

# VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY.

Kristi Lea Harrington, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RYAN P. DELESTON,

APPELLANT

APPELLATE CASE NO. 2013-002224

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RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**  
**STATE'S EXHIBIT #29 (DVD - STATEMENT OF RYAN DELESTON)**  
**STATE'S EXHIBIT #30 (DVD - STATEMENT OF RYAN DELESTON)**  
**STATE'S EXHIBIT #23 (VIDEO OF CRIME SCENE)**  
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**STATE'S EXHIBIT #2 (DVD - DD PECKERS VIDEO)**

STATE OF SOUTH CAROLINA ) GENERAL SESSIONS COURT  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, )  
vs. ) Case Nos.: 2011-GS-10-6361  
RYAN DELESTON, ) 2011-GS-10-6362  
Defendant. ) 2011-GS-10-6363  
2011-GS-10-6364

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TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL, VOLUME I OF V  
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON  
ON OCTOBER 7, 2013

---

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State of SC vs Ryan Deleston  
Jury Trial, October 7, 2013  
Volume I of V

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State of SC vs Ryan Deleston  
Jury Trial, October 7, 2013  
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1 All right. You now have, Mr. Pennington, I  
2 understand, a Motion to Reveal the 404(b) evidence, and  
3 then the State has a companion motion; is that correct?  
4 Is that how I understand we're -- it's working on the  
5 404(b)?

6 MR. PENNINGTON: I think that there is an  
7 attempt by them to have me precluded from going into  
8 what would be some Cross-Examination material that was  
9 relevant to our defense under the idea that some -- that  
10 the State is being prejudiced under a 404(b) theory.  
11 That would be the Chopper shooting, where Bryan Rivers  
12 alleged to have -- I think he admits shooting  
13 Mr. Hayward during the course of armed robbery at night  
14 two weeks before this incident with the same gun. And I  
15 believe we've submitted a memorandum to the Court last  
16 night, which has been filed and passed up as well.

17 THE COURT: All right. Are you -- you are  
18 arguing this motion?

19 MR. KOZELSKI: Yes, your Honor.

20 THE COURT: And the State is ready to go  
21 forward as well?

22 MS. WILSON: Yes, ma'am.

23 Your Honor, what we filed was a Motion *in*  
24 *Limine* regarding this 404(b) of a witness. I believe  
25 you have our memorandum on that issue that we handed in

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1 on Friday. I don't have much to say outside of that  
2 motion, except to just emphasize to the Court, we're  
3 talking about two weeks before the murder of  
4 Marley Lion, an incident that, in the State's view, is  
5 in really very few ways similar to the murder of  
6 Marley Lion.

7           The Defense, we anticipated when we filed the  
8 memorandum, would attempt to argue that the Chopper  
9 shooting two weeks prior should come in because the same  
10 gun was used in the Chopper shooting as was used to kill  
11 Marley Lion. I think that that argument is  
12 significantly undercut, because just that very night, an  
13 hour or so before Marley was shot, Bryan Rivers used  
14 that gun, the murder weapon, to do another robbery  
15 downtown. He was involved in that robbery with  
16 Ryan Deleston and with Julius Brown and with  
17 George Brown. But if there is a need to show that  
18 someone else had possession, someone else had access,  
19 someone else had, in fact, used that weapon, they're  
20 going to have an armed robbery that occurred about one  
21 hour before the shooting.

22           To stretch back two weeks prior, to boot strap  
23 that in to try to show that because two weeks prior Ryan  
24 Rivers shot someone in the leg, that he must have shot  
25 and killed Marley Lion, I think, is a stretch.

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1           In more ways than not, the shooting of Chopper  
2 is just not the same thing. First of all, Chopper was  
3 someone that was known to Bryan Rivers and Ryan Deleston  
4 and the other Codefendants. He was someone that Bryan  
5 Rivers had a beef with. He was someone that these  
6 Defendants set out to rob. That's totally different  
7 than the situation that we have with Marley Lion, in  
8 that Marley Lion just happened to be in the wrong place  
9 at the wrong time. The intended target the night Marley  
10 was killed was a Famous Joe's bar. They set out to do  
11 that robbery when Marley interrupted it by driving up  
12 and they missed the money bag leaving. It's hardly the  
13 same thing.

14           In addition, you know, there are a number of  
15 things as far as how they got there. In the Chopper  
16 shooting, George Brown drove them to the apartment  
17 complex where it took place. In this shooting, they  
18 walked down the street because it was near where they  
19 were hanging out. There are just a number of things  
20 that are different.

21           But when you look at the evidence, what -- with  
22 any piece of evidence, the Court is required to do is a  
23 403 analysis. And in this situation, putting in  
24 evidence that Bryan Rivers shot someone else is more  
25 prejudicial than it is probative. It's not probative,

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1 because it's nothing like the shooting of Marley Lion.

2 And that's our position, your Honor. If you  
3 have any questions, I'll be happy to answer them.

4 THE COURT: Mr. Pennington? Oh, I'm sorry.

5 MR. PENNINGTON: Mr. Kozelski's going to handle  
6 this, your Honor.

7 THE COURT: Thank you.

8 MR. KOZELSKI: Thank you, your Honor. Our  
9 contention is, first and foremost, that this is -- this  
10 doesn't reach the Lyle analysis because it's evidence of  
11 third-party guilt. We are submitting the Chopper  
12 shooting as evidence that somebody else used this weapon  
13 in the very same manner that it was used in the  
14 Marley Lion shooting, and that this evidence shows that  
15 somebody else was the shooter in the Marley Lion murder.

16 That's exactly what third-party guilt evidence  
17 is -- is there for, is to allow Mr. Deleston to present  
18 a defense that he, in fact, did not do this, and that  
19 somebody else was the trigger man. And we think that  
20 this other robbery is very relevant.

21 I am still unclear as to how this prejudices  
22 the State. I don't think that this necessarily  
23 prejudices the State in any way. It doesn't prejudice  
24 Mr. Rivers in any way. He's already pled to charges  
25 related to this.

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1           And in further, it's admittedly known to  
2 happen. These aren't mere accusations that we're  
3 spouting out. This is somebody who puts himself at the  
4 scene of all of these crimes. So this is the first  
5 robbery, the second robbery which took place downtown,  
6 and then eventually the Marley Lion robbery that these  
7 individuals were all involved, and they all put  
8 themselves in there. And as we put, speaking to the  
9 similarity of the common-planned schemes, we have a  
10 chart, and it's submitted in the back of our motion --  
11 or response to the State's motion, that shows that these  
12 are essentially the same plan. Yes, there might  
13 be minute details that are a little different from one  
14 another. But they are planned in advance; they are  
15 targeted individuals.

16           I know the Solicitor just told you Marley Lion  
17 wasn't a targeted individual, but when you read and  
18 understand the evidence that when he did come into the  
19 parking lot, their plan changed. It changed from  
20 robbing the employees that were coming out to robbing  
21 Marley Lion. And you can see that in the video as  
22 Julius Brown walks by and he stalks Marley Lion's car.  
23 And so it's a targeted individual.

24           You have the same perpetrators. You have the  
25 same gun. You have them approaching individuals on foot

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1 under the cover of darkness, that these perpetrators  
2 fled on foot, and Bryan Rivers, while he was fleeing,  
3 turns, fires the gun --

4 THE COURT: Tell me what a targeted individual  
5 is to you.

6 MR. KOZELSKI: They set out to find an  
7 individual that they saw isolated and alone. And they  
8 planned to approach that person and point a gun at them  
9 and say, Give me all your money. I mean, it's a very  
10 simple plan. It's an armed robbery. And to justify --

11 THE COURT: In the Chopper shooting, the  
12 individual known was known to the Defendants; correct?

13 MR. KOZELSKI: Yes, yes. That is --

14 THE COURT: And in the Lion shooting, he was  
15 not known to the Defendant?

16 MR. KOZELSKI: He was not, no. And that's  
17 really the only difference between the two.

18 As we lay out in our chart, as well as  
19 throughout the -- throughout our memo, that the plan  
20 remains the same. The locations are within -- I think  
21 the locations apart are .69 miles. The motive was to  
22 get money. The --

23 THE COURT: Tell me about the location  
24 similarities. One was a parking lot. And where was the  
25 Chopper shooting?

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1 MR. KOZELSKI: The Chopper shooting was at the  
2 Saint Andrew's Gardens Apartments, which is located --

3 THE COURT: Where the victim resided?

4 MR. KOZELSKI: Not -- well, the victim's  
5 parents, Leroy Townsend's parents lived at that  
6 apartment complex, and that's why he says -- he tells  
7 the police that he's there originally. And it's not  
8 very far from -- it's basically right in the Ardmore  
9 area, both of these shootings. They're less than a mile  
10 apart. So they're in the same location, using the same  
11 weapon, the same individuals, and same plan. It's a  
12 common plan.

13 But before we even get to the similarities,  
14 this is really evidence that should be allowed under  
15 just a due process of allowing Mr. Deleston to present a  
16 full defense and saying, I'm not the shooter; this is  
17 the other shooter. This is -- this is a person who puts  
18 himself there and, essentially, just says, Well, Ryan  
19 did it. I didn't do it. So it's not that we're just  
20 casting mere suspicion on him. He puts himself there.  
21 And to not allow that evidence, they're essentially  
22 saying that the Defense can't put up a defense, if we're  
23 not allowed to bring in evidence that somebody else was  
24 the shooter. That is our defense, is that Bryan Rivers  
25 was the shooter, and they're trying to preclude us from

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1 saying that.

2 THE COURT: Tell me how excluding the evidence  
3 of the Chopper shooting will preclude you from  
4 mentioning those facts.

5 MR. KOZELSKI: I think it's relevant. It's  
6 relevant to the fact it makes it more likely that he was  
7 the individual with the gun. He was in the first armed  
8 robbery. He was in the second armed robbery. And then  
9 the third armed robbery, he says, Well, I didn't have  
10 the gun. And that's just rather convenient in this  
11 case. I -- Mr. Deleston -- Mr. Deleston should be  
12 allowed to explore and point out the fact that he was  
13 doing these armed robberies in the same amount -- same  
14 approximate time -- they used two weeks as such a remote  
15 period of time that it's just so far away from the --  
16 the issue here -- or the crime here. But the cases have  
17 found that seven to eight years, justifiable under  
18 common plan scheme, that it's not the actual time, it's  
19 the actual plan. And the plan here was the same. And  
20 that's the robbing an individual at gunpoint under the  
21 cover of darkness with the same murder weapon. All of  
22 them are involved.

23 THE COURT: Okay. Ms. Wilson, how -- couple of  
24 questions. The Defendant brings up a point that it  
25 should be -- even if I don't allow it under 404(b), that

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1 he should be allowed to enter it under a third-party  
2 guilt. What's your position as to that?

3 MS. WILSON: Your Honor, again, I think you  
4 have to look at the pure relevance of it. We're talking  
5 about two weeks remote in an area -- there's no telling  
6 how many armed robberies took place in a one-mile radius  
7 of Ardmore. Just because an armed robbery and a  
8 shooting took place, it doesn't -- it's not probative.  
9 What happened two weeks prior -- and remember this: Two  
10 weeks prior, when Chopper was called on the telephone,  
11 told to be at a certain place under the ruse of buying  
12 drugs, and then he was ambushed, robbed, and shot. Now,  
13 that's horrible. I get that. But it is nothing like  
14 what happened to Marley Lion.

15 Under the Defense analysis, every armed robbery  
16 would involve a plan to hold someone at gunpoint.  
17 That's what an armed robbery is, holding someone up,  
18 whether a knife, a gun, whatever. So to say that that  
19 is the big similarity, I think it fails there. And,  
20 again, the reason that I -- that we submit that the  
21 Defendant is not prejudiced even further is that they  
22 will have the gun in Bryan River's hand one hour before  
23 Marley Lion was shot. The gun will be in his hand  
24 committing an armed robbery.

25 MR. KOZELSKI: Your Honor, the facts remain

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1 that, first, all of these robberies were planned by  
2 Julius Brown. They were planned by the same person.  
3 And they are also executed by the same person, in that  
4 they're executed by Bryan Rivers with the same gun.  
5 They're saying that we are not prejudiced by not  
6 allowing this other evidence of Bryan Rivers' crime in  
7 shooting Chopper. But it still remains that he is a  
8 serial armed robber.

9 And along with this, he puts himself at the  
10 Marley Lion crime scene. So we're not casting mere  
11 accusations. We're not just saying that somebody else  
12 was robbing other people in the area of Ardmore around  
13 this period of time. We are saying Bryan Rivers was  
14 robbing people at gunpoint with the same gun.

15 Your Honor, if I may beg the Court's  
16 indulgence?

17 THE COURT: Take your time.

18 (Mr. Kozelski and Mr. Pennington speak off the  
19 record.)

20 MR. KOZELSKI: Your Honor, this testimony is  
21 testimony from all the parties involved. It is  
22 testimony that comes in under Julius Brown. It's  
23 testimony that comes in under --

24 THE COURT: Tell me again, Counsel, what it's  
25 probative to.

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1 MR. KOZELSKI: It's probative that somebody  
2 else committed this murder. That is the most probative  
3 thing that it could possibly stand for. It does not  
4 prejudice anybody, and it is probative. It is probative  
5 of Mr. Deleston's innocence and a third party is guilty.  
6 And that's -- that's what our defense is. And the  
7 Solicitor's trying to preclude that by saying that this  
8 is too remote in time. But the remoteness really is not  
9 a factor, and it is not a key factor certainly in  
10 determining whether or not third-party guilt is  
11 associated and then, beyond that, whether or not a  
12 404(b) is --

13 THE COURT: In the Chopper shooting, was  
14 the -- was he driven to the victim's location, to the  
15 residence?

16 MR. KOZELSKI: There is testimony that says he  
17 was driven there by George Brown. There's also  
18 testimony and there's also video surveillance of  
19 George Brown driving through the parking lot of  
20 Marley Lion's unit earlier that day. So he's --  
21 George Brown is the driver. He's driving everybody  
22 around to all these crimes. And that's what's going on  
23 as far as getting into the crime scene and having them  
24 flee away. But they're --

25 THE COURT: Was the victim in the Chopper

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1 shooting drawn out of the apartment through some sort of  
2 a ruse?

3 MR. KOZELSKI: It's unclear. I think  
4 what he's -- he's told the police -- he tells the police  
5 that he's going there with dinner for his family.

6 THE COURT: Was he shot in the apartment?

7 MR. KOZELSKI: He was shot outside of the  
8 apartment, in the --

9 THE COURT: Was there money or something stolen  
10 from that victim in the Chopper shooting?

11 MR. KOZELSKI: Yes. I think there was \$1,316.

12 MS. WILSON: Yes, ma'am. If I might, there are  
13 sort of two different versions of the Chopper facts,  
14 because Chopper would not cooperate with the police  
15 initially. The way that we have all of this information  
16 about the shooting is because the Codefendants, once  
17 they decided to cooperate, told the whole story. So the  
18 evidence of the ruse we wouldn't expect to come from  
19 Chopper.

20 First of all, he wouldn't have really been in  
21 on the fact that it was a ruse. But second of all, he  
22 has not wanted to give up information surrounding it.  
23 The information about the ruse comes from those who were  
24 involved along with Ryan Deleston in that robbery. And,  
25 again, as to the third-party guilt aspect, the

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1 remoteness matters, because it deals with whether or not  
2 it's inconsistent. Is it inconsistent that two weeks  
3 later, Ryan Deleston could have had the gun and done the  
4 shooting? It's not inconsistent to think that.

5 THE COURT: All right. Anything further,  
6 Counsel?

7 MR. KOZELSKI: Yes, your Honor. I think that  
8 the -- the third-party guilt is a much lesser standard  
9 than the Lyle analysis. And the Lyle analysis is there  
10 to protect a defendant, and that is -- there's case law  
11 that we -- we cite in our Brief that stands for the  
12 proposition that Lyle is there to protect a defendant  
13 from having the jury hear of these other crimes and  
14 prejudice him for that. Here, we're not even dealing  
15 with a defendant. We're dealing with a third party. It  
16 was a Codefendant, but he has since pled. So he's not  
17 prejudiced by this.

18 And we would ask -- we would rely on our Briefs  
19 as far as the lesser standard is concerned, but that  
20 this was briefly mentioned in the co-case that the  
21 Solicitor had heavily relied upon in their Brief, but  
22 that this was an issue that many other jurisdictions  
23 have -- have addressed outside of South Carolina,  
24 because South Carolina has not addressed this issue.  
25 But when you're dealing with due process and -- of a

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1 -- of evidence tending to take any constitutional  
2 dimension and that it -- it would drastically affect  
3 Mr. Deleston's ability to put on a defense without this  
4 evidence, then it's going to be that lesser standard.

5 THE COURT: All right. And then the final  
6 motion that you have is the videotape, and I think we  
7 have one witness for that?

8 MS. WILSON: Yes, ma'am.

9 THE COURT: I'm going to issue a ruling before  
10 we leave as to all matters. So we'll go forward. And  
11 that's the last motion you have, I understand, pending.

12 MR. PENNINGTON: Your Honor, there are -- I  
13 will touch on where we stand on issues of the 404(b) as  
14 opposed -- as against my client, Mr. Deleston. These  
15 are situations where I understand the State is intending  
16 to offer 404(b), and I want to object for the record.  
17 One involves, I believe, Julius Brown, who is going to  
18 testify.

19 What I gather from his statements to law  
20 enforcement and to the Solicitor's Office, once he  
21 decided to be a cooperating individual, thanks to a  
22 summary from Mr. DuRant, that he describes that my  
23 client says that he was not -- on the night of the 15th,  
24 16th of June, 2012, that my client was riding with these  
25 fellows. And when the robbery of the victims who were

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1 downtown Charleston Rutledge Avenue, which occurred one  
2 hour before this murder, was unsuccessful because  
3 they -- there was no money in the purse that  
4 Bryan Rivers took from the victim, they allege that my  
5 client said, Well, I want to perhaps rob a video poker  
6 or some other vague descriptions.

7           From what I understand, on the standard of  
8 reliability for admissibility purpose under 404(b) --  
9 and I'm objecting precisely to this vague claim by  
10 Julius Brown, that he said he wanted to rob the video  
11 poker place or the casino or the check cashing place.  
12 It's kind of amorphous. And that's exactly my problem  
13 with it. It has no clarity and no specificity, nothing  
14 to root it as solid.

15           And I believe that there'll be other testimony  
16 that they'll offer of other kinds, saying that my  
17 client was very motivated to get cash, was a willing  
18 participant in the downtown robbery, was interested in  
19 getting money on this particular night, and that's what  
20 the Famous Joe's -- all that stuff, I think, is *res*  
21 *gestae*, it's perfectly appropriate, and I understand it.  
22 But as his advocate and lawyer, I'm concerned about  
23 whether or not the claim about, "or I might get some  
24 other place," that's unspecified, is clear and  
25 convincing enough to meet the 404(b) requirements, which

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1 are, it has to be relevant and prejudiced, the probative  
2 value has to be -- has to outweigh the prejudice, and  
3 it's a -- kind of a vague, casual throw-away statement  
4 that I find objectionable.

5 Perhaps it will be clearer, or maybe somehow it  
6 could be articulated more clearly. All I have to go on  
7 at this point -- because he's represented, I can't  
8 interview the man -- is those descriptions as best as I  
9 can render them. So I object to that prospectively and  
10 would ask the Court to not allow that unless it can be  
11 somehow clarified and made more clear and convincing.

12 MS. WILSON: Your Honor, it's ironic in that  
13 the claim is a lack of specificity, when the reason that  
14 it's not specific is because Mr. Deleston was unsure  
15 about who or what or when he was going to rob in the 24  
16 hours, 48 hours before this robbery. He was looking to  
17 hit somebody, something somewhere. And it were -- it  
18 was a crime of opportunity. That's why they came  
19 downtown. They came downtown looking for a robbery.  
20 Before that, they're talking about where else he might  
21 hit. He's making suggestions. Included in those  
22 suggestions is Famous Joe's. There's a debate about a  
23 number of places right around there. Famous Joe's, Five  
24 Guys, a check cashing place that are all right in that  
25 little location. He's getting advice from his

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1 Codefendants about which one he should hit.

2           They come downtown, they do a robbery, it's  
3 unsuccessful, in that while they get a purse, they don't  
4 get any cash. Immediately after that, they're looking  
5 for somewhere else to hit. That's why they ride through  
6 the Famous Joe's parking lot to see what's going on  
7 there, to figure out if that's going to be a great  
8 place. All of this is not wild evidence. It is  
9 obviously *res gestae*, because it goes to this Defendant  
10 in the course of making a plan, in the course of  
11 figuring out what his next step is going to be. There  
12 is a discussion. There's no allegation that he actually  
13 attempts to rob Five Guys or that he attempts to rob the  
14 poker machine place, but that he is evaluating each of  
15 those spots before Famous Joe's is decided upon.

16           So as far as the clear and convincing goes,  
17 what would be clear and convincing is the conversations  
18 that took place. And we have members of this  
19 conspiracy, Codefendants, who were involved in those  
20 conversations. So the evidence is going to be clear and  
21 convincing that there were these conversations.  
22 There will not be evidence that this Defendant actually  
23 made those attempts. But this is part of the whole  
24 story of what they were doing that night and in  
25 the -- the days leading up to that. He is wanting cash.

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1 All right. In dealing with the 404(b)  
2 evidence, the Rule 401 -- pursuant to Rule 401, I must  
3 determine whether the evidence is relevant and  
4 then -- to determining whether it's relevant, I must  
5 find whether or not the evidence fits within an  
6 exception of the 404(b). Pursuant to Rule 404(b), it is  
7 not -- evidence of prior bad acts or misconduct or  
8 crimes is inadmissible unless the evidence tends to  
9 establish motive, intent, absence of mistake, common  
10 scheme, where the identity of the person charged with  
11 the present crime. To be admissible, a prior bad act  
12 must first be established by clear and convincing  
13 evidence if the prior bad act is not subject of the  
14 conviction.

15 I find that there is clear and convincing  
16 evidence the Defendant committed the uncharged act.

17 I must determine whether the prior acts fall  
18 within the common scheme of plan exception under Mile.  
19 A close degree of similarity or connection exists  
20 between the prior bad act and the crime for which the  
21 Defendant is on trial is required to support the  
22 admissibility under this exception for common scheme or  
23 plan. The connection must be more than just a general  
24 similarity. Common scheme or plan involves more than  
25 just the commission of two similar crimes. There must

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1 be a connection between the two in order to be  
2 admissible. Although not a complete list in this type  
3 of case, I should determine whether there is a close  
4 degree of similarity between the bad act and the crime  
5 charged, such as the relationship between the victim and  
6 perpetrator, the location where the incident occurred,  
7 the use of coercion or threats, as well as the manner of  
8 the occurrence. Where the evidence of bad act is so  
9 similar to the charged offense that it enhances the  
10 probative value of the evidence so as to outweigh its  
11 prejudicial effect, it is admissible. However, I must  
12 make a determination and exclude it if its probative  
13 value is substantially outweighed by the danger of  
14 unfair prejudice to the Defendant.

15 Rivers' armed robbery and the shooting of Leroy  
16 "Chopper" Townsend and the Marley Lion attempted armed  
17 robbery and shooting are not sufficiently similar, based  
18 upon the testimony that has been presented, to prove a  
19 common scheme or plan. The Chopper shooting involved a  
20 victim that was known and targeted by the assailants.  
21 The assailants created a ruse to lure him out of his  
22 apartment.

23 The Marley Lion shooting involved a victim of  
24 circumstance who was unknown to the assailants. While  
25 there was bad blood, according to testimony, of the

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1 chart that was given, between the victim and the  
2 assailants, there was no bad blood between the victim  
3 and the assailants in the Marley Lion murder.

4 The victim in the Chopper shooting was a  
5 30-year-old African male, while Marley Lion was a  
6 17-year-old white male. In the Chopper shooting, the  
7 victim was shot once, was forced to strip and received a  
8 minor injury. Marley Lion was shot five times fatally.  
9 In the Chopper shooting, they were driven to the crime  
10 scene. In the current case, the assailants walked to  
11 the crime scene. And Rivers' partner in Rodney Chopper  
12 was Valentino Hayward (phonetic). Other partners in the  
13 attempted robbery of Marley Lion's were Rivers,  
14 Deleston, and Brown.

15 Finally, the Chopper shooting occurred at 9:30  
16 at an apartment complex. Marley Lion was killed at  
17 approximately 4:00 a.m. in the parking lot of a  
18 business. The similarities between the two shootings  
19 and the fact that the gun used belonged to George Brown,  
20 and that Rivers was present at that crime scene,  
21 accordingly, Rivers' prior bad act of shooting Chopper  
22 is not sufficiently similar to the shooting of  
23 Marley Lion to qualify for the common scheme or plan  
24 under Rule 404(b).

25 Any questions about my ruling as to 404(b)?

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1 MR. PENNINGTON: We framed this as having two  
2 prongs of admissibility, in that 404(b), assuming that  
3 it applied to the witness as opposed to the Defendant,  
4 be argued, but we were concerned about our due process  
5 right to put on a defense. And so --

6 THE COURT: Under third party?

7 MR. PENNINGTON: Correct.

8 THE COURT: I'm getting ready for that analysis  
9 now.

10 MR. PENNINGTON: I'm sorry. I jumped ahead. I  
11 would indicate that I -- make sure that the Court knows  
12 that, in terms of overlap of the parties, that it is  
13 clear that Julius and Bryan are involved in all three  
14 incidents, and that George provided transportation in  
15 all three incidents. So you -- because you have George  
16 providing transportation for Julius and Bryan to the  
17 Chopper shooting, and you have George providing  
18 transportation for Julius and Bryan --

19 THE COURT: Is there indication -- I don't  
20 know that it changed the analysis, but I appreciate you  
21 bringing up the -- the overall analysis, I don't know  
22 that it changes any -- the clarification --  
23 clarification.

24 MR. PENNINGTON: On this part.

25 THE COURT: Thank you.

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1 MS. WILSON: Well, I need to further clarify  
2 that, because that's not exactly right, just for the  
3 record. I know it might not affect your analysis, but  
4 while we're in this portion of the record, George Brown  
5 drove Ryan Deleston, Julius Brown, and Bryan Rivers to  
6 an apartment complex when the Chopper shooting took  
7 place, along with a man, Valentino Hayward. Tino and  
8 Bryan Rivers were actually the ones who did the robbery  
9 of Chopper. Tino is actually the one who -- I mean,  
10 Bryan Rivers is actually the man who shot Chopper.

11 In the Marley Lion case, an hour or so before  
12 the robbery, at the attempted robbery, George Brown  
13 drove these guys through the parking lot, then they went  
14 home. George Brown stayed at that location. His truck  
15 stayed at that location. And at some point after that,  
16 as they discussed looking for people to rob, the  
17 Defendant, Bryan Rivers, and Julius Brown walked the  
18 third of a mile, I guess it is, down to Joe's, where  
19 Marley Lion interrupted the employees leaving. So  
20 George Brown didn't drive anyone to the robbery in the  
21 Marley Lion case. He drove them to an apartment  
22 building in the other case. They got out of the car,  
23 went and did the robbery, then he drove them away, just  
24 for the record.

25 MR. PENNINGTON: If we're going to be

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1   straightening out the record, then I'd like to add that  
2   the problem with my analysis --

3               THE COURT: Well, here, I'm just going to  
4   straighten it out for you. My analysis involved that  
5   there was an individual that was driven to the Chopper  
6   shooting that did not drive anyone at that point to the  
7   Marley Lion shooting. Fair enough?

8               MR. PENNINGTON: Is the Court --

9               THE COURT: Is that an accurate statement?

10              MS. WILSON: Correct.

11              MR. PENNINGTON: It is.

12              THE COURT: That was my analysis. All right?

13              MR. PENNINGTON: Is it -- I just want to make  
14   sure that the Court is aware that George drove them  
15   through that, casing the place immediately --

16              THE COURT: At an earlier time.

17              MR. PENNINGTON: Well, immediately prior. It  
18   would have been within an hour. They drove through the  
19   parking lot. And the jury's going to see this, that  
20   they drove through, the same vehicle, they go about four  
21   blocks down and park. This Cashew Street is four blocks  
22   away from Famous Joe's. And then the rest of it is on  
23   foot. So there is -- when they're coming back from the  
24   downtown robbery that involves Julius, Bryan, and  
25   George, and, allegedly, Ryan, you have all those

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1 similarities align there. And then on their way back is  
2 when the discussion is that the Famous Joe's robbery  
3 that leads them to come through that parking lot. So  
4 there's another -- the same group, same group of people.  
5 As long as that's clear, you're correct, your Honor,  
6 that they did not drive the vehicle back.

7 THE COURT: All right. As to the issue  
8 involving third-party guilt, the rule governing the  
9 admissibility of the evidence under third-party guilt  
10 doctrine provides that evidence offered by the accused  
11 as to the commission of the crime by another person must  
12 be limited to such facts that are inconsistent with his  
13 own guilt and to such facts as raise a reasonable  
14 inference of presumption as to his own innocence.  
15 Evidence that has no other fact other than to cast a  
16 suspicion upon another or to raise a conjectural  
17 inference as to the commission of the crime is not  
18 admissible.

19 The evidence of third-party guilt may include  
20 facts that are inconsistent with the Defendant's guilt  
21 and evidence raising a reasonable inference as to the  
22 accused innocent. The evidence, again, to be sought by  
23 the Defendant's Motion to -- to Include Third-Party  
24 Guilt Evidence does not pass the same for admissibility.  
25 The evidence in question exceeds the scope of the facts

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1 that are inconsistent with his own guilt. It does not  
2 pertain to the commission of the crime currently before  
3 this Court or the Defendants involved in it whatsoever.

4 Despite his contention that -- despite  
5 Deleston's contention that Bryan Rivers was the shooter  
6 and that Bryan Rivers used the same weapon used in the  
7 submission of the crime currently before this Court, I  
8 do not find that the Defendant states a sufficient  
9 factual basis to cast more than a mere suspicion upon a  
10 third party. I find that the introduction of this  
11 evidence would also amount to solely a conjectural  
12 inference as to commission of a crime by third party.  
13 And I find that the evidence sought to be admitted is  
14 inadmissible as it pertains to the third-party guilt of  
15 Bryan Rivers. Again, noting your exception to my  
16 ruling.

17 Counsel, I told you I was going to end at 5:00,  
18 so we are over. Is there anything else that I need to  
19 address quickly before we stop?

20 MS. WILSON: Nothing from the State, your  
21 Honor.

22 MR. PENNINGTON: Can I take it we'll resume at  
23 9:30 in the morning here, or at nine o'clock?

24 THE COURT: I'm assuming that by saying 9:30  
25 that there are no other issues that I need to address?

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1           The above-styled cause came on for hearing on  
2   the 8th day of October, 2013, at 9:41 a.m., before Judge  
3   Kristi Lea Harrington, Circuit Judge for the Ninth  
4   Judicial Circuit, presiding over the General Sessions  
5   Court for the County of Charleston, when the following  
6   proceedings were had and entered of record, to wit:

7                               PROCEEDINGS

8                               JURY TRIAL, VOLUME II OF V

9           (The Defendant is present with his counsel.)

10           THE COURT: Anything before we bring in the  
11   jury? From the State?

12           MS. WILSON: No, ma'am.

13           MR. PENNINGTON: I do have one housekeeping  
14   matter I want to make sure that we cover. Over the  
15   evening break, I was thinking through the Court's ruling  
16   with regard to our proffer of evidence related to  
17   showing that it was Bryan Rivers that fired this weapon  
18   at Marley Lion through the incident that occurred on  
19   June the 1st involving Mr. Haywood, "Chopper." I want  
20   to make sure that I give the Court an opportunity -- if  
21   the Court has had an opportunity to address our claim  
22   that separate an apart from state evidentiary law, that  
23   our claim that we have a due process right to offer a  
24   defense, and that this is consistent, as is outlined on  
25   a similarity chart, which was Exhibit A, and our written

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1 motion to the Court, that the Court has seen and waived  
2 that.

3 Our contention is, is that under Holmes, and  
4 even under State vs. Cope, the new South Carolina case  
5 from August, where they talk about a lesser threshold  
6 analysis for admissibility, where the defense has what  
7 is reliable evidence of third-party guilt, that there's  
8 a -- as we read the law, and we contend federal law  
9 requires, that due process would permit Mr. Deleston to  
10 offer this evidence in his defense under both Holmes and  
11 Cope, and that the denial to do so would constitute an  
12 unreasonable application of that federal law. I just  
13 want to make sure that the Court has an opportunity to  
14 rule on that particular claim.

15 THE COURT: Ms. Wilson.

16 MS. WILSON: Your Honor, I don't want to  
17 belabor what was said yesterday. Simply put, the  
18 evidence of the June 1st robbery does not make it  
19 inconsistent -- the Marley Lion shooting inconsistent  
20 with the Defendant's guilt.

21 THE COURT: All right.

22 MR. PENNINGTON: I don't believe that that is a  
23 requirement under this lesser standard. In other words,  
24 we contend that it's not -- the old law, pre Holmes  
25 South Carolina law, requires that the burden is on the

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1 defendant to show that the evidence is inconsistent with  
2 my client's guilt to be admissible is no longer the  
3 standard under Holmes and Cope. And that, in fact,  
4 probative -- in this case, we have a unique  
5 circumstance, where the witness who will testify for the  
6 State is going to admit that he is the shooter in the  
7 June 1st, 2012 shooting, and it's the same gun that was  
8 used by him later, on the night of this incident,  
9 against the two victims on Rutledge Avenue, so that it's  
10 -- there's not an iffiness about the reliability of it.  
11 It's just purely a question of whether the Court rules  
12 that it somehow does not meet the due process standard.

13 Our view is that it supports, from an identity  
14 an intent point of view, as far as Mr. Rivers is  
15 concerned, that it is consistent with his pattern of  
16 planning in advance, of targeting individuals, it  
17 involved the same triumvirate of George, Julius, and  
18 Bryan, the same gun, and both instances they are on  
19 foot, it's at nighttime, at gunpoint, a robbery. Rivers  
20 flees on foot and then turns, in the "Chopper" case, and  
21 runs back -- or turns and fires. It's and afterthought  
22 similar to this case.

23 There are multiple gunshots in both cases. The  
24 motive is to get money. And the proximity is within two  
25 weeks or two weeks and a day and within a mile of the

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1 same area of operation. So that's the basis for our  
2 claim under due process, which I'm trying to distinguish  
3 from the state evidentiary law and the pre Holmes  
4 third-party guilt law in South Carolina.

5 THE COURT: Mr. Pennington, I believe it was  
6 late when I issued that particular part of my ruling,  
7 but I believe that I addressed all your due process  
8 issues in issuing my ruling and denying the request for  
9 that evidence to be brought in. You have articulated it  
10 again on the record. I'm again denying your request.

11 MR. PENNINGTON: Thank you, your Honor. And we  
12 certainly respect that ruling. I believe -- and just as  
13 a -- to further clarify, because I don't want to be  
14 misunderstood, as we approached the three salient  
15 witnesses in this case that I would have cross-examined  
16 -- obviously, I'm redacting anything from my opening or  
17 closing in respect to the Court's ruling. But as I  
18 understand it, the issue is waived unless I renew it  
19 close in time to the moment which I would have presented  
20 evidence. And so I will ask for a moment *in limine* to  
21 proffer the questions that I -- and answers that I  
22 believe I would have gotten so that the Court can have  
23 an opportunity to reconsider its ruling in a time more  
24 right in the middle of the trial, which I think I'm  
25 required to do to avoid procedural default.

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1 THE COURT: I think you are required, and I  
2 find that appropriate to please bring that to my  
3 attention, and we will handle the matter accordingly.

4 MR. PENNINGTON: Thank you, your Honor.

5 THE COURT: Mr. Pennington, anything further?

6 MR. PENNINGTON: No, ma'am.

7 THE COURT: Anything further, ma'am?

8 MS. WILSON: (Moves head from side to side.)

9 THE COURT: All right. Let's bring in the  
10 jury.

11 (The jury is escorted into the courtroom at  
12 9:47 a.m.)

13 THE BAILIFF: All jurors present.

14 THE COURT: Thank you. Please be seated. Good  
15 morning, ladies and gentlemen of the jury. At this  
16 time, we will administer the oath to you. If you will  
17 please stand.

18 (The jurors comply.)

19 THE DEPUTY CLERK OF COURT: If you would all  
20 please raise your right hands to be sworn.

21 (The oath is administered by the Deputy Clerk  
22 of Court, and the jurors answer as follow:)

23 THE JURORS (in unison): I do.

24 THE DEPUTY CLERK OF COURT: Thank you. You may  
25 take your seats.

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1 THE COURT: If there was any juror that was  
2 unable to take that oath, please stand at this time.

3 Thank you. There are no jurors standing.

4 Ladies and gentlemen, I indicated to you,  
5 before we broke yesterday, that one of the first  
6 questions to you would be whether or not you complied  
7 with the Court's instructions. If you complied with all  
8 of my instructions over the evening hour, please raise  
9 your right hand.

10 Please let the record reflect that all 15  
11 jurors complied with the Court's instructions over the  
12 evening hours.

13 Ladies and gentlemen, we are now going to begin  
14 the trial of this case. You have been given notepads,  
15 which is an indication to the Court that you are allowed  
16 to take notes. Please remember some of us were much  
17 better note takers in school than others. Those notes  
18 are for your own use. One juror's notes are no more  
19 correct or accurate than another juror's notes. You  
20 will have those notes with you. We will collect them  
21 over the breaks and over the evening hour and pass those  
22 back to you. You will then have your notes with you  
23 during your deliberation. I caution jurors, because  
24 sometimes when -- I do it myself. When I'm taking  
25 notes, I'm looking down. You may actually miss what is

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1 happening in front of you. So with all those cautions,  
2 you will be allowed to take notes.

3 Ladies and gentlemen, I wanted to take this  
4 opportunity to tell you that this trial probably will be  
5 different from what you might expect. Most people do  
6 not have the opportunity to come to court as you are  
7 doing now, and most people think that from watching  
8 television or movies or reading books, that trials are  
9 full of intense drama and riveting circumstances. While  
10 all of these things are true at some times, please  
11 remember this trial is not for your entertainment. It  
12 is a fundamental part of our democracy. It is a search  
13 for the truth in an effort to make sure that justice is  
14 done before the parties before you. Searching for the  
15 truth and making sure that justice is done is often  
16 slow, deliberate, and repetitive, the opposite of what  
17 you may have seen on television or movies or read in  
18 books.

19 This courtroom is a place of honor. It is  
20 dedicated to the protection and preservation of  
21 citizens' rights to what many have called the greatest  
22 justice system ever created. The attorneys that are  
23 appearing before you here today are advocates for the  
24 parties that they represent, but first and foremost,  
25 they are officers of this court. They are sworn to

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1 uphold the integrity and the fairness of our judicial  
2 system.

