. Okay.

12 A. It was provided to me by Lancaster Police Department.

13 Q. Okay.

14 A. Or the County. I think it was Kristen Grant.

15 Q. That's fine. Now, did the - Were you able to do any
16 tracking - What's the phone number first of all? Give me
17 the phone.

18 A. 803-280-1163.

19 Q. Okay. And did that phone lead you anywhere? Did that
20 number lead you anywhere?

21 A. Yes. Once I sent that - It was an Altell phone. I
22 faxed a court order to Altell cell phone company and they
23 were able to give a latitude longitude for a cell phone
24 tower located - Once I mapped that tower it was located in
25 Lawton, Oklahoma.

1 Q. All right. Are you familiar with Lawton, Oklahoma
2 yourself?

3 A. I am. I've been there. I was in the army for twenty
4 two years and a half so I visited Lawton a couple of times.

5 Q. Is there an Army base out there?

6 A. There is an Army base there.

7 Q. What is the base?

8 A. Fort Sill, Oklahoma.

9 Q. Did you ever travel to Lawton, Oklahoma or Fort Sill
10 in connection with the information you determined from this
11 phone track?

12 A. No, sir. At the time I was in Lawton, Oklahoma was
13 in 1998.

14 Q. Okay. And other than saying that that phone tracked
15 to Lawton, Oklahoma can you tell us anything else about the
16 particulars of it?

17 A. Well once - I recall telling the Investigator - I'm
18 not sure if it was Kristen Grant or Hartley - that there is
19 a Army base on Lawton and I believe I ask him to ask or
20 look into seeing if Mr. McIlwain had any kind of relatives
21 or connections to anybody in the Army.

22 Q. Okay. Beyond that did you do anything further on
23 this case?

24 A. No.

25 SOLICITOR BARFIELD: Thank you, sir. Answer anything

1 Mr. Steen or Mr. Jones has.

2 MR. STEEN: No questions. Thank you, Your Honor.

3 THE COURT: Thank you, sir, you can step down.

4 You're free to leave.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: Call your next witness.

7 SOLICITOR BARFIELD: Give me just a second, Your
8 Honor.

9 THE COURT: Okay.

10 SOLICITOR BARFIELD: Your Honor, we are proceeding a
11 pace, could I take a break? I think we're gonna be fine on
12 the schedule this morning, could I - Could we take a short
13 recess.

14 THE COURT: All right, we'll take a short recess and
15 we'll let you know when we come get you. Don't talk about
16 the case, you have not heard all of the evidence yet and so
17 enjoy your break.

18 (JURY EXITS COURTROOM AT 11:24 A.M..)

19 THE COURT: All right.

20 (COURT IN RECESS AT 11:25 A.M..)

21 (COURT BACK IN SESSION AT 11:34 A.M..)

22 SOLICITOR BARFIELD: We're ready.

23 THE COURT: All right. Bring 'em in.

24 (JURY REENTERS COURTROOM AT 11:36 A.M..)

25 THE BAILIFF: Jury's coming in.

LIEUTENANT BRENNER HARTLEY: DIRECT BY SOLICITOR BARFIELD

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1 THE COURT: All right, all members of the jury are
2 present.

3 Solicitor, call your next witness.

4 SOLICITOR BARFIELD: We call Brenner Hartley.

5 THE BAILIFF: Place your left hand on the Bible and
6 raise your right.

7 (WHEREUPON, BRENNER HARTLEY,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 DIRECT EXAMINATION

10 LIEUTENANT BRENNER HARTLEY BY SOLICITOR BARFIELD:

11 Q. Tell us your name please, sir.

12 A. Brenner Hartley.

13 Q. And Lieutenant Hartley, by whom are you employed?

14 A. City of Lancaster Police Department.

15 Q. How long have you been a police officer?

16 A. Fourteen and a half years.

17 Q. How long have you been employed by the city of
18 Lancaster?

19 A. Fourteen and a half years.

20 Q. What was your rank and job for the city of Lancaster
21 Police Department back in May of 2011?

22 A. Detective Sergeant assigned to a Special Operations
23 Division.

24 Q. An investigator?

25 A. Yes, sir.

LIEUTENANT BRENNER HARTLEY: DIRECT BY SOLICITOR BARFIELD

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1 Q. And what is your rank and duties with the Lancaster
2 Police Department now?

3 A. I am a patrol lieutenant and watch commander of
4 B shift.

5 Q. That's a bump up from being a sergeant?

6 A. Yes, sir.

7 Q. Were you part of the investigation into the shooting
8 death of Terrance Antonio Jones in Pardue Apartments about
9 four o'clock in the morning on Sunday, May 29 of '11?

10 A. I was.

11 Q. Did you at some point become aware that a cell
12 phone had been taken into possession by the police
13 department?

14 A. Yes, sir.

15 Q. And was the number for that phone determined?

16 A. It was.

17 Q. And what was the number for that cell phone and
18 specifically I'm talking about State's Exhibit Number
19 Thirty-three. Are you familiar with this phone?

20 A. Yes, sir.

21 Q. Okay. And what was the number associated with that
22 phone?

23 A. Area code 8-0-3-5-7-7-5-3-8-7.

24 Q. And once you had that phone and that number, once the
25 police department had the phone and you had the number, did

LIEUTENANT BRENNER HARTLEY: DIRECT BY SOLICITOR BARFIELD

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1 you do something to try to determine some information out
2 about that phone?

3 A. Yes, sir, I did.

4 Q. What did you do about that phone?

5 A. That phone I contacted SLED Fusion Center which is
6 our intelligence unit with SLED and requested to speak with
7 a agent that could assist me with the cell phone.

8 Q. Okay. Did you also at some point ask for records
9 concerning that phone?

10 A. I did.

11 Q. And how did you go about getting records for that
12 phone?

13 A. I obtained a search warrant.

14 Q. All right. Now, over the course of the next, I guess
15 three or four weeks or so, did you follow the progress of
16 the effort - Well first of all, was there a suspect in this
17 case?

18 A. There was.

19 Q. And who was the suspect?

20 A. Quanell McIlwain.

21 Q. How soon in the investigation did Quanell McIlwain
22 become a suspect?

23 A. I think it was almost instant.

24 Q. Okay.

25 A. It wasn't very long after we got to the scene that

LIEUTENANT BRENNER HARTLEY: DIRECT BY SOLICITOR BARFIELD

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1 it was determined that he was the suspect.

2 Q. All right. Keep your voice up and use that
3 microphone.

4 A. Excuse me.

5 Q. Once Quanell McIlwain became a suspect what did the
6 Lancaster Police Department do? Did the Lancaster Police
7 Department try to find him?

8 A. Yes, sir, we did.

9 Q. Was he located anytime in the next week?

10 A. No, sir, he wasn't.

11 Q. Anytime in the next two weeks?

12 A. No, sir.

13 Q. Okay. What did you do in the interim, just generally
14 speaking, not who you talked to or what people said, but
15 generally speaking what did you do from the day of the
16 event until Quanell McIlwain was located?

17 A. Basically I just followed up on leads that we had
18 on what his whereabouts were.

19 Q. Were you communicating with other agencies in
20 connection with the search for Quanell McIlwain?

21 A. I was.

22 Q. What other agencies were you dealing with? You talked
23 about SLED. Anybody else?

24 A. Lawton, Oklahoma and the United State's Marshall
25 Service.

LIEUTENANT BRENNER HARTLEY: DIRECT BY SOLICITOR BARFIELD

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1 Q. Now was Quanell McIlwain taken into custody on some
2 date?

3 A. Yes, sir, he was.

4 Q. Do you know the date?

5 A. No, sir, I don't.

6 Q. Okay. Do you know where he was taken into custody?

7 A. I do.

8 Q. Where was he taken into custody?

9 A. He was taken into custody in Lawton, Oklahoma.

10 Q. Now, before he was actually taken into custody, did
11 you have any knowledge that Lawton, Oklahoma might be a
12 location that he could be?

13 A. Yes, sir, I did.

14 Q. Explain - Without - Don't quote people but explain
15 basically how we got to Lawton, Oklahoma?

16 A. Basically we tracked his cell phone to Lawton,
17 Oklahoma and through assistance with Lawton, Oklahoma
18 authorities as well as the United State's Marshall Service
19 we were able to pin point his location.

20 Q. All right.

21 SOLICITOR BARFIELD: Thank you, sir. Answer anything
22 Mr. Steen or Mr. Jones has.

23 CROSS-EXAMINATION

24 LIEUTENANT BRENNER HARTLEY BY MR. JONES:

25 Q. Lieutenant Hartley, you testified that you tracked

LIEUTENANT BRENNER HARTLEY: CROSS BY MR. JONES

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1 Mr. McIlwain's phone to Oklahoma?