3           You should expect them to be professional and  
4 competent and ethical in the representation of their  
5 client's interest. Please remember that you just took  
6 an oath, and you are also expected to be professional,  
7 reasonable, and ethical. Thank you again for accepting  
8 this most important responsibility of jury service and  
9 for your contribution to our justice system.

10           What I now say is intended to serve as an  
11 introduction to the trial of this case. These remarks  
12 are not a charge on the law. I will instruct you on the  
13 law that is applicable to this case throughout the trial  
14 and at the close of the trial before you retire to  
15 consider the verdict.

16           I simply wanted to take this opportunity to  
17 explain the procedure so that you will be better able to  
18 understand what is happening before you. The Defendant  
19 is charged with Indictments, and he is charged in each  
20 Indictment separately with the crime of murder,  
21 attempted armed robbery, possession of a handgun with an  
22 obliterated serial number, and possession of a firearm  
23 during the commission of a violent crime.

24           I will explain the elements of each of these  
25 charges to you at a later time. The Indictment is

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1 simply the charge by which this case is brought into  
2 this court. The Indictment is not in any sense evidence  
3 of the allegations it contains. The Defendant has pled  
4 not guilty to this Indictment. The State has the burden  
5 of proving each of the elements of the Indictment beyond  
6 a reasonable doubt. It is your duty, ladies and  
7 gentlemen, to determine whether the State has met that  
8 burden.

9           Your purpose as jurors is to find and determine  
10 the facts. You are the sole judges of the facts in this  
11 case. If at any time I make any comment regarding the  
12 facts in this case, you must disregard it. You are to  
13 determine the facts from the testimony you hear, as well  
14 as the other evidence that is introduced in court. It  
15 is up to you to determine the inferences which you feel  
16 may be properly drawn from the evidence. It is  
17 important that you perform your duty of determining the  
18 facts diligently and consciously, because ordinarily  
19 there is no way to correct an erroneous determination of  
20 the facts by a jury.

21           On the other hand, and with equal emphasis, the  
22 same law that makes you the judges of the facts makes me  
23 the judge of the law. You must accept and follow the  
24 law as I gave it to you, even though you may disagree  
25 with it. I cannot tell you what I think the facts are,

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1 and you cannot disagree with me about what the law is or  
2 what the law ought to be. Your job is to take the facts  
3 as you find them, apply it to the law as I give it, and  
4 render a verdict, a true and just verdict under your  
5 solemn oath that you just took.

6           Until I advise you to begin your deliberations,  
7 as I indicated to you yesterday, you must not discuss  
8 this case with anyone. That includes your fellow  
9 jurors, your friends, your family members, or anyone  
10 else. The attorneys and the parties in this case have  
11 been advised they are not to speak to you. So please do  
12 not think that if you should see them and they do not  
13 even say hello, they are being rude. They are following  
14 the Court's instructions. During your deliberations,  
15 you may discuss this case only in the jury room and only  
16 with your fellow jurors.

17           You may not -- you must decide this case based  
18 solely on the evidence as it is presented here in the  
19 courtroom. That means that during this trial, again, as  
20 I indicated to you yesterday, you may not conduct any  
21 independent research in this case. You must not discuss  
22 or -- with anyone this case, you may not look up any  
23 words in dictionaries or other reference materials. You  
24 may not search the Internet, websites, or blogs, or use  
25 any other electronic tools to get information about this

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1 case.

2 Ladies and gentlemen, as I indicated to you,  
3 there is no way that I can give you an exhaustive list  
4 of what you can or cannot do, but I just -- very simply  
5 put, you may not discuss this case with anyone in any  
6 fashion. You may not do any independent research.

7 You may not read, watch, listen to any news  
8 accounts regarding this case. That includes anything on  
9 television, newspapers, or the Internet. If you become  
10 aware of another juror's violation of my instructions,  
11 you must inform the Court immediately. It is important  
12 that you keep an open mind and not decide any issue in  
13 this case until all of the evidence has been presented,  
14 the parties have made their closing arguments, and I  
15 have instructed you on the law applicable to this case.

16 It is your solemn responsibility to determine  
17 the guilt or innocence of the Defendant, and your  
18 verdict must be based solely on the evidence as it is  
19 presented to you in this trial, and on the law as I  
20 instruct you during and at the close of this trial. In  
21 just a moment, the solicitor is going to make what is  
22 called an opening statement, in which the solicitor will  
23 explain to you the issues in this case, or at least what  
24 the solicitor thinks the issues are in this case. The  
25 attorney for the Defendant may also make an opening

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1 statement, although he is not required to do so.

2 Please remember, what the attorneys tell you in  
3 their opening statements, as well as in their closing  
4 arguments, is not evidence in this case. It is only  
5 their contention as to what the evidence will show. The  
6 evidence in this case will be presented to you by the  
7 testimony of sworn witnesses from the witness stand, as  
8 well as any exhibits that may be introduced into  
9 evidence.

10 From time to time, you may hear one of the  
11 attorneys ask to approach the bench, or I might find it  
12 necessary to excuse you for a short while from the  
13 courtroom. If I have the attorneys approach the bench,  
14 please do not try to overhear us or read our lips. If I  
15 excuse you from the courtroom, do not think we're trying  
16 to hide anything from you. The reason for this is,  
17 sometimes it is necessary for me to make a comment  
18 regarding the facts in order to issue a ruling on the  
19 law. And as I indicated to you, the law does not allow  
20 me to have an opinion about the facts in this case. So  
21 I may excuse you from the courtroom while I issue my  
22 ruling.

23 In determining what the true facts are in this  
24 case, you must decide whether the testimony you hear is  
25 believable. It is my responsibility to determine, as a

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1 matter of law, whether certain testimony is admissible.  
2 But once the testimony is admitted, whether or not you  
3 believe it is solely for you to determine. In deciding  
4 whether to believe a witness, you have a right to  
5 consider the interest of the witness, the bias of the  
6 witness, the prejudice of the witness, the opportunity  
7 for that witness to have seen and heard the things about  
8 which the witness testifies, as well as the way the  
9 witness acts on the witness stand. You have a right to  
10 consider anything that is in the record that will help  
11 you evaluate the testimony of the witness.

12 Ladies and gentlemen, that means it is your  
13 duty to pay close attention to the witnesses as the  
14 witnesses testify. Please do not let your thoughts  
15 wonder. Give strict attention to the witness, to the  
16 attorneys, and to the Court.

17 Ladies and gentlemen, after the arguments of  
18 counsel, and after you have heard the testimony in this  
19 case, and I have charged you on the law applicable to  
20 this case, you will be in a position to determine the  
21 true facts in this case, apply the law as I gave it to  
22 you to those facts, and render a true and just verdict.

23 Mr. Foreperson, as I indicated, you are the  
24 jury spokesperson, and you are to preside over the jury  
25 in the jury deliberation room. You are also responsible

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1 for writing the verdict, but I'll give you further  
2 instructions regarding that matter when I instruct you  
3 on the law applicable to this case.

4 Ladies and gentlemen, please give your strict  
5 attention.

6 MR. PENNINGTON: If your Honor, please -- I  
7 have -- may we approach?

8 THE COURT: You may.

9 (A discussion is held off the record.)

10 (Mr. Pennington and Ms. Wilson are at the  
11 bench.)

12 THE COURT: Mr. Pennington, note your objection  
13 to my opening and allow you to articulate the reasons  
14 for that outside the presence of the jury at our first  
15 available break.

16 MR. PENNINGTON: Thank you, your Honor.

17 THE COURT: Ms. Wilson.

18 **OPENING STATEMENTS**

19 MS. WILSON: May it please the Court. On June  
20 16th of 2012, it really could have been anywhere. It  
21 could have been anyone. But on that day, it wasn't just  
22 an anyone. It was a 17-year-old kid named Marley Lion.  
23 It could have been Julius Brown or "Little B,"  
24 Bryan Rivers, that pulled the trigger that morning.  
25 Mr. Pennington may tell you it was. But what the

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1 evidence in this case is going to show you is not what  
2 it could have been or what it might have been. It's  
3 going to show you who it was. It's going to show you  
4 that it was Ryan Deleston that pulled that trigger.

5 Now, I mentioned to you Ryan Deleston's  
6 friends, Julius and "Little B." You will hear more  
7 about them. But what you will see is that night, while  
8 Marley lay sleeping in the back of his car, that  
9 Ryan Deleston blew him away for no reason at all.

10 An important principle to carry you through,  
11 for you to be thinking about during this trial, is one  
12 that the Judge will tell you about, is the hand of one  
13 is the hand of all. That is a legal principle that you  
14 have taken an oath to follow. You have taken an oath to  
15 follow the law as the Judge gives it to you. And what  
16 she will tell you is something close to this, if a crime  
17 is committed by two or more people who are acting  
18 together in commission of an offense, the act of one is  
19 the act of all. When accomplices are working and acting  
20 together assisting each other in the commission of an,  
21 in this case attempted robbery, murder, the law says,  
22 the law says, the hand of one is the hand of all.

23 Now, as you might imagine, this is a legal  
24 principle, not a moral principle. When we prove to you  
25 that Julius, "Little B," and Ryan Deleston were acting

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1 together, who pulled the trigger will not be of  
2 importance to you. Now, I'm not saying that morals and  
3 morality don't matter at all. That would be an issue  
4 for the Judge at a sentencing or the ultimate Judge at  
5 some other time. But for you, the issue is whether or  
6 not these Defendants were acting together, with a  
7 purpose. That's the issue for you.

8 And I mention to you that when we prove this to  
9 you, who pulled the trigger won't matter. We do have a  
10 burden of proof, and we'll meet that. That burden of  
11 proof, as the Judge mentioned to you, is proof beyond a  
12 reasonable doubt. Now, you've heard about that on TV  
13 and in the movies, but what our definition of reasonable  
14 doubt is, is that it's proof -- when we have to prove it  
15 beyond a reasonable doubt, we must prove to you so that  
16 you are firmly convinced, firmly convinced of the  
17 Defendant's guilt.

18 The law recognizes that there are a few things  
19 in life that are absolutely 100 percent certain, that  
20 you can know absolutely. The standard of proof is not  
21 beyond a shadow of a doubt. The standard is beyond a  
22 reasonable doubt. And we -- when we prove to you so  
23 that you are firmly convinced that this Defendant worked  
24 with "Little B" and worked with Julius to do that  
25 attempted armed robbery, and that one of them pulled the

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1 trigger in the commission of that armed robbery, we've  
2 met that burden.

3 Let me take you to where all of this took  
4 place, sort of familiarize you. And you will probably  
5 learn during this trial that I'm terrible with  
6 directions, but hopefully this will help you out. Let  
7 me use this one. If you're going up Savannah Highway or  
8 down Savannah Highway towards Savannah, not towards  
9 Mount Pleasant, you will recall that there's a K-Mart on  
10 your left, if you're traveling that direction. There's  
11 a Bessinger's Barbecue that's on your right. The Ford  
12 place, Palmetto Ford, is right across from Bessinger's  
13 Barbecue. And then there's Chick-fil-A. That's the  
14 area of West Ashley that we're talking about. Behind  
15 those businesses is a community called Ardmore. And  
16 much of what happened here centers around what was going  
17 on in that community.

18 And what you will learn about is, at that  
19 night, the late night of June 15th, which was Friday  
20 night, into the early morning hours of June 16th, the  
21 Defendant and his buddies were hanging out in his house,  
22 and they were talking about looking for somewhere and  
23 somebody to rob. The first thing they did was, they  
24 packed up in one of his buddy's cars, George Brown, Big  
25 George, who didn't mind packing everybody in his SUV,

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1 getting his gun and riding downtown, a stone's throw  
2 from where we are now, looking for people to rob. They  
3 rode down to The Battery, they rode right around this  
4 area, and eventually they found a couple walking on  
5 Rutledge Avenue. Ryan and "Little B" hopped out of the  
6 car with George's gun, set out to rob that couple. When  
7 they get back in the car and head back towards West  
8 Ashley, you hear, they looked in the purse and they  
9 didn't get anything. They got some credit cards, which  
10 really might not have been of much use, but no cash. No  
11 cash.

12 So when they leave downtown, they ride by  
13 Famous Joe's, which is a bar in a parking lot behind the  
14 Chick-fil-A area. They ride through that parking lot to  
15 see what is going on at Little Joe's -- at Famous Joe's.  
16 They go back to Ryan's house, where they had been  
17 before, which is over on Cashew Street, and they talk  
18 some more. The first robbery didn't help them out so  
19 much. So the conversation turns between "Little B,"  
20 Ryan Deleston, and Julius Brown to go do a lick at  
21 Famous Joe's.

22 You know, in many ways, it would have been good  
23 if that had worked out. But what happened was, they  
24 went to Famous Joe's, and they sat out there, stalking,  
25 looking to see when those employees left the building

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1 with the bag of money from the night, the day's receipts  
2 from the bar and the restaurant. As they came out,  
3 Marley Lion pulled into the parking lot in his car. He  
4 was tired, at three, four o'clock in the morning, felt  
5 like he was under the influence. He reaches into the  
6 back of his -- gets out, pulls out a pillow from the  
7 back of his SUV, he crawls into the back of his car, and  
8 he goes to sleep. Unbeknownst to him, he's just  
9 interrupted a robbery, or what was going to be a robbery  
10 at Famous Joe's.

11           You can tell from the video, which you will  
12 have, there's no activity in the car. He's laying down.  
13 He's going to sleep. Minutes later, you will see on the  
14 video that Julius Brown, Ryan's buddy, walks through  
15 that parking lot, around behind Marley's car. And what  
16 Julius will tell you is, he was checking out the parking  
17 lot. He was checking to see -- they couldn't be sure if  
18 Marley had somebody else with him. They wanted to know  
19 what the situation was, because the plan has now  
20 changed. They'd missed the money bags from Famous  
21 Joe's. The plan is now to hit Marley. Julius walks  
22 through some minutes later, and after much debate  
23 between Ryan Deleston and "Little B" -- You do it. You  
24 do it. I don't want to do it. You do it. Here's the  
25 gun. You take the gun. Finally, Ryan Deleston takes

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1 the gun, he heads to the car, tries to get Marley to  
2 open the door. The car alarm goes off. Deleston walks  
3 away, ten or 15 seconds it could have been over, when  
4 all of a sudden, the edge of that video, you'll see,  
5 shot after shot after shot after shot. Five shots to  
6 kill Marley Lion. And then they ran away. They ran  
7 away. They blew him away for nothing.

8 The evidence in this case will be that shortly  
9 after that, Ryan Deleston was spotted walking around  
10 near the Famous Joe's area, the same area where he  
11 lived. So police officers, obviously, were swarming the  
12 area looking for people who were out that night. It was  
13 noted he was there. And it shows you his opportunity.  
14 That video that I told you about, it's grainy, but you  
15 can see it.

16 And what the police did after that, after they  
17 gathered this video, was they went to where you got to  
18 go if you want to know. They went to the king of crime  
19 for Ardmore, that old guy named Frank Middleton, who we  
20 know wasn't involved because he was in jail when this  
21 happened. They felt like Frank might be able to look at  
22 that video and tell them who he believed it was. He  
23 watched that video and he said, Ryan Deleston. The  
24 build, the size, the look, the way he holds his gun fits  
25 Ryan Deleston.

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1           The investigation ensued, and that led, again,  
2 to George Brown, who looked like that back in June of  
3 2012 -- he looks like this now. You will hear from him  
4 -- Julius Brown and "Little B," Bryan Rivers. And what  
5 you're going to see here in this courtroom, when you  
6 hear from each of them, that every one of them is a  
7 criminal. And the fact that they are criminals needs to  
8 raise a red flag for you.

9           The Judge told you, you will be the judge of  
10 the credibility of every witness. It is all yours.  
11 Look at what fits. Look at what doesn't fit. Be very  
12 skeptical. But listen and see how they are corroborated  
13 by each other, by other witnesses. Look and see how  
14 smart they are, how articulate they are when you're  
15 judging their credibility. Look at what their  
16 opportunity to know was. Were they there? Did they see  
17 exactly what happened? Did they have an opportunity to  
18 know? Were they high? Were they drunk? When you look  
19 at how their story fits and how it doesn't fit, you will  
20 be able to make the ultimate call as to their  
21 credibility.

22           When you look and listen to what's motivating  
23 them -- they have plea agreements. And make no mistake,  
24 plea agreement is not a four letter word. They have  
25 been given a deal to come here and to tell you the

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1 truth. The fact that they have a deal is another reason  
2 you need to listen closely, and to make sure that what  
3 they say fits, to make sure that it's corroborated. And  
4 when you do that, think about the things that they told  
5 that the police didn't know about.

6 That downtown robbery that I told you about,  
7 the evidence will be, the police didn't connect those  
8 things at all. They had no reason to connect them.  
9 That drive-thru of Famous Joe's, remember I told you,  
10 after they left downtown and there was no money, the  
11 evidence will show you that they cut through the bar at  
12 Famous Joe's, an hour or so before anything relevant, as  
13 far as the police knew, was on that video. But you will  
14 see that car pulling through that parking lot, and there  
15 was no way for the police to know that without their  
16 cooperation.

17 In the video, you will see the video, and you  
18 will take comfort -- George Brown, Big George, he's too  
19 heavy to be the shooter. Julius Brown, he's too short,  
20 about my height, maybe, maybe a little taller. You will  
21 hear from his brother, who nobody says was involved in  
22 the robberies, shorter than I am, out there that night,  
23 short guy. Can't be him. And "Little B," but you will  
24 hear testimony that he's just too skinny to be that guy,  
25 and he will tell you where he was and what he saw that

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1 night.

2 But Ryan Deleston, Ryan Deleston is just right,  
3 just right. And not only that, in the days and weeks  
4 after this murder, Ryan Deleston had a gun to save --  
5 sell. He had a gun to sell, and he was going to sell it  
6 cheap, real cheap. So cheap that even other criminals,  
7 even other criminals thought something must be up with  
8 this gun. But eventually he sold it. And unbeknownst  
9 to him, at the time he sold it to two guys working  
10 undercover for the police. And that gun, that gun that  
11 he sold, the evidence will be, that is the gun that  
12 killed Marley Lion.

13 Ladies and gentlemen, I want to thank you for  
14 being here. It was a process to get you into this jury  
15 box. And you saw, as we saw, that you could have gotten  
16 out of this if you had wanted to. You could have gotten  
17 out of it. You didn't do that. You took an oath to  
18 follow the law. And we appreciate in advance you doing  
19 that. Because at the end of this case, what we're going  
20 to do is, we're going to come to you and ask for you to  
21 give a verdict that speaks the truth. In this case, the  
22 truth of the matter is that Ryan Deleston's hands are  
23 just as dirty as his friends' hands. Ryan Deleston's  
24 hands are just as dirty. Under the hand of one and the  
25 hand of all, he is guilty of murder, whether or not he

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1 pulled the trigger. But the truth of the matter is, he  
2 was the trigger man and that he has earned a guilty  
3 verdict. In the end, that's what we'll ask you for.

4 THE COURT: Mr. Pennington.

5 MR. PENNINGTON: Thank you, your Honor.

6 **OPENING STATEMENTS**

7 MR. PENNINGTON: Good morning. This is an ugly  
8 case. Nobody's disputing that. But what you are going  
9 to see and hear from that witness stand is that  
10 Julius Brown and Bryan Rivers are going to come here,  
11 and they're going to admit to you that they attempted to  
12 rob Marley Lion. And they're going to admit that they  
13 were there, and that they're guilty. And they've  
14 already gone ahead and admitted in a court of law that  
15 they're responsible for his death. They've pled guilty  
16 to voluntary manslaughter. But to get to that, they  
17 needed a scapegoat, who they could say did the shooting,  
18 to get the deal. And they're going to claim, from that  
19 witness stand, that the shooting was a big surprise to  
20 them. They didn't see it coming. And after saying  
21 that, they've gotten their murder charge dropped,  
22 because they were charged with murder, but it's been  
23 dropped to voluntary manslaughter.

24 We talk about motive, motive to tell the truth,  
25 or motive to change the truth. With a murder

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1 conviction, they would have been looking at a minimum of  
2 30 years, and the Judge's discretion up to life in  
3 prison without the possibility of parole. It's all  
4 nonparolable day for day. With a voluntary manslaughter  
5 conviction, you're looking at a maximum 30, and if you  
6 behave yourself, you only have to do 85 percent.

7 Julius and Bryan will come here, and they're  
8 going to claim that it was Ryan who shot Marley. Ladies  
9 and gentlemen, Mr. Foreman, they're not worthy of your  
10 belief. There are going to be solid reasons for that.  
11 They're criminal defendants who have gotten themselves  
12 off the hook by blaming someone else. That's a given.  
13 No one can argue that. They needed someone to take the  
14 fall, and they're using Ryan to avoid that conviction.  
15 But the evidence is going to show -- let's walk through  
16 what the evidence is going to show that perhaps was not  
17 emphasized.

18 We know that Marley parked in front of Famous  
19 Joe's. No dispute about that. The video tells you the  
20 truth, which is, is that it's Julius Brown, who you see  
21 11 minutes later cutting through that parking lot, not  
22 Ryan Deleston, casing. He's going to admit that he's  
23 casing, not Famous Joe's at that point. He's casing  
24 Marley's SUV, his Nissan Pathfinder. The evidence is  
25 going to show that 11 minutes after he walked through,

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1 Bryan Rivers came up with a pistol and tried to rob  
2 Marley. And when the car alarm goes off, Bryan flees  
3 and comes back, and is seen coming back shooting the  
4 pistol.

5 Now Julius, to support his claim, has family  
6 witnesses. He has his brother, Rayshawn, who's going to  
7 be at Cashew Street that night describing things. He's  
8 going to come here today and say things that he didn't  
9 admit to when he was interviewed in the first set of  
10 interviews by the police. When he was first interviewed  
11 by the police, he didn't know nothing. Now that his  
12 brother is in need, he's got a story to tell.

13 And Julius also has his younger cousin, George,  
14 George Brown, Big George. You saw his photograph. But  
15 when -- let's look at what will be the real hard  
16 unchangeable facts in this case. You will see a  
17 different picture begin to come into view. The police,  
18 as they always are careful to do, go out and they look  
19 at the crime scene carefully, and they begin to gather  
20 evidence. And you're going to hear about spent shell  
21 casings. You're going to hear about an autopsy, and  
22 you're going to know that they looked at the car at the  
23 scene, and then they carried it to a place where they  
24 could go over it carefully, detail by detail. What were  
25 they looking for? Of course, they're looking for

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1 fingerprints, but also they're looking for something  
2 called DNA.

3 DNA is a very powerful kind of evidence. It's  
4 a kind of evidence that you can derive just from a few  
5 human cells that are left behind if you touch something  
6 with your hands. And so they were thinking: Suspect  
7 comes up to the car and they're shooting. Maybe he left  
8 DNA on a door handle or on the exterior of the doors on  
9 the side of this SUV. And so they went through the  
10 painstaking process of gathering that evidence. They  
11 gathered evidence from both door handles on the driver's  
12 side of the vehicle, and they swabbed the exterior of  
13 the front door. What may surprise you is that they  
14 never examined the DNA from the exterior of the front  
15 door. They never tested it. And they developed a DNA  
16 profile on the front door handle, which you may be  
17 surprised to know, that even though they took a cheek  
18 swab and they had Bryan River's cells, they never made a  
19 comparison to Bryan Rivers's cells to that front door  
20 handle.

21 They look for fingerprints. And you're going  
22 to see the evidence, that they took fingerprints from  
23 both doors. The prints don't come back to  
24 Ryan Deleston. They don't come back to Bryan Rivers  
25 either. They don't come back to anyone relevant to this

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1 case. But the point is, is that -- and I want to talk  
2 about what the trial is in a moment. The trial is  
3 really not a board search for you to go out and do your  
4 own independent investigation and solve this crime, but  
5 to answer the simple question, has the State proven the  
6 Indictments against Ryan Deleston, against Ryan Deleston  
7 beyond a reasonable doubt?

8           The evidence is going to be clear, that  
9 Ryan Deleston's fingerprints aren't on that SUV. The  
10 hard, real unchangeable fact is, the weapon is Cousin  
11 George Brown's, Big George. Why is that important?  
12 Julius Brown will admit that it's his cousin's gun. And  
13 after this murder, it may surprise you to learn that  
14 it's not Ryan Deleston who holds onto that gun. It's  
15 Big George, Julius' cousin, who has the gun. And when  
16 they begin to talk about selling the gun, because Ryan  
17 knows them, and Ryan says, I might have a buyer, over  
18 and over again, Ryan has to be calling Big George,  
19 saying, can you bring the gun up here to Ardmore? I  
20 might have a seller. It's not Ryan that's holding onto  
21 the gun, the murder weapon, it's Big George, for his  
22 cousin.

23           Another big fact, big fact, unchangeable fact,  
24 is that as best as we can discern, this shooting  
25 occurred at about 4:07 a.m., 4:07 in the morning. And

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1 when you watch the Mantek video -- Mantek Properties  
2 owns this shopping center, and they have security  
3 cameras. And you're going to see that their camera's  
4 actually about 11 minutes slow, in terms of the timing  
5 of it. But we know what we're seeing, based upon a  
6 comparison of the radio times of the police and the  
7 d.d. Peckers', which is another restaurant, and it has a  
8 security cam. And so I think that we will basically --  
9 you will conclude that that Mantek video is roughly 11  
10 minutes slow. It shows really what happened, but the  
11 time on there is 11 minutes slow.

12 So when you finally do the math and you begin  
13 to figure out when this actually occurred in realtime,  
14 that we can compare to police response, the real facts  
15 are that the shooting was approximately 4:07 a.m. And  
16 the video shows Bryan Rivers dressed in dark clothes.  
17 One of those kind of signature things for Bryan, he's  
18 always sort of dressed in dark clothes. And that at 4  
19 -- when you look at 4:19 -- about 4:19, which would be  
20 12 minutes later, only 12 minutes later, as the police  
21 are in the area, they go down White Oak, which is the  
22 road that you -- if you go down 17 South and you make a  
23 right at Bessinger's by Pep Boys, that's White Oak. And  
24 you go in about a block, and that's where Julius Brown's  
25 momma's house is.

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1           And the police observe that Ryan Deleston is  
2 coming out of that house, and he's on a bicycle. He's  
3 with Julius Brown. They both got bicycles. And what do  
4 they see? They see Ryan Deleston not in all black. 12  
5 minutes later, white T-shirt. And they note it.  
6 Officer Vance remembered it. He knew Ryan, because Ryan  
7 had been warned a week or so before not to be riding  
8 that bicycle around without having a flashlight. It's a  
9 city ordinance that's requiring you to be able to show  
10 that you're not -- you don't want to get somebody -- you  
11 don't want to get hit. And Ryan indicated, I've got my  
12 flashlight.

13           Real fast, unchangeable facts. That gun we  
14 talked about, Big George's gun, you're going to hear  
15 that that gun was used by Bryan Rivers, Bryan Rivers.  
16 According to Julius, according to George, according to  
17 even Bryan, he used that weapon 2:45 a.m., one hour  
18 before this murder, downtown on Rutledge Avenue, to rob  
19 that couple that you've heard about downtown. And at  
20 4:07, he used it again to murder Marley Lion.

21           Now, let's talk about this hand of one, hand of  
22 all concept. The solicitor's brought it up. And it is  
23 a principle of law that the Judge will actually instruct  
24 you on. Because the Solicitor and I have a disagreement  
25 or perhaps a different interpretation. The Judge is the

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1 final decider of what the law is in this state. But the  
2 law says that if you and I go out to do something that's  
3 reasonably foreseeable, and you do it, and I'm with you  
4 and I'm your partner, then I'm legally responsible.  
5 That's fine. But the law also says that just because we  
6 go out and agree to commit crime A, it does not mean  
7 that you're automatically responsible for a crazy,  
8 irrational act of another person. The law says that to  
9 be responsible for, in this case, murder, it has to be a  
10 natural, reasonable, foreseeable consequence of the  
11 scheme that we have hatched.

12           The law also says, clearly, that if you're  
13 merely present when a crime is committed by another,  
14 you're not guilty. You're not responsible. So when you  
15 look at all the facts and put the proper doubt  
16 -- reasonable doubt -- on the Brown family and  
17 Bryan Rivers, you'll come back to certain things that  
18 don't fit: Like the timing; like the white shirt; like  
19 the fingerprints that don't match; the DNA of  
20 Bryan Rivers that didn't even get compared to the front  
21 door handle; like a gun that belongs to the people that  
22 say, well, we didn't do it; the gun that Bryan Rivers  
23 used to rob someone else an hour before; a gun that the  
24 accusers held onto after the murder.

25           A trial is a test of what is trustworthy.

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1 That's what trials are. You bring in 12 people to bring  
2 their common sense and decide if something is worthy of  
3 belief. That's what this process really is. It is not  
4 just a vague search for the truth. It is to whether or  
5 not the State has truly removed all reasonable doubt and  
6 shown that -- in this instance, that Ryan Deleston would  
7 have seen the crazy, irrational act of Bryan Rivers  
8 coming. That's really what this case is about.

9           You, as jurors, become judges, fact finders,  
10 and you begin as individuals. So as you sit there and  
11 you're thinking, you can't go back and talk during the  
12 break about yourselves, well, did you think about that?  
13 What did you think about that? But what you can do is  
14 that you're beginning to process in your mind what it is  
15 that's reliable and trustworthy. So that when that  
16 moment comes when the Judge says, it's time now to  
17 deliberate as a group, you will have some thoughts, and  
18 then you will work collectively. But still  
19 individually, you have to come to your own individual  
20 moral determination about whether or not you find that  
21 this has been proven beyond a reasonable doubt.

22           In this case, you will find that the evidence  
23 does not measure up, and that the only true verdict  
24 against Ryan Deleston is not guilty. Because the truest  
25 fact in this case is that, as Marley Lion got out of his

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1 vehicle, was seeking help from CPD police officer,  
2 Officer Deal, who arrived at the scene, he said he was  
3 robbed by two men, not three. He said that there were  
4 two black males. He saw two black males.

5 Thank you, your Honor.

6 THE COURT: Call your first witness.

7 MS. WILSON: State calls Elizabeth Paige.

8 (The oath is administered by the Deputy Clerk  
9 of Court, and the witness answers as follows:)

10 THE WITNESS: I do.

11 THE DEPUTY COURT CLERK: Thank you, ma'am. You  
12 may take your seat. And, then, if you would, please,  
13 state your first and last name, spelling your last for  
14 the record.

15 THE WITNESS: Okay. Elizabeth Paige,  
16 P-a-i-g-e.

17 **ELIZABETH PAIGE,**

18 having been first duly sworn by the Deputy Clerk of  
19 Court to tell the truth, the whole truth, and nothing  
20 but the truth, was examined and testified upon her oath  
21 as follows:

22 **DIRECT EXAMINATION**

23 **BY MS. WILSON:**

24 Q Good morning, Ms. Paige. You okay?

25 A Yeah.

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1 Q You need some water?  
2 A No, I'm good.  
3 Q Okay. You go by Liz?  
4 A Yes.  
5 Q How old are you, Liz?  
6 A Forty-two.  
7 Q And where did you grow up?  
8 A Columbia.  
9 Q And how long have you been in Charleston?  
10 A Eight years, I think.  
11 Q Okay. And where did you go to school?  
12 A High school? College?  
13 Q Both.  
14 A Columbia.  
15 Q Both schools in Columbia?  
16 A Uh-huh.  
17 Q And do you work here in Charleston?  
18 A I do.  
19 Q What do you do?  
20 A I teach first grade for Charleston County.  
21 Q For Charleston County?  
22 A Uh-huh.  
23 Q What area of the county do you live in?  
24 A Johns Island.  
25 Q And when was it that you moved out to Johns

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1 Island?

2 A Just a little over a year ago in May.

3 Q Okay. Now, Liz, what was your relation to

4 Marley Lion?

5 A He is my son.

6 Q And how old was Marley when he was murdered?

7 A Seventeen.

8 Q Had he finished high school?

9 A Yes.

10 Q Was he working?

11 A Yes.

12 Q Where did he work?

13 A He worked at La Tela.

14 Q What is that?

15 A It's a restaurant in Freshfields Village on  
16 Kiawah.

17 Q What type of work was it?

18 A I think -- I think he was like an assistant  
19 server. He was trying to get up to the waiter job. But  
20 before that, he had worked at Chick-fil-A for a long  
21 time before that. This was a new job for him.

22 Q And back in June of 2012, did Marley have a  
23 car?

24 A Yes.

25 Q What kind of car did he have?

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1           A     He had a Nissan Pathfinder.  
2           Q     Was that his first car?  
3           A     No. His -- his first car was a '94 Honda Civic  
4 with no air conditioning that he scrounged and saved all  
5 his money to buy.  
6           Q     A '94. What year was he born in?  
7           A     '94.  
8           Q     Okay. So his first car was as old as he was?  
9           A     Yes.  
10          Q     This Pathfinder that he had, how did he get  
11 that?  
12          A     That -- that was an older Pathfinder, but it  
13 was in good shape. And that was a graduation present  
14 for him from his grandparents.  
15          Q     Okay. Now, you mentioned that he -- he had had  
16 two cars. Had you ever had occasion to ride or drive  
17 with him?  
18          A     Yes.  
19          Q     How was he with directions?  
20          A     Not -- not very good.  
21          Q     Tell me about that.  
22          A     Just have a lineage of bad directions in our  
23 family. I'm not -- I am notoriously not good. My mom  
24 is worse than I am. So each generation it improves, but  
25 it didn't get all the way right with him. So he still

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1 had some problems. And at some point, I was lost, and  
2 we were together and I was driving, and we kept going  
3 back around to the same place where we were, and I was  
4 trying to figure out where I had gone wrong. And I  
5 said, you know, didn't we go through this street?  
6 Didn't we go this way before? And he said, Mom, the  
7 same thing that's wrong with you is the same thing  
8 that's wrong with me. I don't know why you're asking  
9 me.

10 Q Well, that incident that you are talking about  
11 where you are confused, what town were you in?

12 A Charleston.

13 Q The town you live here in?

14 A Yes.

15 Q Did Marley know West Ashley? He had been to  
16 West Ashley?

17 A Somewhat. Yeah, he knew some parts of it.  
18 It's kind of like he knew to get -- how to get from  
19 Point A to Point B, but if you went to C, then he kind  
20 of get confused. You know, like, he only knew the one  
21 way to go type thing.

22 Q I understand.

23 A Yeah.

24 Q More than you might know.

25 A Yeah.

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1 Q Let's go, Liz, to June 15th, June 16th of 2012;  
2 okay?

3 A Okay.

4 Q At that point, you mentioned that Marley had  
5 finished high school. Did he have plans to move out?

6 A He did. He -- well, he had plans to go to  
7 Clemson. So he was going to move out when school  
8 started in the fall, and he would be living there in the  
9 dorm.

10 Q But at that point on the 15th, he was still  
11 living with you and your husband?

12 A Correct.

13 Q Out on Johns Island?

14 A Yes.

15 Q Did he still have a curfew?

16 A He did.

17 Q And how did he like that curfew?

18 A He did not really like having a 12 o'clock  
19 curfew, being a senior, graduated from high school, but  
20 our -- our thing was, you know, you're still here. So  
21 when you go, you go. When you're here, you're here.  
22 And when you're here, it's 12 o'clock. So that's what  
23 it was. And he -- he was bursting at the seams, ready  
24 to go to college and all that.

25 Q Be on his own and do his own thing?

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1 A Yeah. Yeah. So it was -- I mean, he didn't --

2 Q Little struggle there?

3 A He didn't love it, but he was -- you know, we  
4 kept it together pretty good.

5 Q Okay. On that Friday, June 15th, did you see  
6 Marley that day?

7 A No. I talked to him on the phone. He -- he  
8 called me -- he called me on the phone --

9 Q Were you working that day?

10 A Yeah. I was -- I was working at The Island  
11 School in Johns Island for my summer job, teaching  
12 preschool. And he called me on the phone, because I was  
13 there late that day, just kind of cleaning up and  
14 closing up the school and everything. And I don't -- I  
15 can't remember what time it was. I think it was like  
16 real close to six o'clock, because it was the end of the  
17 day. And he had already told me that he was going to go  
18 to his friend, John's, house.

19 And so he called me, and he said, hey, how is  
20 it going? Is it okay if I go ahead and go on to John's  
21 house?

22 And I was, like, sure. Have fun. You know, we  
23 had already talked about that he was going to go over  
24 there Friday night, and I was fine with that. So I  
25 said, you know, go ahead and go. Have a good time.

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1 Q You knew John?

2 A I knew John, yeah. We knew John very well.

3 Q And what part of town did John live in?

4 A West Ashley. Sort of over there by the -- kind  
5 of across from Costco, on the other side, back there.

6 Q Okay. And did you know Katie Ridgway?

7 A I did.

8 Q And did you know about any plans that Marley  
9 had with Katie that night?

10 A No.

11 Q Now, as the night wore on, at any point, did  
12 you have communications again with Marley?

13 A I had some one-way communications, where I was  
14 trying -- I was trying to get in touch with him because  
15 it was 12:30. It was 12:30 and he wasn't home. So I  
16 sent him some curt text message about, it's 12:30.  
17 You're not here. You did not ask me if you could spend  
18 the night at John's house. Because sometimes there  
19 would be an assumption of his that, you know, I'm going  
20 to John's. In his mind, it means, I'm spending -- I'm  
21 going to spend the night with John.

22 In my mind, you're going to John's. That means  
23 you're coming back from John's, you know. So we had  
24 been through that before. And I said, you know, I  
25 didn't tell you that you could go -- you didn't ask me

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1 about going over there -- or I didn't tell you to spend  
2 the night over there. You didn't ask me about that  
3 part. Which would have been fine, but it just wasn't  
4 communicated.

5 And so I continued to try to send him some text  
6 messages, I think. And eventually I just said, well,  
7 his phone must be off. He must have spent -- he must  
8 have went ahead and spent the night at John's house, and  
9 maybe his phone is off. And I went to bed.

10 Q Okay. So you didn't hear back from him when  
11 you texted him about the curfew?

12 A No. I think I texted him more than one time.  
13 I did not hear back from him.

14 Q Okay. Had you ever had any discussions with  
15 Marley about driving under the influence?

16 A We did. We had some -- some, you know, I  
17 guess, typical conversations with him. Call us,  
18 repeated conversations of, you know, you can always call  
19 us. There's not going to be a punishment. We want to  
20 come pick you up. You cannot drink and drive. You  
21 know, don't be stupid, blah, blah, blah, all that.  
22 And --

23 Q Because that spring you had a lot going on, I  
24 take it; graduation, prom, that sort of thing?

25 A Uh-huh.

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1           Q     Was driving under the influence a big concern  
2     for you and your husband?