2 A. I didn't. SLED did.

3 Q. Not you personally ---

4 A. Yes, sir.

5 Q. --- but it was tracked there?

6 A. Yes, sir.

7 Q. Do you know how that happened?

8 A. No, sir, I don't.

9 Q. At the scene of the crime on May 29th did you and
10 Captain Hunter speak with an Agent Wallace from SLED?

11 A. Yes, sir, we did.

12 Q. And did you give her information about what you
13 thought had occurred?

14 A. Excuse me?

15 Q. Did you give her information about what you thought
16 had occurred that night?

17 A. I'm not sure ---

18 Q. I'm --

19 A. --- I understand your question.

20 Q. When you talked to the agent on the scene that night?

21 A. Yes, sir.

22 Q. - - - did you tell her what you thought had happened?
23 Did you explain the facts that led up to the decedents
24 death?

25 A. Other than he had been shot.

LIEUTENANT BRENNER HARTLEY: CROSS BY MR. JONES

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1 MR. JONES: May I approach, Your Honor?

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

3 Q. Read that.

4 A. Yes, sir. Yes, sir, I do recall that.

5 Q. And when you talked to the agent, to Agent Wallace,
6 what did you tell her had happened?

7 A. I told her that he had been at a party that night and
8 had gotten into an argument.

9 Q. And what was the argument over?

10 A. Excuse me?

11 Q. I'm sorry. And what was the argument over?

12 A. Over a female.

13 Q. He got into an argument with a female and anything
14 else about that argument?

15 A. Not that I recall not readily.

16 SOLICITOR BARFIELD: I would ask to - for Mr. Jones
17 to identify the document. I'm not sure what they're
18 looking and what they're talking about.

19 MR. JONES: I'm sorry, Your Honor. This is - It's a
20 report prepared by Agent Wallace.

21 SOLICITOR BARFIELD: But I think that it's improper
22 for Agent Hartley to be reading a report prepared by
23 another agent. I would ask that the previous question and
24 answer be stricken. Being ask to quote a report of
25 somebody else.

LIEUTENANT BRENNER HARTLEY: CROSS BY MR. JONES

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1 THE COURT: All right. What's your response?

2 MR. JONES: It's a statement that he made when
3 speaking
4 to the agent, Your Honor.

5 THE COURT: The statement that you made?

6 MR. JONES: That Lieutenant Hartley made.

7 THE COURT: The witness?

8 MR. JONES: Yes, sir.

9 THE COURT: And you ask him about the - Has he replied
10 to the question?

11 MR. JONES: He did reply to one of the questions I ask
12 him --

13 THE COURT: All right. Objection over ruled.

14 BY MR. JONES:

15 Q. Okay. And starting where I had you look at before.

16 What did you say that the argument was over?

17 A. If you would let me look.

18 Q. I'm sorry. Yes, sir.

19 A. I advised that he had been at a party at Apartment
20 1706 at which point he had gotten into an argument with the
21 suspect over the treatment of a female over he vehicle.

22 Q. Thank you.

23 MR. JONES: Nothing further, Your Honor.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

LIEUTENANT BRENNER HARTLEY: REDIRECT BY SOLICITOR BARFIELD

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1 LIEUTENANT BRENNER HARTLEY BY SOLICITOR BARFIELD:

2 Q. Lieutenant Hartley, I think I know what you all are
3 reading about here just a minute ago.

4 I'm looking at - Is that what you were looking at a
5 minute ago?

6 A. Yes, sir.

7 Q. Is that Melissa Skipper Wallace's Report?

8 A. Her report from SLED yes, sir.

9 Q. Did you write this report?

10 A. I did not.

11 Q. Did you just read what she wrote?

12 A. I did.

13 Q. Did you - Are you telling us that that is what you
14 recall telling her?

15 A. Roughly yes, sir.

16 Q. And who is it that you thought had been in a party
17 at 1706?

18 A. Quanel McIlwain.

19 Q. I'm real confused; not at you. You read the
20 paragraph to yourself for a minute and then let's figure
21 out what that's all about.

22 (WITNESS COMPLIES.)

23 Q. Let me ask you this. That reports to suggest that
24 you knew where the victim had been and what he'd been
25 doing.

CHRIS NUNNERY: DIRECT BY SOLICITOR BARFIELD

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1 A. Yeah.

2 Q. Is that the way you read that?

3 A. Yes, sir.

4 Q. Did you tell Melissa Skipper Wallace anything about
5 where the victim had been or what he'd been doing before
6 he got shot?

7 A. Not that I recall no, sir.

8 Q. Based on your involvement in this investigation is
9 there any information that the victim Terrance Antonio
10 Jones was ever in Apartment 1706?

11 A. No, sir.

12 Q. Okay. And again, what you're reading, is that your
13 report or somebody else's report?

14 A. This is somebody else's report. It's not mine.

15 Q. All right. Thank you, sir.

16 SOLICITOR BARFIELD: That's all on redirect.

17 THE COURT: All right, thank you, sir, you can step
18 down. You're free to leave.

19 (WITNESS LEAVING WITNESS STAND.)

20 THE COURT: Call your next witness.

21 SOLICITOR BARFIELD: Call Chris Nunnery.

22 THE BAILIFF: Place your left hand on the Bible and
23 raise your right.

24 (WHEREUPON, CHRIS NUNNERY,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AND FOLLOWS:)

CHRIS NUNNERY: DIRECT BY SOLICITOR BARFIELD

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DIRECT EXAMINATION

CHRIS NUNNERY BY SOLICITOR BARFIELD:

Q. Tell us your name please, sir.

A. Chris Nunnery.

Q. Mr. Nunnery, who do you work for?

A. I work for Lancaster County.

Q. What do you do for Lancaster County?

A. I'm the 911 Director.

Q. What did you do for a living back in May of - actually
- Yeah, early June of 2011?

A. I was a city of Lancaster Fire Chief.

Q. How long had you been in the fire service?

A. Twenty-six years.

Q. And does the fire department sometimes help the
police department?

A. Yes, sir.

Q. Did you get a request from somebody with the police
department to help them on June 6th of 2011?

A. Yes, sir.

Q. Who made the request?

A. Captain Hunter.

Q. And what was the nature of the request?

A. They were looking for some type of high boots, waders,
because they needed to look in the water in the creek.

Q. Did you help them with their request?

CHRIS NUNNERY: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes, sir.

2 Q. Personally?

3 A. Yes, sir.

4 Q. And just describe what you did and where you went.

5 A. We - On our rescue truck we carry sets of waders and
6 also some big magnets so I carried both those items to the
7 creek by Linwood Drive or underneath the bridge.

8 Q. And describe where that area is. Linwood Drive under
9 the bride. Give us a landmark.

10 A. Near the animal shelter or Lancaster City Public Works
11 just out of town on Linwood Drive.

12 Q. Okay. When you got there did you find police
13 officers?

14 A. Yes, sir.

15 Q. Just tell us what you did.

16 A. I think Detective Hall and Captain Hunter and a few
17 others met us on the bridge, told us what they were looking
18 for.

19 Q. What did they tell you they were looking for?

20 A. A gun in the creek.

21 Q. Okay. Then what?

22 A. We went underneath the bridge, quite a task to get
23 underneath the bridge, underneath the bridge and started
24 looking in the creek. When the creek's dry and the
25 weather's dry there is a main channel and there's some sub

1 little ponds off of it.

2 Q. Well was there water in the creek part?

3 A. Oh yes, sir.

4 Q. Was there - Were there some little pools near and
5 around the creek?

6 A. Yes, sir.

7 Q. Okay. Did you look?

8 A. Yes, sir.

9 Q. Who was wearing the waders or hip boots?

10 A. Detective Hall and myself.

11 Q. Okay. Did you find the gun initially?

12 A. No.

13 Q. Did you find anything initially?

14 A. No. Well we found a lot of trash and debris but no
15 guns.

16 Q. Were you using the magnet at that point?

17 A. No, sir, we were looking in the moving part of the
18 creek, the big part of the creek.

19 Q. Could you see through the water to the bottom?

20 A. It's clear.

21 Q. All right. Did you move to another location?

22 A. We looked in the big part and couldn't find anything.

23 We further looked in the bushes; everybody scouted the

24 whole area and then there were a couple of small ponds or

25 catches of water off to the side and that's when we got the

CHRIS NUNNERY: DIRECT BY SOLICITOR BARFIELD

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1 magnet out and started sweeping with the magnets.

2 Q. Did you find something?

3 A. Yes, sir.

4 Q. How big was the little pool where it was found?

5 A. Probably --

6 Q. Circumference or diameter.

7 A. It's six to seven foot diameter.

8 Q. Okay. How deep - -

9 A. About a foot. About a foot deep.

10 Q. Okay. Nobody was up to his neck in water?

11 A. No, sir.

12 Q. All right. And did you use the magnet then?

13 A. Yes, sir.

14 Q. Who was working the magnet?

15 A. I was.

16 Q. And how was the magnet attached? Was the magnet
17 attached to anything?

18 A. It's a small square magnet attached to a rope. A lot
19 of times we end up fishing keys out of storm drains with it
20 so I'm sort of just sweeping the magnet back and forth
21 because the more we walked the muddy - the water would get
22 muddy ---

23 Q. Yeah.

24 A. --- so it was just easier to just sweep the magnet
25 around.

CHRIS NUNNERY: DIRECT BY SOLICITOR BARFIELD

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1 Q. All right. And did the magnet hit anything?