3           A     I guess, just like it would -- not any more, I  
4     don't think, than any other parent necessarily. Not  
5     anything so special about him or his situation, which is  
6     just that basic thing of, just don't do this and that  
7     kind of stuff. And he did -- he did call my husband  
8     Robert, at some point and --

9           Q     At some point other than this?

10          A     Some point in the past that -- that same -- I  
11     think it was his senior year -- I think it was that same  
12     year that he called and said he needed a ride home, that  
13     he had been drinking, and he -- and he went and picked  
14     him up and got him home. And we took him back to his  
15     car the next day. And he got his car, and, I mean, we  
16     talked about it and tried not to go into a big  
17     punishment, because we told him that we would not  
18     -- that was kind of the deal, but it was -- it was hard.  
19     I'm not sure that --

20          Q     Yeah, I understand.

21          A     -- I didn't find something else to punish him  
22     for, but, yeah.

23          Q     So you mentioned that you didn't hear back from  
24     Marley on the night of the 15th into the morning of the  
25     16th. When you got up that morning on the 16th, did you

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1 try to track him down?

2 A Yes. He was -- he was supposed to work for a  
3 friend of ours, doing another -- like, one of his  
4 friend's mom's, at her little restaurant, a different  
5 place. It's just a side job to pick up some extra hours  
6 to get some more money. He was supposed to go there in  
7 the morning and work with her from like nine to 12 or  
8 something like that. And I think after I called him,  
9 couldn't get in touch with him, I called her. She -- or  
10 sent her a text, and she sent me a text that said, I  
11 didn't need him to come in at nine after all. I sent  
12 him a text last night that he could come in at noon and  
13 work in the afternoon.

14 Q Did that give you some relief then?

15 A Yeah. I thought, well, he's probably really  
16 tired, then, because as soon as he found out that he  
17 didn't have to be at work at nine, maybe he thought, we  
18 can just -- I can stay out later or stay up later,  
19 because now I can sleep in, because I don't have to be  
20 at work as early. I'm going to go in at 12.

21 So I thought he probably just ended up staying  
22 up really late, once he found out that he did not really  
23 have to be somewhere until 12, and thought he had some  
24 extra time to sleep in. So. . .

25 Q When was it that you found out that wasn't the

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1 case?

2       A     I think I -- I think I tried to call him some  
3 more and he didn't answer, and then I started trying to  
4 call his friend, John, whose home he had gone to that  
5 Friday night. Finally I got in touch with John. That  
6 was at like 9:30 or something. And John said, no, you  
7 know, Marley left the party last night. He left my  
8 house and went on to some other place, and he -- I think  
9 he didn't really know where he went. And I thought that  
10 was strange, that he just kind of left all of his  
11 friends and kind of went off to someplace else. And  
12 they said, well, we didn't know who those other people  
13 were or something.

14            Anyway, John was on his way to, like, a rugby  
15 game with his family, and they had moved on with their  
16 day. And the last time he had seen Marley was at his  
17 house, when Marley was kind of going off to do his own  
18 thing and left the other people that were his close  
19 -- all his best friends at this -- at his friend,  
20 John's, house.

21            So that seemed weird. And I thought, well, you  
22 know, maybe -- maybe there's -- you know, maybe there's  
23 a girl that he knows that they don't know or something,  
24 and I just -- by then I was, like, this is just weird.  
25 I don't know where he is. And we went -- we have our

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1 other children. We went to go eat breakfast. And, you  
2 know, we pray before we eat. And we said a prayer, and  
3 we said, you know, Lord, just let us hear from Marley  
4 and find out, you know, where -- you know, find out  
5 what's going on with Marley and let us hear from Marley.  
6 And like five minutes later the knock on the door of,  
7 you know, Detective Burckhardt and the coroner there to  
8 tell us what happened. And that was like at eleven  
9 o'clock, I think, on Saturday.

10 MS. WILSON: Beg the Court's indulgence.

11 THE COURT: Take your time.

12 MS. WILSON: That's all I have, your Honor.

13 MR. PENNINGTON: Your Honor, I have no  
14 questions for Ms. Paige.

15 THE COURT: Ms. Paige, you may step down.  
16 Thank you.

17 THE COURT: Ladies and gentlemen, it's an  
18 appropriate time for us to take a midmorning break. You  
19 may leave your notepads in your chair. Do not begin  
20 your deliberations. Do not discuss this case amongst  
21 yourselves. You may be excused. Please rise for the  
22 jury.

23 (The jury is escorted from the courtroom at  
24 10:50 a.m.)

25 THE COURT: Thank you. Be seated.

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1 Mr. Pennington, I'll allow you to place on the record  
2 your objection to the Court's opening.

3 MR. PENNINGTON: Thank you, your Honor. The  
4 Court, in its opening remarks, initially mentioned that  
5 for the jury, this is a search for the truth. That's  
6 language that I've heard in other trials, and I've  
7 actually used it myself. But I was recently at a  
8 seminar where they talked about, this can mislead the  
9 jury into thinking that their job is to be investigators  
10 instead of to be evaluators of the quality of the  
11 evidence and whether or not it proves beyond a  
12 reasonable doubt the Indictments that have been brought  
13 by the State against the individual on trial.

14 And so I objected after the Court finished the  
15 Court's remarks, and at that time asked the Court to  
16 consider -- I believe I asked the Court to consider some  
17 sort of modified instruction. My concern is, is that I  
18 believe jurors play -- place enormous weight and  
19 importance on what judges say, much more, of course,  
20 than lawyers. And that if a juror was to believe that  
21 this was not a question of purely, have they proven  
22 their case, but a search for the truth, this could  
23 result in, I think, a more -- an inappropriate burden  
24 for those jurors. I think their burden is already hard  
25 enough, which is to evaluate this evidence to see if it

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1 proves beyond a reasonable doubt the allegations. And I  
2 would ask the Court to modify its instruction when the  
3 jury comes back in.

4 THE COURT: All right. Your request is noted.  
5 It is denied. Thank you. Anything before we take our  
6 midmorning break?

7 MS. WILSON: How long did you say?

8 THE COURT: I didn't. But anything before we  
9 take our break?

10 MR. PENNINGTON: And I understand that the  
11 Court will probably take a lunch break at noon. Am I  
12 correct?

13 THE COURT: We're going to try to get a couple  
14 of witnesses on, so. . .

15 MR. PENNINGTON: Okay. I just didn't know --  
16 I'm just trying to predict as far as my schedule. Thank  
17 you.

18 THE COURT: Anything before we take our  
19 midmorning break?

20 MR. PENNINGTON: No, ma'am.

21 MS. WILSON: No, ma'am.

22 THE COURT: Fifteen minutes. Thank you.

23 (A break is taken from 10:53 a.m. until  
24 11:10 a.m.; at which time, the proceedings continue  
25 as follows:)

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1 THE COURT: Anything before we bring in the  
2 jury? From the State?

3 MS. WILSON: No, ma'am.

4 THE COURT: From the Defense?

5 MR. PENNINGTON: No, ma'am.

6 THE COURT: Let's bring in the jury.

7 (The jury is escorted into the courtroom at  
8 11:12 a.m.)

9 THE BAILIFF: All jurors are present, your  
10 Honor.

11 THE COURT: All right. Thank you. Be seated.  
12 Ms. Wilson, please call your next witness.

13 MS. WILSON: Katie Ridgway.

14 (The oath is administered by the Deputy Clerk  
15 of Court, and the witness answers as follows:)

16 THE WITNESS: I do.

17 THE COURTROOM DEPUTY CLERK: Thank you. You  
18 may take your seat. And, ma'am, if you would, please  
19 state your first and last name, spelling your last for  
20 the record.

21 THE WITNESS: Katherine Ridgway, R-i-d-g-w-a-y.

22 **KATHERINE RIDGWAY,**  
23 having been first duly sworn by the Deputy Clerk of  
24 Court to tell the truth, the whole truth, and nothing  
25 but the truth, was examined and testified upon her oath

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1 as follows:

2 DIRECT EXAMINATION

3 BY MS. WILSON:

4 Q And do you go by Katie?

5 A Yes, ma'am.

6 Q Katie, how old are you?

7 A I'm 19 years old.

8 Q And where are you from?

9 A Charleston.

10 Q Where -- did you go to school here?

11 A Yes, ma'am.

12 Q Where did you go?

13 A I went to Charleston County School of the Arts.

14 Q And when did you graduate from there?

15 A 2012.

16 Q After you graduated, did you stay home?

17 A No. After I graduated, I moved out.

18 Q Where did you move?

19 A I moved into Ashley Grove Apartments.

20 Q Tell the jury about where Ashley Grove

21 Apartments are.

22 A Ashley Grove Apartments is right off of

23 Cosgrove Avenue on Ashley Hall Road.

24 Q Okay. And are you still living there now?

25 A No, ma'am.

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1 Q Where are you living now?  
2 A I moved back in with my parents.  
3 Q Are you working?  
4 A Yes, ma'am.  
5 Q What kind of work are you doing now?  
6 A I'm working at a day school at my church.  
7 Q Katie, did you have a friend named Marley Lion?  
8 A Yes, ma'am.  
9 Q And how long did you know Marley before he  
10 died?  
11 A I knew him for about four years.  
12 Q How long?  
13 A Four years.  
14 Q So were the two of you in high school together?  
15 A We didn't go to the same high school together,  
16 but we went to the same church, and we rode the same bus  
17 for a while.  
18 Q When was it -- what bus did y'all ride and when  
19 was that?  
20 A We rode bus number 519, and it was in ninth  
21 grade.  
22 Q Okay. And even though you didn't go to the  
23 same school, the same bus would pick y'all up?  
24 A Yeah.  
25 Q Okay. Katie, did you and Marley -- were you

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1 boyfriend and girlfriend?

2 A For a while in ninth grade, yes.

3 Q And back after you graduated, did you and  
4 Marley sort of begin to talk and maybe see each other  
5 again?

6 A Yes, ma'am.

7 Q All right. Well, let's go to the night of June  
8 15th, June 16th of 2012. Do you recall that night?

9 A Yes, ma'am.

10 Q And I believe you said that at that point, you  
11 had already moved out from your parents' to the Ashley  
12 Grove Apartments; right?

13 A Yes, ma'am.

14 Q And tell us about what your plans were that  
15 night.

16 A My plans that night were to have Marley pick me  
17 up and take me to a party.

18 Q Okay. And who knew the people at the party or  
19 that were having the party?

20 A My friend. His name was Jahad. He was going  
21 to be the host of the party.

22 Q So your -- the connection to the party was you,  
23 not Marley, mainly; is that right?

24 A Yes.

25 Q And did Marley pick you up?

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1           A     Yes, ma'am.

2           Q     What was he driving?

3           A     He was driving a light-colored SUV.

4           Q     Light colored?

5           A     Uh-huh.

6           Q     And where did you and Marley go after he first  
7     picked you up?

8           A     We went towards Jahad's house, which is off  
9     Savannah Highway and Carolina Bay. But then I called  
10    Jahad, and he told me not to come yet because the party  
11    wasn't ready.

12          Q     Okay. What does that mean, the party's not  
13    ready?

14          A     There aren't enough people there. He's not --

15          Q     Were parents still there?

16          A     Possibly.

17          Q     So this was going to be one of those parties  
18    with high schoolers, graduates, no parents?

19          A     Yes, ma'am.

20          Q     And do you remember about what time it was when  
21    you and Marley set out to go to the party and you got  
22    sort of waived off?

23          A     It was probably around 7:45, eight o'clock.

24          Q     And after you got waived off, where did you and  
25    Marley go?

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1           A       Well, we -- we headed back towards the  
2 apartment, but on the way there, he stopped in the  
3 parking lot of a Jehovah's Witness church or something,  
4 and he -- you know how Marley is, he's really playful  
5 and stuff. So he made fun of the place, and he went --  
6 he knocked on the door and said, Jehovah's Witness, and  
7 then we went back to my apartment.

8           Q       Okay. Did you go into the apartment?

9           A       Yes, ma'am.

10          Q       How long did y'all stay there?

11          A       I can't really -- just not that long. Maybe  
12 about 30 minutes.

13          Q       All right. So now it's around nine o'clock?

14          A       Uh-huh.

15          Q       Or so?

16          A       (Moves head up and down.)

17          Q       Did you head back to the party?

18          A       Yes, ma'am.

19          Q       And you said that was in Carolina Bay?

20          A       Yes, ma'am.

21          Q       And when you got to the party at Carolina Bay,  
22 how many people were there, would you guess?

23          A       It was a pretty large house, and there were  
24 people in all different rooms. But there was probably,  
25 maybe, 30 people, tops --

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1 Q Okay.  
2 A -- there.  
3 Q Did you know most of the people there?  
4 A No.  
5 Q Did Marley know most of the people there?  
6 A He knew a few people there.  
7 Q How long did y'all stay at the party?  
8 A We stayed until about three in the morning.  
9 Q So 9:30 -- nine to three or so?  
10 A Yes.  
11 Q Must have been somewhat fun?  
12 A (Moves head up and down.)  
13 Q Drinking going on?  
14 A Yes, ma'am.  
15 Q Other stuff going on?  
16 A Yes, ma'am.  
17 Q So you and Marley left the house at Carolina  
18 Bay around three?  
19 A Yeah. Yes, ma'am.  
20 Q And where did y'all head when you left the  
21 party?  
22 A He went to take me home to the apartment.  
23 Q At Ashley Grove?  
24 A Yes, ma'am.  
25 Q And when he took you home that time, did he

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1 come up?

2 A No, ma'am.

3 Q And did you have an understanding of where he  
4 was going from there?

5 A He said he was heading home.

6 Q And did you know where he lived at that point?

7 A On Johns Island.

8 MS. WILSON: Beg the Court's indulgence.

9 THE COURT: Take your time.

10 (Ms. Wilson speaks with Mr. DuRant off the  
11 record.)

12 Q (By Ms. Wilson) Katie, after Marley left and  
13 said he was headed home, did you hear from him again?

14 A No, ma'am.

15 Q And when was it that you learned that something  
16 bad had happened?

17 A I learned it the next day, in the afternoon.

18 Q And as a result of what you heard, where did  
19 you go, and who did you talk to?

20 A I immediately called Detective Burckhardt to  
21 see what I could do. And after that, I just sat at the  
22 house, in the apartment, just really upset.

23 MS. WILSON: That's all I have, your Honor.

24 THE COURT: Mr. Pennington.

25 MR. PENNINGTON: Your Honor, I have no

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1 questions for this witness.

2 THE COURT: Ms. Ridgway, you may step down.

3 Thank you. Call your next witness.

4 MR. DURANT: State would call Lauren Mulkey.

5 MS. WILSON: Your Honor, may Ms. Ridgway be  
6 excused?

7 THE COURT: Any objection?

8 MR. PENNINGTON: No. No objection.

9 THE COURT: You may be excused. Feel free to  
10 remain with us.

11 (The oath is administered by the Deputy Clerk  
12 of Court, and the witness answers as follows:)

13 THE WITNESS: I do.

14 THE DEPUTY CLERK OF COURT: Please take a seat.  
15 Ma'am, if you would, please, state your first and last  
16 name, spelling your last for the record.

17 THE WITNESS: Lauren Mulkey, M-u-l-k-e-y.

18 **LAUREN MULKEY,**

19 having been first duly sworn by the Deputy Clerk of  
20 Court to tell the truth, the whole truth, and nothing  
21 but the truth, was examined and testified upon her oath  
22 as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. DURANT:**

25 Q Good morning, Ms. Mulkey.

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1           A       Good morning.

2           Q       Could you please tell our jury where you're  
3 employed?

4           A       The Charleston Police Department.

5           Q       And how long have you been with the police  
6 department?

7           A       Approximately seven years.

8           Q       What do you do for the police department now?

9           A       Currently I'm assigned to the central  
10 investigation division as a robbery detective.

11          Q       And what were you doing on June the 16th of  
12 2012?

13          A       I had the same assignment as a detective in the  
14 robbery unit.

15          Q       In that capacity, did you have the occasion to  
16 become involved in the investigation involving the  
17 murder of Marley Lion?

18          A       Yes, sir.

19          Q       And what were you tasked to do on June the 16th  
20 of 2012?

21          A       To canvass area businesses in the surrounding  
22 area of the incident location for surveillance video.

23          Q       Okay. And could you tell us if amongst those  
24 businesses your canvass was d.d. Peckers!?

25          A       Yes, sir, it was.

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1 Q And what type of business is d.d. Peckers'?

2 A It's a restaurant and a bar.

3 Q And where is it located?

4 A At 1660 Savannah Highway.

5 Q And where is that in relation to the parking

6 lot where the murder took place in this case?

7 A If you're looking at d.d. Peckers', sir, the

8 parking lot where the incident took place was

9 immediately behind it.

10 Q Okay.

11 (Document is shown to defense counsel.)

12 MR. DURANT: Your Honor, we would offer State's

13 5, I believe, without objection.

14 THE COURT: Any objection?

15 MR. PENNINGTON: No objection.

16 THE COURT: State's 5 into evidence without

17 objection.

18 (State's Exhibit No. 5 is admitted into

19 evidence.)

20 Q (By Mr. DuRant) Ms. Mulkey, referring now to

21 State's Exhibit No. 5 -- and if you need to get up,

22 that's fine too -- could you tell our jury where d.d.

23 Peckers' is?

24 A Be located right here.

25 Q Okay. And what is this business right here?

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1       A       This is Famous Joe's.

2       Q       And what is this business right here in front  
3 of Famous Joe's?

4       A       This is the Mantek building, and it has a  
5 couple of different businesses. I think they've changed  
6 since then.

7       Q       Okay. And this would be the Chick-fil-A here;  
8 is that correct?

9       A       Yes, sir.

10      Q       Now, regarding the -- and did you have the  
11 opportunity to see the surveillance video and shooting  
12 in this case?

13      A       Yes, sir, I did.

14      Q       Okay. Do you know where the victim had  
15 actually parked his car in the parking lot?

16      A       It was right here.

17      Q       Okay. And that would be right in front -- kind  
18 of between Joe's and the Mantek Properties' building; is  
19 that correct?

20      A       Yes, sir.

21      Q       When you went to -- to d.d. Peckers' to see if  
22 they had surveillance video, did they have surveillance  
23 video?

24      A       Yes, sir.

25      Q       And do you recall where the camera was located?

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1           A     Yes, sir. It was in this left rear corner on  
2 the outside patio.

3           Q     This is a -- this little square area there is a  
4 patio; is that correct?

5           A     Yes, sir.

6           Q     In which direction was the camera pointed?

7           A     The camera points out in the parking lot  
8 towards the tier.

9           Q     Okay. So you kind of catch the d.d. Peckers'  
10 building and -- excuse me, the Mantek building and that  
11 area; is that correct?

12          A     Yes, sir.

13          Q     All right. Thank you very much.

14                Now, when you went to Mantek, who did you meet  
15 with?

16          A     I went to d.d. Peckers'.

17          Q     Excuse me, d.d. Peckers'?

18          A     Yes, sir. I met with the manager on duty that  
19 day. I believe his name is Mr. Brandau.

20          Q     Did he allow you to have access to his video  
21 surveillance system?

22          A     Yes, sir, he did.

23          Q     And were you able to examine the footage of  
24 what had occurred on their video surveillance system in  
25 the early morning hours of June 16th of 2012?

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1           A       Yes, sir, I was.

2           Q       And while reviewing that video, what did you  
3 observe roughly at 3:46 a.m. on the -- on the d.d.  
4 Peckers' video time?

5           A       At approximately 3:46 a.m., a light-in-color  
6 sport utility vehicle pulled into the Famous Joe's  
7 parking lot.

8           Q       Okay. And what happened a couple of minutes  
9 later, at 3:48?

10          A       3:48, two vehicles that were believed to be the  
11 employees from Famous Joe's were seen exiting the  
12 parking lot.

13          Q       And at 3:55?

14          A       3:55, a black male in a white T-shirt comes  
15 along the side of the Mantek building towards the d.d  
16 Peckers' parking lot, swings out, and heads back towards  
17 the direction of where the victim's vehicle, the  
18 light-colored SUV, was.

19          Q       Okay. And then what occurred at 4:08 p.m. --  
20 at 4:08 a.m., excuse me?

21          A       The light on the light-colored SUV, determined  
22 to be the victim's vehicle, started to blink as if the  
23 alarm was activated.

24          Q       And once you observed that video, did you have  
25 the occasion to download it?

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1           A     Yes, sir, we did.  
2           Q     Onto what kind of media?  
3           A     On a CD.  
4           Q     I hand you what has been marked previously as  
5     State's Exhibit Number 3.  
6                     (Document is handed to the witness.)  
7           Q     (By Mr. DuRant) And ask if you recognize that?  
8           A     Yes, sir, I do.  
9           Q     And what is that, ma'am?  
10          A     That is the CD containing the footage that I  
11     obtained from d.d. Peckers' that morning.  
12          Q     And how do you know that?  
13          A     It's marked with my signature.  
14          Q     Okay. You actually observed it in my office;  
15     is that correct?  
16          A     Yes, sir, I did.  
17          Q     And is it a true and exact copy of the video  
18     that you downloaded from the d.d. Peckers' video  
19     surveillance system on June the 16th?  
20          A     Yes, sir, it is.  
21                     MR. DURANT: Your Honor, we would offer State's  
22     Exhibit No. 3 into evidence, if there's no objection.  
23                     MR. PENNINGTON: No objection, your Honor.  
24                     THE COURT: State's 3 into evidence without  
25     objection. You may publish.

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1 is Deal, D-e-a-l.

2 **ROBERT DEAL,**

3 having been first duly sworn by the Deputy Clerk of  
4 Court to tell the truth, the whole truth, and nothing  
5 but the truth, was examined and testified upon his oath  
6 as follows:

7 **DIRECT EXAMINATION**

8 **BY MR. DURANT:**

9 Q Good morning.

10 A Good morning.

11 Q Where are you currently employed, Mr. Deal?

12 A I'm currently employed with the City of  
13 Charleston Police Department.

14 Q Okay. But you're not really -- are you back  
15 with them yet, or you still --

16 A No. I'm still -- I've been recalled by the  
17 U.S. Air Force Reserve. So I'm temporarily assigned to  
18 Charleston Air Force Base.

19 Q You're on active duty with Air Force now; is  
20 that correct?

21 A That is correct.

22 Q Where are you stationed?

23 A Charleston Air Force Base.

24 Q Okay. And -- but when you weren't called up,  
25 you were working where?

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1           A       With the City of Charleston Police Department.

2           Q       And what were you doing with the City of  
3 Charleston Police Department?

4           A       I was on team four, patrol.

5           Q       And where is team four?

6           A       Team four is considered a West Ashley area. So  
7 if you think about, like, Bees Ferry Road Area,  
8 Sam Rittenberg, all the way up to Ashley River, all the  
9 way over to North Charleston section of town.

10          Q       Okay. And kind of out there all the way down  
11 to the Ashley River going toward town; is that correct?

12          A       Yes, sir, that's correct.

13          Q       Does that include the area of Ardmore  
14 Subdivision?

15          A       Yes, it does.

16          Q       Now, directing your attention to June 16th of  
17 2012, did you have the occasion to be dispatched to the  
18 Ardmore Subdivision around 4:06 in the morning?

19          A       Yes, I was.

20          Q       In reference to what?

21          A       We had received a call in reference to possible  
22 shots fired in that area. So I was dispatched to it.

23          Q       Okay. And where were you when you received the  
24 call?

25          A       I was active patrolling in the area of the

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1 Citadel Mall area. That was my assigned beat area, and  
2 so I diverted from that area to head toward Ardmore.

3 Q And what did you do upon receiving the call?

4 A I acknowledged receipt of the call and started  
5 driving to the Ardmore Subdivision by means of  
6 Highway 17, Savannah River -- Savannah Highway, going  
7 northbound, and I came up White -- White Oak Street to  
8 -- into the Ardmore Subdivision.

9 Q Okay. And so you took a left onto White Oak  
10 going into Ardmore Subdivision; is that correct?

11 A Yes, it is.

12 Q Now, what route did you take when you actually  
13 pulled into Ardmore?

14 A I took the route of turning -- once I was on  
15 White Oak, I took a left onto Balsam. There was another  
16 unit that turned right. So that way we could canvass  
17 the area pretty well. So I turned left onto Balsam. As  
18 I was going down Balsam, I then took another left up Yew  
19 Street.

20 Q And Yew is spelled Y-e-w?

21 A That is correct, sir.

22 Q Some people may call it Yew Street?

23 A Yes, sir.

24 Q Okay. And what did you observe after you took  
25 that left on Yew Street?

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1           A     After I took the left up Yew Street, I was just  
2 scanning. I was just checking. I had my windows down,  
3 and then I noticed to the right, in the parking lot of  
4 Famous Joe's, I saw a little white vehicle. And it  
5 appeared to have a gentleman laying down on the ground  
6 beside the vehicle. There was a gravel lot. So I had  
7 already passed that gravel lot leading into the Famous  
8 Joe's parking lot. So once I saw that, I decided to go  
9 down -- back up Evergreen toward White Oak to get back  
10 to 17 to come around.

11          Q     Okay. And the parking lot of Famous Joe's and  
12 Ardmore, what county are all of those areas located?

13          A     They are located within Charleston County.

14          Q     Okay.

15               (Document is shown to the witness.)

16           MR. PENNINGTON: No objection.

17           MR. DURANT: Your Honor, we would offer State's  
18 4 without objection, I believe.

19           THE COURT: State's 4 into evidence without  
20 objection.

21               (State's Exhibit No. 4 is admitted into  
22 evidence.)

23           MR. DURANT: May the witness step down for a  
24 moment, your Honor?

25           THE COURT: He may. Please maintain a loud

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1 voice for the court reporter. Thank you.

2 (The witness steps down from the witness  
3 stand.)

4 Q (By Mr. DuRant) Okay. If you would, just kind  
5 of orient the jury. Could you tell them where Savannah  
6 Highway is?

7 A Savannah Highway is right here.

8 Q Okay. And which way is going out -- going  
9 south towards Savannah?

10 A Let's see here. This will be going south.  
11 This will be going north.

12 Q Okay. So town would be back to the right?

13 A Yes, sir.

14 Q And Savannah would be out toward the left; is  
15 that correct?

16 A That is correct.

17 Q And if you would, would you tell the jury what  
18 route you took when you -- when you drove into Ardmore  
19 and got the shots fired call?

20 A Initially I was coming, like I said, northbound  
21 on 17 -- on Savannah Highway. I turned left onto White  
22 Oak and drove past Evergreen up to Balsam. Like I  
23 initially said, there was another vehicle behind me.  
24 That officer went to the right. I turned left down  
25 Balsam and came up Yew Street. And that's when I saw

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1 the white vehicle over here. This is Famous Joe's  
2 parking lot and the gravel lot.

3 Q Okay. And when you saw that person, what did  
4 you do?

5 A Initially, when I saw the vehicle there, I was  
6 already past the little cut-through here, the gravel  
7 lot. So -- because while patrolling the area, I didn't  
8 hear anything going on, I saw that gentleman over there,  
9 I felt that it needed to be investigated. So since I  
10 had already passed, I came up to Evergreen and turned  
11 left onto Evergreen and came back down White Oak to get  
12 over to that parking lot.

13 Q Were you intending to come through the  
14 Chick-fil-A parking lot to begin with?

15 A Originally I was going to look at that, but the  
16 Chick-fil-A parking lot has a iron gate -- or gate they  
17 kind of close off at nighttime to stop people from  
18 coming through, and it was closed.

19 Q Okay. So you went Evergreen, White Oak, back  
20 to Savannah?

21 A That is correct.

22 Q And came around which way?

23 A Okay. As I came back up Evergreen to White Oak  
24 and turned south on Savannah Highway, this is d.d.  
25 Peckers'. And then I turned into d.d. Peckers', and

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1 there's a Five Guys hamburger shop. There's a driveway  
2 there that leads to the Famous Joe's parking lot.

3 Q Okay. And referring briefly to State's Exhibit  
4 Number 5 -- it's just a little bit more zoomed-in  
5 version.

6 A Okay.

7 Q This is what you call Yew Street; is that  
8 correct?

9 A That is correct. This is Balsam. This is Yew  
10 Street that I turned down.

11 Q Okay.

12 A This is the Famous Joe's parking lot and the  
13 gravel driveway.

14 Q And what is this building?

15 A That is the location of Famous Joe's. It's a  
16 strip mall that's down from -- it's right there on the  
17 end.

18 Q Okay. How about this building; do you know  
19 what's in that?

20 A At the time of that day, it was another bar  
21 establishment. I don't remember the name of it, but it  
22 was also another bar.

23 Q This is d.d. Peckers' up here?

24 A That would be correct.

25 Q Okay. And where was the car you observed, how

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1 far?

2 A The car that I observed was, I believe, in this  
3 first spot right there by the concrete sidewalk.

4 Q Okay. Thank you, sir. You can resume your  
5 seat.

6 What did you first think when you saw the  
7 person out there lying by the car?

8 A When I was coming up Yew Street, like I said, I  
9 was just kind of actively patrolling, listening out, had  
10 all my windows down, had my side lights on and scanning.  
11 And when I first initially saw the vehicle and the  
12 gentleman laying on the ground, especially in that area  
13 of establishments, with two local bars, I first  
14 initially assumed there had been an intoxicated party  
15 that had fallen trying to get to their vehicle. So  
16 that's the reason why I wanted to go over there and kind  
17 of investigate and make sure, A, they were okay, and if  
18 they needed any assistance.

19 Q Okay. And so when you -- you said you went  
20 around and you actually got at the location where the  
21 victim was. Did you radio that information in?

22 A Yeah. I had contacted our dispatch to let them  
23 know that I was changing my location to over to the  
24 Famous Joe's parking lot because I was actually  
25 investigating something. So I wanted them to know where

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1 I was at. I also went ahead and notified them --  
2 because once I was able to pull up, I saw the gentleman  
3 on the ground, some broken glass -- to go ahead and have  
4 EMS respond in case we needed them.

5 Q Okay. And what time was it -- do you have an  
6 opportunity to review the radio logs; is that correct?  
7 What time was it when you arrived in the Famous Joe's  
8 parking lot where the victim was?

9 A I want to say, without -- after looking at --  
10 having the document in front of me, I want to say it was  
11 probably either 4:12 or 4:15-ish.

12 Q By looking at the radio log, refresh your  
13 recollection?

14 A Yes, it would.

15 Okay. Like, location changed to Famous Joe's  
16 parking lot was at 4:18 that day.

17 Q So 4:18 would be the time that you actually  
18 arrived at --

19 A That would be the time the dispatch documented  
20 that we were on scene at that location.

21 Q What did you do upon parking your cruiser in  
22 the parking lot?

23 A Upon arriving at the parking lot, I -- I got  
24 out of my vehicle, I approached, I'm radioing in to my  
25 dispatch to let them know where I was at, kind of what I

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1 was observing. I approached the gentleman that was  
2 laying on the ground. I was asking him if he was okay.  
3 At that time, he advised me that he had been shot five  
4 times. So I radioed that back in to kind of let  
5 dispatch know the situation change.

6 Q Okay. So you realized pretty quickly this  
7 wasn't just a drunk?

8 A That's correct.

9 Q And what did you do after you radioed for EMS?

10 A After I updated my dispatch to -- to kind of  
11 step it up, I also requested a supervisor to arrive on  
12 scene. During that time, while I was waiting on EMS, I  
13 -- I was talking with the victim there and trying to get  
14 some information to figure out what had happened, what  
15 had transpired.

16 Q What was the victim wearing at the time, if you  
17 recall?

18 A To recall, I think he had some khaki pants on  
19 and a shirt. I don't remember exactly the color without  
20 referring back to my report.

21 Q Okay. Do you know whether or not he had on a  
22 black T-shirt?

23 A That -- that sounds familiar. Like I said, if  
24 I could -- you know, I've documented in my report  
25 exactly what he was wearing, but a black T-shirt does

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1 sound consistent.

2 Q Okay. Would looking at your report refresh  
3 your recollection?

4 A Yes, it would.

5 (Document is handed to the witness.)

6 A In my report, I documented that he was wearing  
7 a black in color shirt and khaki pants.

8 Q (By Mr. DuRant) Okay. Now, what was his  
9 condition at the time?

10 A When I first approached, I noticed that he had  
11 some minor lacerations to the face. There was some  
12 broken glass around. And when I approached him, in  
13 further discussion with him, and he advised that he had  
14 been shot. He was somewhat coherent, but it was kind of  
15 an in and out. You know, so as I was trying to get  
16 questions and trying to get some details, he would talk  
17 to me a little bit, and he would kind of fade out, and  
18 then he'd come back.

19 Q What did he keep asking you about?

20 A He kept asking me where EMS was, why it was  
21 taking so long, and I kept advising him they were  
22 coming, to try to keep his mind off, I guess, the pain  
23 or whatever he was experiencing. I wanted to get as  
24 much information to help locate the people responsible.

25 Q And when he wasn't -- during his lucid stages,

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1 was he able to relate any information to you?

2 A He was able to relate quite a bit. When I  
3 spoke with him, he -- like I said, he advised that he  
4 had been shot five times. I also asked him which  
5 direction the subjects took off, and he was able to  
6 actually point toward the gravel lot area. He also  
7 advised me that it was two people that were part of the  
8 incident, two black males wearing all black. And like I  
9 said, each time I was talking to him, he would ask about  
10 EMS, where they were at, and I would try to switch the  
11 subject and kind of refocus his mind away from that.

12 Q Did he indicate why he was sleeping in his car?

13 A He had informed me that he had pulled in there  
14 to kind of get some sleep, that he had been out that  
15 evening, and he felt that he was too intoxicated to  
16 drive. So he stopped in there, because he was familiar  
17 with the location, and that he was just going to sleep a  
18 little bit to be safe.

19 Q Which direction did he indicate that the  
20 -- that the -- his assailants had fled in?

21 A He indicated -- and while I was talking to him,  
22 he was actually able to point in the direction of the  
23 gravel lot that is from off the Famous Joe's parking lot  
24 going toward Yew Street.

25 Q And that would be this kind of cut-through

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1 located in this area?

2 A That would be correct.

3 Q Okay. How long did it take EMS to arrive?

4 A I remember it took quite a bit. I probably  
5 estimate probably about 15, 17 minutes or so. If I can  
6 look at the call log, I can tell you exactly when they  
7 -- or it showed on the scene, but it was probably at  
8 least 15 minutes.

9 Q And while he was being worked on by EMS, were  
10 you able to observe any wounds, gunshot wounds?

11 A Yes. While EMS was trying to get him patched  
12 up for transport, they were cutting away his clothing,  
13 and at that time, I think it was necessary to probably  
14 -- to preserve the scene, to take some photographs. So  
15 as they were removing his garments to try to assess his  
16 injuries, I was able to see several wounds to his body.

17 Q And where, just from your initial inspection,  
18 did you see gunshot wounds?

19 A I initially -- when they removed his shirt, I  
20 initially saw one in the upper chest area. As they were  
21 removing his clothing, his pants and stuff, I was able  
22 to see several through the thigh and the lower region.

23 Q Thigh and groin area?

24 A Yes, sir.

25 Q You mentioned something about taking

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1 photographs. Did you take some photographs?

2 A Yeah, I took several photographs. And the  
3 reason why is, over my time as a police officer, you  
4 don't -- by the time the CSI folks and investigator show  
5 up, a lot of things can potentially happen. Your victim  
6 is going to be removed from the scene. So to best  
7 preserve the scene, I do know it's necessary to go ahead  
8 and photograph what I was seeing to better help the  
9 investigators once they got there.

10 (Document is shown to defense counsel.)

11 (Document is handed to the witness.)

12 Q (By Mr. DuRant) Hand you what's previously  
13 been marked as State's Exhibits 35 and 36 and ask you to  
14 look at them and see if you recognize those photographs.

15 A Yes. These are two photographs that I took  
16 while I was on scene, while EMS was taking care of the  
17 victim.

18 Q And do they fairly and accurately depict the  
19 condition of the victim at the time that you were  
20 there --

21 A Yes, sir, they do.

22 Q -- and he was being treated by EMS?

23 A Yes, sir.

24 MR. DURANT: Your Honor, we would offer them, I  
25 believe, with objection.

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1 MR. PENNINGTON: I have a matter of law to take  
2 up with the Court.

3 THE COURT: All right. Please approach.

4 (A discussion is held off the record.)

5 (The attorneys are Ms. Wilson, Mr. Pennington,  
6 Mr. DuRant at the bench with the Judge.)

7 THE COURT: 35 and 36 into evidence over the  
8 Defendant's objection. And, Mr. Pennington, I indicated  
9 that I would allow you to further articulate your  
10 argument on the record outside the presence of the jury.  
11 So your objection is preserved for the record.

12 MR. PENNINGTON: Thank you, your Honor.

13 THE COURT: Thank you.

14 (State's Exhibits No. 35 and 36 are admitted  
15 into evidence.)

16 MR. DURANT: Could we have State's Exhibit  
17 Number 35, please?

18 Can you see that, sir, or is this blocking  
19 your --

20 THE WITNESS: I can see.

21 Q (By Mr. DuRant) This is referring to State's  
22 Exhibit Number 35. Who is that depicted there?

23 A That is the victim that I -- known as  
24 Marley Lion, of the time, at the scene, I arrived.

25 Q And you noted to the family that he had an

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1 injury on his arm. Does that depict where you saw the  
2 injury on his arm?

3 A I believe so. If I may stand?

4 Q You'll have to stand up. The laser pointer  
5 won't work.

6 A You've got some injury here. I believe that  
7 will be his left.

8 Q Be his right, I think.

9 A Right. Yeah. Right here. And then some  
10 blood.

11 Q Okay. And -- and if you need something --  
12 here's an actual pointer.

13 (Pointer is handed to the witness.)

14 Q (By Mr. DuRant) Do you know what that thing is  
15 on his back there?

16 A The back here in the lower region, I -- through  
17 training and experience, would probably be the  
18 projectile that probably entered into his abdominal  
19 area.

20 Q Okay. And State's Exhibit Number 36. Is that  
21 the victim that you encountered in the parking lot that  
22 night?

23 A Yes.

24 Q And is that in the condition that you found  
25 him?

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1 A Yes, it is.

2 Q Okay. And this is obviously while -- while  
3 he's being treated by EMS?

4 A That's correct.

5 Q Is that correct?

6 A That's EMS personnel assisting him.

7 Q Okay. Now, in -- in this -- this photo and the  
8 photo proceeding it, he doesn't have a shirt on. Did he  
9 have a shirt on when you got there?