2 A. Yes, sir.

3 Q. And did you pull the magnet up when it hit something?

4 A. It hit something solid and then as I lifted it up
5 you could see the butt of a gun.

6 Q. Okay. I'm gonna show you - And who took possession
7 of the gun?

8 A. Detective Hall.

9 SOLICITOR BARFIELD: Your Honor, I'm informed by the
10 Sheriff's Department that the gun's been cleared.

11 THE COURT: Okay.

12 Q. Can you identify that?

13 A. It looks similar to the gun yes, sir, that we found
14 in there.

15 Q. Did you ever handle the gun ---

16 A. No, sir.

17 Q. --- when it was in your possession?

18 A. No, sir.

19 SOLICITOR BARFIELD: Thank you, sir, that's all I
20 have. Answer anything Mr. Steen or Mr. Jones has.

21 THE COURT: Counsel.

22 CROSS-EXAMINATION

23 CHRIS NUNNERY BY MR. STEEN:

24 Q. On what day was the gun recovered?

25 A. I don't remember the exact day, sir.

CHRIS NUNNERY: CROSS BY MR. STEEN
DETECTIVE PHILLIP HALL: DIRECT BY SOLICITOR BARFIELD

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1 MR. STEEN: No further questions. Thank you.

2 THE COURT: Thank you, sir, you can step down and
3 you're free to leave.

4 Call your next witness.

5 (WITNESS LEAVING WITNESS STAND.)

6 SOLICITOR BARFIELD: One more, Your Honor. Give me
7 just a second to get -

8 THE COURT: Yes, sir.

9 SOLICITOR BARFIELD: --- my folder out.

10 The State calls Phillip Hall.

11 THE COURT: Go ahead and swear him back in.

12 THE BAILIFF: Place your left hand on the Bible and
13 raise your right.

14 DIRECT EXAMINATION

15 DETECTIVE PHILLIP HALL BY SOLICITOR BARFIELD:

16 Q. Tell us your name again.

17 A. Phillip Hall.

18 Q. And, Detective Hall, you're a police officer with the
19 city of Lancaster?

20 A. I am.

21 Q. Are you the primary investigator in this case State
22 versus Quanell McIlwain?

23 A. I am.

24 Q. Okay. Let me ask you, let's address some stuff out
25 of order for a minute. The morning this event occurred,

1 did you respond?

2 A. Yes, sir, I did.

3 Q. And where did you initially respond to?

4 A. To the actual scene 1700 block of Pardue.

5 Q. Okay. Did you at the scene at Pardue did you ever
6 talk to Tanisha Nelson?

7 A. I did not.

8 Q. Did you become aware of her existence and knowledge?

9 A. I did.

10 Q. As a result of that did you talk to her sometime
11 that morning at some other location?

12 A. Yes I did.

13 Q. Where?

14 A. At the police department.

15 Q. At the police department was it day light or dark
16 when that was going on?

17 A. I think it was still dark.

18 Q. And what did you and she do at the police department?

19 A. We took a written statement from her.

20 Q. Okay. At the police department - I'm gonna jump
21 ahead. Did you talk to her again that morning?

22 A. I did.

23 Q. What - Where and when did you talk to her the second
24 time?

25 A. I think it was later that morning at Quan Nelson's

DETECTIVE PHILLIP HALL: DIRECT BY SOLICITOR BARFIELD

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1 momma's house at Baker Place.

2 Q. And where was she and where were you when you were
3 actually talking to her?

4 A. Inside my patrol car.

5 Q. Now, at the police department by the time you were
6 talking to Tanisha Nelson at the police department did you
7 know a suspect in this case?

8 A. Prior to talking to her or after talking to her?

9 Q. Prior to did you know a suspect?

10 A. Prior to no.

11 Q. Okay.

12 A. I did not.

13 Q. Okay. After talking to her did you have a suspect?

14 A. I did.

15 Q. And how did you have a suspect after talking to her?

16 A. She knew the suspect as SK or K.

17 Q. Did you know the suspect as S - Did you know anybody
18 as SK?

19 A. I have knowledge of who --

20 Q. Okay. That's fine. At the police department did you
21 have any pictures of Quaneil McIlwain?

22 A. I --

23 Q. Well let me back up. Obviously you had pictures.

24 At the police department in your interview of
25 Tanisha Nelson did you have any pictures of anybody?

1 A. I did not.

2 Q. Did you have any pictures of Quanell McIlwain?

3 A. I did not.

4 Q. Did you show her any pictures at the police
5 department?

6 A. I did not.

7 Q. Did you know when she came to the police department
8 who you might be interested in having pictures of?

9 A. I did not.

10 Q. After talking to her at the police department what
11 did you do?

12 A. I advised her that, you know, I would get back with
13 her later on that morning once I got a photo lineup
14 developed and would meet her and show her that lineup once
15 we got everything taken care of at the scene.

16 Q. All right. Now, ---

17 A. --- because I knew it was gonna get us on scene which
18 --

19 Q. Did you prepare a photo lineup?

20 A. I did.

21 Q. And generally speaking what is a photo lineup?

22 A. A photo lineup is a lineup consisting of six pictures
23 that we use, sometimes we use SLED lineups, sometimes we
24 use ours. We had enough photos in our data base to build a
25 lineup and what it was it takes certain characteristics;

DETECTIVE PHILLIP HALL: DIRECT BY SOLICITOR BARFIELD

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1 height, weight, skin color, goatee, braids, any special
2 characteristics, and it will pick so many photos out of our
3 RMS System.

4 Q. Okay. Did you construct a lineup concerning this
5 case?

6 A. I did.

7 Q. Did the lineup in fact have Quaneil McIlwain's
8 picture in it?

9 A. It did.

10 Q. Now, I'm showing you State's Exhibit Number Thirty-
11 seven. It's got three pages.

12 A. Correct.

13 Q. What - Technically what is the third page?

14 A. The third page is the six photograph lineup.

15 Q. Now, when you construct the lineup before a witness
16 is shown the lineup, do you make any markings on the lineup
17 yourself?

18 A. I just number the pictures.

19 Q. Are there any names anywhere on this paperwork?

20 A. None whatsoever.

21 Q. Of the people whose picture's are on it?

22 A. None whatsoever.

23 Q. Is there preliminary paperwork that is used when you
24 present a lineup to somebody?

25 A. Yes.

1 Q. And what is the first page of that? Don't read it but
2 what is the first page of that document?

3 A. It is the read before you sign. Before you look at
4 the photos you have to read this declaration to 'em.

5 Q. Okay. Where was this going on with Tanisha Nelson?

6 A. Inside my patrol vehicle.

7 Q. Did you read that whole first page to her?

8 A. I did.

9 Q. Okay. Did she sign it?

10 A. She did.

11 Q. Did you sign it and put, I guess, a date or maybe even
12 time on there ---

13 A. Yes, sir.

14 Q. --- somewhere?

15 A. Well she actually put the date and time and I put my
16 initials.

17 Q. And what time was all that going on?

18 A. 9:23 a.m. on May the 29th, 2011.

19 Q. And in relation to the dispatch at least for the
20 shooting, how long after the shooting were you talking to
21 her in her mother-in-law's yard with the lineup?

22 A. The shooting come in a little bit after four and this
23 is nine, so I'd say five hours.

24 Q. Okay.

25 A. Four to five hours.

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1 Q. Did you - Is there some other - Well, when a witness
2 is shown a lineup, generally speaking not in this case,
3 when a witness is shown a lineup if the witness's make a
4 pick is there anything the witnesses - the witness does on
5 the lineup itself?

6 A. On the actual picture the witness usually circles the
7 picture that they pick and put their initials inside that
8 picture or circle the box where that pictures located.

9 Q. Is there any followup paperwork after a pick is made?

10 A. There is. There is a second page that we fill out
11 that says you know I pick so and so photograph number one,
12 number two, number three, number four, number five, number
13 six. There is a place where you can check it and we also
14 have them initial that as well.

15 Q. Is there a page two involved in this lineup?

16 A. There is.

17 Q. Now, did you show that lineup to Tanisha Nelson?

18 A. I did.

19 Q. At the time you showed her that lineup, had you shown
20 her - First of all, had you shown her any other pictures of
21 any people at all prior to showing her that lineup?

22 A. No, sir.

23 Q. To your knowledge had any other police officers showed
24 any - her any pictures of anybody concerning this case?

25 A. To my knowledge she hadn't spoke to any other officers

1 involved.

2 Q. Okay. And did she pick somebody when you - Well,
3 first of all when you showed her the lineup did you tell
4 her number one, that the suspects picture was actually in
5 the lineup?

6 A. I did not.

7 Q. Did you tell her number two who any of the people in
8 the lineup were?

9 A. I did not.

10 q. Did you tell her number three tell her or suggest in
11 any way that she should pick somebody in the lineup?

12 A. I did not.

13 Q. Did you suggest to her in any way that she should
14 pick any particular picture in the lineup?

15 A. I did not.

16 Q. Did you show her the lineup?

17 A. I did.

18 Q. Did she pick anybody?

19 A. She did.

20 Q. What number picture did she pick?

21 A. She picked number three.

22 Q. And who was number three?

23 A. Quaneil McIlwain.

24 Q. All right. Thank you. Did you at some point become
25 aware that - or somebody named Timothy Nelson?

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1 A. Yes.