10 A Yes, he did. If you can notice here, they've  
11 kind of tore it and cut it away to better assess his --

12 Q And that was the same thing in State's 35, the  
13 previous, with regard to his pants?

14 A That is correct.

15 Q Okay. And you said that when they cut away his  
16 pants, you observed some other gunshot wounds and -- or  
17 when they removed his shirt and his pants, you observed  
18 gunshot wounds in what area?

19 A To his thigh region. Because there wasn't a  
20 whole lot of blood on the scene. So when they started  
21 cutting away the clothing, I was able to see better his  
22 injuries.

23 Q Okay. You can --

24 (Witness takes his seat.)

25 Q (By Mr. DuRant) What did you think, given the

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1 fact that there was not a lot of blood and all?

2 A Through my experience and training, I deemed  
3 that being that he had articulated he had been shot five  
4 times, seeing where the wounds were, that he was more  
5 than likely bleeding out internally.

6 Q Now, were you able to locate any shell casings  
7 at the scene?

8 A Yes. Once EMS had left with Marley Lion, I did  
9 an initial survey of the scene to help protect and  
10 preserve any evidence that was out in the parking lot.  
11 As you can imagine, with a lot of people walking around,  
12 there is the potential for things to get kicked and  
13 knocked away. So I was able to locate six spent  
14 cartridge casings on the ground. Utilizing different  
15 pieces of equipment that were on my belt, I laid them  
16 near the object to let people know that there was  
17 something there to be cautious of.

18 Q Okay. You didn't actually collect those shell  
19 casings, though; correct?

20 A No, I did not collect them.

21 Q Was crime scene contacted?

22 A Yes, crime scene was contacted. Once my  
23 supervisor arrived on scene, he made sure that Central,  
24 which is our detective division, was notified, along  
25 with our forensic team. And forensic technician,

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1 Charles Rene, was actually the one that responded to the  
2 scene.

3 Q Okay. Now, how were you able to identify the  
4 victim?

5 A I was able to identify the victim later that  
6 morning. Once the crime scene was done with the initial  
7 scene there at the parking lot at the Famous Joe's, we  
8 secured the vehicle, and we transported it to their lab.  
9 I followed the vehicle to maintain custody of it. Once  
10 we arrived to the lab and put it inside the bay for  
11 processing, Technician Rene Charles was photographing it  
12 and found the victim's wallet, which had a South  
13 Carolina driver's license in it, that stated this was  
14 Marley Lion.

15 Q And do you recall how old Mr. Lion was?

16 A His date birth documented on the license was  
17 [REDACTED], I believe, and that would have made him  
18 17 at that time.

19 MR. DURANT: Okay. Court's indulgence for just  
20 a moment.

21 THE COURT: Take your time.

22 (Mr. DuRant and Ms. Wilson speak to  
23 Mr. Pennington speak off the record.)

24 MR. DURANT: Your Honor, at this time, offer  
25 State's Exhibit Number 100. It is a stipulation between

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1 the parties Mantek Property videos. There are two  
2 different videos. If you'd like, I can publish it to  
3 the jury, or you could do whatever --

4 THE COURT: All right. This is the  
5 stipulation. And you're in agreement with the  
6 stipulation, Mr. Pennington?

7 MR. PENNINGTON: I am, your Honor.

8 THE COURT: All right. It does not need to be  
9 marked -- I believe that has already been marked as  
10 Court's 2.

11 MR. DURANT: This has actually been marked as  
12 State's Exhibit 100. So if we could --

13 THE COURT: That will not go back to the jury.  
14 I believe it's Court's 2. You may read the stipulation  
15 into the record. Is that what you wish to do at this  
16 time?

17 MR. DURANT: That's correct, your Honor.

18 THE COURT: Ladies and gentlemen, a stipulation  
19 is simply an agreement between the parties. In this  
20 particular case, Mr. DuRant, on behalf of the State, is  
21 going to read the stipulation, which is an agreement.  
22 And typically what that does is, it does -- it requires  
23 that witnesses are not required to come in. And so the  
24 parties have agreed to the information contained in the  
25 stipulation. So you are to listen to the stipulation

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1 and give it the weight that you think it is appropriate.

2 Mr. DuRant.

3 MR. DURANT: Thank you, your Honor.

4 Attorneys for the State and defense counsel do  
5 hereby agree and stipulate to the testimony described  
6 below. It's if Dave -- David Mantek and Ed Oliger were  
7 called to testify, their testimony would include the  
8 following: David Mantek is the owner of Mantek  
9 Properties, which owns and manages several properties in  
10 the West Ashley area of Charleston County, South  
11 Carolina. Ed Oliger is a maintenance supervisor for  
12 Mantek Properties. The original recordings and  
13 surveillance video, recorded and retained in the normal  
14 course of Mantek Properties' business, during the night  
15 of June 15, 2012, and in the early morning hours of June  
16 16th, 2012, from the exterior camera of the Mantek  
17 Properties office building located at 1662 Savannah  
18 Highway, and showing the parking lot area in front of  
19 Famous Joe's bar, was delivered to officers with the  
20 Charleston County Police -- or Charleston City Police  
21 Department.

22 State's Exhibit 1 is a true copy of video  
23 recorded between approximately 3:30 a.m. to 4:30 a.m. on  
24 June 16th, 2012, and retained in the normal course of  
25 Mantek Properties' business.

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1 State's Exhibit 2 is a true copy of video  
2 recorded between approximately eight o'clock p.m. on  
3 June 15th, 2012 to 3:45 a.m. on June 16, 2012, and  
4 retained in the normal course of Mantek Properties'  
5 business. That the contents of State's Exhibits 1 and 2  
6 and the scenes depicted thereon have not been altered in  
7 any way.

8 THE COURT: Is that the stipulation as you  
9 understood it to be, Mr. Pennington?

10 MR. PENNINGTON: Yes, your Honor.

11 (Respite.)

12 MR. DURANT: Your Honor, we would also offer,  
13 at this time, State's Exhibit 103, I believe, without  
14 objection, which is a timeline prepared from the Mantek  
15 Property videos as to the times at various -- various  
16 things occurred which are pertinent to the facts in this  
17 case.

18 THE COURT: Any objection to State's 103?

19 MR. PENNINGTON: No, your Honor.

20 THE COURT: State's 103 into evidence without  
21 objection.

22 (State's Exhibit No. 103 is admitted into  
23 evidence.)

24 MR. DURANT: Your Honor, based on the  
25 stipulation previously published to the Court and the

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1 jury, at this time, we would offer State's Exhibits 1  
2 and 2 into evidence, which are two DVDs referred to in  
3 the stipulation previously referred to, and published to  
4 the jury.

5 THE COURT: All right. And since State's 1 and  
6 2 are the basis of the stipulation that is Court's 2, is  
7 there any objection from the Defendant?

8 MR. PENNINGTON: No, your Honor.

9 THE COURT: State's 1 and 2 into evidence  
10 without objection.

11 (State's Exhibit Nos. 1 and 2 are admitted into  
12 evidence.)

13 Q (By Mr. DuRant) Just a couple of more  
14 questions, Officer Deal. According to -- I believe I  
15 showed you the radio logs. I believe you said,  
16 according to the radio logs, you arrived at the victim's  
17 location at what time?

18 A I believe it was 4:18.

19 Q Almost 4:19, as I recall?

20 A That's correct.

21 Q And you have had an opportunity to view State's  
22 Exhibit 1, which is the surveillance video of Mantek  
23 Properties, from the Mantek Properties' camera; is that  
24 correct?

25 A That is correct.

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1           Q     And just so -- do you recall -- do you know  
2 where that surveillance camera was located?

3           A     I knew there was numerous cameras on the  
4 different buildings. I don't remember exactly where  
5 that camera was pointed, but I believe it was pointed in  
6 the direction that would be overlooking the victim's  
7 vehicle going toward the gravel lot, toward Yew Street.

8           Q     Okay. And you've had an opportunity to review  
9 the video; is that correct?

10          A     That is correct.

11          Q     And what time did you -- using the Mantek  
12 Property video time stamp, what time did you arrive on  
13 the Mantek Property video?

14          A     I believe there's like a 11-minute difference.  
15 So my dispatch log is right around 4:18, 4:19. So it  
16 would have been 11 minutes, I believe, greater on that  
17 time stamp. So --

18          Q     So around 4:07?

19          A     Yes.

20          Q     Okay. So there's basically a difference of  
21 about 12 minutes?

22          A     (Moves head up and down.)

23          Q     And when I say a difference, CPD is running 12  
24 minutes ahead of what the Mantek video is; is that  
25 correct?

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1 A That's correct. That's correct.

2 MR. DURANT: Okay. Could you please answers  
3 any questions that defense counsel may have for you?

4 MR. PENNINGTON: Please the Court.

5 **CROSS-EXAMINATION**

6 **BY MR. PENNINGTON:**

7 Q Officer Deal, part of your training, is it not,  
8 that you are trained to make reports from what happens  
9 to you out in the field; is that correct?

10 A I am trained to document reports of incidences,  
11 that's correct.

12 Q Have you been to the South Carolina Law  
13 Enforcement Academy?

14 A Yes, I have, sir.

15 Q And is that where part -- that is part of the  
16 training?

17 A That's where you get some of your initial  
18 training, but once you return from the academy and in  
19 your -- what they call field training, where you're --  
20 you're fine-tuning the tools that the academy gave you,  
21 that's where you get more, I guess, practice in writing  
22 reports and fine-tuning those details.

23 Q All right. And so in addition to the South  
24 Carolina Law Enforcement Academy, you get training on  
25 the job?

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1           A       That is correct.

2           Q       And it's expected, at the Charleston City  
3 Police, that you make written reports?

4           A       That's correct.

5           Q       The purpose of a written report is because we  
6 all know that memory can fade or be distorted. So that  
7 a written report is intended to make a fresh recording  
8 of what happened so it will be as accurate as possible?

9           A       That's correct.

10          Q       And in this instance, in this case, you created  
11 a report in this case?

12          A       That is correct.

13          Q       And it's -- it is a narrative of what occurred  
14 as best you could record it at the time?

15          A       Yeah. It's a documentation narrative, sort of  
16 like a synopsis of what I saw, what information was  
17 relayed to me. That way that we have it, as you said,  
18 documented for future reference.

19          Q       That way, in terms of trying to remember  
20 clearly, you can always go back to the document to pull  
21 out the fine points?

22          A       That's correct.

23          Q       Is it fair to say that probably the document is  
24 going to be the most accurate way to recall what  
25 happened?

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1           A     Yes, sir.

2           Q     Okay. Is it fair to say that on this early  
3     Saturday morning at about four o'clock, that you were  
4     dispatched by your dispatcher about 4:05 a.m. because of  
5     the shots fired?

6           A     That's correct.

7           Q     And so at 4:05 you left the Citadel Mall area,  
8     and you drove up, as was described, into the Ardmore  
9     Subdivision?

10          A     That is correct.

11          Q     Okay. And you've already covered with the  
12     Solicitor how you drove through the subdivision, and  
13     then you came back around 17 and entered the d.d.  
14     Peckers', Five Guys hamburger restaurant parking lot;  
15     right?

16          A     That's correct. They have a driveway between  
17     the two.

18          Q     And that's how you would proceed, past Five  
19     Guys and then on toward the back right corner, which is  
20     where the Famous Joe's bar is?

21          A     That is correct.

22          Q     Okay. And at that time, you described that, as  
23     best you can guesstimate, from looking at the call log,  
24     that you think that you got with the victim,  
25     Marley Lion, about 4:18 a.m.?

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1           A     Yes. It was 4:18. If you look at the seconds,  
2 it was leaning more toward 4:19, but between 4:18, 4:19.

3           Q     All right. And obviously, your purpose there  
4 is public safety, is it not?

5           A     That's correct.

6           Q     But also, in addition, your purpose is to  
7 record what would be any important --

8                 MR. PENNINGTON: May I put this on the juror --

9                 THE COURT: You may.

10                MR. PENNINGTON: Thank you, your Honor.

11           Q     (By Mr. Pennington) Your purpose is also to,  
12 obviously, record and observe critical facts that might  
13 be useful later?

14           A     That is correct.

15           Q     So you were paying full attention, when you  
16 were conversing or talking with Mr. Lion, about what  
17 happened to him, weren't you?

18           A     That's correct.

19           Q     And what he told you was, is that he had been  
20 sleeping in the back of his vehicle?

21           A     He articulated to me that he had pulled into  
22 the parking lot because he had been out that evening,  
23 and he was -- he felt that he was too intoxicated to  
24 drive. So he pulled in there to get some sleep to be  
25 safe.

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1           Q     So he had been sleeping in the back of the  
2 vehicle?

3           A     That's correct.

4           Q     Because he felt he was too intoxicated to  
5 drive?

6           A     Yes, sir.

7           Q     And he appeared lucid to you, in terms of being  
8 able to accurately recite that history?

9           A     Yes. He was very lucid at the time. As I  
10 articulated earlier, when we were communicating with  
11 each other and I was asking him questions, he would  
12 -- he would give his responses. He would seem to drift  
13 away sometimes. I was trying to keep him alert. There  
14 was numerous times that he attempted to try to get up,  
15 but I kept him on the ground for his safety and to make  
16 sure that he was -- try to, you know, be more stable.  
17 But he would drift in and out, but I would continue to  
18 question him and try to get information, and then he  
19 would try to comment back.

20          Q     Is it fair to say that it appeared that he knew  
21 who you were, that you were an officer?

22          A     I actually told him who I was additionally  
23 also. He knew he could -- he could visually see the  
24 uniform, but I also -- it's a normal thing that I like  
25 to do is, I introduce myself as a Charleston City police

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1 officer and who I am.

2 Q And it appeared that he was able to tell you in  
3 realtime why he was there, that he was sleeping off --  
4 having been drinking and was sleeping in the back of the  
5 car?

6 A He articulated that he felt he was too  
7 intoxicated to drive. That's the reason why he was  
8 stopped there to sleep.

9 Q And he also told you that two black males  
10 approached him?

11 A That's correct.

12 Q And that one was wearing all black, along with  
13 blue jeans?

14 A That sounds correct, from my report.

15 Q Would it refresh your recollection to actually  
16 see your report?

17 A I can read it from the report, if that would  
18 better suit the Court.

19 MR. PENNINGTON: May I approach the witness,  
20 your Honor?

21 THE COURT: You may.

22 (Document is handed to the witness.)

23 Q (By Mr. Pennington) Take a look at it. You  
24 don't have to respond to a question. Just let me know  
25 when you are ready.



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1           A       The victim stated two black males approached  
2 him, one wearing all black, along with blue jeans.

3           Q       Okay.

4           A       Would you like me to continue?

5           Q       If I can borrow it back again.

6           A       No problem.

7                   (Document is handed back to Mr. Pennington.)

8           Q       (By Mr. Pennington) And so Mr. Lion told you  
9 that two black males approached him, and one was wearing  
10 all black with blue jeans; correct?

11          A       That's correct.

12          Q       And he pulled a gun out that appeared to be all  
13 black?

14          A       That's what I wrote, yes, sir.

15          Q       And that that individual began to fire at him?

16          A       That's correct.

17          Q       There's no description here of the second  
18 individual, is there?

19          A       No, sir. I tried to gather as much information  
20 as I could from him, but in his state, like I said, he  
21 was kind of drifting in and out. I tried to re-question  
22 him about the descriptions, and that's the description  
23 that he gave me.

24          Q       All right. So the description was of two black  
25 males?

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1           A     That's correct.

2           Q     One wearing all black; correct?

3           A     With blue jeans, correct.

4           Q     With blue jeans. And no clothing description

5 for the second one?

6           A     That is correct.

7           Q     Now, to be perfectly clear about the

8 photographs that you took, State's 35 and 36, those were

9 photographs where the -- this was after the EMS

10 personnel had arrived?

11          A     That's correct.

12          Q     And they were the ones who had cut away the

13 clothing in order to provide medical care?

14          A     That's correct.

15          Q     And as best I understood your testimony, you're

16 indicating that if you compare the City of Charleston's

17 time clock, dispatch log time clock, with the Mantek

18 video, that there would appear to be between an 11- and

19 12-minute difference?

20          A     That's correct. Their video was off a little

21 bit compared to our call log.

22          Q     Okay. And so the Mantek video, when it is

23 played, will actually be what we might call 11 to 12

24 minutes slow?

25          A     That's correct.

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1 Q It still accurately depicts the events --

2 A It accurately depicts the scene. It's just  
3 that the time -- sort of like when people forget to set  
4 their clocks back an hour during daylight savings time,  
5 it's just a little bit slow.

6 Q And it shows you arriving at about 4:07?

7 A It had -- it shows me arriving with the time  
8 difference -- yeah, that's correct, be about 4:07.

9 Q And that's the real City time, not the --

10 A That would be the Mantek time. The City time,  
11 if you look at the call run sheet from dispatch, I  
12 arrived at the location change right around 4:18, almost  
13 4:19.

14 Q I see. Even I'm getting mixed up here. The  
15 Mantek time that you arrived is 4:07 a.m.?

16 A Would be correct, because it's a little bit  
17 slower.

18 Q But the realtime, you estimate to be 4:18?

19 A That's correct. When I pulled up at the Famous  
20 Joe's and started to speak with the victim, I updated my  
21 location. That way dispatch knew where I was at. And  
22 that's where, on the call log, you'll see a location  
23 change, and it shows Famous Joe's.

24 MR. PENNINGTON: Thank you. May I have the  
25 Court's indulgence, your Honor?

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1 don't have an extra copy -- but to make a copy of the  
2 full incident report regarding the Chopper shooting as a  
3 Court's exhibit. And I can do that at the end of the  
4 day, give you a full copy of that. It has been provided  
5 in discovery, Pages 1344 through 1375, I believe it is.

6 MR. PENNINGTON: That's correct.

7 THE COURT: It will be Court's 5.

8 MS. WILSON: I'll have to give you a copy at  
9 the end of the day.

10 MR. DURANT: Your Honor, may I -- just a  
11 housekeeping matter. With regard to State's 100, the  
12 stipulation that we had signed, and you said there was  
13 one that was already marked as Court's 2.

14 THE COURT: Correct.

15 MR. DURANT: Did you want to just go ahead and  
16 mark that Court's 2 or have them sign those two? 100 is  
17 the only one that's been signed so far. May I show you?

18 THE COURT: I'm trying to -- at this point, I  
19 don't know that it really makes a difference. It's been  
20 read. You agreed that that's Court's 2.

21 MR. DURANT: That's fine.

22 THE COURT: And now 100, it's just -- it cannot  
23 go back to the jury. That's the only thing.

24 COURT SECURITY OFFICER: He's up here, Judge.

25 THE COURT: Mr. Brown is here?

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1 COURT SECURITY OFFICER: Yes.

2 THE DEPUTY CLERK OF COURT: Place your left  
3 hand here. Raise your right hand.

4 (The oath is administered by the Deputy Clerk  
5 of Court, and the witness answers as follows:)

6 THE WITNESS: Yes, sir.

7 THE DEPUTY CLERK OF COURT: Thank you, sir.  
8 You may be seated. Sir, if you would, please, state  
9 your first and last name, spelling your last name.

10 THE WITNESS: Julius Brown, B-r-o-w-n.

11 JULIUS BROWN,

12 having been first duly sworn by the Deputy Clerk of  
13 Court to tell the truth, the whole truth, and nothing  
14 but the truth, was examined and testified upon his oath  
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Mr. Brown, you can see that the jury is not  
19 here. We're having a hearing so that the Judge can  
20 evaluate some of your testimony on some matters. Okay?

21 A Yes, ma'am.

22 Q I'm not going --

23 MS. WILSON: Judge, if it's okay with you, I'm  
24 just going to go straight to the matters at hand rather  
25 than go through all the background.

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1 THE COURT: I would prefer that.

2 MR. PENNINGTON: Yes, ma'am.

3 THE COURT: Mr. Pennington, if at any time you  
4 have any objections to this, just let me know.

5 MR. PENNINGTON: Thank you, your Honor.

6 Q (By Ms. Wilson) Julius, the first thing I want  
7 to ask you about is the shooting of Leroy Townsend, also  
8 known as "Chopper." Do you know who I'm talking about?

9 A Yes, ma'am.

10 Q And do you remember that shooting?

11 A Yes, ma'am.

12 Q When was it that the shooting took place; do  
13 you recall?

14 A I can't remember.

15 Q Was it before or after the Marley Lion murder?

16 A Before.

17 Q Okay. And who all was involved in going to the  
18 area where Chopper was?

19 A Me, Deleston, Bryan, George, Rayshawn --

20 THE COURT: Mr. Brown, I'm going to need you to  
21 speak up, please. Thank you.

22 A Me, Deleston, Rayshawn, and George Brown.

23 Q (By Ms. Wilson) Okay. And when you say  
24 "Rayshawn," is that Rayshawn Milligan?

25 A Yes, ma'am.

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1 Q And he's your brother?  
2 A Yes, ma'am.  
3 Q And George Brown?  
4 A George Brown.  
5 Q Bryan Rivers?  
6 A Yes.  
7 Q Did you say Tino?  
8 A No. Valentino, he was --  
9 Q He was with you as well?  
10 A Yes, ma'am.  
11 Q Okay. And tell the Judge who Chopper is.  
12 A A drug dealer.  
13 Q You knew him?  
14 A Yes, ma'am.  
15 Q Did Bryan Rivers know him, or do you know?  
16 A Yes, ma'am.  
17 Q Had you bought or sold drugs to him before?  
18 A Bought.  
19 Q Bought from him before?  
20 A Yes, ma'am.  
21 Q Okay. And were you aware that he and  
22 Bryan Rivers had a beef?  
23 A No, ma'am.  
24 Q Had a disagreement?  
25 A No, ma'am.

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1 Q You were not aware of that?  
2 A No, ma'am.  
3 Q Okay. Do you remember what time of day it was  
4 when all of you decided to go rob Chopper?  
5 A Think it was night, like around  
6 10:00-something, eleven o'clock.  
7 Q And how was it that you got to where Chopper  
8 lives?  
9 A George.  
10 Q And when you say "George," what do you mean?  
11 A George Brown. He drove us.  
12 Q Okay. And drove y'all from where?  
13 A From Cashew Street.  
14 Q Where were you on Cashew Street before?  
15 A At my sister house.  
16 Q Who lived with your sister?  
17 A Ryan Deleston.  
18 Q Okay. So y'all leave there in George's car?  
19 A Yes, ma'am.  
20 Q And where is this area that Chopper lived?  
21 A It's in Andrews Garden Apartment.  
22 Q Can you tell the Judge about where that is?  
23 A Like, that's, like, in, like -- I don't know  
24 the area, but I know it's in the Andrews Garden  
25 Apartment.

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1 Q Is it further up 17 or off 61?  
2 A Off 61.  
3 Q Okay. It's off 61?  
4 A (Moves head up and down.)  
5 Q All right. Is it before you get to Sam  
6 Rittenberg?  
7 A No. You got to make a -- Sam Rittenberg to the  
8 left, and you got to make a right when you going out  
9 Ardmore.  
10 Q So you come out of Ardmore and you take a  
11 right?  
12 A Yes, ma'am.  
13 Q On what road?  
14 A It's Highway 7, I think.  
15 Q And you stay on 7. And then you go where?  
16 A Go down some and make a right.  
17 Q And about how long did it take y'all to get  
18 there in George's car?  
19 A Probably like five minutes.  
20 Q Okay. And when -- did you know what gun was  
21 going to be used to rob Chopper?  
22 A The gun George Brown had.  
23 Q And who -- who planned or who was going to get  
24 out to do the robbery?  
25 A Valentino. He went with Bryan Rivers.

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1 Q Did they do that?  
2 A Yes, ma'am.  
3 Q And did you see where they went?  
4 A No, ma'am.  
5 Q Okay. Where did George park the car while they  
6 went to do the robbery?  
7 A In The Shires.  
8 Q In The Shires?  
9 A Yes.  
10 Q What is that?  
11 A That's like the back of Ardmore. And you can  
12 go through a cut to get to the Saint Andrews Garden  
13 Apartment.  
14 Q If you're on foot?  
15 A Yeah.  
16 Q Okay. And while at The Shires, who all was in  
17 the truck with George?  
18 A Me, George, Rayshawn, and Deleston.  
19 Q And did -- you couldn't see the robbery take  
20 place?  
21 A No, ma'am.  
22 Q After the robbery -- and you know now there was  
23 a shooting; right?  
24 A Yes, ma'am.  
25 Q Did you see Tino, Valentino Hayward, and

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1 Bryan Rivers again?

2 A Yeah. Running.

3 Q Where'd they run to?

4 A From The Shires -- from Saint Andrews Garden  
5 Apartment through The Shires.

6 Q And got in the car with y'all?

7 A They get in the car with us on -- when we get  
8 back at Ardmore.

9 Q Okay. And then where did y'all go in the car?

10 A On Cashew Street.

11 Q So they got in the car and rode the rest of the  
12 way to Cashew?

13 A Yes, ma'am.

14 Q And do you know how much money was taken from  
15 this guy, Chopper?

16 A Like 12- or \$1,300.

17 Q And what happened with that money?

18 A We split it up.

19 Q And who all got a cut of the money?

20 A Me, George, Deleston, Valentino, and Rayshawn,  
21 and Bryan.

22 Q You didn't see who shot Chopper, did you?

23 A No, ma'am.

24 Q And do you know how it was they went about  
25 doing the robbery, as far as what they made Chopper do?

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1 Did you see it?

2 A No, ma'am.

3 Q All right. Let's -- let's move forward a  
4 little bit to June 15th, June 16th, the night that  
5 Marley Lion was killed. Do you remember that?

6 A Yes, ma'am.

7 Q During that time period, was Ryan Deleston  
8 talking about finding a lick to do?

9 A Yes, ma'am.

10 Q And what places did he talk about that he was  
11 considering robbing?

12 A Joe's, there's a gambler's bar across the  
13 street.

14 Q When you say "Joe's," is that Famous Joe's?

15 A Yes, ma'am.

16 Q And you said there's a gambling spot. Tell the  
17 Judge about that spot.

18 A It's, like, across the street by Five Guys on  
19 the other side of the highway. It had tint on the  
20 window.

21 Q Tint on the window?

22 A Yes, ma'am.

23 Q And did it say this is a gambling spot?

24 A No. It didn't have nothing on it.

25 Q Okay. And had you ever been in there?

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1       A     No, ma'am.

2       Q     Do you know if Deleston ever went in there?

3       A     Yes, ma'am.

4       Q     Why did he go in there?

5       A     To check it out.

6       Q     All right. And what did he discover there?

7       A     That one person behind the -- I guess, the

8   register.

9       Q     Okay. Did he rob it?

10      A     No, ma'am.

11      Q     Did he talk with you about whether or not he

12   should rob that place?

13      A     He said it was a easy lick, like, he -- he

14   never got a chance to go out and get it because I think

15   they closed.

16      Q     Did you say anything to him about whether or

17   not he should rob the gambling place?

18      A     No, ma'am.

19      Q     And then you mentioned Joe's. We know about

20   Joe's. Were there any other places that he mentioned

21   robbing?

22      A     A loan place.

23      Q     Do you know where that loan place was?

24      A     I think down Savannah Highway.

25      Q     Did he case that area out or take a look at

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1 that area?

2 A He go in one time with my sister. That's how  
3 he found out about it.

4 Q So he had been there with your sister?

5 A Yes, ma'am.

6 Q Do you know if he went back in order to see  
7 what it would be like to rob, or he just went that one  
8 time?

9 A No, ma'am.

10 Q You don't know?

11 A I don't know.

12 Q Okay. Now, when he was having these -- well,  
13 let me go back to Joe's. How many times did you hear  
14 Deleston talking about thinking Joe's would be a good  
15 place to rob?

16 A A good bit of time.

17 Q How many -- well, in what time period before  
18 the night that y'all actually set out to --

19 A Way before that.

20 Q Excuse me?

21 A Way before that.

22 Q Okay. How many times before that, though?

23 A Like four or five times.

24 Q All right. And can you tell me -- I know you  
25 say a way before that. Can you tell me what time

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1 period -- I mean, you talking about a year ago --

2 A No.

3 Q -- or a day ago or two days ago?

4 A Like a couple of months.

5 Q And during the week before the robbery, did he  
6 talk about doing Joe's?

7 A Yes, ma'am.

8 Q All right. How about that day before y'all  
9 went downtown to do the lick downtown, had he discussed  
10 robbing Joe's?

11 A Yes, ma'am.

12 Q And during that day before y'all went to  
13 eventually rob Joe's, did he discuss any of these other  
14 places to rob?

15 A No, ma'am.

16 Q Okay. Do you know how long before the robbery  
17 and the attempted robbery and murder of Marley Lion it  
18 was that he discussed robbing those other places?

19 A Couple of months.

20 Q And do you know why it was that he was talking  
21 to you about it?

22 A He was talking to all of us about it.

23 Q For what?

24 A Because he had wanted to get a lick.

25 Q Did he need help?

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1           A     Yes, ma'am.  
2           Q     In what way?  
3           A     People to watch out.  
4           Q     Did you agree to help him with the check  
5     cashing place --  
6           A     No, ma'am.  
7           Q     -- I mean with the gambling place?  
8           A     No, ma'am.  
9           Q     Why not?  
10          A     Because I didn't know anything about it.  
11          Q     What you mean?  
12          A     Like, I never been by it, or I never know it  
13     was over there until he mentioned it.  
14          Q     Okay. And the loan place, did you agree to  
15     help him with that at some point?  
16          A     No, ma'am.  
17                 MS. WILSON: Beg the Court's indulgence.  
18                 THE COURT: Take your time.  
19                 (Ms. Wilson speaks with Mr. DuRant off the  
20     record.)  
21                 MS. WILSON: That's all, your Honor.  
22                 THE COURT: Mr. Pennington.  
23                 MR. PENNINGTON: Court's indulgence.  
24                 THE COURT: Take your time.  
25                 (Mr. Pennington speaks with Ms. Wilson off the



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1 record.)

2 CROSS-EXAMINATION

3 **BY MR. PENNINGTON:**

4 Q Mr. Brown, did I hear correctly that you're  
5 saying that this talk of robbing a gambling place across  
6 from Five Guys was a couple of months before the  
7 Marley Lion murder?

8 A Yes, sir.

9 Q Okay. And this talk about maybe going to a  
10 loan place where Stephanie, his girlfriend, had been,  
11 that talk was a couple of months before this too?

12 A Yes, sir.

13 Q And let's talk about each of those just for a  
14 second. In those discussions months before, it never  
15 escalated to the point where you guys went around and  
16 cased the specific location yourselves to prepare for a  
17 robbery; right?

18 A No, sir.

19 Q And with regard to the loan place, you're not  
20 even sure what loan place he's talking about, are you?

21 A No, sir.

22 Q Somewhere down Savannah Highway?

23 A Yes, sir.

24 Q Some place that presumably has business hours  
25 maybe during the day or early evening but probably not

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1 at 3:00 in the morning?

2 A Yes, sir.

3 Q Okay. So what the conversation was on June the  
4 15th -- the Friday, June the 15th and Saturday morning  
5 early, June 16th, was the talk about Joe's, about going  
6 to Joe's?

7 A Yes, sir.

8 Q And when you mentioned earlier this business  
9 about the gambling spot, you said that he had talked  
10 affirmatively about the fact he was talking to you  
11 because he would need help or lookouts?

12 A About the gambling spot, he was merely talking  
13 to George about it.

14 Q So you overheard that?

15 A Yes, sir.

16 Q And that was months before this?

17 A Yes. Yes, sir.

18 Q As far as you know, nothing ever came of that?

19 A No, sir.

20 Q As far as you know, George didn't go down there  
21 and act on that or case it?

22 A No, sir.

23 Q No?

24 A No, sir.

25 Q Okay. With regard to the loan place, you

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1 didn't go down and try to case out or look for a loan  
2 place together?

3 A No, sir.

4 Q With regard to the incident that occurred with  
5 Chopper, is it fair to say that the date of that  
6 incident was about two weeks before Marley Lion?

7 A I can't remember. I know it was before  
8 Marley Lion.

9 Q Okay. And you have not been charged with being  
10 a part of that robbery of Leroy Townsend, have you?

11 A No, sir.

12 Q However, this was something that was planned in  
13 advance, wasn't it?

14 A Yes, sir.

15 Q Planned in advance, in the sense of -- that you  
16 named -- that you and George Brown and your brother,  
17 Rayshawn; Bryan Rivers; Tino; and you say, Ryan Deleston  
18 actually knew that you were going over to Saint Andrews  
19 Garden Apartments to do a robbery?

20 A Yes, sir.

21 Q And when you went over there, the people that  
22 got out was Bryan Rivers and Valentino Hayward?

23 A Yes, sir.

24 Q But they were carrying George Brown's pistol;  
25 correct?

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1           A     Yes, sir.

2           Q     And that is the same pistol that was used to  
3 shoot Marley Lion?

4           A     Yes, sir.

5           Q     It's a black Sig Sauer .380 semiautomatic  
6 pistol?

7           A     Yes, sir.

8           Q     And from what you understand, they approached  
9 Chopper, or Mr. Townsend, on foot?

10          A     Yes, sir.

11          Q     This was at nighttime?

12          A     Yes, sir.

13          Q     And the plan was to rob him at gunpoint, wasn't  
14 it?

15          A     Yes, sir.

16          Q     Did you hear multiple gunshots?

17          A     No. I heard one.

18          Q     Now, in terms of the location of -- of this  
19 incident --

20               MR. PENNINGTON: If I may have the Court's  
21 indulgence --

22               THE COURT: Take your time.

23               MR. PENNINGTON: -- I just need to look at the  
24 exhibit, your Honor.

25               (Respite.)

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1 Q (By Mr. Pennington) Mr. Brown, did I  
2 understand you to say that the back of Ardmore backs up  
3 to the Saint Andrews Garden Apartments?

4 A Yes, sir.

5 Q There's a walk-through or a cut that you can  
6 take from Saint Andrews Garden Apartments to Ardmore?

7 A Yeah. Through The Shires.

8 Q Okay. Through The Shires. Through The Shires  
9 is an apartment complex?

10 A Yes, sir.

11 Q And I didn't quite understand what you said  
12 about picking up Little B, Bryan Rivers, and Tino. They  
13 took off on foot after the shooting; right?

14 A Yes, sir.

15 Q And then where did you and -- where did George  
16 drive?

17 A We drive through The Shires, around and come  
18 back -- like, that's Nottingham, like, down Nottingham  
19 and turn through the back street, and they went on the  
20 back street.

21 Q All right. So these neighborhoods are  
22 contiguous so that you didn't have to get back out on  
23 Highway 61 to get back to Ardmore?

24 A No.

25 Q You were able to cut right through the

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1 neighborhood to come back into Ardmore?

2 A Yes, sir.

3 Q And so by the time you linked up, are you  
4 saying that Bryan and Tino got all the way back to  
5 Balsam on foot?

6 A No. They get on -- they been on the back  
7 street. We was parked in The Shires. And if you leave  
8 out The Shires, you still in Ardmore.

9 Q Okay. And so they spotted you and jumped in  
10 the car?

11 A Yeah. They run past the truck at first because  
12 the police had come through.

13 Q Okay.

14 A And they run past and go and jumped the gate,  
15 and they went on the other side of Ardmore. So all we  
16 had to do is ride out The Shires and come through  
17 Nottingham and come down the back street.

18 Q And the plan had been that y'all were there to  
19 provide transportation if they needed it; right?

20 A Yes, sir.

21 Q And that's what you did?

22 A Yes, sir.

23 Q And you described that you got, I think you  
24 said, 1,200 -- 12- or \$1,300 in cash?

25 A Yes, sir.

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1 Q And some drugs too, didn't you?

2 A Yes, sir.

3 Q What kind of drugs?

4 A Crack cocaine.

5 Q How much?

6 A Like -- like three grams.

7 Q And this is the same pistol that was used by  
8 Bryan in the robbery downtown the night before shooting  
9 Marley Lion; right?

10 A Yes, sir.

11 MR. PENNINGTON: May I have the Court's  
12 indulgence for just a moment, your Honor?

13 THE COURT: Yes, sir.

14 (Mr. Pennington speaks with Mr. Kozelski off  
15 the record.)

16 MR. PENNINGTON: Thank you, Mr. Brown. I have  
17 no further questions.

18 **REDIRECT EXAMINATION**

19 **BY MS. WILSON:**

20 Q Just a couple. I may have heard wrong, but I  
21 didn't -- when I asked you who was with you, Rayshawn  
22 was not with you at the Chopper shooting; correct?

23 A Yes, he was. He was in the truck.

24 Q He was in the truck with y'all?

25 A Yes, ma'am.

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1 MS. WILSON: Okay. That's all I have.

2 THE COURT: Mr. Pennington.

3 MR. PENNINGTON: No further follow-up, your  
4 Honor.

5 THE COURT: Is this witness excused for the  
6 purposes of this hearing?

7 MS. WILSON: Yes, ma'am.

8 MR. PENNINGTON: Yes, ma'am.

9 THE COURT: But we need him to remain here with  
10 us; correct?

11 MS. WILSON: Yes.

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

13 Ms. Wilson.

14 MS. WILSON: Your Honor, I don't have anything  
15 further to add from yesterday. And I think -- if the  
16 Court were to reconsider its position, this would not be  
17 the witness to bring it in with anyway. I don't think  
18 he has enough of the facts about the shooting itself.  
19 He doesn't know independently who shot, those types of  
20 things. As for the other 404(b), I would concede, based  
21 on the testimony here today, that the evidence regarding  
22 the robbery of other places is too remote for us to  
23 inquire upon his direct.

24 THE COURT: Mr. Pennington.

25 MR. PENNINGTON: That makes sense to me, your



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1 Honor.

2 THE COURT: Do we need -- do you have any other  
3 witnesses that we need to proffer or inquire?

4 MR. PENNINGTON: Well, I heard that we are  
5 going to do Bryan Rivers this afternoon, and Mr. Rivers  
6 would be -- if I can proffer the questions I would ask,  
7 I don't know that we have to go through a formal  
8 colloquy, because I really don't think these facts were  
9 in dispute. He's been debriefed. And if the Solicitor  
10 says she disagrees with this stipulation of facts, then  
11 we can bring them out.

12 But from what I would cover with him in the  
13 context of a overall Cross-Examination would be that,  
14 early on in a discussion in June, before these  
15 Defendants were arrested in July, so about six days  
16 after the Marley Lion murder, there was an opportunity  
17 for Detective Osborne to have a formal meeting, sit down  
18 with Bryan Rivers where they talked on tape. And  
19 Osborne asked him about being involved in a robbery at  
20 the Saint Andrews Garden Apartments with Tino, which he  
21 denied, and which was not truthful. So he -- I would  
22 use that to show that was -- when he needed to lie, he  
23 knew how to lie.

24 With regard to the follow-up conversation that  
25 he had after his arrest on these charges on July 30th

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1 and 31st, I would cover the fact that he now admits that  
2 he, on June 1st, rode along on the preplanned robbery of  
3 Leroy Townsend, a.k.a "Chopper," in the Saint Andrews  
4 Garden Apartments; that he got \$1,300 in cash and drugs;  
5 he used the Marley Lion murder weapon to rob Townsend;  
6 he shot Townsend in the leg; it was George Brown's gun;  
7 that he's not been charged with this armed robbery  
8 pursuant to his proffer agreement; and he has not also  
9 been charged with attempted armed robbery pursuant to  
10 his agreement. And that's the sum and substance of what  
11 I would cover with Bryan Rivers.

12 THE COURT: Based upon that, Ms. Wilson, is  
13 there any reason to bring Mr. Rivers out?

14 MS. WILSON: I don't think so. The only thing  
15 that I would take real issue with is, while he has not  
16 been charged with the Chopper shooting, that's not  
17 pursuant to any agreement with us. What our agreement  
18 is, that we can't use Bryan Rivers' words against him.  
19 We could make a case from other folks against him. He  
20 doesn't have immunity from prosecution.

21 MR. PENNINGTON: Oh, okay. My mistake, your  
22 Honor.

23 MS. WILSON: But as far as the facts to Chopper  
24 goes, I think that pretty much covers it. And I think  
25 that even the limited testimony that Julius Brown or the

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1 limited insight that he's able to give shows the stark  
2 difference between the Chopper shooting and the  
3 Marley Lion shooting.

4 MR. PENNINGTON: May I ask -- I'm still  
5 thinking about the verification that we got about the  
6 plea agreement and whether or not it is part of a  
7 understanding between the State and Mr. Rivers at this  
8 time that he would not be prosecuted for this.

9 MS. WILSON: No. We don't have an agreement  
10 not to prosecute anybody for anything, period.

11 MR. PENNINGTON: So that still could be -- that  
12 legitimately could happen regardless of his cooperation?

13 MS. WILSON: That could happen. And it largely  
14 depends on Chopper.

15 MR. PENNINGTON: Okay. Got it. Okay. That  
16 clarifies that. Thank you, your Honor.

17 THE COURT: Okay.

18 MR. PENNINGTON: With regard to this,  
19 obviously, we'll stand on the arguments that we've made.  
20 I've elucidated prior what we feel are the similarities  
21 implied that should be still relevant. Your Honor has  
22 already ruled. I appreciate the chance to renew the  
23 objections and that you can hear the testimony and,  
24 obviously, we would like the objection to continue.  
25 Once he gets to the witness stand, I don't know if you

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1 would want me to make another objection at that time.

2 THE COURT: I think that out of an abundance of  
3 precaution to protect the records, you should make the  
4 appropriate objection at the appropriate time.

5 MR. PENNINGTON: Very good.

6 THE COURT: With that being said, all of our  
7 jurors are here. Is there anything before we bring in  
8 the jury? We will take a short break before we bring  
9 them in. But do we need -- is there anything else we  
10 need to address before we bring them in?

11 MS. WILSON: I'm going to hand this up. This  
12 is Chopper shooting incident report. I believe you said  
13 it would be marked as Court's 5.

14 (Court's Exhibit No. 5 is marked for  
15 identification.)

16 THE COURT: Court's 5. Thank you.

17 MR. PENNINGTON: I don't believe we have  
18 anything else, your Honor.

19 THE COURT: State have anything else?

20 MS. WILSON: No, ma'am.

21 THE COURT: All right.

22 MS. WILSON: We're going to take a short  
23 break --

24 THE COURT: Five minutes.

25 MS. WILSON: Right now? Okay.

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1 to you, my first question to you is going to be whether  
2 or not you complied with my instructions. If you were  
3 unable to comply with all of my instructions, please  
4 raise your right hand.

5 Thank you. Please let the record reflect all  
6 15 jurors have complied with the Court's instructions.

7 Please call your next witness, Ms. Wilson.

8 MS. WILSON: Your Honor, at this time, we would  
9 seek to play the Mantek video, which is State's  
10 Exhibit 1. And if we could have the lights dimmed.

11 THE DEPUTY CLERK OF COURT: Yes, ma'am.

12 MR. DURANT: We're beginning -- this is  
13 timestamp 3:33 on the Mantek video.

14 THE COURT: Thank you.

15 (The video is played.)

16 MR. DURANT: Your Honor, I'm going to jump  
17 ahead about six minutes.

18 THE COURT: Any objection?

19 MR. PENNINGTON: No.

20 THE COURT: Mr. DuRant, is there any way to  
21 make that the whole screen?

22 MR. DURANT: You can, your Honor, but it kind  
23 of distorts the image and makes things look thicker than  
24 they are.

25 THE COURT: All right.

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1 (The video is played.)  
2 MR. DURANT: This is at about 3:44 now.  
3 (The video is played.)  
4 MR. DURANT: At this point, your Honor, I'm  
5 going to jump ahead about 12 minutes.  
6 THE COURT: Any objection, Mr. Pennington?  
7 MR. PENNINGTON: No, your Honor.  
8 (The video is played.)  
9 MR. DURANT: This is at 3:56 on the Mantek  
10 time.  
11 (The video is played.)  
12 MR. DURANT: At this point, I'm going to move  
13 to the point where Officer Deal arrives, if there's no  
14 objection. It's about ten minutes.  
15 THE COURT: Any objection, Mr. Pennington?  
16 MR. PENNINGTON: Could I have just a moment?  
17 THE COURT: You may.  
18 (Mr. Pennington speaks with Mr. DuRant off the  
19 record.)  
20 MR. PENNINGTON: I have no objection, your  
21 Honor.  
22 (The video is played.)  
23 MS. WILSON: Your Honor, just so you know,  
24 there's no pause button. That's why it is so difficult  
25 to control.

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1 THE COURT: Thank you.

2 MR. DURANT: Sorry, your Honor. And this  
3 occurs at 4:06:50.

4 (The video is played.)

5 MR. DURANT: I will forward it about eight or  
6 nine minutes -- I think this is when the ambulance  
7 arrives -- if there's no objection.

8 THE COURT: Any objection?

9 MR. PENNINGTON: No, your Honor.

10 THE COURT: Okay.

11 (The video is played.)

12 MR. DURANT: This is 4:16:25 on the Mantek  
13 timestamp.

14 (The video is played.)

15 MR. DURANT: Your Honor, that's all we would  
16 show at this time, if that's all right with the Court.

17 THE COURT: All right. Any objection?

18 MR. PENNINGTON: No objection.

19 THE COURT: Any request to play any more of the  
20 video?

21 MR. PENNINGTON: No objection.

22 THE COURT: Okay. Thank you.

23 MS. WILSON: Your Honor, the State calls  
24 Ulysius Vance.

25 (The oath is administered by the Deputy Clerk

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1 of Court, and the witness answers as follows:)

2 THE WITNESS: I do.

3 THE DEPUTY COURT CLERK: Thank you, ma'am. You  
4 may take your seat. And, then, if you would, please,  
5 state your first and last name, spelling your last for  
6 the record.

7 THE WITNESS: V-a-n-c-e.

8 (Exhibit shown to Defense counsel.)

9 MS. WILSON: Beg the Court's indulgence.

10 THE COURT: Take your time.

11 ULYSIUS VANCE,

12 having been first duly sworn by the Deputy Clerk of  
13 Court to tell the truth, the whole truth, and nothing  
14 but the truth, was examined and testified upon his oath  
15 as follows:

16 DIRECT EXAMINATION

17 **BY MS. WILSON:**

18 Q Officer Vance, where are you employed?

19 A I'm employed with the City of Charleston Police  
20 Department.

21 Q And how long have you been working for the  
22 City?

23 A Since September 2011.

24 Q And what -- in what capacity do you work for  
25 the City Police?

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1           A       As a patrol officer.

2           Q       And back in June of 2012, specifically June

3 15th, 16th, were you working in that same capacity?

4           A       Yes, ma'am.

5           Q       And what team are you on?

6           A       Team 4.

7           Q       And that covers what area?

8           A       West Ashley.

9           Q       Okay. Does that Team 4 area include the

10 Ardmore subdivision area?

11          A       Yes, it does.

12          Q       I want to take you back to about two weeks

13 before the Marley Lion murder, on June 5th, 2012, do you

14 remember working that night?

15          A       I do.

16          Q       And what area were you working?

17          A       Savannah Highway, from 526 to Ashley River.

18          Q       And do you remember what shift you were on that

19 night?

20          A       I believe it was night shift, third shift.

21          Q       And did you have an occasion to stop someone

22 that night?

23          A       I did.

24          Q       For what?

25          A       Some individual for not having a light on his

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1 bicycle.

2 Q Okay. And when you stopped him, did you  
3 identify him?

4 A Yes. He identified himself as Ryan Deleston.

5 Q And did you confirm his identity?

6 A I did through our computer system. There was a  
7 picture attached to his name.

8 Q And do you recognize that person here today?

9 A I do. He's sitting right there.

10 Q In the white shirt?

11 A Yes, ma'am.

12 MS. WILSON: Your Honor, please let the record  
13 reflect he's identified Ryan Deleston.

14 Q (By Ms. Wilson) Okay. So that was on June the  
15 5th. You made the stop of Mr. Deleston for not having a  
16 light on his bike. Move forward to the early morning  
17 hours of June 16th, 2012, after 4:00 a.m. Were you  
18 called to do something that morning?

19 A I was. Officer Mattingly was attempting to  
20 conduct a person stopped on White Oak Drive on two  
21 individuals. One of the individuals kept walking away  
22 on White Oak towards Savannah Highway.

23 Q Okay. Now, what had happened that caused  
24 Officer Mattingly to be there and for you to be on  
25 standby and also in that area?

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1       A     There was a homicide that had just occurred  
2 minutes prior to him attempting to make that person  
3 stop.

4       Q     All right. So shortly before Mattingly makes  
5 the stop of two people, there had been a murder?

6       A     Correct.

7       Q     He attempts to stop two people, and one of them  
8 walks away?

9       A     Correct.

10      Q     And as a result of that, you go to the area to  
11 do what?

12      A     I responded to assist him; attempted to stop  
13 the other individual.

14      Q     Okay. And do you recall about what time it was  
15 when you got to the area of Ardmore to try to find that  
16 second individual?

17      A     It was approximately 4:20 in the a.m.

18      Q     4:20?

19      A     Yes, ma'am.

20      Q     Okay. Now, upon arriving to that area, were  
21 you able to stop someone?

22      A     I did. I stopped a Mr. Maurice Simmons.

23      Q     And was Mr. Simmons eventually interviewed by  
24 the police department?

25      A     Yes, he was.

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1 Q Okay. Now, where was it that you stopped

2 Mr. Simmons?

3 A It was in front of 635 White Oak Drive.

4 Q All right. And while you were stopping him,  
5 did you see anyone else?

6 A Yes. Two individuals came out at 635 White Oak  
7 Drive, one being Mr. Ryan Deleston, and the other person  
8 I did not know at the time.

9 Q Now, this person, again, you knew him from the  
10 stop a couple of weeks before; right?

11 A Yes, ma'am.

12 Q All right. And the other person, do you recall  
13 what he was wearing?

14 A The only thing I recall, he was wearing a white  
15 T-shirt. I do not recall what color pants or shorts he  
16 might have had on.

17 Q And, actually, both of them had on white  
18 T-shirts; is that right?

19 A Correct. Yes, ma'am.

20 Q And this was about 4:20?

21 A Yes, ma'am.

22 Q And when you saw Mr. Deleston and the other guy  
23 that was with him, did you have any conversation?

24 A Mr. Deleston made the comment that he had the  
25 flashlight tonight.

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1 Q In reference to the other stop?

2 A Yes, ma'am.

3 Q I'm going to ask you, Officer, if you would  
4 step down.

5 MS. WILSON: If that's okay, your Honor?

6 THE COURT: Yes.

7 (The witness steps down from the witness  
8 stand.)

9 Q (By Ms. Wilson) Tell me which one would work  
10 better to show the jury, State's 27 or State's 4.

11 A It would be this one.

12 Q State's 4. Okay. I'm going to give you a  
13 laser pointer. And, actually, why don't you stand on  
14 this side, if you can, so that the court reporter can  
15 get you. And there's the pointer right there.

16 If you'll show the jury, first of all, where is  
17 Savannah Highway again?

18 A It's -- Savannah Highway is this road right  
19 here.

20 Q And can you see the Famous Joe's over in the  
21 corner there?

22 A Yes.

23 Q Okay. Now, when you got the call from  
24 Mattingly, where had you been located?

25 A I was in this parking lot right here.

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1           Q     Okay. And it didn't take you long to get over  
2 into Ardmore?

3           A     No, ma'am.

4           Q     Where'd you go?

5           A     I went left right out of that parking and north  
6 on Savannah Highway and made a left on White Oak Drive  
7 and stopped Mr. Simmons right here.

8           Q     Okay. There's a little red car on there. Is  
9 that about where you were?

10          A     Yes, ma'am.

11          Q     And you engaged Mr. Simmons?

12          A     Correct.

13          Q     Who was later detained and interviewed by the  
14 police?

15          A     Yes, ma'am.

16          Q     And where was it that you saw Ryan Deleston?

17          A     They came out of this -- this house right here  
18 onto the roadway.

19          Q     Were they on foot?

20          A     No, ma'am. They both were on bicycles.

21          Q     Both of them had on white shirts?

22          A     Yes, ma'am.

23          Q     Which way did they go after they left you?

24          A     They went on White Oak Drive towards Balsam  
25 Street.

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1 Q Balsam runs this way?

2 A Yes, ma'am.

3 MS. WILSON: That's all I have, your Honor.

4 THE COURT: Officer, if you'll have a seat back  
5 in the witness stand.

6 (The witness resumes the witness stand.)

7 THE COURT: Mr. Pennington.

8 MR. PENNINGTON: With the Court's permission,  
9 I'll just stay here, if that's all right.

10 THE COURT: That's fine.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q Officer Vance, just a couple questions. I  
14 believe that you wrote a report on the day in question  
15 or shortly thereafter to help you remember the specific  
16 facts of what went on?

17 A Correct.

18 Q Is that standard procedure for the City  
19 officers to do, to write reports?

20 A Yes, sir.

21 Q And the purpose of reports is to help you  
22 remember the specific details clearly?

23 A Correct.

24 Q And you reported -- actually, we don't even ask  
25 you. You were dispatched at roughly 4:10 up in the

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1 early morning hours, 4:10 a.m.?

2 A After reviewing the -- the CAD entry, the log  
3 system, radio log, the actual time was approximately  
4 4:20.

5 Q So your report was incorrect?

6 A That time is incorrect, yes.

7 Q So when you responded, you were actually at  
8 the -- the little red car on the map, you were there at  
9 4:20?

10 A Approximately 4:20. I'm not sure the exact  
11 time, but approximately 4:20.

12 Q And that's when you saw Ryan Deleston coming  
13 out of 635 White Oak on the bike?

14 A That's when I stopped Mr. Simmons, when I got  
15 to the area to stop Mr. Simmons.

16 Q And about that same time is when you saw  
17 Deleston?

18 A Yes.

19 Q And you described already for the Solicitor  
20 that he was wearing a white T-shirt. Would it refresh  
21 your recollection if you looked at your report to  
22 remember the other clothing he had on?

23 A Yes.

24 MR. PENNINGTON: May I approach, your Honor?

25 THE COURT: You may.

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1 (Document is handed to the witness.)

2 A White T-shirt and gray shorts.

3 Q (By Mr. Pennington) Okay. Thank you.

4 (Document is handed back to Mr. Pennington.)

5 Q (By Mr. Pennington) And that's accurate, to  
6 the best of your recollection, that Mr. Deleston, at  
7 about 4:20 in the morning, was wearing a white T-shirt  
8 and gray shorts?

9 A Yes.

10 Q And he was on a bicycle?

11 A Correct.

12 Q With another individual?

13 A Correct.

14 Q And the other individual had a bicycle?

15 A Yes.

16 Q And the reason you knew it was Ryan Deleston  
17 was because you had had an encounter just about 11 days  
18 before in the Chick-fil-A parking lot?

19 A Correct.

20 Q Where you had been able to identify him  
21 and advised him he needed to have a light on his  
22 bicycle?

23 A Yes, sir.

24 MR. PENNINGTON: Court's indulgence, your  
25 Honor.

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1 (Mr. Pennington speaks with Mr. Kozelski and  
2 the Defendant off the record.)

3 Q (By Mr. Pennington) When you met with  
4 Mr. Deleston, you had a chance to talk to him at 635  
5 White Oak for a moment?

6 A He spoke to me, yes, sir.

7 Q About the -- about the --

8 A Yeah, he stated that he had a flashlight  
9 tonight.

10 Q He had a flashlight?

11 A Correct.

12 Q You did not report that you smelled bleach when  
13 you spoke to him, did you?

14 A No, sir.

15 Q Because you didn't smell any bleach at that  
16 time, did you?

17 A We weren't that close where I could smell  
18 anything.

19 Q Were -- you were close enough to be able to  
20 have a conversation?

21 A He spoke to me. He said that he had a  
22 flashlight. We were maybe, I would say, five, ten feet  
23 from each other.

24 Q Okay. And you didn't smell anything that you  
25 remember?

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1           A       No, sir.

2                   MR. PENNINGTON:   Okay.   Thank you.   That's all  
3   I have.

4                   MS. WILSON:   No, ma'am.

5                   THE COURT:   Is this witness excused?

6                   MS. WILSON:   As far as we're concerned.

7                   MR. PENNINGTON:   Yes, ma'am.   No objection.

8                   THE COURT:   You are free to leave, but you're  
9   also free to remain with us.   Thank you.   You may step  
10  down.

11                   Call your next witness.

12                   MS. WILSON:   Julius Brown.

13                   (The oath is administered by the Deputy Clerk  
14  of Court, and the witness answers as follows:)

15                   THE WITNESS:   Yes, sir.

16                   THE DEPUTY CLERK OF COURT:   You may take your  
17  seat.   Sir, if you would, state your first and last  
18  name, spelling your last for the Court.

19                   THE WITNESS:   Julius Brown, B-r-o-w-n.

20                   THE COURT:   Ms. Wilson.

21                               **JULIUS BROWN,**

22   having been first duly sworn by the Deputy Clerk of  
23   Court to tell the truth, the whole truth, and nothing  
24   but the truth, was examined and testified upon his oath  
25   as follows:

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1                                    **DIRECT EXAMINATION**

2    **BY MS. WILSON:**

3            Q        Julius, how old are you?

4            A        Thirty-three.

5            Q        How far did you go in school?

6            A        The eighth grade.

7            Q        And you've been in some trouble; hadn't you?

8            A        Yes, ma'am.

9            Q        You have several convictions?

10          A        Yes, ma'am.

11          Q        Been to prison?

12          A        Yes, ma'am.

13          Q        Let's go back through some of those. Back in  
14 '99, you were convicted of three charges: carrying a  
15 gun, criminal sexual conduct in the third degree, and  
16 assault on a police officer; is that right?

17          A        Yes, ma'am.

18          Q        You got a youthful offender sentence?

19          A        Yes, ma'am.

20          Q        And then later you had your parole revoked?

21          A        Yes, ma'am.

22          Q        Went to prison, and then when you got out, you  
23 had a conviction for some drug offense; is that right?

24          A        Yes, ma'am.

25          Q        Have you been a drug dealer for a while?

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1           A     Yes, ma'am.

2           Q     How many times have you been convicted of

3     dealing drugs?

4           A     Just one.

5           Q     Okay. And that was for ecstasy or cocaine?

6           A     Ecstasy.

7           Q     You don't recall a 2009 conviction for

8     possession of cocaine?

9           A     No, ma'am.

10          Q     How about lying to the police?

11          A     Yes, ma'am.

12          Q     You gave the police a false name?

13          A     Yes, ma'am.

14          Q     When was that?

15          A     I can't -- I can't remember. But I know I gave

16     them a false name because I had a warrant for family

17     court.

18          Q     Okay. Do you have some children?

19          A     Yes, ma'am.

20          Q     Child support warrant?

21          A     Yes, ma'am.

22          Q     All right. So when they went to get you for

23     trespassing, you told them a lie about who you were?

24          A     When they had stopped me, I had tell them a lie

25     who I be.

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1 Q That didn't really work out for you, did it?  
2 A No, ma'am.  
3 Q Where are you from, Mr. Brown?  
4 A Charleston, South Carolina.  
5 Q You lived here your whole life?  
6 A Yes, ma'am.  
7 Q What neighborhood did you grow up in?  
8 A Orleans Garden.  
9 Q And at some point, did you ever move to  
10 Ardmore?  
11 A Yes, ma'am.  
12 Q About how old were you when you moved to  
13 Ardmore? Do you remember?  
14 A I don't remember, but I was young.  
15 Q Okay. Do you have a sister?  
16 A Yes, ma'am.  
17 Q And what is her name?  
18 A Stephanie Brown.  
19 Q Has she been in a relationship with the  
20 Defendant, Ryan Deleston?  
21 A Yes, ma'am.  
22 Q How long have they been together?  
23 A About two years.  
24 Q And how about a brother? You have a brother?  
25 A Yes, ma'am.

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1 Q What's his name?  
2 A Rayshawn Brown.  
3 Q All right. Does he also goes -- go by  
4 Rayshawn Milligan?  
5 A Yes, ma'am.  
6 Q And was he raised up by the same parents as  
7 you?  
8 A My granddaddy raised him.  
9 Q He's younger than y'all?  
10 A Yes, ma'am.  
11 Q Younger and shorter?  
12 A Yes, ma'am.  
13 Q How tall are you, Julius?  
14 A About 5-5, 5-6.  
15 Q And Rayshawn's littler than you are?  
16 A Yes, ma'am.  
17 Q Now, you mentioned that you have a sister,  
18 Stephanie, who has been involved with the Defendant.  
19 Tell the jury about what difficulties Stephanie has.  
20 A She's diabetic.  
21 Q She had that for a long, long time?  
22 A Yes, ma'am.  
23 Q What complications has she had from diabetes?  
24 A She's blind, and she got one of her legs cut  
25 off.

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1 Q Okay. But is she able to walk?  
2 A She have a fake leg.  
3 Q Okay. And so she can get around?  
4 A Yes, ma'am.  
5 Q All right. And she can see some, can she not?  
6 A Yes, ma'am.  
7 Q Can she drive?  
8 A No, ma'am.  
9 Q Can she cook for herself and do things like  
10 that?  
11 A No, ma'am.  
12 Q All right. You have been arrested regarding  
13 the murder of Marley Lion; is that right?  
14 A Yes, ma'am.  
15 Q And when was that?  
16 A July 31st.  
17 Q Of 2012?  
18 A Yes, ma'am.  
19 Q And when you were arrested, did you tell the  
20 police everything you knew about it?  
21 A No, ma'am.  
22 Q Did you tell them the truth about it?  
23 A Some.  
24 Q Some of the truth?  
25 A Yes, ma'am.

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1 Q Did you tell them about your involvement in it?  
2 A No, ma'am.  
3 Q Kind of left that part out?  
4 A Yes, ma'am.  
5 Q After you were arrested, at some point, were  
6 you appointed an attorney?  
7 A Yes, ma'am.  
8 Q And who was that attorney? Is he here?  
9 A Rodney Peeples. Yes, ma'am.  
10 Q Is that him sitting on the front row right  
11 there?  
12 A Yes, ma'am.  
13 Q And I'm going to show you what has been marked  
14 State's Exhibit --  
15 (Document is shown to Defense Counsel.)  
16 MS. WILSON: Your Honor, may I approach the  
17 witness?  
18 THE COURT: You may.  
19 (Document is handed to the witness.)  
20 Q (By Ms. Wilson) Do you recognize State's  
21 Exhibit 6?  
22 A Yes, ma'am.  
23 Q What is that?  
24 A That's a plea agreement.  
25 Q All right. And you entered into that plea

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1 agreement through your lawyer in my office; is that  
2 right?

3 A Yes, ma'am.

4 MS. WILSON: Your Honor, at this time, we offer  
5 State's Exhibit 6.

6 MR. PENNINGTON: No objection, your Honor.

7 THE COURT: State's 6 into evidence without  
8 objection.

9 (State's Exhibit No. 6 is admitted into  
10 evidence.)

11 Q (By Ms. Wilson) And, Julius, tell this jury  
12 what you believe the benefit to you is in having that  
13 plea agreement.

14 A To tell the truth.

15 Q Well, what's it going to help you?

16 A Get my charge reduced from murder to  
17 manslaughter.

18 Q All right. So instead of looking at 30 to  
19 life, you're looking at a 30-year maximum; is that  
20 right?

21 A Yes, ma'am.

22 Q And since that time of that plea agreement,  
23 have you agreed to cooperate and talk with the  
24 investigators with my office?

25 A Yes, ma'am.

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1 Q And have you told them about your involvement  
2 in this?

3 A Yes, ma'am.

4 Q And have you told them what you knew about what  
5 happened that night?

6 A Yes, ma'am.

7 Q Well, let's go to that night. First of all,  
8 you said that Ryan and Stephanie were in a relationship.  
9 Where were they living?

10 A On Cashew Street.

11 Q And how about a guy named George Brown? Who is  
12 that?

13 A A friend of the family.

14 Q What size guy is he?

15 A Big.

16 Q And did he live in Ardmore?

17 A No, ma'am.

18 Q Okay. And back on June 15th of 2012, did you  
19 and George and your brother, Rayshawn, have occasion,  
20 along with Bryan Rivers, to be at Cashew Street at Ryan  
21 and Stephanie's house?

22 A Yes, ma'am.

23 Q And I mentioned Little B. Who is that?

24 A A friend.

25 Q What's his real name?

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1           A     Bryan Rivers.  
2           Q     He goes by "Little B"?  
3           A     Yes, ma'am.  
4           Q     And that night on Cashew Street, what were  
5 y'all doing out at Stephanie's and Ryan's?  
6           A     Drinking and smoking marijuana.  
7           Q     Okay. And was that an unusual thing for y'all  
8 to do out there?  
9           A     No, ma'am.  
10          Q     And how was it that George and your brother,  
11 Rayshawn, got to Stephanie's?  
12          A     Drive.  
13          Q     In what?  
14          A     In his truck.  
15          Q     What kind of truck does he have?  
16          A     A GMC.  
17          Q     What style? Is it a Suburban?  
18          A     Yeah. A black Suburban.  
19          Q     Been in that truck before?  
20          A     Yes, ma'am.  
21          Q     All right. So Rayshawn and George came to  
22 Stephanie's by truck. How'd you get there?  
23          A     George picked me up.  
24          Q     So he brought you there too?  
25          A     He came to get me like 7:00, 7:30 that night.

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1 Q Okay. And so y'all are out there drinking,  
2 smoking pot?

3 A Yes, ma'am.

4 Q And at some point was there a discussion about  
5 leaving to go downtown?

6 A Yes, ma'am.

7 Q Why was it that you were going to go downtown?

8 A To go pick up a friend.

9 Q What else were you going to do?

10 A That's -- George told us -- when we was going  
11 to pick up my friend, I got a call. He was like, he got  
12 a ride over there so we didn't have to come get him. So  
13 George was, like, he -- he get licks down there because  
14 he already had pulled a lick off down there, so we go on  
15 downtown.

16 Q So you were going to -- originally going to go  
17 pick up friend, but you found out that he no longer  
18 needed a ride?

19 A Yes, ma'am.

20 Q And George is saying y'all can do what  
21 downtown?

22 A Hit a lick.

23 Q Tell the jury what that means, to hit a lick.

24 A A robbery.

25 Q All right. And so you're in George's car.

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1 George is driving?  
2 A Yes, ma'am.  
3 Q Where are you sitting?  
4 A In the passenger seat.  
5 Q All right. Where are Little B and  
6 Ryan Deleston?  
7 A The seat behind the driver and passenger.  
8 Q And where's Rayshawn?  
9 A All the way in the back.  
10 Q So y'all come downtown. Where do you go?  
11 A On down -- down the street from the courthouse.  
12 Q All right. Did y'all have anything to use to  
13 do this robbery with?  
14 A Yeah. The gun.  
15 Q What gun?  
16 A The gun that was used to kill Marley Lion.  
17 Q Whose gun was that?  
18 A George Brown.  
19 Q George had brought the gun that night?  
20 A Yes, ma'am.  
21 Q Was that something he carried around often?  
22 A Yes, ma'am.  
23 Q Okay. So y'all come around somewhere near the  
24 courthouse?  
25 A Yes, ma'am.

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1 Q Do you remember what street you were on?  
2 A No, ma'am.  
3 Q Where did you go?  
4 A Riding -- we ride around. We was down at this  
5 building down the street from the courthouse. Then we  
6 leave from around there and then, like, ride around.  
7 Q Did you ever go by the Battery?  
8 A No.  
9 Q You didn't go by the Battery?  
10 A No, ma'am.  
11 Q You never went and got out at the Battery and  
12 walked around?  
13 A No, ma'am. I don't think that -- I don't know  
14 if that's the Battery or not, but I know we was a little  
15 bit down from the courthouse.  
16 Q Did y'all ever go buy any water?  
17 A No, ma'am.  
18 Q Okay. So y'all went down from the courthouse.  
19 Who or what were y'all looking for, as far as a person  
20 to rob?  
21 A Whoever.  
22 Q How many hours were y'all downtown?  
23 A Like -- probably, like, two hours.  
24 Q It took you that long?  
25 A Yes, ma'am.

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1           Q     Okay. Did y'all ever spot somebody that you  
2     thought would be a good person to rob?  
3           A     Yes, ma'am.  
4           Q     Who'd you spot?  
5           A     A girl and a boy.  
6           Q     What were they doing?  
7           A     Walking.  
8           Q     And do you remember around what street they  
9     were walking?  
10          A     No, ma'am.  
11          Q     What happened?  
12          A     Bryan and Ryan got out.  
13          Q     Who had the gun?  
14          A     Bryan.  
15          Q     All right. They went to do the robbery?  
16          A     Yes, ma'am.  
17          Q     Did you get out to help them do the robbery?  
18          A     No, ma'am.  
19          Q     Did George get out?  
20          A     No, ma'am.  
21          Q     Rayshawn get out?  
22          A     No, ma'am.  
23          Q     Do you know if they were able to do a robbery?  
24          A     Yes, ma'am.  
25          Q     How do you know?

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1           A       Because I saw when Bryan point the gun and got  
2 the pocketbook and ran back to the car.

3           Q       Okay. He got the -- the pocketbook, ran back  
4 to the car. Where did Ryan go?

5           A       He going the other way.

6           Q       Running? walking? what?

7           A       He was walking.

8           Q       Okay. What happened when Bryan got back to the  
9 car?

10          A       George crank up the truck, and we backed off  
11 and left.

12          Q       Where'd you go?

13          A       We met Ryan by McDonald's.

14          Q       Was it a plan to meet Ryan at McDonald's?

15          A       No, ma'am.

16          Q       How did y'all end up meeting him there?

17          A       He called George for him.

18          Q       And that was at McDonald's over on Crosstown?

19          A       Yes, ma'am.

20          Q       And when you got to McDonald's, did he get in  
21 the car with you?

22          A       Yes, ma'am.

23          Q       At some point when everybody's in the car, did  
24 y'all go through this pocketbook that Bryan was able to  
25 steal from the lady?

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1       A     Bryan went through the pocketbook.  
2       Q     Ryan went through it?  
3       A     Bryan.  
4       Q     Bryan? Little B?  
5       A     Yes, ma'am.  
6       Q     Was there any cash inside the pocketbook?  
7       A     No, ma'am.  
8       Q     Nothing for y'all to split up?  
9       A     No, ma'am.  
10      Q     After that, did y'all talk about maybe another  
11 option, since that robbery didn't work out?  
12      A     Yes, ma'am.  
13      Q     And what was that?  
14      A     Famous Joe's.  
15      Q     Tell me about the Famous Joe's. Where is that?  
16      A     West Ashley.  
17      Q     Had Ryan discussed robbing the Famous Joe's  
18 before?  
19      A     Yes, ma'am.  
20      Q     And when y'all were in the car headed back to  
21 West Ashley, what did y'all try to do -- what did y'all  
22 decide to do to figure out whether or not robbing Famous  
23 Joe's would be a good idea or not?  
24      A     Ride through the parking lot.  
25      Q     And, again, who was driving?

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1           A     George Brown.  
2           Q     And you were still sitting in the front seat?  
3           A     Yes, ma'am.  
4           Q     Rayshawn was still in the way, way back?  
5           A     Yes, ma'am.  
6           Q     And then Ryan and Little B?  
7           A     Behind the passenger in the driver's side.  
8           Q     Did y'all, in fact, ride through the parking  
9 lot of the Famous Joe's?  
10          A     Yes, ma'am.  
11          Q     And when you went through, what'd you see?  
12          A     Two cars and a truck.  
13          Q     And did you talk about whether or not the  
14 Famous Joe's would be a good target to rob?  
15          A     Yes, ma'am. I told him there ain't nobody in  
16 there, so ain't no need to go there to try to lick  
17 Joe's.  
18          Q     Okay. What do you mean? There's nobody there,  
19 why -- why did that affect your thought on how good it  
20 would be to rob it?  
21          A     Because it usually be packed.  
22          Q     Okay. So if it wasn't packed, that meant what?  
23          A     We was going to rob it.  
24          Q     But if -- if they didn't have a lot of  
25 customers, how would that affect the money?

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1           A     We wouldn't probably get no money.  
2           Q     Okay. So what did you tell Ryan about whether  
3 or not y'all should rob Famous Joe's?  
4           A     I told him I don't think it's a good idea. But  
5 then when we got to Cashew Street --  
6           Q     All right. So y'all ride through the parking  
7 lot and go on to Cashew?  
8           A     Yes, ma'am.  
9           Q     Back to his house?  
10          A     Yes, ma'am.  
11          Q     Everybody get out of the car?  
12          A     Yes, ma'am.  
13          Q     Where is the gun?  
14          A     Under the driver's side, under the mat.  
15          Q     Okay. How did it get from Bryan doing the  
16 robbery to under George's mat?  
17          A     Ryan. You mean --  
18          Q     Bryan. I'm sorry. Little B. Let's say Little  
19 B instead of Bryan.  
20          A     He gave it to him on our way leaving from  
21 downtown.  
22          Q     Little B gave the gun back to George?  
23          A     Yes, ma'am.  
24          Q     Because it was whose gun?  
25          A     George.

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1 Q All right. And George put it where?  
2 A Under the mat, under the driver's side.  
3 Q Okay. And when y'all got back to Cashew, the  
4 gun was where?  
5 A Under the mat.  
6 Q Okay. Was there any more discussion about  
7 going ahead and robbing Famous Joe's?  
8 A Yes, ma'am.  
9 Q Tell the jury what that discussion was like.  
10 A He -- Deleston is, like, let's go down here  
11 anyway and check it out. And we end up leaving from  
12 Cashew Street to go check it out.  
13 Q Did the people at Famous Joe's know you?  
14 A Yes, ma'am.  
15 Q How did they know you?  
16 A From being in there.  
17 Q How many times you been in there?  
18 A We always used to go in there to shoot pool and  
19 drink.  
20 Q Did you ever get kicked out of there?  
21 A Yes, ma'am.  
22 Q You passed out?  
23 A Yes, ma'am.  
24 Q You weren't worried about them seeing you?  
25 A I wasn't going to go in there. I was lookout.

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1 Q You were going to be looking out?  
2 A Yes, ma'am.  
3 Q Well, who was going to be the one to rob them?  
4 A Deleston.  
5 Q Do you know whether or not he had the gun when  
6 y'all set out to go down there?  
7 A Yes, ma'am.  
8 Q Well, how did he get it from George?  
9 A George gave it to him before we left.  
10 Q Okay. Did you see that?  
11 A Yes, ma'am.  
12 Q What'd Deleston do with the gun?  
13 A Put it in his side.  
14 Q In his side what?  
15 A Inside his pant on his hip.  
16 Q What'd he have on?  
17 A A striped shirt, some white shoes, and some  
18 jeans.  
19 Q Okay. So you and who else walked down to  
20 Famous Joe's?  
21 A Me, Deleston, and Rivers.  
22 Q Was the plan to go inside to do the robbery?  
23 A No. To wait for them to come out.  
24 Q For who to come out?  
25 A The people inside Joe's.

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1 Q What'd you think they have?  
2 A Money.  
3 Q In what?  
4 A In the bag.  
5 Q All right. What was Little B going to do?  
6 What was his part going to be?  
7 A To watch out.  
8 Q How long do you -- would it take y'all, or did  
9 it take y'all to walk from Cashew Street down to little  
10 Joe's -- Famous Joe's?  
11 A Probably like three minutes.  
12 Q Okay. Where'd you go when you got down to that  
13 area?  
14 A We stopped behind the white fence and were  
15 looking.  
16 Q What did you see?  
17 A The people leaving out of Joe's.  
18 Q All right. Did y'all hit them?  
19 A No, ma'am.  
20 Q Why not?  
21 A Because Marley Lion ended up rolling up.  
22 Q All right. And you're saying Marley Lion. Did  
23 you know Marley Lion?  
24 A No, ma'am.  
25 Q Did you know his name at that time?

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1           A     No, ma'am.

2           Q     You've learned that since then?

3           A     Yes, ma'am.

4           Q     So you're watching, standing behind a fence; is

5     that right?

6           A     Yes, ma'am.

7           Q     Okay. And the people come out. Could you tell

8     if they had money or bags or anything?

9           A     Yeah. They had stuff in their hands, but I

10    couldn't tell if it was no money or nothing.

11          Q     Did the three of y'all talk about going to hit

12    them?

13          A     Yes, ma'am.

14          Q     Okay. What was said?

15          A     Give him like --

16               MR. PENNINGTON: Objection, your Honor. At

17    this point, if we're going to use hearsay to support,

18    that we be specific as to who is the speaker. So I

19    would ask him to be clear as to who's speaking.

20               THE COURT: Okay. Thank you.

21          Q     (By Ms. Wilson) When you are having the

22    discussion -- make sure you say who said what.

23          A     Yes, ma'am.

24          Q     Did Ryan say anything about going to do the

25    robbery of the people leaving?

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1 A Yes, ma'am.

2 Q What did he say?

3 A He was, like, he was going to get them, but  
4 that Marley roll up. He intervened -- intervened in the  
5 robbery. So we waited behind the gate.