2 Q. How did you become aware of Timothy Nelson?

3 A. Lieutenant - or who our investigation talked with
4 other parties at the scene and we will learn he was also at
5 1701 before the shooting incident occurred.

6 Q. Now, did you go find him? Or did you talk to him?

7 A. I did.

8 Q. Do you remember how you ended up talking to him?

9 A. I know me and Lieutenant Kirk knew his mom. We went
10 over to the house and left word with her that, you know, if
11 she sees him have him come see us at the station.

12 Q. And did you see him?

13 A. I did.

14 Q. Did you have to go find him or did he come to you?

15 A. He come to the station.

16 Q. Now, at the time you first saw Timothy Nelson, of
17 course you investigated this case, you took statements.
18 Were you aware that people inside 1701 said he had a gun
19 after the shooting? When you went to see Timothy Nelson
20 did you know people had said that about him?

21 A. Yes.

22 Q. Okay. Did you talk to Timothy Nelson about this case?

23 A. I did.

24 Q. Did he give you a written statement?

25 A. He did.

1 Q. During the course of that interview - And what date
2 were you talking to Timothy Nelson?

3 A. On the 6th of June.

4 Q. And in relation to - And the incident date was what?

5 A. May the 29th.

6 Q. Okay. Is that the first opportunity you had to go to
7 try to run this gun down?

8 A. Yes.

9 Q. All right. On the 6th of June did Timothy Nelson tell
10 you about his knowledge of this case?

11 A. He did.

12 Q. Did he tell you about the gun?

13 A. He did.

14 Q. As a result of him telling you about the gun, what
15 did you all do? Where did you go?

16 A. Based on where he told us he had thrown it I knew it
17 was gonna be in water. I advised Captain Hunter about the
18 situation cause she was in the interview. I told her that
19 we knew the whereabouts of it and she made a phone call to
20 Chief Nunnery or Fire Chief Nunnery then. I ask for some
21 supplies to help us look, again, waders and some other
22 resources. We then went to Linwood Drive; he pointed to
23 the location where he threw it over a bridge. We then made
24 our way down there and began to search. Couldn't find it
25 in moving water, moved to several settle ponds around the

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1 water and located that firearm.

2 Q. All right. When it came out of the water whose hands
3 were on it first?

4 A. Mine.

5 Q. I'm gonna show you the contents of a box. I ask if
6 you can identify what's in the box.

7 A. A chrome plated .357.

8 Q. Is that a semi-automatic or a revolver?

9 A. A revolver.

10 Q. And when did you first see this gun?

11 A. When it come out the mud hole.

12 Q. Is this the gun that Timothy Nelson led you to?

13 A. Yes, sir.

14 Q. When you got this gun in your possession, of course
15 it looks pretty good today. How did it look then?

16 A. It still looked the same. I mean it had water spot
17 on it or water on it.

18 Q. And what did you do with it when you got it?

19 A. I immediately seized it, I cleared it to make sure
20 it wasn't loaded and put it in a evidence bag.

21 Q. Now, when you say clear it, how did you clear it?

22 I'm not gonna hand you the gun; but how did you clear
23 it?

24 A. I opened the cylinder to make sure it was clear.

25 Q. Was there anything in the cylinder?

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1 A. There was not.

2 Q. Live ammunition or fired cartridge cases?

3 A. Nothing. It was empty.

4 Q. Okay. And what did you do with it after you got - Did
5 you do anything to dry it out?

6 A. We let it air dry ---

7 Q. Okay.

8 A. --- and then --

9 Q. Has it been secured since you had your hands on it
10 first up until now?

11 A. Yes.

12 Q. And what did you ultimately do with this gun?

13 A. Once we dried it out we packaged it up and sent it
14 to SLED.

15 Q. All right.

16 SOLICITOR BARFIELD: Your Honor, at this time I would
17 offer the gun in the box as State's Exhibit Number --

18 THE COURT: Next in order.

19 SOLICITOR BARFIELD: Next.

20 THE COURT: All right. Any objections?

21 MR. STEEN: I would object on the chain ground, Your
22 Honor. There was a seven day period where they didn't know
23 where the gun was. We don't know, there's a seven day gap
24 in the chain. Why is it only alleged in the water?

25 THE COURT: All right. Objection over ruled.

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1 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-SEVEN,
2 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

3 BY SOLICITOR BARFIELD:

4 Q. Did you - Were you aware that an autopsy was done
5 on Terrance Antonio Jones?

6 A. Yes, sir.

7 Q. Do you remember what day that occurred?

8 A. It was on the 29th. Correction, the 30th.

9 Q. Of?

10 A. May.

11 Q. Did you attend?

12 A. I did.

13 Q. Did you take possession of anything from the autopsy?

14 A. I did.

15 Q. And specifically I'm handing you State's Exhibit
16 Number Thirty-five for identification purposes.

17 Do you recognize what that is?

18 A. Yes, sir.

19 Q. What is that? And talk real loud please, sir.

20 A. This is the round that was extricated out of Jones'
21 body.

22 Q. Was that recovered in your presence?

23 A. Yes I was actually in the room when the autopsy was
24 performed.

25 Q. Was it handed over to you concurrently with it being

1 recovered?

2 A. Yes. Once it was sealed in their container.

3 Q. And what did you do with it when you got it?

4 A. Took possession of it and brought it back to the
5 station.

6 Q. And has it been secured except for testing purposes
7 ever since?

8 A. Correct.

9 Q. Did you also - Did you collect any - Can you identify
10 what State's Exhibits - State's Exhibit Number Thirty-six
11 for identification is?

12 A. This is the vile of blood that the Newberry
13 Pathology takes on the scene.

14 Q. And blood from whom?

15 A. Terrance Jones.

16 Q. Did you take possession of it at the autopsy?

17 A. I did.

18 Q. Was it sealed up when it came into your possession?

19 A. It was.

20 Q. All right. And what did you do with it when you got
21 it?

22 A. Brought it back to the station.

23 Q. And has it been secured also since then?

24 A. Yes.

25 SOLICITOR BARFIELD: Your Honor, at this time I'd

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1 offer

2 Thirty-five and Thirty-six as State's Exhibits instead of
3 ID.

4 MR. STEEN: Without objection, Your Honor.

5 THE COURT: All right, without objection introduced
6 into evidence as those numbers.

7 (WHEREUPON, STATE'S EXHIBIT NUMBERS THIRTY-FIVE AND
8 THIRTY-SIX, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 Q. Now, I'm gonna show you another packet. Can you
10 identify what's in that sealed plastic envelop?

11 A. These are buccle swabs that was taken from Quanell
12 McIlwain.

13 Q. All right. Explain to me first of all what buccle
14 swabs are.

15 A. Buccle swabs is swabs pretty much like Q-tips that
16 we take and swab the inside of your mouth.

17 Q. And --

18 A. It's standardized.

19 Q. Well that was my next question. For what purpose
20 do you swab the inside of somebody's mouth?

21 A. It's a standard; everybody's got their own stamp, your
22 own stamp in other words.

23 Q. All right. Did you collect buccle swabs from Quanell
24 McIlwain?

25 A. I did.

1 Q. When did you do that?

2 A. On December the 7th of 2012.

3 Q. All right. When you do those - when you collect
4 those standards on those swabs, first of all, how many
5 swabs do you use in a buccle swab kit?

6 A. Usually two.

7 Q. And are they one ended swabs or double ended like?

8 A. They are one ended swabs.

9 Q. How did you - What do you do with the swabs once
10 you collected whatever you're gonna collect from inside
11 the mouth?

12 A. Well first of all I glove up so we won't get cross
13 contamination and I just insert one at a time into the
14 mouth. Put it in a location where it can air dry; I seal
15 it up then put it in a box and then send it to SLED.

16 Q. And what date did you collect those again?

17 A. On December the 7th of 2012.

18 Q. And were they sealed up properly?

19 A. Yes.

20 Q. Did they end up going to SLED?

21 A. They did.

22 Q. Was the integrity of the evidence maintained from the
23 point you collected it until it got to SLED?

24 A. It did.

25 Q. Do you have - Did you do any testing of --

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1 A. I did not do any testing.

2 Q. All right.

3 A. Just the standard.

4 SOLICITOR BARFIELD: Your Honor, at this time I would
5 offer the buccle swabs.

6 MR. STEEN: Without objection.

7 THE COURT: Without objection ---

8 MR. BARFIELD: Forty-eight.

9 THE COURT: --- introduces State's next in order.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-EIGHT,
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 BY SOLICITOR BARFIELD:

13 Q. Lieutenant Hall, I just want to kind of run over some
14 investigative things now if that's okay.

15 A. Yes, sir.

16 Q. Based upon - When - For your purposes when did
17 Quanell McIlwain become a suspect?

18 A. After Ms. Nelson identified him at the photo lineup.

19 Q. As early as 9:30 in the morning on the same day?

20 A. Correct.

21 Q. And as a result of the information you had obtained
22 up to that point, did you make any charging decision?

23 A. I did. I presented the case to our judge.

24 Q. Was a warrant obtained.

25 A. It was.

1 Q. On May 29th?

2 A. Yes.

3 Q. What did the police department do to try to find Mr.
4 McIlwain from that point forward?

5 A. Any and everything we could.

6 Q. Okay.

7 A. Went to his house, relative's house, friend's house,
8 other sources with the phone service and all that.

9 Q. Okay. Was he located?

10 A. He was.

11 Q. What were you doing when he was actually arrested?

12 A. I was on vacation.

13 Q. When was he arrested? When was he actually taken
14 into custody? Not when he was brought back here but when
15 was he taken into custody?