6 Q When you say "intervene," do you mean  
7 "interrupt"?

8 A Yeah. Interrupt.

9 Q Okay. All right. So when he pulled up, what  
10 happened with the other people with the money?

11 A Marley -- they said something to Marley and  
12 then he got out -- he was moving stuff around in his  
13 truck. And then -- they ended up leaving. So he was,  
14 like, well, since they --

15 Q Wait. Who's "he"?

16 A Deleston said, Well, he going to try to see  
17 what Marley Lion had.

18 Q All right. What'd you think about that plan,  
19 to see about what Marley Lion had?

20 A I went along with it.

21 Q Okay. What'd you do to help to begin that part  
22 of the plan?

23 A I just was sitting there telling him how to  
24 watch out.

25 Q Okay. Well, did you stay there behind that

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1 gate -- behind that white fence?

2 A No. I walked in -- walked through the parking  
3 lot to make sure ain't nobody else was in the parking  
4 lot.

5 Q All right. Tell the jury what path you took to  
6 do that.

7 A I walk around the side and came around the  
8 front of the building and walked through the parking lot  
9 beside the truck and walked on through the rock.

10 Q What'd you have on?

11 A A white T-shirt, some black short pants, some  
12 black slippers, and white socks.

13 Q Slippers like --

14 A Maggie slippers.

15 Q All right. When you walked around, who -- who  
16 did you leave behind that fence?

17 A Ryan -- Bryan and Ryan Deleston.

18 Q Okay. Little B and Ryan Deleston?

19 A Yes, ma'am.

20 Q Okay. When you walked around by the  
21 Chick-fil-A and through the parking lot, did you see  
22 anybody?

23 A No, ma'am.

24 Q Did you check out Marley's car?

25 A I couldn't see inside.

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1 Q Why not?  
2 A The window was dark.  
3 Q Okay. Was there any reflection from the  
4 lights?  
5 A Yes, ma'am.  
6 Q Okay. So did you tell him that you would try  
7 to see what was in Marley's car?  
8 A I tell him I couldn't see.  
9 Q No. I mean, before you left. Were you going  
10 to try to see what was in Marley's car?  
11 A Yes, ma'am.  
12 Q Tell the jury why.  
13 A Because the window -- to see how much people  
14 was in the car.  
15 Q How was that going to affect something?  
16 A To see -- in case he was more than one person  
17 in there.  
18 Q So if there were a car full of big old guys,  
19 y'all might have decided not to --  
20 MR. PENNINGTON: Objection. Leading, your  
21 Honor.  
22 THE COURT: Rephrase your question.  
23 MS. WILSON: Thank you, your Honor.  
24 Q (By Ms. Wilson) How was who was in the car  
25 with Marley going to affect whether or not y'all did a

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1 robbery?

2 A I guess they was going to get robbed too.

3 Q Oh, okay. You just wanted to know the number?

4 A Yes, ma'am.

5 Q Okay. Well, when you got back to that fence,  
6 that white fence, who was still back there?

7 A Deleston and Bryan.

8 Q Okay. And did you tell them what you had seen?

9 A No, ma'am.

10 Q You didn't say anything to them?

11 A I couldn't see in the truck.

12 Q Okay. Well, did you tell them that?

13 A Yes, ma'am.

14 Q All right. Was there any discussion about  
15 whether or not to go through with the robbery of Marley?

16 A Bryan and Ryan them are discussing who was  
17 going to go, passing the gun back and forth, and then  
18 Ryan just decided to go.

19 Q Okay. Tell me about that. Passing the gun  
20 back and forth. All right. You said when you -- when  
21 y'all got down there, when you left Cashew, Ryan had the  
22 gun?

23 A Yes, ma'am.

24 Q All right. Tell the jury about passing it back  
25 and forth. Who was passing it?

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1           A     Ryan was passing it back and forth to  
2 Little B, saying go, and Little B was telling him, No,  
3 he go. And then Ryan just decided to go on -- go on out  
4 to the truck hisself [sic].

5           Q     Okay. Could you see what happened when  
6 Deleston approached Marley's truck?

7           A     Yes, ma'am.

8           Q     How could you see?

9           A     I was right there behind the fence.

10          Q     Okay. What happened?

11          A     He walked up to the truck and tell him to open  
12 the door, and Marley set off the alarm. And that made  
13 Deleston run back. And when he ran back, I told him,  
14 I'm like, bust the window, and he turned back around and  
15 that's when he started shooting.

16          Q     Okay. When you say he ran back, Deleston ran  
17 how far back?

18          A     Not that far. From the truck to the fence.

19          Q     Okay. And you said to him what?

20          A     To bust the window. But he thought I said  
21 shoot.

22          Q     Well, shoot doesn't sound like bust.

23          A     No, ma'am.

24          Q     Why were you telling him to bust the window?

25          A     So he could have get in the truck.

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1 Q And do what?  
2 A And rob Marley Lion.  
3 Q All right. After you said bust it, what did he  
4 do?  
5 A He started shooting.  
6 Q Do you know how many times he shot?  
7 A About five times.  
8 Q What'd you do after that?  
9 A Took off running.  
10 Q What did Little B do?  
11 A He ran too.  
12 Q What did Little B have on?  
13 A All black.  
14 Q What color shoes did he have on?  
15 A Black.  
16 Q What kind of black shoes?  
17 A Some Nikes.  
18 Q Black Nikes?  
19 A Yes, ma'am.  
20 Q And you said you had on slippers?  
21 A Yes, ma'am.  
22 Q And Ryan Deleston had on what color shoes?  
23 A White Nikes.  
24 Q What kind of Nikes?  
25 A Willie Dee's.

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1 Q What's a Willie Dee?

2 A Like, some high-top shoe with a strap, Air  
3 Force 1 on it.

4 Q So y'all started running. How are you running  
5 in your flip-flop sandals?

6 A I can run in my slippers.

7 Q All right. Who was running with you?

8 A Deleston.

9 Q What path did y'all take?

10 A Like, across the street, like, running down  
11 Balsam Street behind the houses.

12 Q Okay. And where did you go?

13 A We went up behind this white boy named Jason  
14 house, and Deleston hide the gun under the pool.

15 Q Okay. Did y'all hang out at Jason's house for  
16 a while?

17 A No, ma'am.

18 Q Where'd you head?

19 A On Cashew Street.

20 Q Straight to Cashew?

21 A Yes, ma'am.

22 Q Did it take y'all as long to run back as it  
23 took you to walk down there?

24 A No, ma'am.

25 Q Faster?

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1           A     Faster. We got back faster.

2           Q     What happened when y'all got back to Cashew?

3           A     Deleston, I tell him to go in the house and

4 wash his hands.

5           Q     Why'd you tell him to wash his hands?

6           A     Because he had -- because of the gunpowder.

7           Q     All right. Did you tell him what to wash his

8 hands with?

9           A     Yes, ma'am.

10          Q     What was the mood there between you and

11 Little B and Ryan at that point?

12          A     We was telling him -- we was telling -- Ryan

13 was in the house, and George and Duke went outside. We

14 were telling him he was stupid for shooting him. He

15 had --

16          Q     When you say "Duke," that's Rayshawn?

17          A     Yes, ma'am.

18          Q     So Duke and George were still outside?

19          A     Yes, ma'am.

20          Q     Why didn't they go down to Little [sic] Joe's

21 with you?

22          A     George said he was too big and too -- he just

23 saying, I won't go.

24          Q     He didn't want to go?

25          A     No, ma'am.

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1 Q All right. So did you ever confront Ryan about  
2 shooting the kid?

3 A We just been telling him he go down for  
4 shooting him and cursing him out.

5 Q Okay. Well, what'd you tell him?

6 A I'm, like, You's a stupid MF for shooting him  
7 for nothing. You don't have to shoot him.

8 And he was, like, I thought you said shoot.

9 And I was, like, No, I tell you to bust the  
10 window.

11 Q What about Bryan?

12 A He was telling him the same thing.

13 Q Little B was?

14 A Yes, ma'am.

15 Q Well, what exactly did Little B say to Ryan?

16 A He's a stupid mother fucker; he shouldn't shoot  
17 that cracker.

18 Q Did y'all fight?

19 A No, ma'am.

20 Q When you told Ryan that he should go wash his  
21 hands, do you know whether or not he did that?

22 A He went in the house, but I don't think he  
23 washed his hands with bleach. He come back out; his  
24 hands were wet.

25 Q Okay. You mentioned bleach. Why do you even

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1 bring bleach up?

2 A Because I had tell him to wash his hands with  
3 bleach to get the gunpowder off.

4 Q But you don't know if he did?

5 A No, ma'am.

6 Q How about his clothes? What'd he do with his  
7 clothes?

8 A He burn it.

9 Q Well, did he do that right then?

10 A No, ma'am.

11 Q Did he change his clothes?

12 A He took off his shirt.

13 Q Okay. The shirt that he had on when?

14 A When we going down to do the lick.

15 Q The shirt that he had on when he shot  
16 Marley Lion?

17 A Yes, ma'am.

18 Q He took that shirt off?

19 A Yes, ma'am.

20 Q At some point, did you and Ryan Deleston decide  
21 you needed to leave Cashew?

22 A Yes, ma'am.

23 Q Why was it that y'all needed to leave?

24 A Because he had leave his hat and a card.

25 Q All right. Tell me about that. He left a hat?

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1       A     Yes, ma'am.

2       Q     What kind of hat?

3       A     A red hat.

4       Q     He had taken that down to Famous Joe's?

5       A     Yes, ma'am.

6       Q     Where'd he leave it?

7       A     Like -- like behind the house we was -- the

8     house we was standing behind, he left it on that little

9     concrete with the card.

10      Q     You keep saying "the card." What card had Ryan

11     taken down there that he left?

12      A     The card from the lick from downtown.

13      Q     From the robbery downtown?

14      A     Yes, ma'am.

15      Q     A business card?

16      A     No. I think it's a card you can use to go

17     inside the gas station to get stuff with.

18      Q     Like a debit card or credit card?

19      A     A debit card.

20      Q     How did you know that he left it down at the

21     robbery?

22      A     Because he said he had left his hat.

23      Q     Why didn't you just leave it?

24      A     Because that would have been evidence.

25      Q     Okay. So you and he set out to go get the hat?

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1           A     Yes, ma'am.

2           Q     Did you know then you were going to get the  
3 card?

4           A     No, ma'am.

5           Q     So where did you and he go?

6           A     We went back to the spot where we went out  
7 behind the gate.

8           Q     Did you stop off anywhere?

9           A     We stop by my mom house to get two bicycles.

10          Q     And did you see anybody when you stopped off?

11          A     No, ma'am.

12          Q     Did you ever see any police?

13          A     Yeah. After we get the hat and the card.

14          Q     Okay. After that?

15          A     Yes, ma'am.

16          Q     So you stopped by your momma's house? She  
17 lives where?

18          A     On White Oak.

19          Q     And is that between Cashew and Famous Joe's?

20          A     Yes, ma'am.

21          Q     You get the bicycles. Why are y'all getting  
22 bicycles?

23          A     To hurry up and go get the hat.

24          Q     All right. Tell the jury what you saw when you  
25 rode down towards Famous Joe's on bikes.

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1           A       We saw the police and a fire truck.  
2           Q       Down where?  
3           A       In Famous Joe's parking lot.  
4           Q       So you're saying that after there's this  
5 robbery -- let me ask you this: Did you know whether or  
6 not Marley Lion had been hit?  
7           A       Yes, ma'am. Because when we ran off, I hear  
8 him yelling.  
9           Q       You heard Marley yelling?  
10          A       Yes, ma'am.  
11          Q       So you and Ryan Deleston, after you know  
12 somebody has been shot, get on bikes and ride back down  
13 there?  
14          A       Yes, ma'am.  
15          Q       Did the police see you down there?  
16          A       No, ma'am.  
17          Q       Where did you go when you went back the second  
18 time?  
19          A       We had gone down there to get the hat and the  
20 card.  
21          Q       Right. Did both of you go up to do that?  
22          A       No. He stayed in front of the apartment  
23 building what's right there by Joe's, and I ran around  
24 the left side and go on and got the hat. And that's  
25 when I saw the card.

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1 Q The stolen card?

2 A Yes, ma'am.

3 Q Did you pick that up?

4 A Yes, ma'am.

5 Q What happened next? Did y'all stay there?

6 A We stand in front of the apartment building for

7 a little while. Then we left.

8 Q Where'd you go when you left?

9 A We went back to my momma house to drop the

10 bikes off.

11 Q At that point, did y'all see anybody?

12 A Yeah. Two police.

13 Q Did anybody have any conversation with the

14 police at that point?

15 A No. Deleston just said that been the police

16 who had stopped me for not having a flashlight on the

17 bike.

18 Q Okay. And after y'all took the bikes back and

19 saw the police, where'd y'all go?

20 A Back on Cashew Street.

21 Q Now, you mentioned something about burning

22 clothes?

23 A Yes, ma'am.

24 Q Who burned the clothes?

25 A Deleston.

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1 Q What clothes did he burn; do you know?  
2 A The clothes he had weared. Clothes he had on.  
3 Q All his clothes?  
4 A He burned the -- like, the shirt and some pants  
5 and the pocketbook.  
6 Q What pocketbook?  
7 A From the robbery downtown.  
8 Q Got burned in that fire?  
9 A Yes, ma'am.  
10 Q And where was the fire?  
11 A In the backyard.  
12 Q Did you go back there and watch him burn it?  
13 A No, ma'am.  
14 MS. WILSON: Beg the Court's indulgence.  
15 THE COURT: Take your time.  
16 (Ms. Wilson speaks with Mr. DuRant off the  
17 record.)  
18 (Documents shown to Defense counsel.)  
19 MS. WILSON: Your Honor, at this time, I offer,  
20 I believe without objection, State's 84, which is a  
21 photograph; State's 38; State's 43; State's 55; State's  
22 67; and State's 68 in, I believe without objection.  
23 THE COURT: Is that correct?  
24 MR. PENNINGTON: That is correct, your Honor.  
25 THE COURT: Those will be admitted into

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1 evidence without objection.

2 (State's Exhibit Nos. 38, 43, 55, 67, 68, and  
3 84 are admitted into evidence.)

4 MS. WILSON: Your Honor, if we could, I'd ask  
5 that the witness step down. Is it okay if the witness  
6 steps down?

7 THE COURT: He's very soft-spoken. I'm  
8 inclined -- if you can make it work any other way --

9 MS. WILSON: I will try to improvise. This  
10 might work as well.

11 Can you see that?

12 THE WITNESS: No.

13 MS. WILSON: You can't?

14 Can you see that?

15 THE WITNESS: Yes, ma'am.

16 Q (By Ms. Wilson) All right. I'm going to hand  
17 you this clicker. Just make sure you --

18 A Turn it.

19 Q You need it turned a little bit?

20 Can you see it now?

21 A Yes, ma'am.

22 Q Okay. I'm going to hand you this clicker.  
23 This red button makes the laser go.

24 This area that we've been talking about on  
25 State's Exhibit 27, do you see Cashew Street?

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1           A     Yes, ma'am.

2           Q     All right. Show the jury where Cashew Street

3     is.

4           A     (Witness complies.)

5           Q     Right there?

6                     And which house on that street does Stephanie

7     and Ryan live in?

8           A     (Witness indicates.)

9           Q     Right there?

10          A     Yes, ma'am.

11          Q     Okay. And when you and Little B and

12     Ryan Deleston left Cashew to go down to Famous Joe's,

13     which path did y'all take?

14          A     We went down Evergreen Street.

15          Q     Okay. And when you got down to Famous Joe's --

16     I'm going to show you what's been marked as State's

17     Exhibit 5. You've seen that diagram before, haven't

18     you?

19          A     Yes, ma'am.

20          Q     Okay. Show the jury on that where Famous Joe's

21     is.

22          A     Right there.

23          Q     Right in that corner?

24          A     Yes, ma'am.

25          Q     Okay. And when y'all walked down, y'all came

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1 down Evergreen?

2 A Yes, ma'am.

3 Q All right. Show the jury where y'all went when

4 y'all first got there that night.

5 A (Witness complies.)

6 Q Back there.

7 Okay. What is this building right here?

8 A That's the little day care, like a day care.

9 Q That's a day care?

10 A Yeah.

11 Q And you mentioned at some point you walked

12 through a parking lot to check things out.

13 A Yes, ma'am.

14 Q Show the jury what path you took.

15 A I came around through this way right here.

16 Q And what is this right there?

17 A D.d. Peckers'.

18 Q And is that the Chick-fil-A?

19 A Yes, ma'am.

20 Q Okay. So y'all were staked out right there?

21 A Yes, ma'am.

22 Q Okay. And where did you see the employees come

23 out of Famous Joe's?

24 A Right there.

25 Q Okay. And Marley Lion pulled in where?

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1       A     (Witness indicates.)  
2       Q     Right in there?  
3       A     Yes, ma'am.  
4       Q     Okay. And you left to go walk and check  
5 everything out?  
6       A     Yes, ma'am.  
7       Q     Show the jury where you walked.  
8       A     From right here --  
9       Q     Yeah.  
10      A     -- through here. And I walked around and then  
11 came through the parking lot and went through these  
12 rocks right here.  
13      Q     All right. After you walked through there, did  
14 you go back straight behind that fence?  
15      A     No, ma'am.  
16      Q     Why not?  
17      A     Because he probably would have seen me.  
18      Q     "He" who?  
19      A     Marley Lion.  
20      Q     So you didn't walk straight back to meet back  
21 up with -- with Ryan and Little B?  
22      A     No, ma'am.  
23      Q     Show the jury on this map where you went after  
24 you had walked through the parking lot and seen Marley.  
25            You can stand up. Just make sure you talk

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1 loudly.

2 A I walked through the rocks --

3 Q Speak up.

4 A I walked through the rocks right here.

5 Q Yeah.

6 A And went around Balsam and came back through

7 here and end up back right here. And then I walked back

8 behind the fence.

9 Q To where they were?

10 A Yes, ma'am.

11 Q Okay. And if I could -- if we could have

12 State's Exhibit 38 -- and you can look on that screen

13 behind you or on that screen.

14 Do you recognize that?

15 A Yes, ma'am.

16 Q And the white fence there, is that the fence

17 y'all were hiding behind?

18 A Yes, ma'am.

19 Q State's Exhibit 55, what is that?

20 A That's Famous Joe's parking lot.

21 Q Okay. And that fence, to the right of that

22 fence, that little open area -- the laser is not going

23 to work on there -- did anybody walk through that area?

24 A That's the area Deleston came from when he

25 shot -- when the police -- when he ran up to the truck

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1 and set off the alarm, he came back to that area right  
2 there. And then that's when I tell him to bust the  
3 window, and he turned back around.

4 Q You were watching from that area?

5 A Yes, ma'am.

6 Q Okay. And when y'all ran after the shooting,  
7 can you show the jury, on State's Exhibit 4, what path  
8 you took going back to Cashew? You didn't go back the  
9 same way; right?

10 A No, ma'am.

11 Q Where'd you go?

12 A I walked -- ran down Balsam. And then I don't  
13 know where -- I don't know where Little B went at, but I  
14 know me and Deleston -- and Deleston split up on White  
15 Oak and he went down Evergreen and I keep going up  
16 Balsam.

17 Q Okay. Let's look at -- all my maps are getting  
18 confused.

19 All right. So you're running down Balsam.  
20 Balsam Street's up here?

21 A Yes, ma'am.

22 Q Okay. Do you know where it was that you saw  
23 Little B again?

24 A When we got -- when I got on -- this is a  
25 little side street before you get, like, the end.

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1 -- like, at Monroe Balsam, a little side street you can  
2 turn off, and he was coming down Evergreen.  
3 Q At some point did the three of y'all hook back  
4 up?  
5 A Yes, ma'am.  
6 Q Okay. And went back to Stephanie and Ryan's?  
7 A Yes, ma'am.  
8 Q Now, you mentioned that Ryan Deleston burned  
9 some of his things when he got back?  
10 A Yes, ma'am.  
11 Q And that Little B had on black tennis shoes or  
12 black Nikes; is that right?  
13 A Yes, ma'am.  
14 Q Where'd he get those black Nikes?  
15 A I give them to him.  
16 Q You gave them to him when?  
17 A I think I gave them to him since he came home.  
18 Q Since he came home from prison?  
19 A Yes, ma'am.  
20 Q He had no clothes?  
21 A No, ma'am.  
22 Q And you gave him those shoes?  
23 A Yes, ma'am.  
24 Q All right. I'm going to show you some videos  
25 now. First of all, State's Exhibit 3 -- first of all,

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1 Julius, I want you to look at State's Exhibit 3.

2 MS. WILSON: Your Honor, while we're pulling  
3 that up, we'd offer State's Exhibit 27, which is one of  
4 the maps up there.

5 MR. PENNINGTON: No objection, your Honor.

6 THE COURT: State's 27 into evidence without  
7 objection.

8 (State's Exhibit No. 27 admitted into  
9 evidence.)

10 Q (By Ms. Wilson) We're now going to play  
11 State's Exhibit 3, which was the d.d. Peckers' video  
12 that was introduced through Lauren Mulkey.

13 Julius, while he's getting that set up, do you  
14 have any idea what time it was when y'all came back from  
15 downtown and rode through the Famous Joe's parking lot?

16 A Had to have been like going on two o'clock,  
17 because I --

18 Q Why do you say that?

19 A Because when we got back down there, Joe's was  
20 closing.

21 Q So it was sometime after 2:00?

22 A Yes, ma'am.

23 (The video is played.)

24 Q (By Ms. Wilson) If you'll look in that right  
25 corner, Julius, and tell us what you see.

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1           A     That's me walking through -- that's me walking  
2 through the parking lot.

3           Q     In that top corner?

4           A     Yes, ma'am.

5           Q     White T-shirt?

6           A     Yes, ma'am.

7           Q     What were you doing back there?

8           A     Walking through to make sure nobody in the  
9 parking lot.

10          Q     And when you talked to the police when you were  
11 first arrested, you didn't tell them that's what you  
12 were doing back there, did you?

13          A     No, ma'am.

14          Q     What'd you tell them you were doing?

15          A     I was making a drug sale.

16          Q     There was no drug sale back there, was there?

17          A     No, ma'am.

18          Q     You walked through to see who all was back  
19 there?

20          A     Yes, ma'am.

21          Q     So that y'all could rob Marley Lion?

22          A     Yes, ma'am.

23                MS. WILSON: Your Honor, we're going to play  
24 State's Exhibit 2.

25                (The video is played.)

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1 Q (By Ms. Wilson) While we're pulling that up,  
2 already admitted as State's 84, what is this?

3 A George's truck.

4 Q Is that the truck y'all went downtown in?

5 A Yes, ma'am.

6 Q The truck y'all rode through Famous Joe's in?

7 A Yes, ma'am.

8 MS. WILSON: Your Honor, if I could just hold  
9 this up for the jury?

10 THE COURT: You may.

11 (The exhibit is published to the jury.)

12 Q (By Ms. Wilson) Now, Julius, after you signed  
13 the plea agreement and agreed to cooperate, before that,  
14 had anybody ever talked to you about that ride-through  
15 that y'all did in the parking lot?

16 A No, ma'am.

17 Q When was the first anybody heard about that?

18 A When I had talked to y'all.

19 Q And you told us?

20 A Yes, ma'am.

21 Q Did you know whether or not it had been on  
22 video?

23 A No, ma'am.

24 MS. WILSON: Your Honor, we're at 3 --

25 MR. DURANT: This is 3:08:56.

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1 MS. WILSON: On State's Exhibit 2.  
2 MR. DURANT: On State's Exhibit 2.  
3 (The video is played.)  
4 Q (By Ms. Wilson) What is this coming through,  
5 Julius?  
6 A That's George's truck.  
7 Q And who all was in that truck?  
8 A Me, Deleston, Rivers, Rayshawn Milligan.  
9 Q And George was driving?  
10 A And George driving.  
11 Q And that was after y'all came back from doing  
12 what?  
13 A The lick from downtown.  
14 Q The lick from downtown?  
15 A Yes, ma'am.  
16 MS. WILSON: Your Honor, if we could go to  
17 3:33.  
18 (The video is played.)  
19 Q (By Ms. Wilson) Do you remember that, Julius?  
20 A Yes, ma'am.  
21 Q Where were you when that car was pulling in?  
22 A Behind the white gate.  
23 Q Behind that white fence?  
24 A Yes, ma'am.  
25 Q Okay. And -- keep watching.

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1 (The video is played.)

2 Q (By Ms. Wilson) What's going on in the  
3 background back there?

4 A They leaving out of Joe's.

5 Q And where those bright lights are, do you  
6 recognize those people?

7 A I can't recognize them, but I know them.

8 Q Okay. You can't recognize them from the video?

9 A No, ma'am.

10 Q Did you recognize them that night?

11 A No, ma'am.

12 Q Do you know what they were doing?

13 A They were leaving.

14 Q Okay.

15 (The video is played.)

16 Q (By Ms. Wilson) What was being discussed  
17 between you and Ryan Deleston and Little B while this  
18 all was happening?

19 A He was, like, he's going to see --

20 Q "He" who?

21 A Deleston was, like, he going to see where  
22 Marley Lion at since they were leaving Joe's.

23 (The video is played.)

24 Q (By Ms. Wilson) So there was all this time  
25 right now while Marley Lion is getting his stuff out of

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1 the back, what was happening then?

2 A We was -- Deleston was, like, he didn't know if  
3 all those people been in the truck. And that's when I,  
4 like, got out to walk around to see if I could see how  
5 much people was in the truck.

6 Q Okay.

7 (The video is played.)

8 MS. WILSON: Your Honor, I believe we have to  
9 switch videos for the next segment.

10 Trying to get at 3:44:19. There we go.

11 Q (By Ms. Wilson) Who's that?

12 A That's me walking through the parking lot.

13 Q Just leaving the d.d. Peckers'/Chick-fil-A  
14 area?

15 A Yes, ma'am.

16 (State's Exhibit 23 is shown to Defense  
17 Counsel.)

18 (Ms. Wilson and Mr. Pennington approach the  
19 bench.)

20 Q (By Ms. Wilson) I'm going to show you, Julius,  
21 State's Exhibit 23. What is that? Do you recognize it?

22 A Yes, ma'am.

23 Q What is it?

24 A That's the gun used to kill Marley Lion.

25 Q Whose gun was it?

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1 A George Brown.

2 Q And who had it when y'all went down to rob the  
3 Famous Joe's?

4 A Ryan Deleston.

5 MS. WILSON: Your Honor, at this time we'd  
6 offer State's Exhibit 23.

7 THE COURT: Any objection?

8 MR. PENNINGTON: No objection.

9 THE COURT: State's 23 into evidence without  
10 objection.

11 (State's Exhibit No. 23 is admitted into  
12 evidence.)

13 Q (By Ms. Wilson) So this is the gun -- was this  
14 the gun used downtown to rob the lady of her purse?

15 A Yes, ma'am.

16 Q By who?

17 A Bryan Rivers.

18 Q Okay. And this was the gun taken down to  
19 Famous Joe's?

20 A Yes, ma'am.

21 Q By who?

22 A Ryan Deleston.

23 Q And when you talked about there being some back  
24 and forth with the gun, who was that between?

25 A Bryan Rivers and Ryan Deleston.

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1 Q Over this gun?  
2 A Yes, ma'am.  
3 Q All right. Look at the video in State's  
4 Exhibit 1. We're at 3:54.  
5 (The video is played.)  
6 Q (By Ms. Wilson) We're going to go to 3:56.  
7 (The video is played.)  
8 MR. DURANT: This is 3:56.  
9 (The video is played.)  
10 Q (By Ms. Wilson) Could you see what color shoes  
11 that person had on?  
12 A Yes, ma'am.  
13 Q What color?  
14 A White.  
15 Q Can you tell anything about his shirt?  
16 A Yes. It's striped.  
17 Q Who is that person?  
18 A Ryan Deleston.  
19 Q How do you know?  
20 A Because Little B had on all black, and Deleston  
21 had on a striped shirt. And I had on a white T-shirt  
22 with some short pants and some slippers on.  
23 Q Did you see that happen in real life?  
24 A Yes, ma'am.  
25 Q From where?

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1       A     Behind the fence.  
2       Q     Where did Deleston go just then?  
3       A     He ran back by the fence.  
4       Q     What are you telling him right now?  
5       A     To bust the window.  
6       Q     Who was that?  
7       A     Deleston.  
8       Q     Any question about that?  
9       A     No, ma'am.  
10      Q     And when you and Ryan left Cashew to come back  
11    behind that fence to get his hat -- what color was the  
12    hat you got?  
13      A     Red.  
14      Q     Show you State's Exhibit 68. Do you recognize  
15    that?  
16      A     Yes, ma'am.  
17      Q     What is it?  
18      A     A red hat.  
19      Q     Where?  
20      A     In the kitchen.  
21      Q     Whose kitchen?  
22      A     Stephanie Brown's.  
23      Q     And who else?  
24      A     Ryan Deleston.  
25            MS. WILSON: Your Honor, we'd offer 68, I

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1 believe without objection.

2 MR. PENNINGTON: That's correct.

3 MS. WILSON: And I would ask to publish it.

4 THE COURT: You may publish. It's been  
5 previously admitted.

6 Q (By Ms. Wilson) And that's the hat y'all  
7 picked up from behind that fence -- or you picked up?

8 A Yes, ma'am.

9 Q Why didn't you send Ryan to go get his own hat?

10 A He acted like he didn't want to go get it.

11 Q Well, why did you care about going to get it?  
12 Was it your hat?

13 A No, ma'am.

14 Q Well, why'd you give a rip whether or not the  
15 hat was left back there?

16 A Because the police would have get evidence.

17 Q And done what?

18 A And come back and charged us.

19 Q Well, it wasn't your hat.

20 A It was Deleston's hat.

21 Q And if they get Deleston, what happens next?

22 A They get me too.

23 Q You were worried about that?

24 A Yes, ma'am.

25 Q You've been worried about that?

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1           A     Yes, ma'am.

2                   MS. WILSON:  Beg the Court's indulgence.

3                   THE COURT:  Take your time.

4                   (Ms. Wilson speaks with Mr. DuRant off the  
5 record.)

6           Q     (By Ms. Wilson)  Julius, one other question --  
7 sorry.  You need a minute?

8           A     No, ma'am.

9           Q     From where you and Julius and Ryan were behind  
10 that fence, would anybody in the parking lot have been  
11 able to seen y'all on the other side of the fence?

12          A     No, ma'am.

13          Q     That fence is solid?

14          A     Yes, ma'am.

15          Q     Marley Lion wouldn't have been able to see  
16 behind that fence?

17          A     No, ma'am.

18          Q     Did Bryan Rivers ever leave and go on the  
19 parking lot side of that fence?

20          A     No, ma'am.

21          Q     So Marley Lion saw you?

22          A     Walking through the parking lot.

23          Q     And who else?

24          A     He had to see Ryan Deleston because that's who  
25 ran up to the truck.

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1 (The jury is escorted into the courtroom at  
2 4:01 p.m.)

3 THE BAILIFF: All jurors present, your Honor.

4 THE COURT: Thank you. Be seated.

5 Mr. Pennington, your witness.

6 MR. PENNINGTON: Thank you, your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. PENNINGTON:**

9 Q Mr. Brown, do you recall that in the days that  
10 followed the Marley Lion murder that the police began to  
11 come around and concentrate and talk to a lot of people  
12 in Ardmore?

13 A Yes, sir.

14 Q And do you remember at one point voluntarily  
15 going in and sitting down with Detective Burckhardt,  
16 who's wearing kind of the bluish striped -- red striped  
17 tie?

18 A I didn't volunteer. They called me on my cell  
19 phone to come down and talk with them.

20 Q This would have still been in June; not when  
21 you were arrested, but in June?

22 A Yeah, in June.

23 Q Let's do this so you don't have to be leaning  
24 way over. Let me see if I can point this more from  
25 where you're sitting. How'd that be? Is that better?

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1           A       (Moves head up and down.)  
2           Q       Okay. See if this works a little bit better so  
3   you don't have to lean forward. See how it does.  
4           A       (Moves head up and down.)  
5           Q       All right. So we were talking about that time  
6   frame where before you were arrested, a month before you  
7   were arrested, while the police were just getting  
8   started in the investigation, do you remember going down  
9   to Lockwood and meeting with Detective Burckhardt?  
10          A       Yes, sir.  
11          Q       And do you recall that you told him that you  
12   and Ryan -- you and Ryan Deleston got bicycles from your  
13   mother's house; right?  
14          A       Yes, sir.  
15          Q       And that was at [REDACTED] White Oak?  
16          A       Yes, sir.  
17          Q       And the plan at that point, from what you told  
18   Detective Burckhardt was, is that y'all were going to go  
19   get some beer?  
20          A       Yes, sir.  
21          Q       But when you stepped out there, you saw police  
22   officers talking to some other men?  
23          A       Yes, sir.  
24          Q       And at that point, in that moment, Ryan was  
25   wearing a white tank top?

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1           A     Yes, sir.

2           Q     And the officer talked to him about having a  
3     flashlight on his bicycle; correct?

4           A     The officer didn't talk to him.

5           Q     He talked to the officer?

6           A     He -- he said that's the officer who stopped me  
7     one day for not having a flashlight on the bike.

8           Q     All right. And do you recall, in that  
9     interview that occurred about six to seven o'clock at  
10    night, on tape, that you said to the detective that the  
11    police should look at Bryan Rivers?

12          A     I don't recall that.

13          Q     Do you recall telling them that Rivers was  
14    trouble?

15          A     I don't recall that either.

16          Q     That he dresses in black?

17          A     Yeah.

18          Q     And that his associates -- he and his  
19    associates were doing robberies?

20          A     Yes, sir.

21          Q     And so you were calling Detective Burckhardt's  
22    attention to Bryan Rivers?

23          A     Yes, sir.

24          Q     That was in June?

25          A     Yes, sir.

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1 Q And that would have been probably roughly at  
2 least six weeks before you were arrested?

3 A Yes, sir.

4 Q Okay. So you are describing this incident --  
5 I'm going to ask you to refer again to State's Exhibit  
6 4. I'm going to put here on the easel for you. Can you  
7 still see that?

8 A Yeah.

9 Q You can?

10 A (Moves head up and down.)

11 Q I'm going to call your attention to the night  
12 that you were involved in the murder of Marley Lion.  
13 Okay?

14 A Yes, sir.

15 Q And so we orient the jury again, we're talking  
16 about the -- this is the parking lot of Famous Joe's?

17 A Yes, sir.

18 Q And just so we get an idea of distance, this is  
19 where your mother's house is?

20 A Yes, sir.

21 Q Okay. That's [REDACTED] White Oak?

22 A Yes, sir.

23 Q Okay. Now, so that people make sure they know  
24 the geography, because not everybody drives up and down  
25 17 every day, this would be a Pep Boys restaurant [sic]

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1 right here?

2 A Yes, sir.

3 Q This is obviously a hotel, some kind, with a  
4 swimming pool?

5 A That's the Best Western.

6 Q Best Western hotel. Okay. And behind here,  
7 over behind the hotel is Cashew Street?

8 A Yes, sir.

9 Q Okay. And so if you were traveling in a  
10 straight line down 17, you'd pass the hotel and then  
11 pass Pep Boys. And this is what restaurant?

12 A Bessinger's.

13 Q Bessinger's Barbecue; right?

14 And then next to that is sort of an abandoned  
15 building and then a McAlister's funeral home?

16 A Yes.

17 Q And then next to that is -- is this part of the  
18 Ford dealership? It's a bunch of cars and boats?

19 A Yes. A Ford place, and it's a little  
20 restaurant right there next to it.

21 Q There's a little restaurant here?

22 A Yes.

23 Q That's the Early Bird cafe?

24 A Yes, sir.

25 Q And then there's the Meineke store?

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1           A     Yes, sir.

2           Q     And then next to that is the brand new

3 Chick-fil-A?

4           A     Yes, sir.

5           Q     This is their parking lot; right? Correct?

6           A     Yes, sir.

7           Q     And then you don't see the entrance --

8 this -- this little cutoff building right here is

9 d.d. Peckers'; are we correct?

10          A     Yes, sir.

11          Q     And so the area that you're walking around is

12 from this white fence area around through here. Somehow

13 there's a little cut-through, and you came around

14 thisaway?

15          A     Yes, sir.

16          Q     And then up around by Marley?

17          A     Yes, sir.

18          Q     Okay. And the -- if we were to -- if this was

19 to continue on, what we would see is there's actually an

20 entrance somewhere over here into the parking area, and

21 then there's the Five Guys restaurant. So that's the

22 distance we're talking about?

23          A     Yes, sir.

24          Q     Okay. So your story today is, is that after

25 the murder, that you ran, and you ran thisaway and up

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1   Balsam Street; correct?

2       A     Negative.

3       Q     All right.  So you ran -- didn't you say that

4   y'all ran through here and hid a gun?

5       A     We ran -- we ran through the back -- down the

6   back through those apartments.

7       Q     So you were running in through here?

8       A     Yes, sir.

9       Q     Parallel to Balsam Street?

10      A     Yes, sir.

11      Q     Okay.  And this is at night, 4:00 in the

12   morning?

13      A     Yes, sir.

14      Q     Pitch black outside?

15      A     Yes, sir.

16      Q     And would it help you to move this over so

17   you're not having to flip back and forth?  There you go.

18            And so your testimony is, is that you guys ran

19   through here, and at some point there was a pause where

20   the gun got hidden; right?

21      A     Yes, sir.

22      Q     And I'll let you point and show me, if you can,

23   where that gun got hidden.

24      A     Right here.

25      Q     Right in there?

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1           A       Jason backyard.  
2           Q       And you -- just to speak a little bit louder,  
3   you're saying that that's Jason's backyard? That's  
4   someone that you know?  
5           A       Yes, sir.  
6           Q       He's a crack head?  
7           A       Yes, sir.  
8           Q       And y'all hid the pistol under his aboveground  
9   swimming pool?  
10          A       Yes, sir.  
11          Q       And then you indicate that you continued on,  
12   and you said you crossed White Oak; right?  
13          A       Yes, sir.  
14          Q       And then you indicate that you took a little  
15   cut street? Was this Locust Street?  
16          A       Yeah, that's Locust right there.  
17          Q       Okay. So you -- did you continue to cut  
18   through all these yards, or did you --  
19          A       No. I came back on Balsam Street.  
20          Q       Okay. So when you emerged here, you went away  
21   from 17 and got on to Balsam. But this -- you headed  
22   down to Locust?  
23          A       Jason's street is Balsam Street.  
24          Q       I'm sorry?  
25          A       Jason live on Balsam Street.

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1           Q     Correct. And the crackhead that we're talking  
2 about with the pool over here, he's on -- he fronts  
3 Balsam Street; right?

4           A     Yes, sir.

5           Q     But you actually came out onto the roadway to  
6 continue your path back toward Cashew?

7           A     I continued down Balsam Street to Cashew.

8           Q     Okay.

9           A     And I made the right on Locust.

10          Q     On Locust. And came down here, and this is  
11 where you say that you then kind of jogged over and came  
12 to Cashew. And this is where your sister lives?

13          A     Yes, sir.

14          Q     And you described that, after that process,  
15 that there's a -- it's your story that Ryan washed his  
16 hands inside the house; right?

17          A     Yes, sir.

18          Q     And then at some point the decision was that we  
19 want to head back and what we're going do is get the  
20 hat. We need to get the red hat. That was the plan  
21 when y'all were on Cashew, was to go back for the red  
22 hat; right?

23          A     Yes, sir.

24          Q     Yes?

25          A     Yes, sir.

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1 Q So at that point, did you proceed down  
2 Evergreen to this apartment complex where you could see  
3 what was going on?

4 A No. We going down Evergreen, stopped by my mom  
5 house to get the bikes.

6 Q All right. I thought you said on Direct  
7 testimony that you ran into the police officers after  
8 you'd gotten the hat?

9 A No. I said after we get the bike -- when we  
10 got the bikes, we went and got the hat. And then on our  
11 way back to my mother house to drop the bike off, the  
12 police had some boy stopped in front of her house.

13 Q Are you sure you didn't just say a moment ago  
14 -- that you told the Solicitor that you got -- went and  
15 got the hat and then you came back and saw the police?

16 A Yeah. We -- after -- after that, we came back  
17 and saw the police in the parking lot.

18 Q Right. No. What I'm talking about -- and you  
19 talked to the police at your momma's house?

20 A We didn't talk to the police.

21 Q Okay. All right. But we know at the very  
22 least that we're talking about -- from your story, that  
23 you had to leave here and go through -- and these are  
24 backyards of people's houses; right?

25 A No. Apartments.

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1 Q They're apartments?

2 A Yes, sir.

3 Q Okay. And then eventually emerge and go up  
4 here and then down here and over here and go through the  
5 process of washing hands, and then make your way back to  
6 your mother's house?

7 A We didn't go right back. We didn't -- after he  
8 washed his hand, he came out and that -- he was, like,  
9 he left his hat down there. So that's when we going to  
10 get the hat, but stopped by mother house before we went  
11 to get the hat to get the bikes.

12 Q Okay. That's what I'm asking. So this took  
13 some time, didn't it?

14 A Yeah, it take time. Not that long.

15 Q Okay. And so you get the bikes, you talk with  
16 the officers, and then your story is, is that you go  
17 back and you grab this hat?

18 A No. We didn't talk to the officers. After we  
19 got the hat, the stuff, we came back, and that's when  
20 the officers -- it was two people -- two people was  
21 walking. One got stopped, like, by Balsam, and one kept  
22 walking. And he got stopped in front of my mom house,  
23 and that's when we put the bikes back.

24 Q Is that when you talked to the officer about  
25 the flashlight?

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1           A       I didn't talk to the officer.

2           Q       I'm sorry. Is that when Ryan talked with the  
3 officer about the flashlight?

4           A       He didn't talk to the officer. He just said,  
5 that's the police who had stopped me for not having a  
6 light on the bike.

7           Q       So it's your testimony that he didn't speak to  
8 the officer?

9           A       He just said, That's the officer who stopped me  
10 without a flashlight on the bike. The officer didn't  
11 talk to him.

12          Q       Okay. So y'all had been down and fetched the  
13 hat before the encounter with the police officers?

14          A       Yes, sir.

15          Q       And you're sure about that?

16          A       Yes, sir.

17          Q       No doubt in your mind?

18          A       Yes, sir.

19          Q       You're absolutely certain?

20          A       Yes, sir.

21          Q       Okay. All right.

22                   All right. Mr. Rivers, you're now 33?

23          A       I'm not Rivers.

24          Q       I'm sorry. You're right. I apologize. Excuse  
25 me.

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1           Mr. Brown?

2       A     Yes, sir.

3       Q     You're 33?

4       A     Yes, sir.

5       Q     Before you entered into this plea agreement,

6     the minimum kind of sentence, if you had been convicted

7     of a murder, would have been 30 years; right?

8       A     Yes, sir.

9       Q     And that would have been a day-for-day

10    sentence?

11      A     Yes, sir.

12      Q     Meaning that you could basically take your age

13    at the date of your arrest, which was 32, and add 30,

14    and that would be the earliest possible out date; right?

15      A     Yes, sir.

16      Q     But the Judge could give you more than that on

17    a murder conviction; right?

18      A     Yes, sir.

19      Q     But you bypassed that by virtue of this plea

20    agreement; am I correct?

21      A     Yes, sir.

22      Q     Now, you could have gotten up to life without

23    parole, but that's not an issue. That's not a -- you're

24    not exposed to that now, are you?

25      A     No, sir.

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1 Q Thanks to this agreement?

2 A Yes, sir.

3 Q Okay. And you were charged with attempted  
4 armed robbery before you made the agreement that could  
5 carry up to 20 years; correct?

6 A Yes, sir.

7 Q And obstruction of justice that could carry up  
8 to ten years more?

9 A Yes, sir.

10 Q So really, before the deal, you were looking at  
11 life plus 30 years on this?

12 A Yes, sir.

13 Q And part of the deal, is it not, is that you  
14 are no longer exposed to consecutive sentencing for  
15 these various counts? The understanding is, is that if  
16 you do your part and testify, that the max you can get  
17 is 30 years?

18 A Yes, sir.

19 Q At 85 percent?

20 A Yes, sir.

21 Q That means that instead of having to do day for  
22 day, if you go in and earn your good time, you could get  
23 out as early as 85 percent of that sentence, whatever it  
24 is?

25 A Yes, sir.

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1 Q The Judge doesn't have to give you 30 years?  
2 A No, sir.  
3 Q She can give you anywhere from two to 30 years?  
4 A Yes, sir.  
5 Q That's your understanding?  
6 A Yes, sir.  
7 Q It's also your understanding that you're not  
8 going to get charged for that robbery down on Rutledge  
9 Avenue?  
10 A Yes, sir.  
11 Q Okay. And if you were to be charged with that  
12 robbery down on Rutledge Avenue, in South Carolina,  
13 armed robbery -- or a conviction of armed robbery  
14 carries a mandatory ten years; right?  
15 A Yes, sir.  
16 Q And it can carry up to a range of -- a minimum  
17 of ten up to 30 years; correct?  
18 A Yes, sir.  
19 Q So had they charged that, then you would be  
20 looking at no less than ten at 85 percent?  
21 A Yes, sir.  
22 Q Eight and a half more years in the  
23 penitentiary?  
24 A Yes, sir.  
25 Q Let's talk about that Rutledge Avenue. You've

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1 described that you got down there. George was driving;  
2 correct?

3 A Yes, sir.

4 Q And he has a secret compartment in his SUV?

5 A Yes, sir.

6 Q I think it's a Chevy suburban, a big kind of  
7 truck thing that we saw in the video?

8 A Yes, sir.

9 Q And the secret compartment is something that --  
10 well, he works on cars, doesn't he?

11 A Yes, sir.

12 Q And so he has a way that he can lift up the  
13 carpet underneath where he puts his feet as the driver?

14 A Yes, sir.

15 Q So if you were to get into his -- well, we'd  
16 have to get out of his vehicle and get up underneath  
17 where the pedals, the brake is and peel it back, and  
18 you'd be able to find the secret compartment?

19 A Yes, sir.

20 Q On this particular night, George had the murder  
21 weapon in his truck?

22 A Yes, sir.

23 Q And y'all rode down there to the downtown area  
24 and ultimately spied this couple on -- somewhere near  
25 Medical University, the Crosstown area?

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1           A     Yes, sir.

2           Q     Okay. And you described that it was Bryan who  
3 got out with the gun?

4           A     Yes.

5           Q     George's gun?

6           A     Yes, sir.

7           Q     And you actually saw Bryan Rivers, Little B,  
8 point that gun at that couple?

9           A     Yes, sir.

10          Q     And he's the one that got the purse?

11          A     Yes, sir.

12          Q     Ryan had gone the other way?

13          A     Yes, sir.

14          Q     He'd gone away from the robbery; correct?

15          A     Yes, sir.

16          Q     All right. So you go back to the Crosstown  
17 area, and Ryan Deleston is calling you on the phone or  
18 calling George and saying, Could you pick me up at the  
19 McDonald's on the Crosstown?

20          A     Yes, sir.

21          Q     That's over there at the foot of the Ashley  
22 River bridges?

23          A     Yes, sir.

24          Q     The Solicitor mentioned that you had some  
25 convictions. But just so that they're clear, I want to

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1 make sure that we are accurate about this. I'm not  
2 going to go back over with you what would be the earlier  
3 convictions from '98, '99. But I'm going to zero in on  
4 the drug convictions just so we're clear about that.  
5 All right?

6 A Yes, sir.

7 Q Is it accurate to say that around 2006 you were  
8 charged with possession of crack cocaine and got  
9 convicted of that?

10 A I was charged with ecstasy. That wasn't crack  
11 cocaine.

12 Q All right. Well, you went to court -- I'm  
13 confusing you, but let's stick on the '06. I'm going to  
14 have to go back to '04. Then we're going -- we're going  
15 to stick with '06 for the moment.

16 On the '06, would it refresh your recollection  
17 to look at the court documents that relate to that when  
18 you went to court in front of the judge?

19 A May I read it?

20 (Document is handed to the witness.)

21 Q (By Mr. Pennington) Just take a moment. You  
22 don't have to answer a question at this point. It's  
23 just a chance for you to refresh your memory and look  
24 this over at the various things and the dates and the  
25 signatures on here and see if that refreshes your

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1 recollection. And when you tell me it has or it hasn't,  
2 just say yes or no, and then I'll frame a question.

3 A This supposed to be ecstasy, not crack cocaine.

4 Q All right. Well, so what you're telling us is,  
5 is that when you went in front of the judge in June of  
6 2006, that the sentencing sheet was filled out  
7 incorrectly, and it was not a possession of crack  
8 cocaine; it was supposed to have been a possession of  
9 ecstasy?

10 A I remember that night. I got locked up because  
11 it was a domestic violence, and they found ecstasy in my  
12 front pocket. I didn't have no crack.

13 Q But somehow or other, you ended up entering a  
14 guilty plea and signing this sentencing sheet that says  
15 possession of crack?

16 A Yes, sir.

17 Q And so that would be your signature right  
18 underneath where it says possession of crack?

19 A Yes, sir.

20 Q Zero to three?

21 A Yes, sir.

22 Q Okay. All right. Let's go back to '04.

23 There, again, you were convicted of possession of crack  
24 cocaine, weren't you?

25 A I don't remember that.

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1 Q Would it refresh your recollection again to do  
2 like we did?

3 A Yes.

4 (Document is handed to the witness.)

5 Q (By Mr. Pennington) Take a moment. You  
6 don't -- I'm not asking you a question. Just see if it  
7 refreshes you to look at the signatures and the charges  
8 and the dates. And let me know when you're ready for me  
9 to ask you a question.

10 (Respite.)

11 Q (By Mr. Pennington) You ready? Okay. Is it  
12 accurate to say that in January of 2004, you entered a  
13 guilty plea of -- for possession of crack cocaine?

14 A Yes, sir.

15 Q Okay. And then turning to 2009, May of 2009,  
16 at that time, were you convicted of possession of  
17 ecstasy or other controlled substance?

18 A I don't remember.

19 Q Okay. Would it help to refresh?

20 (Document is handed to the witness.)

21 Q (By Mr. Pennington) Just take a moment. Take  
22 your time. Dates.

23 A (Moves head up and down.)

24 Q Ready? Okay. So would it be accurate now to  
25 say that you appeared in a courtroom like this in

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1 Charleston County and pled guilty to possession of  
2 ecstasy in May of '09?

3 A Yes, sir.

4 Q Okay. In addition to the exposure that you  
5 might have for a conviction and sentence in this case,  
6 I'm going to take you back before this case to the  
7 summer of 2012, last summer. And you told the police  
8 that you had been going back and forth to jail for the  
9 last few years for child support?

10 A Yes, sir.

11 Q And so you were having some money problems,  
12 weren't you?

13 A Yes, sir.

14 Q In fact, you owed over \$10,000 in child  
15 support?

16 A Yes, sir.

17 Q Okay. And so what had been happening was, is  
18 that DSS had been taking you to court on a civil  
19 contempt for failing to pay child support?

20 A Yes, sir.

21 Q And when you couldn't pay the child support,  
22 you were actually being locked up?

23 A Yes, sir.

24 Q And so you had been summoned -- you had had  
25 that problem in the past. You'd had it in '09 and in

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1 '10 too?

2 A Yes, sir.

3 Q And you were facing that risk and threat of  
4 jail starting about April of 2012, weren't you?

5 A No, sir.

6 Q Weren't you given some Rule to Show Cause  
7 papers in April of 2012? This would have been a couple  
8 of months before this incident --

9 A I got took off child support.

10 Q Well, didn't you get, in fact, taken off child  
11 support after the Marley Lion murder?

12 A No. Before that.

13 Q You owed \$10,000; right?

14 A Yes, sir.

15 MR. PENNINGTON: Court's indulgence, your  
16 Honor.

17 THE COURT: Take your time.

18 Q (By Mr. Pennington) Do you recall appearing on  
19 or about June 20th in this court, family court, where  
20 Judge Garfinkel agreed to close the case? Somehow you  
21 had settled your arrearage, and they closed the case?

22 A Yes, sir.

23 Q All right. And so --

24 (Document is shown to the witness and to  
25 Ms. Wilson.)

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1 Q (By Mr. Pennington) Will it refresh your  
2 recollection to look at the date here?

3 (Document is handed to the witness.)

4 Q (By Mr. Pennington) So that we know that  
5 Marley Lions was killed on June the 16th of 2012; right?

6 A Yes, sir.

7 Q And you were interviewed by Detective  
8 Burckhardt, and you told him just the 'day before, six  
9 days after this, but you told Detective Burckhardt just  
10 the day before on the 20th of June, that you'd gotten  
11 that burden off of you, hadn't you?

12 A Oh, yeah. Yes, sir.

13 Q And you described to the Solicitor that, in  
14 earlier occasions, when you had had a warrant pending  
15 for you out of the family court, that you actually lied  
16 to police, been charged with lying to police, about who  
17 you were to avoid him serving a bench warrant for you?

18 A Yes, sir.

19 MR. PENNINGTON: May I have the Court's  
20 indulgence, your Honor?

21 THE COURT: Take your time.

22 (Mr. Pennington speaks with Mr. Kozelski off  
23 the record.)

24 Q (By Mr. Pennington) Mr. Brown, in your  
25 testimony before the Solicitor, I think that you said



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1 that your plan changed from a plan to rob the people  
2 coming out of Famous Joe's; right? The first plan was  
3 to rob people coming out of Famous Joe's; correct?

4 A Yes, sir.

5 Q And that when the SUV showed up in the parking  
6 lot, then the question was to rob either the young guy  
7 that got out, or if there were more people in the car,  
8 you were prepared to rob whoever was in the car. Did I  
9 understand that right?

10 A Yes, sir.

11 Q Okay.

12 MR. PENNINGTON: Your Honor, at this time, I  
13 would renew my request to go further. Based on the  
14 Court's ruling, I would offer at this time to go further  
15 with regard to the other matters.

16 THE COURT: All right. Based upon the Court's  
17 prior ruling, your motion is denied.

18 MR. PENNINGTON: Thank you, your Honor.

19 I have no further questions.

20 THE COURT: All right. Ms. Wilson?

21 **REDIRECT EXAMINATION**

22 **BY MS. WILSON:**

23 Q Julius, you are a drug dealer?

24 A Yes, ma'am.

25 Q Not a real good one, are you?

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1           A     No, ma'am.

2           Q     You been in and out of prison for it?

3           A     Yes, ma'am.

4           Q     You have to rob people because it doesn't  
5 support you, does it?

6           A     Yes, ma'am.

7           Q     You haven't hidden that fact, have you?

8           A     No, ma'am.

9           Q     And you're looking at up to 30 years even with  
10 this plea agreement; isn't that right?

11          A     Yes, ma'am. Yes, ma'am.

12          Q     Do you think for a minute that you're not going  
13 to prison?

14          A     No, ma'am.

15          Q     You know you're going to prison, aren't you?

16          A     Yes, ma'am.

17          Q     And when you talked to the police initially  
18 before you were arrested, that week after, when you  
19 talked to police, you didn't want them to know you were  
20 involved --

21               MR. PENNINGTON: Objection, your Honor.

22          Leading.

23          A     Yes, ma'am.

24               THE COURT: Hold on one second and let him --  
25 make his ruling.

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1           Overruled as to leading.

2           Q     (By Ms. Wilson) What did you want the police  
3 to know about your involvement in Marley Lion's murder  
4 the week after it happened?

5           A     That I wasn't in it.

6           Q     And when you were first talked to, what did you  
7 want them to know about Little B and Ryan's involvement?

8           A     Nothing.

9           Q     You didn't want them to know about any of it,  
10 did you?

11          A     No, ma'am.

12          Q     It got tighter and tighter?

13          A     Yes, ma'am.

14                MS. WILSON: That's all, your Honor.

15                THE COURT: Mr. Pennington..

16                MR. PENNINGTON: Nothing further, your Honor.

17                THE COURT: All right.

18                Resume back at 9:30, Ms. Wilson?

19                MS. WILSON: Yes, ma'am, that'd be great.

20                THE COURT: 9:30, Mr. Pennington?

21                MR. PENNINGTON: Yes, ma'am.

22                THE COURT: Ladies and gentlemen, this is an  
23 appropriate time for us to stop for the evening. Please  
24 leave -- please take your notebooks with you. The  
25 bailiffs will collect your notepads for the evening.

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1 afternoon. Please be in your jury room so that we can  
2 all begin promptly at 9:30. As you realize, we can't  
3 begin until all of you are in the jury room, and then we  
4 can begin. So please be respectful of each other's  
5 time. Have a wonderful afternoon.

6 Please rise for the jury.

7 (The jury is escorted from the courtroom at  
8 4:35 p.m.)

9 THE COURT: Thank you. Be seated.

10 You may step down. Thank you.

11 (Witness steps down from the witness stand.)

12 THE COURT: Ms. Wilson, is there anything  
13 before we break for the evening?

14 MS. WILSON: No, ma'am. I do -- well, we  
15 resolved the 404(b) issue with Mr. Rivers, so we don't  
16 need to proffer that; correct?

17 MR. PENNINGTON: I'm having a brain freeze.

18 THE COURT: I think you probably -- I think  
19 you --

20 MS. WILSON: I thought you said that the facts  
21 were I agreed to them.

22 MR. PENNINGTON: I believe that issue has been  
23 preserved and that I -- we proffered it and I made my  
24 timely objections. So in terms -- are we talking about  
25 the Chopper?

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1 MS. WILSON: Yes, the Rivers.

2 MR. PENNINGTON: So I believe the issue has  
3 been preserved.

4 THE COURT: So nothing else is needed?

5 MR. PENNINGTON: Not at this time on this  
6 witness. I'll have to go through some of the same  
7 exercise -- you're talking about Rivers now. I'm sorry.  
8 My brain is turned off.

9 MS. WILSON: I think what happened, your Honor,  
10 is before we broke -- and I know it's been a long day --  
11 Mr. Pennington said, I'll proffer what I would elicit  
12 from Mr. Rivers, if Ms. Wilson takes issue with any of  
13 it. I only took issue with some administrative-type  
14 thing and you made your ruling. So I don't believe we  
15 have to proffer with Bryan Rivers, is the bottom line.

16 THE COURT: That was my understanding. So --

17 MR. PENNINGTON: I concur that I think I've  
18 articulated for the Court as clearly as I can what I  
19 believe the evidence would show under our proffer. The  
20 Court has ruled. I will be -- offer that again at the  
21 close of my cross-examination. And that's all that I  
22 have to say about that.

23 THE COURT: All right. All right.. With that,  
24 we will end. Please, again, we'll start as soon as all  
25 jurors are present at 9:30. So the courtroom will be

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1 you would be whether or not you have complied with the  
2 Court's instructions. If you have complied with the  
3 Court's instructions over the evening hour, please raise  
4 your right hand.

5 Please let the record reflect that all 15  
6 jurors have complied with the Court's instructions.

7 Ms. Wilson, call your next witness.

8 MS. WILSON: Bryan Rivers.

9 (The oath is administered by the Deputy Clerk  
10 of Court, and the witness answers as follows:)

11 THE WITNESS: Yes, sir.

12 THE DEPUTY CLERK OF COURT: Thank you, sir.  
13 You may take your seat. Sir, if you would, please state  
14 your first and last name, spelling your last for the  
15 record.

16 THE WITNESS: Bryan Rivers, R-i-v-e-r-s.

17 THE COURT: And, sir, if you could spell your  
18 first name.

19 THE WITNESS: B-r-y-a-n.

20 THE COURT: Thank you.

21 Your witness.

22 **BRYAN RIVERS,**

23 having been first duly sworn by the Deputy Clerk of  
24 Court to tell the truth, the whole truth, and nothing  
25 but the truth, was examined and testified upon his oath

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1 as follows:

2 DIRECT EXAMINATION

3 BY MS. WILSON:

4 Q Mr. Rivers, did you shoot Marley Lion?

5 A No, ma'am.

6 Q Who did?

7 A Ryan Deleston.

8 Q And where is Ryan Deleston?

9 A Right there.

10 Q Which one?

11 A In the white shirt.

12 MS. WILSON: Your Honor, please let the  
13 record reflect that he's identified the Defendant,  
14 Ryan Deleston.

15 THE COURT: Ms. Wilson, just for a record, I  
16 know it's a minor point, but there are two individuals  
17 with a white shirt at the table.

18 Q (By Ms. Wilson) Which guy in the white shirt?  
19 Does he have on a tie?

20 A No.

21 MS. WILSON: Okay. Let the record reflect he's  
22 identified the Defendant.

23 THE COURT: It will. Thank you.

24 Q (By Ms. Wilson) You didn't shoot him. Were  
25 you involved in his shooting?

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1           A     Yes.  
2           Q     Was Julius Brown?  
3           A     Yes.  
4           Q     George Brown?  
5           A     Yes.  
6           Q     How was George Brown involved?  
7           A     He knew about it.  
8           Q     Okay. Whose gun was used?  
9           A     George's.  
10          Q     All right. How about Rayshawn Milligan? Do  
11 you know him?  
12          A     Yes, I know him.  
13          Q     Did he help kill Marley Lion?  
14          A     No.  
15          Q     Have anything to do with it?  
16          A     No.  
17          Q     Now, you said Ryan Deleston is the one who did.  
18 You know Ryan Deleston; don't you?  
19          A     Yes.  
20          Q     And when you got out of prison, where did you  
21 go to live?  
22          A     With Stephanie Brown.  
23          Q     And who else lived there?  
24          A     Ryan Deleston.  
25          Q     Because they were what?

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1       A     Girlfriend and boyfriend.  
2       Q     And you got out of prison when?  
3       A     June 1st, 2012.  
4       Q     Just two weeks before this happened; is that  
5 right?  
6       A     Yes, ma'am.  
7       Q     It wasn't your first time in prison, was it?  
8       A     No, ma'am.  
9       Q     You've been convicted in 2003 of assault with  
10 intent to kill?  
11      A     Yes, ma'am.  
12      Q     And assault and battery of a high and  
13 aggravated nature; isn't that right?  
14      A     Yes, ma'am.  
15      Q     Had a probation violation?  
16      A     Yes, ma'am.  
17      Q     And then got convicted of dealing drugs in 2011  
18 and 2012; is that right?  
19      A     Yes, ma'am.  
20      Q     And when you got out of prison on June 1st of  
21 2012 -- that was for dealing drugs; right?  
22      A     Yes, ma'am.  
23      Q     And when you got out, you went to live with  
24 him?  
25      A     Yes.

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1           Q     Now, when was it, do you recall, that you were  
2 first interviewed about this case? Do you remember?  
3           A     Not exact. Sometime in June.  
4           Q     Before your arrest?  
5           A     Yes.  
6           Q     You weren't arrested until when?  
7           A     July 30th, 2012.  
8           Q     But back closer to the shooting, you had been  
9 interviewed by police?  
10          A     Yes.  
11          Q     And did you tell them everything you knew?  
12          A     No.  
13          Q     Did you tell them about your involvement?  
14          A     No.  
15          Q     Did you tell them about Mr. Deleston's  
16 involvement?  
17          A     No.  
18          Q     Did you want to be involved in the  
19 investigation?  
20          A     No.  
21          Q     And at some point -- you said you got arrested  
22 on July 30th -- you got a lawyer; didn't you?  
23          A     On July 30th?  
24          Q     Excuse me?  
25          A     On July 30th?

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1 Q At some point after that, you got a lawyer?  
2 A Yes.  
3 Q And who's that lawyer?  
4 A Mr. Buchanan.  
5 Q And is that him seated on the first row there?  
6 A Yes, ma'am.  
7 Q Okay. And during that time, the State  
8 approached you about cooperation; is that right?  
9 A Yes, ma'am.  
10 Q Did you want to cooperate?  
11 A No, ma'am.  
12 Q Did you want to plead guilty to voluntary  
13 manslaughter?  
14 A No, ma'am.  
15 Q Did you want to plead guilty to attempted  
16 robbery?  
17 A No, ma'am.  
18 Q You didn't want to be involved, did you?  
19 A No, ma'am.  
20 Q I'm going to show you State's Exhibit 104.  
21 (Document is shown to Defense counsel.)  
22 Q (By Ms. Wilson) Do you recognize State's 104?  
23 A Yes, ma'am.  
24 Q What is that?  
25 A A letter I wrote to you.

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1 Q A letter you wrote?  
2 A Yes, ma'am.  
3 Q Whose handwriting is that in?  
4 A In my handwriting.  
5 Q And you sent that to who?  
6 A Scarlett Wilson.  
7 Q Me?  
8 A Yeah.  
9 Q Is that right?  
10 A Yes.  
11 Q And at that point, when you sent this letter,  
12 we made you a plea offer; is that right?  
13 A Yes.  
14 Q And you wrote this to me about that plea offer?  
15 A Yes.  
16 MS. WILSON: Your Honor, at this time we'd  
17 offer State's 104.  
18 THE COURT: Any objection?  
19 MR. PENNINGTON: May I have a moment, your  
20 Honor?  
21 THE COURT: You may.  
22 (Respite.)  
23 MR. PENNINGTON: I have no objection, your  
24 Honor. Thank you.  
25 THE COURT: State's 104 into evidence without

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1 objection.

2 (State's Exhibit No. 104 is admitted into  
3 evidence.)

4 Q (By Ms. Wilson) Can you read this letter to  
5 the jury that you wrote to me?

6 (Document is handed to the witness.)

7 Q (By Ms. Wilson) What's the date you wrote it?

8 A Date is August 17th, 2013.

9 Q Okay. That was just two --

10 A Couple months.

11 Q Okay. Two months -- six weeks ago; is that --

12 All right. Read that to the jury.

13 A Ms. Scarlett, I writing you to let you know  
14 that I'm going to trial. To my knowledge, y'all try to  
15 goodness to come at me with some bullshit-ass deal for  
16 voluntary manslaughter and attempted armed robbery.  
17 If I get on the stand, it's not going to work,  
18 Ms. Scarlett. Y'all have nothing on me whatsoever.  
19 What do I look like, taking some dude for manslaughter?  
20 That's just saying I killed somebody, when I know that I  
21 didn't kill nobody. Well, I prove that at trial and let  
22 the jury decide.

23 I wrote Mr. Buchanan, telling him the same  
24 thing. I don't know what y'all -- I don't know what  
25 y'all got going on, Ms. Scarlett, but let's go to trial.

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1 See y'all starting October 7th, on course. I told  
2 Mr. Buchanan I need the rest of my motion. There's no  
3 reason my codefendant got all their motions, and all I  
4 got is 150 pages. I need my motions, please, the rest  
5 of it. Bryan Rivers.

6 Q You said: See you in court?

7 A Yes, ma'am.

8 Q On August 17th?

9 A Yes, ma'am.

10 Q Is that right?

11 A Yes, ma'am.

12 Q No deal for you; right?

13 A Yes, ma'am.

14 Q You wrote another letter; did you not?

15 A Yes.

16 (Document is handed to the witness.)

17 Q (By Ms. Wilson) Do you recognize that one?

18 A Yes, ma'am.

19 Q State's 105, you recognize it?

20 A Yes, ma'am.

21 Q What is it?

22 A It's a letter stating that I --

23 Q Don't tell me what's in it yet. But you wrote  
24 that letter to who?

25 A Scarlett Wilson, you.

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1 Q And when did you write it?

2 A September 11th, 2013.

3 MS. WILSON: Okay. Your Honor, we'd offer  
4 State's 105.

5 MR. PENNINGTON: No objection, your Honor.

6 THE COURT: State's 105 into evidence without  
7 objection.

8 (State's Exhibit No. 105 is admitted into  
9 evidence.)

10 Q (By Ms. Wilson) Read that letter to the jury.

11 A Ms. Scarlett, I writing to ask you can I still  
12 take that deal that was offered? I do want the deal.  
13 I'm been thinking about my daughter in my life. That's  
14 why I'm writing to let you know that I want the deal  
15 plea. When y'all say y'all was going to get back with  
16 me, y'all never did. But, yeah, I would like the deal,  
17 Ms. Scarlett. Thank you. -Bryan Rivers.

18 Q So between August 17th and September 11th, you  
19 had a change of heart?

20 A Yes, ma'am.

21 Q What did you learn about between those two  
22 dates?

23 A I started thinking about the hand of one is the  
24 hand of all.

25 Q What do you mean by that? What did that mean

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1 to you?

2 A Like, one man -- all us go down for it for one  
3 man's mistake, all what one man did.

4 Q And State's Exhibit 7, you recognize that?  
5 (Document is handed to the witness.)

6 A Yes, ma'am.

7 Q (By Ms. Wilson) Is that your plea agreement?  
8 A Yes, ma'am.

9 Q Did you plead guilty to voluntary manslaughter?  
10 A Yes, ma'am.

11 Q Killing Marley Lion, you pled guilty to that?  
12 A Yes, ma'am.

13 Q Did you pull the trigger?  
14 A No, ma'am.

15 Q Well, then why did you plead guilty?  
16 A Because South Carolina have that law that hands  
17 of one is the hands of all.

18 Q Were you involved with killing him?  
19 A Yes, I was involved.

20 Q Were you involved in the attempted robbery of  
21 him?  
22 A Yes, ma'am.

23 Q You pled guilty to that too, didn't you?  
24 A Yes, ma'am.

25 Q And you got out from underneath a murder

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1 charge?

2 A Yes, ma'am.

3 Q And what kind of time are you looking at?

4 A From three to 30.

5 MS. WILSON: Your Honor, at this time, we'd  
6 offer State's 7.

7 MR. PENNINGTON: No objection.

8 THE COURT: State's 7 into evidence without  
9 objection.

10 (State's Exhibit No. 7 is admitted into  
11 evidence.)

12 Q (By Ms. Wilson) Up to 30 years; is that right?

13 A Yes, ma'am.

14 Q And what do you have to do in order to keep  
15 that plea agreement?

16 A Tell the truth.

17 Q About whose involvement?

18 A My involvement.

19 Q Before that plea agreement, had you ever told  
20 the truth about your involvement?

21 A No, ma'am.

22 Q And under that agreement, if you tell the  
23 truth, what will happen with your words that you speak?  
24 Will they be used against you?

25 A Can you say that again, please?

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1 Q Under that plea agreement, can we use your own  
2 words against you?

3 A Yes, ma'am.

4 Q We can? Okay. Let me ask you this: You  
5 mentioned Ryan Deleston, living with him after you got  
6 out of prison. Do you know what Ryan Deleston's money  
7 situation was?

8 A Low.

9 Q You don't know?

10 A I said low.

11 Q Low? Okay. What was your money situation?

12 A Low.

13 Q Real low?

14 A Real low.

15 Q And do you remember hanging out with  
16 Ryan Deleston on the night of June 15th, 2012?

17 A Yes, ma'am.

18 Q Where were y'all hanging out?

19 A At first we was at Stephanie Brown house.

20 Q Who else was there?

21 A It was me, Deleston, Julius, George, and  
22 Rayshawn.

23 Q Who's Rayshawn?

24 A Duke.

25 Q Duke. He goes by "Duke"?

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1           A       Yes.

2           Q       When y'all were hanging out that night of the  
3 15th into the morning of the 16th, tell the jury what  
4 y'all were doing.

5           A       Drinking, smoking.

6           Q       Smoking cigarettes?

7           A       Reefer, cigarettes. Just cooling.

8           Q       At some point, did y'all decide to go downtown?

9           A       Yes, ma'am.

10          Q       And why was that? What were you going downtown  
11 for?

12          A       Looking for licks.

13          Q       What is a "lick"?

14          A       Robberies.

15          Q       And did y'all have anybody in mind when you  
16 went downtown?

17          A       No, not exactly.

18          Q       Okay. What were y'all going to use to do this  
19 lick?

20          A       A gun.

21          Q       Whose gun?

22          A       George. George Brown.

23          Q       Where did George Brown have his gun that night?

24          A       Like, tucked, like, in between the -- under the  
25 seat.

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1           Q     Had you seen the gun before y'all went downtown  
2     that night?

3           A     I'm not sure.

4           Q     Okay. When y'all came downtown, tell the jury  
5     where all y'all went.

6           A     Went by the Battery. We went by the Battery,  
7     you know, just to cool off for a sec, chill out. And  
8     then after that, we got in the truck and drove around  
9     going toward, like, right around the College of  
10    Charleston. After that, we went to Rutledge Avenue  
11    area, and George Brown, he parked the truck and  
12    retrieved a gun.

13          Q     How did you get the gun?

14          A     George gave me the gun. I retrieved the gun.

15          Q     Did you see anybody that looked like a good  
16    target?

17          A     I seen this couple, this white couple.

18          Q     What made them look like a good target? They  
19    look like they'd been drinking?

20          A     They look like they were drinking.

21          Q     Who spotted them first?

22          A     If I'm not mistaken, I think George spotted  
23    them.

24          Q     So he pulled over and he parks. How do y'all  
25    decide who's going to get out and do the robbery?

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1           A     They decided.

2           Q     You were going to get out. Who got out with

3   you?

4           A     Deleston.

5           Q     Was he going to help you with the robbery?

6           MR. PENNINGTON: Objection. Leading, your

7   Honor.

8           THE COURT: Overruled. You may answer.

9           Q     (By Ms. Wilson) Was he supposed to help you

10   with the robbery?

11          A     Yeah, he was supposed to.

12          Q     Did he?

13          A     No.

14          Q     What do you mean? How did he not help you?

15          A     He went the other way. He walked -- wherever

16   he went, I didn't see him after that.

17          Q     So what did you do?

18          A     I approached the couple.

19          Q     And?

20          A     I held them at gunpoint, told them to give me

21   everything.

22          Q     Did she give you anything?

23          A     She gave me her purse.

24          Q     Okay.

25          A     A big purse.

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1           Q     Do you remember what color it was?  
2           A     Like beige-looking color.  
3           Q     Did you get anything from the boy, from the  
4   guy?  
5           A     No.  
6           Q     Do you remember about what age these people  
7   were?  
8           A     Late 20s, early 30s, something like that.  
9           Q     Now, when you got out and you robbed these  
10   people, what'd you have on?  What were you wearing?  
11          A     All black.  Black T-shirt, black shorts, black  
12   sneakers.  
13          Q     You didn't have on khakis?  
14          A     No.  
15          Q     Do you wear khakis?  
16          A     No.  
17          Q     Do you know whether or not -- well, after you  
18   stuck them up and got the purse, where did you go?  
19          A     Back to the truck.  
20          Q     And did you see Ryan Deleston there?  
21          A     No, not at the truck.  
22          Q     Well, let me ask you this:  Around that area,  
23   and in your involvement since you've been arrested, have  
24   you seen any videos of that robbery?  
25          A     Repeat the question, please.

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1           Q     Have you seen any videos of you robbing those  
2 people downtown?

3           A     No.

4           Q     No video of that, is there?

5           A     No.

6           Q     And do you know if the police had any  
7 connection with that case to this case before you and  
8 Julius talked?

9           A     No.

10          Q     You told them about that?

11          A     Yes.

12          Q     And you told them who had the gun?

13          A     Yes.

14          Q     And who was that?

15          A     The night of the robbery?

16          Q     The night that those people got robbed  
17 downtown.

18          A     I had the gun.

19          Q     When you got back to the car and Deleston  
20 wasn't there, where'd y'all go?

21          A     We -- we drove off. We hit Spring Street and  
22 headed back towards West Ashley.

23          Q     Did y'all leave Deleston downtown?

24          A     No. We bumped into him at McDonald's..

25          Q     You just bumped into him out of the blue?

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1           A     Yeah. We seen him at the McDonald's.  
2           Q     Was the McDonald's -- is that the one on  
3   Crosstown?  
4           A     Yeah, close to the Battery.  
5           Q     Was that very far from where the robbery of the  
6   people was?  
7           A     I wouldn't say it was that far.  
8           Q     Do you know if the people you robbed called the  
9   police?  
10          A     Yeah.  
11          Q     What makes you think they called the police?  
12          A     I seen a lot of police going towards that area.  
13          Q     When y'all were driving away?  
14          A     Yeah.  
15          Q     So y'all picked up Deleston at McDonald's; is  
16   that right?  
17          A     Yes.  
18          Q     Did you go through the purse that you'd stolen?  
19          A     Yes.  
20          Q     What did you have in there?  
21          A     Nothing much.  
22          Q     Get any cash?  
23          A     About a dollar or two.  
24          Q     Couldn't split that four ways, could you?  
25          A     No.

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1 Q What did y'all decide to do after that?  
2 A We went back to West Ashley.  
3 Q Where did you go when you came back to West  
4 Ashley?  
5 A We drove through Joe's parking lot.  
6 Q Why did you drive through Joe's parking lot?  
7 A Scope the scene. We were planning on robbing  
8 the person coming out of Joe's.  
9 Q Who was planning on robbing the people coming  
10 out of Joe's?  
11 A I say everybody.  
12 Q Rayshawn was going to be in on that?  
13 A No.  
14 Q Why do you say no? What do you mean?  
15 A No, ma'am. It was --  
16 Q Was Rayshawn into these robberies?  
17 A No.  
18 Q Where was he when you went to go rob the people  
19 downtown? Was he still in the truck?  
20 A Yeah, he was still in the truck.  
21 Q And when you rode through Joe's, scoping it  
22 out, who was involved in planning to rob Joe's?  
23 A Me, Deleston, Julius, and George.  
24 Q And what did you see when you went through  
25 Joe's?