16 A. The 23rd of June.

17 Q. Of?

18 A. 2011.

19 Q. Let me go back to the firearm for a minute. I'm
20 referring to State's Exhibit Number Forty-seven.

21 When you got that gun in your possession, - First of
22 all what's the brand of the gun?

23 A. Smith and Wesson.

24 Q. Okay. And what caliber again?

25 A. .357.

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1 Q. And I didn't look and I don't know if you did either,
2 but how many shots does that cylinder - -

3 A. It's a six shot.

4 Q. Were you interested in trying to see if you could
5 get any history on that gun?

6 A. I was.

7 Q. And you got to talk louder.

8 A. I'm sorry. I was.

9 Q. That's fine.

10 A. I'm being loud.

11 Q. I know. What did you do to try to get a history on
12 that gun?

13 A. Once I was able to receive the serial number, and
14 that was from SLED because I didn't want to mess with the
15 grits or anything in case they were able to process it, I
16 wanted on SLED to come back with a serial number so I could
17 do an E-trace on it.

18 Q. And who actually gives you information when you
19 request a trace on a gun?

20 A. The FBI.

21 Q. Okay. Were you able to determine anything about the
22 origins of this gun?

23 A. I was.

24 Q. Before you get into the details, are you familiar
25 with firearm's record keeping at an initial point of

1 purchase from a dealer with a Federal Firearm License?

2 A. I am.

3 Q. Is there a record made at that point when I gun is
4 bought from a dealer with a license?

5 A. Yes. You have to do a application.

6 Q. Do we require in this state - and I guess maybe even
7 in this country - any further record keeping when firearms
8 change hands?

9 A. No, sir, we do not.

10 Q. Okay. Is there a chain of title like there would be
11 for an automobile when it passes from one person to
12 another?

13 A. No, sir, not to my knowledge not unless you do a
14 handwritten saying I sold such and such to so and so.

15 Q. Okay. Were you able to determine when this gun got
16 bought from a retailer?

17 A. I was.

18 Q. And when was it bought from a retailer?

19 A. I believe it was 9/14 of 1985.

20 Q. Okay. And who is the listed purchaser of record
21 with the federal government?

22 A. A Joseph Meeks White.

23 Q. Okay. And where was it bought and sold? What town?

24 A. The Okay Pawn Shop in Rock Hill.

25 Q. Was there any - Were you able to get any documented

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1 history for this gun after it's initial sale to the fellow
2 whose name you just gave us back in '85?

3 A. Say that one more time.

4 Q. You said it got bought by, what's the fellow's name
5 again?

6 A. Joseph Meeks White.

7 Q. And a pawn shop in Rock Hill in 1985?

8 A. Correct.

9 Q. Was there any record of this gun after that?

10 A. No, sir, none after that.

11 Q. And based on your investigation is there any
12 connection of Mr. White to the shooting in Pardue Street
13 Apartments on May 29th of 2011?

14 A. No.

15 Q. Now, did you during the course of your investigation
16 meet a fellow named Mauricio Richardson?

17 A. I did.

18 Q. How did you end up meeting Mr. Richardson?

19 A. I received a phone call from -

20 Q. Don't quote anybody but just tell me what happened
21 that led you to do something.

22 A. I was told to meet SLED agents in York County.

23 Q. Where did you go in York County?

24 A. To a pediatric place. I can't remember the name.

25 Q. Doctor's office?

- 1 A. Yeah, doctor's office.
- 2 Q. And who did you meet over there?
- 3 A. I - SLED Agent Diego.
- 4 Q. And did you meet Mr. Richardson over there?
- 5 A. And Mr. Richardson. Right.
- 6 Q. How did you all actually make contact with Mr.
- 7 Richardson?
- 8 A. I went up to - You mean how did we get to him?
- 9 Q. Yeah. You end up in a parking lot?
- 10 A. Right.
- 11 Q. Do you know how that information got you there?
- 12 A. I have no idea.
- 13 Q. Do you know if it had anything to do with the phone
- 14 tracing or not?
- 15 A. With Diega being involved I knew it was something to
- 16 do with the phone.
- 17 Q. Okay. Well you get to Rock Hill in a parking lot
- 18 at a doctor's office. How do you know who to make contact
- 19 with civil wise?
- 20 A. Diego and then they had already made contact with him
- 21 and advised him that he needed to speak with us.
- 22 Q. Okay. And did you talk to Mr. Richardson then?
- 23 A. I did.
- 24 Q. All right. During the course of this investigation
- 25 there was a fired .380 cartridge case found out there in

DETECTIVE PHILLIP HALL: DIRECT BY SOLICITOR BARFIELD

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1 Pardue?

2 A. Yes, sir.

3 Q. Anything in this investigation lead you to believe
4 that a .380 firearm was involved in the shooting of
5 Terrance Antonio Jones?

6 A. No, sir.

7 Q. Evidence of - There's been some testimony about a
8 black, black shirt and a black hat left in 1701 Pardue the
9 morning this occurred. When did you find out about those
10 items?

11 A. I believe it was on 6/3 like several days after the
12 fact.

13 Q. Were they ever located?

14 A. They were not.

15 Q. The same question about there was also testimony
16 from Timothy Nelson in particular about taking the fired
17 cartridge cases out of the .357 State's Exhibit Number
18 Forty-seven and putting them in a dirty pampers in the
19 trash can. When did you find out, did you find out about
20 that?

21 A. The day he told me about it.

22 Q. And what day was that?

23 A. The 6th of June.

24 Q. Were you - Did you locate a dirty diaper with fired
25 bullet cartridges in it?

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1 A. No, sir.

2 SOLICITOR BARFIELD: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 Q. I hesitate to do this but anything else that you need
5 to tell this jury that I failed to ask you?

6 MR. STEEN: Objection. Ask for a narrative response.

7 THE COURT: Sustain.

8 SOLICITOR BARFIELD: I beg the Court's indulgence just
9 a minute.

10 THE COURT: All right.

11 Q. Oh. I think we covered this the other day, but
12 State's Exhibit Thirty-three, I think you had it in your
13 hand the other day. Do you recognize that?

14 A. Yes, sir.

15 Q. And where did you get that?

16 A. That is the phone that Sergeant Jaillette from the
17 Lancaster County Sheriff's Office handed me that morning
18 when I first arrived on scene.

19 Q. And State's Exhibit Twenty-eight I think you did this
20 the other day. Just in case you didn't let me ask you if
21 you know what that is.

22 A. Yes.

23 Q. What is that?

24 A. That is the telephone number that belongs to this
25 phone, this the Verizon phone.

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1 Q. The same phone that is State's Number Thirty-three
2 that I just showed you?

3 A. Yes, sir.

4 SOLICITOR BARFIELD: I think that's all I have.

5 Please answer anything Mr. Steen or Mr. Jones has.

6 THE COURT: Counsel.

7 MR. STEEN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 LIEUTENANT PHILLIP HALL BY MR. STEEN:

10 Q. I think I been using Investigator. Is it Investigator
11 or Detective?

12 A. Either one.

13 Q. Which one would you prefer?

14 Investigator Hall, did you attempt to locate the
15 fired cartridges in the diaper?

16 A. I mean we went to the house but I mean there is a big
17 green box out there in front of the apartment and its
18 dumped every week so we were advised that the trash can had
19 already been dumped. I would say yes.

20 Q. Does --

21 A. But I wasn't gonna - -

22 Q. Does - Just a big green container just for diapers?

23 A. No, no.

24 Q. Okay.

25 A. For the whole complex.

1 Q. I gotcha. Did you attempt to locate the - Sorry.

2 You testified that the .380 had no relevance to this
3 case?

4 A. Correct.

5 Q. Was it not found within a few feet of the victim's
6 body?

7 A. The way it was based on the shell casing itself and
8 you could tell it had been there for quite some time due to
9 the rust and content on it.

10 Q. And the cell phone, that was the first thing you came
11 in contact with in this investigation?

12 A. Correct.

13 Q. Did you get fingerprints taken off of that or attempt
14 to get fingerprints taken off it?

15 A. I did not. Like I said if I had gotten it and it had
16 been in a sealed bag I would have but again it came - from
17 my understanding in the chain of custody it came from
18 Tanisha to Sergeant Jaillette and then to me.

19 Q. And did you attempt to locate the black hat, black
20 shirt?

21 A. I didn't know anything to that until several days
22 after the fact but I did not try to locate it.

23 MR. STEEN: No further questions.

24 Thank you, Your Honor.

25 THE COURT: Anything else?

1 SOLICITOR BARFIELD: No, sir.

2 THE COURT: All right, thank you, sir, you can step
3 down.

4 (WITNESS LEAVING WITNESS STAND.)

5 SOLICITOR BARFIELD: I believe that's all for the
6 morning.

7 THE COURT: All right, ladies and gentlemen, we're
8 going to take a recess for lunch right now. Remember
9 during lunch don't talk to anybody about the case. Don't
10 do any independent research on it and don't let anybody
11 talk to you about the case. We'll see you back here -

12 Let's take a short lunch today. Let's be back in your
13 jury room at 1:30 ready to start for the afternoon. Okay.

14 See you then.

15 (JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:20 P.M.)

16 THE COURT: All right, gentlemen, anything before we -
17 Anything from you all before we break for lunch?

18 SOLICITOR BARFIELD: No, sir.

19 THE COURT: All right. You all approach.

20 SOLICITOR BARFIELD: Let me do say this.

21 THE COURT: Yes, sir.

22 SOLICITOR BARFIELD: I got SLED people coming this
23 afternoon. They are notorious for being here early. I
24 told them to come at two so that's why I said I think we're
25 probably okay saying 1:30 but if they are not here and

1 nobody is here at 1:30 just bear with me until they get
2 here.

3 THE COURT: Well, we'll find something to do. All
4 right, you all come on up here.

5 We're in recess.

6 (COURT IN LUNCH RECESS AT 12:21 P.M..)

7 (COURT BACK IN SESSION AT 01:30 P.M..)

8 THE COURT: All right, charges, gentlemen. Have you
9 all had a chance to look at the Court's proposed charge?

10 SOLICITOR BARFIELD: I have. Are you gonna charge
11 flight?

12 THE COURT: I have not but I can.

13 SOLICITOR BARFIELD: I think it's here.

14 THE COURT: Okay.

15 MR. STEEN: Your Honor, one moment. I was on my
16 research last night I know I came across something that
17 said that can't be a jury charge - in a jury charge. If I
18 could just run up the stairs and grab it.

19 SOLICITOR BARFIELD: I don't want to throw something
20 in that's improper but I'm certainly gonna argue it and I
21 think I certainly can.

22 MR. STEEN: I mean that's what - arguing both sides in
23 a jury charge.

24 THE COURT: All right, do you have the specific jury
25 charge?

1 SOLICITOR BARFIELD: I don't.

2 THE COURT: I don't - I mean I thought about that. I
3 didn't see one either. How about I not charge it but you
4 can certainly argue it.

5 SOLICITOR BARFIELD: That's fine.

6 THE COURT: All right. All right, do other than that
7 anything additionally? Of course you all will have an
8 opportunity at the end of my charge to address it again but
9 any problem with the Court's proposed charge from the
10 state?

11 SOLICITOR BARFIELD: No, sir.

12 THE COURT: From the Defense?

13 MR. STEEN: No, Your Honor.

14 THE COURT: And I am charging identification right out
15 the bench book.

16 MR. STEEN: Yes, Your Honor. Thank you.

17 THE COURT: Okay. I just don't have that printed yet.
18 All right, everybody ready?

19 You got a witness to fill in until - -

20 SOLICITOR BARFIELD: I got to go talk to him. I got
21 to see him and talk to him for a second.

22 THE COURT: Okay. All jurors are here?

23 All right.

24 (PAUSE.)

25 THE COURT: All right. Are we ready?

QUINTUS YOUNG: DIRECT BY SOLICITOR BARFIELD

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1 SOLICITOR BARFIELD: The State's ready.

2 THE COURT: All right. Bring the jury in.

3 THE BAILIFF: The jury's coming in.

4 (JURY REENTERS COURTROOM AT 01:38 P.M..)

5 THE COURT: All right, all members of the jury are
6 present.

7 Solicitor, you may call your next witness.

8 SOLICITOR BARFIELD: The State calls Quintus Young.

9 THE BAILIFF: Place your left hand on the Bible and
10 raise your right.

11 (WHEREUPON, QUINTUS YOUNG,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 QUINTUS YOUNG BY SOLICITOR BARFIELD:

15 Q. Tell us your name please, sir.

16 A. My name is Quintus Young, II.

17 Q. Mr. Young, by whom are you employed?

18 A. South Carolina Law Enforcement Division commonly known
19 as SLED.

20 Q. What do you do for SLED?

21 A. I am a forensic toxicologist.

22 Q. How long have you been employed by SLED?

23 A. Since 2007 so it would be eight years in March.

24 Q. And how long have you been a forensic toxicologist for
25 SLED?

QJINTUS YOUNG: DIRECT BY SOLICITOR BARFIELD

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1 A. The entire time.

2 Q. What is your educational background?

3 A. I have a Bachelor's in Science in Chemistry from the
4 University of South Carolina. Once I hired on at SLED I
5 began in house training which consist of blood alcohol and
6 drug training. We have written exams, four week exams, you
7 have to - with regards to the alcohol you have to test five
8 hundred samples, previously tested samples, to see if you
9 come within a certain percentage of that reported value.
10 And from then on you do drug training where you pretty much
11 shadow senior toxicologist.

12 Q. What does a forensic toxicologist do?

13 A. It is our responsibility to analyze biological
14 specimens. Blood, urine, sometimes brain and liver tissue
15 to detect the absence or presence of alcohol, drugs and
16 poisons and interpret those findings for courts,
17 solicitor's, pathologist and coroners.

18 Q. Has SLED deemed you qualified to be a forensic
19 toxicologist and to give testimony in court?

20 A. Yes, sir.

21 Q. Have you provided testimony in court as an expert in
22 forensic toxicology in this state before?

23 A. I have.

24 Q. Do you know how many times?

25 A. Twelve, thirteenish.

QUINTUS YOUNG: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. Have you ever been not recognized as an
2 expert in forensic toxicology?

3 A. No, sir.

4 SOLICITOR BARFIELD: Your Honor, at this time I'd
5 offer

6 Mr. Young as an expert in forensic toxicology.

7 THE COURT: Any objection?

8 MR. STEEN: No, objection, Your Honor.

9 THE COURT: All right, without objection.

10 Jury, you will remember again what the charge is or
11 what I charge on expert witnesses'. When someone is
12 qualified by way of education and experience or otherwise
13 that may be - they need to testify in the form of an
14 opinion. Just because they are deemed an expert doesn't
15 mean you have to accept that opinion, it's simply something
16 that you as a jury should consider when you are weighing
17 all the evidence as well as credibility of the evidence.

18 Okay. Solicitor.

19 BY SOLICITOR BARFIELD:

20 Q. Mr. Young, did you get called upon to provide
21 assistance in a case which has SLED Lab Number L11-06004?

22 A. Yes, sir.

23 Q. And did you receive material from the Lancaster
24 Police Department or on a Lancaster Police Department
25 investigation to do forensic toxicology work on?

QUINTUS YOUNG: DIRECT BY SOLICITOR BARFIELD

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1 A. Yes. We received the blood sample.

2 Q. And does that blood sample have a SLED Lab Number?

3 SLED Item Number. I'm sorry.

4 A. That would be Item Number 13.

5 Q. Was the blood sample identified with a particular
6 person?

7 A. Yes. It was blood labeled Terrance Jones.

8 Q. All right. And did you analyze that blood to
9 determine the presence or absence of any of the substances
10 you said it's in your training to do?

11 A. Yes, sir.

12 Q. Did Mr. Jones have anything in him of note that you
13 found in your analysis?

14 A. The only thing I found was THC which is commonly
15 known as marijuana.

16 Q. And did you quantify - Did you quantify the level of
17 THC?

18 A. Yes, sir.

19 Q. And what was the quantity?

20 A. It was 2.7 micrograms per liter which is a very very
21 low amount.

22 Q. All right. Is that an amount that would severely
23 impair anybody?

24 A. It's presence was acting on the brain but to what
25 capacity it would be minor.

QUINTUS YOUNG: DIRECT BY SOLICITOR BARFIELD

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1 Q. Anything else in Mr. Jones?

2 A. That is it.

3 Q. Any -

4 A. The blood alcohol was negative.

5 Q. Any other legal or illegal drugs in the blood sample
6 you got?

7 A. No, sir.

8 Q. Thank you, sir, answer anything Mr. Steen or Mr.
9 Jones has.

10 One more question. I'm sorry. Excuse me.

11 Did you prepare a report containing your finding?

12 A. Yes, sir.

13 Q. I'm gonna hand you a two page stapled document.

14 Can you identify what that is?

15 A. This is a copy of my report.

16 Q. Concerning Terrance Jones and the testimony you just
17 gave?

18 A. Correct.

19 SOLICITOR BARFIELD: Your Honor, at this time I would
20 offer the toxicology report as State's Exhibit.

21 THE COURT: Any objection?

22 MR. STEEN: No objection, Your Honor.

23 THE COURT: All right, without objection State's next
24 in order introduced into evidence.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER FORTY-NINE,

ILA SIMMONS: DIRECT BY SOLICITOR BARFIELD

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1 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

2 THE COURT: You tend to the witness?

3 SOLICITOR BARFIELD: Yes, sir.

4 THE COURT: All right.

5 MR. STEEN: No cross examination.

6 THE COURT: All right. Thank you, sir, you can step
7 down, you're free to leave.

8 (WITNESS LEAVING WITNESS STAND.)

9 SOLICITOR BARFIELD: Let me step out and see who's out
10 here if I can, Your Honor.

11 THE COURT: Yes, sir.

12 (PAUSE.)

13 SOLICITOR BARFIELD: The State calls Ila Simmons.

14 THE BAILIFF: Place your left hand on the Bible and
15 raise your right.

16 (WHEREUPON, ILA SIMMONS, BEING
17 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 THE COURT: All right.

19 DIRECT EXAMINATION

20 ILA SIMMONS BY SOLICITOR BARFIELD:

21 Q. Tell us your name please, ma'am.

22 A. My name is Ila Simmons.

23 Q. Ms. Simmons, where were you formerly employed in
24 relation to this case?

25 A. I worked at the South Carolina Law Enforcement

1 Division also known as SLED in the Forensic Services
2 Laboratory, Trace Evidence Department.

3 Q. And how long had you - When did you last work for
4 SLED?

5 A. October of last year.

6 Q. How long before October of last year did you work for
7 SLED?

8 A. Fourteen years.

9 Q. And as an employee of SLED toward the end of your
10 tenure there I guess what was your speciality at SLED?

11 A. I was a gunshot residue analyst.

12 Q. Okay.

13 A. In the Trace Department.

14 Q. What did you have to do to become a gunshot residue
15 analyst in the Trace Department?

16 A. The first three years that I worked at SLED I worked
17 with a court qualified SLED certified trace evidence
18 examiner. I had to possess a bachelor's degree in
19 Chemistry before I came to work at SLED to get that
20 appointment. And after that I worked through a three year
21 training program that I had to take written and practical
22 examinations and pass them all with one hundred percent
23 efficiency. I also had to attend seminars annually to
24 learn the new techniques establishing gunshot residue. And
25 I was a member of the FBI's gun shot residue symposium

ILA SIMMONS: DIRECT BY SOLICITOR BARFIELD

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1 where we were invited to Quantico to discuss and set forth
2 all the standards and practices that would be used by
3 analyst around the world for gunshot residue analysis.

4 Q. Were you deemed qualified by SLED to do gunshot
5 residue analysis?

6 A. Yes, sir.

7 Q. Have you testified in the court's of this state
8 previously as an expert in gunshot residue analysis?

9 A. Yes, sir, over two hundred and fifty times.

10 Q. Have you ever been determined not qualified by a
11 court to testify in that field of speciality?

12 A. No, sir.

13 SOLICITOR BARFIELD: Your Honor, at this time I'd
14 offer Ms. Simmons as an expert in gunshot residue analysis.

15 THE COURT: Any objection?

16 MR. JONES: No objection.

17 THE COURT: Without objection she's can testify in the
18 form of an opinion as an expert.

19 BY SOLICITOR BARFIELD:

20 Q. Ms. Simmons, did you - Do you have access to material
21 related to this case even though you're not employed by
22 SLED at the time?

23 A. Yes, sir, I do to my report. Yes, sir.

24 Q. Okay. And do you have that with you today?

25 A. Yes, sir, I do.

1 Q. Now, did you get called upon back in 2011 to do
2 some work on a case from the Lancaster Police Department
3 with SLED Lab No. L11-06004?

4 A. Yes, sir..

5 Q. And what is it that you received to do some work on
6 in the Lab?

7 A. I received a gunshot residue collection kit collected
8 from Terrance Jones.

9 Q. And is the kit - Does the kit have a SLED Item Number?

10 A. Yes, sir.

11 Q. And what is the item number?

12 A. The Item Number was Item Number 1.

13 Q. Now I'm gonna hand you State's Exhibit Number Forty-
14 three and ask if you can identify what that is? If you
15 need to open it up you certainly may.

16 A. Yes, sir. State's Exhibit Forty-three is the gunshot
17 residue kit I received from Terrance Jones. It is marked
18 with the unique identification number, the item number, my
19 initials, and the date that it was opened for analysis.

20 Q. And does it also have the SLED Lab Number for this
21 case on it?

22 A. Yes, sir, it does.

23 Q. Educate us a little bit about gunshot residue.

24 First of all, what is gunshot residue?

25 A. Gunshot residue is a mixture of microscopic chemicals

ILA SIMMONS: DIRECT BY SOLICITOR BARFIELD

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1 that come out of a gun when it's discharged. It comes out
2 in a cone shaped cloud and can get on anything in close
3 proximity to the gun including the hands of the person who
4 fired the gun.

5 Q. Is gunshot residue - Is it possible for gunshot
6 residue to get on somebody who has been shot by a gun?

7 A. Yes, sir, it is.

8 Q. Now, what are the components of gunshot residue?

9 A. The three primary components of gunshot residue are
10 lead, barium and antimony.

11 Q. And when you - Well let's talk about a gunshot
12 residue evidence collection kit. What is that?

13 A. It is the standardized kit made by scientific
14 companies and it contains two portions. The first portion
15 is the double-sided piece of sticky tape that has a handle
16 on it and the collecting officer would dab that tape across
17 the area of the hands from whomever the kit is being
18 collected and it would pick up any gunshot residue that
19 would be present. There is a sample collected from the
20 right palm, a sample collected from the back of the right
21 hand, a sample collected from the left palm and a sample
22 collected from the back of the left hand. Each one is
23 labeled and placed in a separate vile.

24 After that's completed the officer then take two
25 sterile cotton swabs, put a couple of drops of nitric acid

1 on them, diluted nitric acid, and go over those same areas
2 of the hands. And they also have viles and they are
3 labeled and they would be placed back into the kit and sent
4 to SLED.

5 Q. Do you analyze the tape list or the swabs or both?

6 A. We analyze the swabs first. It's a screening test and
7 if the metals that we find reach a certain threshold level
8 we would take it on to the second portion of the test which
9 would be the tape.

10 Q. Now, how do you actually analyze it? Is this a
11 microscopic examination or is this a machine chemical
12 examination? How is it examined?

13 A. It is a instrument, it's basically is a big bean
14 counter. It tells you how many particles of each element
15 is on the swabs when we analyze them and it's called an
16 inductively coupled plasma mass-spectrometer. It tells you
17 all of the metals that are present on that swab at the time
18 of the analysis.

19 Q. Now, did you break Item 1 down into sub Items?

20 A. Yes, sir, I did.

21 Q. And what are the numbered sub items?

22 A. It would be 1.1 would be the sample from the right
23 palm. 1.2 would be the sample from the back of the right
24 hand. 1.3 would be the sample from the left palm and 1.4
25 would have been the sample from the back of the left hand.

ILA SIMMONS: DIRECT BY SOLICITOR BARFIELD

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1 Q. Did you examine samples 1.1 through 1.4 for gunshot
2 residue?

3 A. Yes, sir, I did.

4 Q. Did you find any evidence of gunshot residue on any
5 of those samples?

6 A. No, sir.

7 Q. Now, can you tell the jury anything about how far
8 gunshot residue would travel? What part of a gun does
9 gunshot residue come out of?

10 A. It comes mainly about ninety-eight percent of the
11 gunshot residue comes out of the muzzle of the gun where
12 the bullet exits the gun and it's gonna come out as I said
13 before in a cone shaped cloud. If you have a revolver
14 which is the type of gun where you put the cartridges in
15 and the cylinder actually turns some can come out around
16 the cylinder gap. Also in a semi-automatic where the
17 cartridge case is ejected out a small amount will come out
18 of the ejector bore but ninety-eight percent comes out of
19 the muzzle of the gun.

20 Q. All right. In addition to the type of operation of
21 the gun, being semi-automatic or revolver, does the caliber
22 of the gun have anything to do with distance of travel of
23 gunshot residue?

24 A. Yes, sir. The larger the caliber of the gun the more
25 gunshot residue is placed in the cartridge so the more that

1 is available to be expelled out of the gun. The larger the
2 caliber of the gun the farther the gun shot residue will
3 travel simply because you have more of it and you have more
4 power behind the ejection of it.

5 Q. Generally speaking, can you tell the jury anything
6 about how far gunshot residue might travel out the muzzle
7 of a revolver if it is a .357 caliber revolver?

8 A. It can travel up to ten feet.

9 Q. Okay. And what does the absence of gunshot residue
10 on samples 4.1 through 4.4 tell you in this case?

11 A. It is indicative that this person's hands were not
12 in the cloud of the gunshot residue. They could have been
13 at a distance farther than the gun would have expelled
14 gunshot residue. And also it does not appear that this
15 person had handled or fired a gun within six hours from
16 being deceased.

17 Q. Okay. Did you prepare a report containing your
18 findings?

19 A. Yes, sir.

20 Q. And I'm gonna hand you a two-page document and ask
21 you if you can identify that please, ma'am?

22 A. Yes, sir. This is a copy of the report that I
23 prepared.

24 SOLICITOR BARFIELD: And I think I failed to offer
25 Ms. Simmons as an expert in --

1 Did I offer her as an expert?

2 THE COURT: You did.

3 SOLICITOR BARFIELD: I did. Your Honor, at this time
4 I'd offer the report as State's Number Forty-nine?

5 THE COURT: Any objection to the report?

6 SOLICITOR BARFIELD: Fifty.

7 MR. JONES: No objection, Your Honor.

8 THE COURT: All right. Admitted as State's next in
9 order.

10 (WHEREUPON, STATE'S EXHIBIT NUMBER FIFTY, IDENTIFIED
11 AND MARKED, RECEIVED INTO EVIDENCE.)

12 SOLICITOR BARFIELD: No further questions.

13 MR. JONES: No questions.

14 THE COURT: All right. Thank you, ma'am, you may step
15 down and you're free to leave.

16 (WITNESS LEAVING WITNESS STAND.)

17 SOLICITOR BARFIELD: Again, may I step out to see who
18 is here?

19 THE COURT: Yes, sir.

20 (PAUSE.)

21 SOLICITOR BARFIELD: The State calls Paul Meeh.

22 THE BAILIFF: Place your left hand on the Bible and
23 raise your right.

24 (WHEREUPON, PAUL MEEH, BEING
25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

PAUL MEEH: DIRECT BY SOLICITOR BARFIELD

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DIRECT EXAMINATION

PAUL MEEH BY SOLICITOR BARFIELD:

Q. Tell us your name please, sir.

A. My name is Paul Meeh. That's M-e-e-h.

Q. Mr. Meeh, by whom are you employed?

A. I'm employed at SLED in Columbia in the DNA Department.

Q. How long have you been employed at SLED in the DNA Department?

A. I've been there approximately seven years.

Q. And what is your job and what is your speciality in the DNA Department?

A. Well I'm in the DNA section and I identify body fluids which is called serology and I also do DNA which is the identification of to whom those belong.

Q. Have you been qualified as an expert in serology in DNA analysis in the court's of this state before?

A. Yes, sir.

Q. How did you become an expert in serology and DNA analysis?

A. I did my undergraduate at South Carolina in Biology. I finished that in 2001. I did my master's at the Medical University of South Carolina; finished that in 2003. I did three years of Ph.,D work but I did not complete my Ph.,D and that was in 2007 when I hired by SLED.

PAUL MEEH: DIRECT BY SOLICITOR BARFIELD

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1 Q. Okay. How long have you been analyzing substances
2 for DNA at SLED?

3 A. My training took approximately a year and a half after
4 I arrived at SLED so it would be about five years. Around
5 five years maybe five point five.

6 Q. All right.

7 SOLICITOR BARFIELD: Your Honor, at this time I'd
8 offer Mr. Meeh as an expert in DNA analysis.

9 THE COURT: Any objection?

10 MR. JONES: No objection, Your Honor.

11 THE COURT: No objection he's qualified as an expert.

12 BY SOLICITOR BARFIELD:

13 Q. Mr. Meeh, did you do some work on a case submitted
14 by the Lancaster Police Department with SLED Lab Number
15 L11-06004?

16 A. Yes, sir, I did.

17 Q. I'm gonna jump way to the end and then we'll fill in
18 some gaps. Did you make any DNA match on the items you
19 worked on?

20 A. No, sir, I did not. The DNA profile that I developed
21 were insufficient to put into our matching system.

22 Q. Okay. Now I'm gonna ask you first of all what the
23 items were that you were presented to do some work on? A
24 SLED Item number and description of the item.

25 A. Yes, sir. I had Item 12.1 which was a dried blood

1 standard from Terrance Jones.

2 Q. Did you understand Jones to be the victim or did you
3 know?

4 A. He was listed as - Jones was listed as the victim
5 on my incoming work sheet.

6 Q. Okay. Go ahead.

7 A. I had a buccle swab Item 14 which is from Quanell
8 McIlwain. Excuse me if that pronunciation isn't correct.

9 Q. It's correct.

10 A. I had Item 7.1 which was a swab from the mouth of
11 a plastic cup from Marker A. I had Item 8.1 which was a
12 swab from the mouth of a plastic cup from Marker E.

13 Q. Now, I'm gonna show you State's Exhibits Forty and
14 Forty-one first and ask if you can identify what they are?

15 A. This one is Item 7.1 which is a swab from the plastic
16 cup at Marker A. This is Item 8.1 which is the swab from
17 the mouth of the plastic cup at Marker E.

18 Q. Now I'm gonna show you State's Exhibit Number
19 Forty-eight and if you need to open it up feel free to
20 cause I'm gonna ask you if you can identify what that is
21 also.

22 A. I don't need to open it. We have our label here
23 which identifies this as Item Number 14. Those are my
24 initials and the date that I worked on it. It's resealed.
25 So that would make this Item 14 buccle swab from Quanell

PAUL MEEH: DIRECT BY SOLICITOR BARFIELD

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1 McIlwain.

2 Q. And what are buccle swabs?

3 A. They are from the inside of your cheek but for a
4 DNA standard you can use any cells from the body as long as
5 you know where they come from so we can use the inside of a
6 swab from the cheek or blood or any of those things.

7 Q. Now, from a blood sample and from two swabs - Well
8 from each of these items you got a blood sample from
9 Terrance Jones; you got a swab from each of two plastic
10 cups and you got buccle swabs from Quanell McIlwain. What
11 do you do with each one of those four items to see if you
12 got something to work with?

13 A. Well the known standards are the buccle swabs and the
14 blood. We generate a DNA profile from those. There's
15 never a failure from that. And that DNA profile is sort of
16 like a locker combination, it's specific to you so you can
17 think of it as a fingerprint or anything like that. It's
18 specific to a person.

19 Then we compare it to evidence so in this case the
20 evidence obviously is the swab from the cups. But you're
21 not always able to generate a full DNA profile from
22 evidence and in this case with cups it's just touch DNA
23 that perhaps sat outside or did any of those things and so
24 that degraded it.

25 And then the chart you can see that some of the places

KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 fell away but there were some remaining places and I
2 attempt to match and in this case I was aks to match the
3 standards of the subject and the victim to attempt to put
4 them on one of these cups and neither of them were there.

5 Q. Okay. Were you able to say that neither of them,
6 although you can't develop the full profile, were you able
7 to say that both of them are not on those two cups?

8 A. Yes, sir.

9 Q. Okay. Did you prepare a report which states your
10 findings?

11 A. Yes, sir, I did.

12 Q. And I want to hand you a three page document and
13 ask you if you can identify what that is?

14 A. This is a copy of my report.

15 Q. Okay.

16 SOLICITOR BARFIELD: Your Honor, at this time I'd
17 offer the report as Number Fifty-one I believe.

18 MR. JONES: No objection, Your Honor.

19 THE COURT: Without objection entered into evidence.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER FIFTY-ONE,
21 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

22 SOLICITOR BARFIELD: Bear with me just a minute.

23 (PAUSE.)

24 SOLICITOR BARFIELD: Thank you, sir, answer anything
25 Mr. Steen or Mr. Jones has.

KEN WHITLER: CROSS BY SOLICITOR BARFIELD

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1 MR. JONES: No questions for this witness.

2 THE COURT: All right. Thank you, sir, you can step
3 down and you're free to leave.

4 (WITNESS LEAVING WITNESS STAND.)

5 THE COURT: Call your next witness.

6 SOLICITOR BARFIELD: The State calls Ken Whitler.

7 THE BAILIFF: Place your left hand on the Bible and
8 raise your right.

9 (WHEREUPON, KEN WHITLER,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 KEN WHITLER BY SOLICITOR BARFIELD:

13 Q. Tell us your name please, sir.

14 A. My name is Kenneth H. Whitler. The last name is
15 spelled W-h-I-t-l-e-r.

16 Q. Mr. Whitler, are you employed right now?

17 A. No I'm retired.

18 Q. And from where did you retire?

19 A. South Carolina Law Enforcement Division also known
20 as SLED.

21 Q. When did you retire from SLED?

22 A. In 19 - Excuse me. Two years ago and I came back
23 and worked part time until April 1st of this year then I
24 fully retired.

25 Q. Congratulations. What department of SLED did you

1 work in?

2 A. I worked in the laboratory section in the firearms
3 and tool mark unit.

4 Q. How long did you work in the firearms and tool mark
5 unit at SLED?

6 A. From 1997 until this year.

7 Q. And in the firearms and tool mark identification unit
8 were you a firearms examiner among other things?

9 A. I was an examiner for firearms identification yes,
10 sir.

11 Q. Yes, sir. How did you get to be an examiner for
12 firearms identification?

13 A. There is no school you can go to to get a degree in
14 firearm identification. You have to learn it from other
15 qualified examiners. When I was in the FBI laboratory I
16 underwent their training period for about two years and
17 learned how to become a firearms examiner. Like I said
18 it's a two year period. You look at literally thousands of
19 cartridge cases and bullets. You fire many guns and you
20 work with all the examiners, qualified examiners, in the
21 unit. At the end of - during this period you're given test
22 and you also work on real cases with the actual examiners.

23 At the end of the period when all the examiners felt
24 that you're qualified or able to do the work then they give
25 you a series of three test and if you successfully complete