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1           A     Nothing, really.  Nobody was out there.  
2           Q     Did that affect your plan to rob it?  
3           A     Can you repeat that?  
4           Q     Did that have any impact or affect on your plan  
5     to rob Joe's, the fact that you didn't see many people  
6     out there?  
7           A     Yeah.  That gave us the idea to continue on  
8     with the robbery.  
9           Q     Okay.  Do you know what time of night it was  
10    when y'all rode through that parking lot?  
11          A     It could have been -- at that time, probably  
12    was a little bit after 2:00 or something.  
13          Q     And where did y'all go after you rode through?  
14          A     Back to Cashew Street, Stephanie Brown house.  
15          Q     The place where you were staying?  
16          A     Yes, ma'am.  
17          Q     And where y'all had been hanging out earlier  
18    that night; is that right?  
19          A     Yeah.  Yeah.  
20          Q     How long did y'all hang out there?  
21          A     Couple of hours.  
22          Q     And at some point, did y'all leave again?  
23          A     Yes, ma'am.  
24          Q     Who left this time?  
25          A     Me, Deleston, and Brown.

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1 Q Which Brown?  
2 A Julius Brown.  
3 Q And where were y'all headed?  
4 A Down the street by Joe's.  
5 Q Did you take anything with you?  
6 A A gun.  
7 Q Who had the gun this time?  
8 A Deleston.  
9 Q Where'd he get it from?  
10 A George Brown.  
11 Q Now, the last we heard, you had the gun and did  
12 a robbery downtown. How did George Brown have the gun  
13 now when you got to Cashew?  
14 A I gave it back to him before we left downtown.  
15 Q Do you know what he did with it when you gave  
16 it back to him?  
17 A Put it under his seat.  
18 Q Did you see George Brown give Deleston the gun?  
19 A At that time, no.  
20 Q You didn't see that transaction?  
21 A No.  
22 Q How do you know Deleston had the gun when y'all  
23 left Cashew?  
24 A Because he was -- he's fixing to tuck it under  
25 his waistline.

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1 Q What'd he have on?  
2 A Like, stripy looking pullover shirt, collared  
3 shirt.  
4 Q And you said he tucked it in his pants, waist?  
5 A Yeah. Like -- I can't remember if he had on  
6 pants or shorts. I think it was --  
7 Q Okay. But he had on a striped shirt?  
8 A Yes. With white Willie Dee's, high top.  
9 Q What's a Willie Dee?  
10 A Air Force 1.  
11 Q Show you State's Exhibit 20, for identification  
12 only. What is this?  
13 A Willie Dee's.  
14 Q That's what a Willie Dee is?  
15 A (Moves head up and down.)  
16 THE COURT: Is that a yes?  
17 THE WITNESS: Yes, ma'am.  
18 THE COURT: Thank you.  
19 Q (By Ms. Wilson) All right. So he had on white  
20 Willie Dee's; striped, collared shirt; but you're not  
21 sure about his pants. He's got the gun. You said y'all  
22 walked down to Joe's. How far of a walk is that?  
23 A I'd say about a quarter of a mile.  
24 Q And what happened when y'all got down to Joe's?  
25 A There's this day care right there. We, like,

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1 kind of fell back behind the day care, behind the white  
2 fence.

3 Q Okay. Why did y'all hang out back there?

4 A Scope the scene to see who come out.

5 Q Did y'all see anything?

6 A At that point, we seen, like, a couple of  
7 people walking out of there.

8 Q Out of where?

9 A Out of Joe's.

10 Q Did y'all hit them?

11 A No. Not at that time.

12 Q Why not?

13 A My man froze up, I guess.

14 Q Okay. Well, what happened next?

15 A That's around the time that Marley Lion pulled  
16 up.

17 Q And you're using the term "Marley Lion" or the  
18 name "Marley Lion." Did you know him?

19 A No, not at that time.

20 Q Okay. You've never met him, have you?

21 A No, ma'am.

22 Q You didn't know his name at that point, did  
23 you?

24 A No, ma'am.

25 Q All right. But now you do?

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1           A     Yes, ma'am.

2           Q     And he pulled up. And while he was pulling up,  
3 what were the Joe's employees doing?

4           A     Getting in their car, bumming a ride.

5           Q     All right. Did y'all ever rob the employees of  
6 Joe's?

7           A     No, ma'am.

8           Q     So that money's gone?

9           A     Yeah. That money -- he let that go.

10          Q     Who let that go?

11          A     Deleston.

12          Q     All right. So what happened next?

13          A     Just when the Marley Lion dude was pulling up,  
14 got out of his car. I guess he went in the back to get  
15 a pillow or something. So Mr. Deleston attentions went  
16 off the Joe's robbery, so now he -- he decided to --  
17 going to rob the white dude.

18          Q     Well, where'd your attentions go?

19          A     My attentions -- I didn't really have no  
20 attentions then.

21          Q     How about Julius; where did his go?

22          A     His is gone too. Our plan was on getting the  
23 money from the Joe's, with the big fish.

24          Q     Big fish, big cash?

25          A     Yeah.

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1 Q You already struck out once that night; right?

2 A (Moves head up and down.)

3 Q All right. So y'all were sitting out there  
4 watching Marley Lion. What happened? Did Julius hang  
5 around?

6 A No. At that time, Julius, he got up and went  
7 around through Chick-fil-A parking lot to --

8 Q For what?

9 A Say he was going to scope the scene out, see if  
10 everything clear.

11 Q Did he do that?

12 A Yes, ma'am.

13 Q What happened when he got back?

14 A He said everything was good. Said he didn't  
15 see anybody else.

16 Q Okay. Who had the gun at this point?

17 A Ryan Deleston.

18 Q Did you ever have the gun at that point?

19 A No, ma'am. He tried to pass me the gun, but I  
20 gave it back. I pushed it off.

21 Q Why did he pass you the gun?

22 A I guess he wanted me to try to do that robbery,  
23 but I don't want nothing to do with that, because my  
24 attentions wasn't on robbing -- robbing that old white  
25 boy. My attention was on getting that man with that big

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1 bag coming out of Joe's.

2 Q So he's trying to push you the gun, and what do  
3 you tell him?

4 A I don't want nothing to do with that. I keep  
5 pushing him back, telling him, You go ahead.

6 Q What happened next?

7 A After that, all three of us got up. I guess he  
8 was going to continue with the robbery. All three of us  
9 got out. Me and Mr. Brown stayed back by the gravel,  
10 where the gravel was. Mr. Deleston went up to the car  
11 and knocked on the window.

12 Q And?

13 A When he got up on the window, the alarm went  
14 off, I guess. So. . .

15 Q Do you know if Deleston set off the alarm or  
16 Marley Lion set off the alarm; do you know?

17 A If you ask me, I think Marley Lion set the  
18 alarm off.

19 Q Well, I am asking you. Do you know?

20 A Huh?

21 Q Do you know which one it was, whether or not  
22 Deleston knocking on the window set it off or Marley set  
23 it off?

24 A Marley set it off.

25 Q What did Deleston do after he set off the



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1 alarm -- after Marley set off the alarm?  
2 A He ran off.  
3 Q Where did he run?  
4 A I guess he was trying to run towards us, where  
5 we was at.  
6 Q Okay. Anybody say anything to Deleston?  
7 A Nothing. Julius stated, Get him, get him, get  
8 him. Not as "get him" as in to shoot the man, but --  
9 Q What else did "get him" mean?  
10 A Continue with the robbery.  
11 Q What did you say to him?  
12 A I didn't say nothing. I'm just looking at him.  
13 Q After Julius said, Get him, get him, get him,  
14 did you -- what did you think Julius meant at that  
15 point?  
16 A To continue with the robbery; to rob the man.  
17 Q Okay. Well, what happened?  
18 A Well, instead of running back and robbing the  
19 man, he started shooting -- he started shooting the man.  
20 Q How many times did he shoot?  
21 A About five, six.  
22 Q Do you know if he hit him? Did you know -- I  
23 know you know now, but at the time, did you know if he  
24 hit Marley Lion when he shot?  
25 A Yeah, I knew he hit him.

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1 Q How did you know he hit him?  
2 A Because of the way he was yelling and  
3 screaming.  
4 Q When you heard that yelling and screaming, what  
5 did you do?  
6 A I turned around and started running.  
7 Q Who else ran?  
8 A Me and Julius ran.  
9 Q What did Deleston do?  
10 A At that time, he was -- he turned around and  
11 started running, but we already had a little stretch on  
12 him. So at a certain point, he, like, caught up with  
13 me. I was looking back to see if he was behind me,  
14 but it seemed like he was catching up. I started  
15 hitting the gates, you know.  
16 Q When you say "hitting the gates," what are you  
17 talking about?  
18 A Like jumping gates, basically trying to get  
19 away.  
20 Q Like fences?  
21 A Yeah, fences.  
22 Q So y'all were running through yards?  
23 A Backyards.  
24 Q And do you know what happened with the gun?  
25 A Well, at this certain point, we got -- we got

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1 in the back of this yard -- this white dude, Jason, his  
2 backyard. And he got, like, a pool. He got a big pool  
3 back there at that time. Deleston, he, like, brushed  
4 the gun off inside the pool and tucked it under the  
5 pool.

6 Q Where did you go after that?

7 A Headed to the front, the front of the yard and  
8 hit Balsam Street and went back to Cashew.

9 Q And who was at Cashew when you got back?

10 A It was me, Deleston, Julius, George, and Duke.

11 Q So Duke and George are still there?

12 A Yeah.

13 Q Why didn't George go down to the robbery with  
14 y'all?

15 A I can't -- I'm not sure. I can't tell you. I  
16 can't answer that.

17 Q Why didn't Duke go?

18 A Duke don't do that type of stuff. He ain't got  
19 nothing to do with no robberies or nothing.

20 Q So they're hanging back at the house?

21 A Uh-huh.

22 Q What did you say to Deleston once y'all got  
23 back to Cashew Street?

24 A I asked him why he did that.

25 Q Okay. Did you say, Mr. Deleston, why did you

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1 do that?

2 A No. I didn't say it like that. I said it  
3 like --

4 Q How did you say it, and what did you say?

5 A I looked at him and I said: Why the fuck you  
6 did that?

7 Q What else did you say to him?

8 A I can't remember nothing at that time. I don't  
9 think I said anything, but asked him why the fuck he did  
10 that.

11 Q What was his response?

12 A I don't know. I think I did something wrong.

13 Q What happened after that? Did Deleston stay  
14 out there with y'all?

15 A No.

16 Q What did he do?

17 A I remember him going in the house. When he  
18 went in the house -- at one point, he come back out and  
19 he smelling like bleach.

20 Q Do you know what he did with his clothes?

21 A At that time, no. At that time, he didn't do  
22 anything with the clothes.

23 Q Did he have on the same clothes when he came  
24 out?

25 A He didn't have any shirt on.

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1 Q So he took his shirt off, but you don't know  
2 what he did with it at that point; is that right?

3 A No.

4 Q Whatever happened with that purse, the purse  
5 that y'all stole downtown?

6 A That got burned.

7 Q Do you know what got burned with it?

8 A I guess clothes, because you could see a little  
9 part of clothes in there.

10 Q And who burned that stuff, the clothes and the  
11 purse?

12 A I say Deleston.

13 Q Why do you say Deleston?

14 A At that time.

15 Q Did you burn it?

16 A No, I didn't burn it.

17 Q Did you see Julius burn it?

18 A No.

19 Q Do you know where it was burned?

20 A Like, toward the back of the house, on the  
21 side.

22 Q The back of Cashew?

23 A No. The back of the house where  
24 Stephanie Brown staying at, like on the side.

25 Q Okay. Now, I want to show you some video.

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1 MS. WILSON: Beg the Court's indulgence.

2 THE COURT: Take your time.

3 (Ms. Wilson speaks with Mr. DuRant off the  
4 record.)

5 Q (By Ms. Wilson) While they're getting the  
6 video set up, Mr. Rivers, let me show you State's 109.  
7 Whose shoes are those?

8 A Those are my shoes.

9 Q Taken off of you when you were arrested?

10 A Yes, ma'am.

11 Q What size shoe do you wear?

12 A A nine.

13 Q A nine?

14 MS. WILSON: Your Honor, we'd offer State's  
15 109.

16 THE COURT: Any objection?

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: State's 109 into evidence without  
19 objection.

20 (State's Exhibit No. 109 is admitted into  
21 evidence.)

22 Q (By Ms. Wilson) And before we get into the  
23 video, show you -- well, let me ask you this: What  
24 happened to your hair?

25 A I cut it.

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1 Q Just recently?  
2 A Couple of months back.  
3 Q Couple of months back?  
4 A (Moves head up and down.)  
5 Q Back in June 2012, your hair didn't look like  
6 you got it today, did it?  
7 A No.  
8 Q You have a little bit of an afro?  
9 A Yes.  
10 Q Show you State's Exhibit 108. Do you recognize  
11 that guy?  
12 A That's me.  
13 Q That's you?  
14 A (Moves head up and down.)  
15 Q Back in 2012?  
16 A Yes, ma'am.  
17 Q That's how you kept your hair?  
18 A (Moves head up and down.)  
19 MS. WILSON: Your Honor, we'd offer State's  
20 108.  
21 THE COURT: Any objection?  
22 MR. PENNINGTON: If I may just have a quick  
23 look?  
24 THE COURT: You may.  
25 (Document is shown to Defense Counsel.)

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1 MR. PENNINGTON: No objection.

2 THE COURT: State's Exhibit 108 into evidence  
3 without objection.

4 (State's Exhibit No. 108 is admitted into  
5 evidence.)

6 MS. WILSON: Your Honor, if I can just publish  
7 this to the jury. We don't have it on the --

8 THE COURT: You may.

9 (State's Exhibit 108 is published to the jury.)

10 THE COURT: Ladies and gentlemen of the jury,  
11 if a piece of evidence has been admitted, that evidence  
12 does go back with you during your deliberations, back  
13 into your jury room.

14 Thank you. You may proceed.

15 MS. WILSON: Your Honor, at this time, we'd  
16 like to play a portion of State's Exhibit 2. If you  
17 turn around -- well, whichever one you want to look at.  
18 It's playing on both screens. We're at 3:09:11, just  
19 for the record.

20 (Video is played.)

21 Q (By Ms. Wilson) Do you recognize that?

22 A Yes, ma'am.

23 Q What is that?

24 A That's George Brown's truck.

25 Q Where?



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1           A     Riding through the parking lot.  
2           Q     Do you remember that?  
3           A     Yes, ma'am.  
4           Q     And what were y'all doing when you were riding  
5 through?  
6           A     Checking out the scene.  
7           Q     No Marley Lion there at that point; right?  
8           A     No, ma'am.  
9                 (Ms. Wilson speaks with Mr. DuRant off the  
10 record.)  
11                 MS. WILSON: Your Honor, we're going to go to  
12 3:33.  
13                 (Video is played.)  
14           Q     (By Ms. Wilson) Where were you at this point  
15 in the night when that car pulled in?  
16           A     Behind the white fence, behind the day care.  
17           Q     Did you ever come out from behind that white  
18 fence?  
19           A     Yeah, eventually.  
20           Q     Okay. Into the Joe's parking lot?  
21           A     No.  
22           Q     So when you say you -- you did come out from  
23 behind the white fence, where did you come out to?  
24           A     The gravel part close to Yew Street.  
25           Q     And why did you go to the gravel part?

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1           A     Because I didn't want to do the robbing on  
2 Marley Lion.

3           Q     What were y'all doing when Marley was going  
4 into the back of his car getting his pillow out?

5           A     Looking through the white fence.

6           Q     About when was it that y'all started talking  
7 about robbing him? At which point?

8           A     Right there.

9           Q     Where was the Joe's money at that point?

10          A     They have gone. They have ride off. I -- I  
11 said I wasn't sure which car they got in, but I think  
12 they already left.

13                (Video is played.)

14          Q     (By Ms. Wilson) So at this point, at 3:36 on  
15 the Mantek video, there's nobody out there but  
16 Marley Lion; right?

17          A     Yes, ma'am.

18          Q     Why didn't y'all hit him then?

19          A     Hesitation. I guess he was hesitating.

20          Q     When this was happening around 3:36, 3:37,  
21 where was Julius? Was he still with y'all?

22          A     All of us was behind the fence.

23          Q     All of you behind the fence?

24          A     (Moves head up and down.)

25          Q     At that point, had anybody been on the Joe's

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1 parking lot side of the white fence?

2 A Can you repeat that?

3 Q At this point, had any of you that night been  
4 on the Joe's parking lot side of the white fence?

5 A On the other side?

6 Q On this side. On the side that Marley Lion's  
7 on. Had y'all been over there yet?

8 A No. We were behind the white fence.

9 Q So Marley couldn't see you?

10 A No.

11 (Video is played.)

12 Q (By Ms. Wilson) Were y'all sitting back there  
13 quietly, just watching?

14 A Yes, ma'am.

15 Q From where you were, could you tell if there  
16 were any other people in the car with Marley?

17 A No, not at that time.

18 MS. WILSON: Your Honor, at this time, we need  
19 to switch DVDs. We will go to 3:44, try to.

20 (Respite.)

21 Q (By Ms. Wilson) So at 3:44:20 on the video, do  
22 you recognize that person?

23 A Yes, ma'am.

24 Q Who's that?

25 A That's Julius.

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1 Q What was he doing?  
2 A Checking out the scene.  
3 Q Did he come report what he saw?  
4 A Yes, ma'am.  
5 Q And that was at 3:44. And then we'll go to  
6 3:56 on State's Exhibit --  
7 MR. DURANT: One.  
8 Q (By Ms. Wilson) -- 1, which is a 12-minute  
9 gap. 3:44, where Julius was, and we're getting ready to  
10 go to 3:56. What happened in that 12 minutes?  
11 A Just sitting behind the fence.  
12 Q Excuse me?  
13 A Just chilling behind the white fence.  
14 Q Who had the gun while you were chilling behind  
15 the white fence?  
16 A Deleston.  
17 (Respite.)  
18 Q (By Ms. Wilson) If you'll look at the video at  
19 3:56:18, who is that?  
20 A Deleston.  
21 Q What's he got on?  
22 A Striped-colored shirt.  
23 Q What kind of shoes?  
24 A White Willie Dee's.  
25 (Video is played.)

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1 Q (By Ms. Wilson) Where did he go when he ran  
2 just then?

3 A Headed towards the gravel part where we was at.  
4 (Video is played.)

5 Q (By Ms. Wilson) If you look at that video,  
6 Mr. Rivers, where were you when that happened?

7 A Standing on the gravel part.

8 Q Did you ever make eye contact with Marley Lion?

9 A No.

10 Q Do you know if he ever even saw you?

11 A No.

12 MS. WILSON: All right. Keep going.

13 (Video is played.)

14 MS. WILSON: That's all I have, your Honor.

15 THE COURT: Mr. Foreperson, this is a perfect  
16 time to take a break. Do y'all wish to have a break  
17 now? You can take it.

18 THE FOREPERSON: I think we're okay.

19 THE COURT: All right. Let me know if you need  
20 any additional breaks.

21 Mr. Pennington.

22 MR. PENNINGTON: Ready to proceed.

23 If your Honor, please, I think I -- may I stay  
24 here? I'm just going to move the podium.

25 THE COURT: However you are comfortable.

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1 MR. PENNINGTON: Thank you.

2 THE COURT: Thank you.

3 THE BAILIFF: The podium is blocking their view  
4 of the Defendant.

5 THE COURT: Ladies and gentlemen of the jury,  
6 sometimes it's because just the way the courtroom is  
7 laid out, Mr. Pennington needs to be in a certain point  
8 so that he is not blocking my view, your view of  
9 anything, and that he has -- is standing back enough.  
10 So we will try to make -- we're trying to make every  
11 effort to accommodate all the issues, but sometimes we  
12 can't accommodate views of everything in the courtroom.

13 MR. PENNINGTON: Maybe if I come a little bit  
14 more forward, your Honor, because actually, it was close  
15 to blocking my view of the witness. So I'm trying to  
16 find a sweet spot.

17 THE COURT: I need you to go back just a little  
18 bit because you're now blocking my view of the jury.  
19 All right. That's perfect for me. Thank you.

20 MR. PENNINGTON: All right. There we go.  
21 Thank you, your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. PENNINGTON:**

24 Q Mr. Rivers, you know Julius Brown; right?

25 A Yes, sir.

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1 Q And you know George Brown?

2 A Yes.

3 Q And George is Julius's cousin?

4 A Yes.

5 Q Okay. Now, you indicated in your -- through  
6 your letter that you wrote, the first letter in August,  
7 of -- well, I'll come back to that.

8 The Solicitor covered with you your record,  
9 your criminal history; correct?

10 A Yes.

11 Q And so you were convicted in 2003 of assault  
12 with intent to kill; correct?

13 A Yes.

14 Q And then in October of 2004, which was a  
15 different date, you went back to court on a different  
16 charge, and that charge was assault and battery of a  
17 high and aggravated nature?

18 A Yes.

19 Q And you pled guilty to that charge?

20 A Yes.

21 Q Okay. And Solicitor mentioned that you went to  
22 prison at that time for that charge; right?

23 A Yes.

24 Q And then you got out at some point between '04  
25 and '08, but in '08 you got violated -- your probation

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1 was violated, and you were sent back to the penitentiary  
2 a second time; correct?

3 A Yes.

4 Q And then in June of 2011, you were convicted of  
5 possession of crack cocaine?

6 A Yes.

7 Q And in August of 2011, you also got convicted  
8 of a charge of false information to police officers?

9 A Yes.

10 Q You essentially were lying to the police?

11 A Yes.

12 Q At that time in 2011?

13 A Yes.

14 Q And then in 2012, you pled guilty and got  
15 sentenced for possession of crack cocaine, second  
16 offense. That would have been February of 2012?

17 A Yes.

18 Q Okay. And you've testified that you got out of  
19 jail two weeks before this incident?

20 A Yes.

21 Q You testified that, in effect, you had no  
22 address; you were just staying with friends?

23 A Yes.

24 Q And so on your booking sheet that we showed you  
25 a moment ago -- that the Solicitor put into evidence, it

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1 lists various addresses for you, doesn't it?

2 A Yes.

3 Q The date of the booking sheet is July 31st,  
4 which was the day that you were arrested in this case?

5 A I was arrested July 30th.

6 Q Okay. And -- but the date that's reflected on  
7 this form, which you might have not have ever really  
8 studied, but the date on the photo is the next day, July  
9 31st.

10 MR. PENNINGTON: May I approach, your Honor.

11 THE COURT: You may.

12 MR. PENNINGTON: Obviously, I already have. I  
13 apologize.

14 (Document is handed to the witness.)

15 Q (By Mr. Pennington) Just take a look. Is that  
16 correct?

17 A Yes.

18 Q Okay. And so on there, it lists other  
19 addresses that you had, because you were -- you had a  
20 daughter downtown, [REDACTED]?

21 A Yes.

22 Q It mentions 631 White Oak Drive. Who stays on  
23 White Oak?

24 A I don't -- I don't know nobody stay on 631.

25 Q Well, was it supposed to be [REDACTED] White Oak? Was

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1   that Dolores Brown's house?  
2       A     That's Dolores Brown's.  
3       Q     Okay. So you were staying there sometimes too;  
4   right?  
5       A     No, I never stayed there.  
6       Q     But you hung out there?  
7       A     Yes.  
8       Q     Okay. With Julius?  
9       A     Yes.  
10      Q     And his family?  
11      A     Yes.  
12      Q     Okay. And since coming out, they became sort  
13   of the people that you hung with; right?  
14      A     Yeah. I -- I raised up around them.  
15      Q     Okay. And you also mention an address at [REDACTED]  
16   [REDACTED] Street.  
17      A     That was my sister house at one time.  
18      Q     Okay. And then there's [REDACTED], which is  
19   Stephanie Brown's house?  
20      A     Yes.  
21      Q     You didn't have a key to Stephanie Brown's  
22   house on Cashew?  
23      A     No.  
24      Q     In other words, you were just -- you would come  
25   and knock and say, Can I crash here tonight?

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1 A Yes.

2 Q Okay. When you were arrested, at the beginning  
3 of your arrest period on July 30th, do you remember that  
4 you were taken to Lockwood station?

5 A Yes, I remember that.

6 Q That's the police station down where  
7 Detective Osborne works, the gentleman that's sitting in  
8 the blue tie right here that's at counsel table?

9 A Yes.

10 Q Do you remember talking to him that day?

11 A Yes.

12 Q And he, at the beginning, as you two talked --  
13 you essentially told Detective Osborne that that whole  
14 evening at Cashew Street -- and I'm talking now about  
15 the 15th into the 16th of June, the night that  
16 Marley Lion was murdered -- that you were essentially  
17 drinking heavily; correct?

18 A Yes.

19 Q And obviously you were off smoking some pot  
20 too?

21 A Yes.

22 Q Marijuana?

23 A Yes.

24 Q And that what you told Detective Osborne was,  
25 is that you essentially drank and drank and passed out

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1 at Cashew Street, and that's what you could remember;  
2 correct?

3 A Yes.

4 Q He didn't believe you, did he?

5 A I don't think so.

6 Q Well, in fact, he told you explicitly, didn't  
7 he, that he believed Ryan Deleston was the killer and  
8 that Ryan was trying to bring you into it. Isn't that  
9 what he told you?

10 A I'm not sure. I can't remember, it was so long  
11 ago.

12 Q Well, think back. Do you remember that -- that  
13 at first it seemed like they really didn't have  
14 anything, and he kept telling you again and again that  
15 Ryan's talking about you and calling your name?

16 A Yes.

17 Q And he kept telling you that, didn't he?

18 A Yes.

19 Q And it really kind of got in your head, didn't  
20 it? It made you a little nervous?

21 A Yeah, at that time.

22 Q And he kept saying, Look, man, this is your  
23 opportunity, because he believed that Ryan was the  
24 killer; right?

25 A I guess that's what he believed.

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1           Q     Well, he told you. He told you that  
2 explicitly. Didn't he say, Ryan's a liar, but he's  
3 trying to set you up?

4           A     Yeah, at that time he did say that.

5           Q     Okay. He said that. And that worried you,  
6 didn't it?

7           A     Somewhat.

8           Q     Okay. So by the end of the conversation, your  
9 story had changed to where you admitted that you were  
10 out there, but your version at that time was -- is that  
11 you were just going for a walk. You weren't part of any  
12 kind of robbery plan; right?

13          A     Yeah, at that time, that's what I told him.

14          Q     But that wasn't the truth. That was a lie,  
15 wasn't it?

16          A     Yeah, it was a lie.

17          Q     Okay. Now, let's go back to earlier on  
18 the -- the same day, but before what we just talked  
19 about. You described that y'all got into George Brown's  
20 Chevy Suburban; correct?

21          A     Yes.

22          Q     And George knew how to go downtown and do some  
23 licks; right?

24          A     Yeah.

25          Q     And George had his secret compartment where he

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1   kept his pistol; right?

2       A     Yes.

3       Q     And this was a pistol you had seen before?

4       A     Yes.

5       Q     You were familiar with it?

6       A     Yes.

7       Q     And you -- that night, you've admitted that you

8   robbed a lady of her purse at about -- well, I mean, you

9   robbed a lady of her purse; correct?

10      A     Yes, that night, but not on --

11      Q     The same night?

12      A     June 15th?

13      Q     June 15th.

14      A     Yes.

15      Q     And into the early morning of the 16th, because

16   it was actually about 2:45 a.m. when the robbery went

17   down, wasn't it?

18      A     Probably around that time.

19      Q     Okay. And then on the way back downtown --

20   from downtown is when George drove you through the Joe's

21   parking lot?

22      A     He drove through Joe's parking lot.

23      Q     He didn't stop? He just drove through, like we

24   just saw in the video; right?

25      A     Yeah.

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1           Q     Now, the Solicitor had you read that letter  
2     that you wrote in August. And that letter in August  
3     said, essentially, you wanted a trial; right?

4           A     Yes.

5           Q     And in your communications, you were telling  
6     her, in no uncertain terms, that you wanted a trial;  
7     right?

8           A     That I was going to trial, yes, I did tell her  
9     that.

10          Q     And that's because, really, in your heart of  
11     hearts, your position here today is, is that you're  
12     really not guilty of voluntary manslaughter? In your  
13     really heart of hearts?

14          A     Yeah. At that time -- at that time, I felt I  
15     wasn't guilty, yeah, of nothing.

16          Q     Well -- and even to this day, it's your  
17     position that you were standing behind the fence, but  
18     when the Joe's thing didn't materialize, when those  
19     people left, you really didn't want anything to do with  
20     anything more; right?

21          A     Right.

22          Q     That's your contention; right?

23          A     Right.

24          Q     That's what you want the jury to believe;  
25     correct?

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1           A     That's the truth.

2           Q     Okay. So you just stood off to the side,

3 right, over by the gravel part?

4           A     Around the time Marley Lion got shot?

5           Q     Yeah.

6           A     Yeah, I was by the gravel.

7           Q     And I think you testified on Direct that you

8 have no more intentions to do a robbery?

9           A     What? After the Joe's thing?

10          Q     Uh-huh.

11          A     Yeah.

12          Q     And you also said that really Julius didn't

13 have any more intentions in doing a robbery; right?

14          A     Correct.

15          Q     And so you were kind of more of like just a

16 bystander?

17          A     Yeah. Kind of like lost the spirit of, you

18 know, even being in that situation.

19          Q     Okay. So you -- you were just merely present?

20          A     Basically.

21          Q     Okay. You really didn't have anything to do

22 with this murder, did you?

23          A     With the murder -- yeah, I -- I was --

24 obviously, I did have something to do with it because I

25 was there.

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1 Q But you really didn't have any intent to see it  
2 go through?

3 A No. My intention was not deceit. Why would  
4 they shoot the white boy they shoot?

5 Q Aren't you saying that --

6 MS. WILSON: Objection, your Honor.

7 THE COURT: What's the basis?

8 MS. WILSON: He's putting words in his mouth.  
9 He just told him what he was thinking and what he was  
10 saying.

11 THE COURT: Overruled. You may continue.

12 MR. PENNINGTON: Thank you, your Honor.

13 Q (By Mr. Pennington) Isn't it fair to say that,  
14 as far as this -- that you've already testified you  
15 really didn't have any desire to go forward with a  
16 second robbery; correct?

17 A What second robbery?

18 Q Of Mr. Lion.

19 A Well, yeah. My intention wasn't to rob  
20 anybody.

21 Q You weren't down with that?

22 A No.

23 Q Okay. And so if you weren't down for the  
24 robbery, then it was completely a surprise and  
25 unforeseeable to you when the shooting occurred. You

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1 didn't see that coming, did you?

2 A No, I did not.

3 Q Okay. So, essentially, that was not  
4 foreseeable. You did not see that coming?

5 A No. I didn't know he was going to do something  
6 like that.

7 Q Okay. So, in effect, you're saying that it  
8 really wasn't something a foreseeable consequence of,  
9 when you first started out going down there to rob  
10 Joe's?

11 A Repeat that.

12 Q So you're saying this really wasn't a  
13 foreseeable kind of thing for you. It came as a  
14 surprise; correct?

15 A Correct.

16 Q But the fact of the matter is, is that you  
17 could have pled not guilty and had a trial today,  
18 couldn't you?

19 A Yes, I could have.

20 Q You could have been sitting right here at this  
21 table and pled not guilty. But you chose to plead  
22 guilty to voluntary manslaughter, didn't you?

23 A Yes, I did.

24 Q Okay. And you pled guilty to voluntary  
25 manslaughter because, as you told the Judge the day you

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1   pled guilty, you are guilty of voluntary manslaughter,  
2   aren't you?

3       A     Yes. The hands of one is hands of all.

4       Q     Okay. So -- but what's changed is this: The  
5   Solicitor said that you sent that second letter, that  
6   second letter, describing that you'd had a change of  
7   heart. That letter was sent September 11th, which would  
8   have been about two weeks after the first letter, two  
9   and a half weeks?

10      A     Yeah, around -- something like that.

11      Q     And you said, I do want the deal. I'm thinking  
12   about my daughter and my life; right?

13      A     Yes, I did.

14      Q     And what you were also thinking about, weren't  
15   you, that Julius Brown had just made a deal and was  
16   going to testify against you?

17      A     No, I was not thinking about that.

18      Q     You weren't concerned that Julius was going to  
19   come in and say what happened?

20      A     No. I --

21      Q     And say that you were down with this robbery?

22      A     I was concerned about myself.

23      Q     You were concerned about yourself?

24      A     (Moves head up and down.)

25      Q     Okay. And concerned about your daughter?

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1           A     Yeah, of course.

2           Q     You want to be with your daughter; right?

3           A     Of course.

4           Q     You love your daughter?

5           A     Very much.

6           Q     And you really don't want to go to the

7 penitentiary for this, do you?

8           A     I know I'm going to the penitentiary.

9           Q     But you don't want to?

10          A     Nobody want to go to prison.

11          Q     And you'd like to see that time cut as low as

12 it could be?

13          A     Yes.

14          Q     And so whereas before, you were looking at, if

15 you had been convicted of this murder of Marley Lion,

16 you were going to have to do no less than 30 years, day

17 for day; correct?

18          A     Could be.

19          Q     But as you know, the Judge has wide discretion

20 in murder cases. And if you had been convicted of

21 murdering, of shooting Marley Lion, you would have

22 gotten, perhaps, up to life in prison without the

23 possibility of parole; right?

24          A     Repeat your question.

25          Q     Well, murder carries between 30 and life,

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1 doesn't it?

2 A Yes. That what murder carry.

3 Q So you knew that?

4 A (Moves head up and down.)

5 Q Correct? Yes?

6 A Correct.

7 Q You have been talking about that with your

8 lawyer?

9 MS. WILSON: Objection, your Honor.

10 THE COURT: What's the basis?

11 MS. WILSON: Privilege.

12 THE COURT: Sustained.

13 Q (By Mr. Pennington) You had been thinking

14 about that a lot?

15 A About --

16 Q What you were facing on a murder charge?

17 A Yeah. Murder carry 30 to life.

18 Q Okay. You were also facing the attempted armed

19 robbery charge?

20 A Yes. I pled guilty to that.

21 Q And possession of a firearm during the course

22 of a violent crime?

23 A No.

24 Q They dropped that?

25 A Yes.

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1           Q     So you were charged with the possession of a  
2     firearm during the course of a violent crime, weren't  
3     you?

4           A     No, I was never -- I was never charged with  
5     that. I was charged with possession of a firearm by a  
6     convicted felon.

7           Q     Okay. But they've dropped that; right?

8           A     Yes.

9           Q     So your deal is, is that you plead to voluntary  
10    manslaughter, attempted armed robbery, and possession of  
11    a firearm with an obliterated serial number?

12          A     Correct.

13          Q     But the best part of the deal is that, even  
14    though you're pleading to those other two charges, you  
15    can't get any extra time for that, right, because  
16    the -- the max you can get is 30 years; right?

17          A     Everything's concurrent. Yes, the max I can  
18    get is 30 years.

19          Q     Okay. Because the max on the manslaughter is  
20    30 years at 85 percent; right?

21          A     Correct.

22          Q     The one thing we are clear on here is that you  
23    don't always dress in all black, do you?

24          A     Yes. The majority of the time, I got on all  
25    black.

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1 Q Well, certainly, you weren't on July 17th,  
2 2012, were you?

3 A I can't remember back to July 27 [sic].

4 Q Do you remember the day that you sold imitation  
5 rock crack cocaine to an undercover officer?

6 A Yeah, I remember.

7 Q You're -- now, let's position this. This is  
8 after the date that Marley Lion was shot to death. And  
9 we're talking about in July, about two weeks before you  
10 got arrested. Do you remember that date?

11 A You said July 17th. You said that was the day  
12 after Marley got killed?

13 Q No, I'm not saying that. Let me back up.  
14 Let's repeat. Marley was killed on the 16th of June,  
15 wasn't he?

16 A Yes.

17 Q And so I'm now talking about July 17th; right?

18 A Uh-huh.

19 Q Two weeks or so before you got arrested, which  
20 would have been on the 30th.

21 A Yes.

22 Q And on that date, you got filmed in Ardmore,  
23 didn't you?

24 A Filmed, as in?

25 Q Filmed, as in your picture taken.

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1           A     By whom?

2           Q     I'm asking you.  Didn't you get filmed that

3   day?

4           A     I don't know.

5           Q     You sold imitation rock?

6           A     I was selling that.  Yeah, I did that.

7           Q     Okay.  And they took your picture that day,

8   didn't they?

9           A     What?  The police?

10          Q     The police.

11          A     I reckon they did.  I didn't see them take no

12   picture.

13          Q     Well, you were wearing a white T-shirt that

14   date, weren't you?

15          A     I can't remember.  That's far -- that's too far

16   back.

17          Q     Would it refresh your recollection to take a

18   look at the picture?

19          A     Yeah, it would.

20                MS. WILSON:  Ashley.

21                (Document is shown to Ms. Wilson.)

22                (Document is handed to the witness.)

23          Q     (By Mr. Pennington)  And I'm not asking you a

24   question.  I'm just giving you a chance to look at these

25   photographs.  Here and then here and then here and then

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1 here, there.

2 (Respite.)

3 Q (By Mr. Pennington) All right. Do these  
4 pictures help you remember more clearly that you were  
5 not dressed in all black that day?

6 A Yeah, not that day.

7 Q You were wearing something that looks like a  
8 white shirt?

9 A Yeah. That's a white T-shirt.

10 Q And that was July 17th?

11 A Yes, sir.

12 Q One more thing about your deal. You're not  
13 going to get charged with that robbery that you did down  
14 on Rutledge Avenue, are you?

15 A I don't know. That's something I -- the  
16 solicitors --

17 Q So they have the say over that?

18 A Yes. I don't know what they going to do with  
19 that.

20 Q Okay. And that could carry another ten  
21 years -- minimum ten to 30; right?

22 A I reckon. I don't know.

23 Q Well, you know that armed robbery in this state  
24 carries a minimum of ten years?

25 A Zero to 20.

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1 Q Armed robbery?

2 A Carries zero to 20, but a minimum of ten years.

3 Q Minimum of ten years. And that's at 85

4 percent?

5 A Yes.

6 Q So that means you have to do no less than eight

7 and a half years for that alone?

8 A Yeah, on ten years at 85.

9 Q And if you didn't behave yourself in the

10 penitentiary, you could have to do the whole ten; right?

11 A I guess that what they do.

12 Q Well, if they took your good time, then you

13 would have to max it out; right?

14 A You only get good time 65 percent.

15 Q I'm talking about an 85 percent case.

16 A Eighty-five percent, you ain't got no good

17 time.

18 Q Now, you identified what I think has been

19 marked as State's Exhibit 20, and you say that this is a

20 Willie Dee?

21 A Yes.

22 Q Okay. You were staying at Steph's house?

23 A Correct.

24 Q Stephanie Brown's house?

25 A Correct.

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1 Q Cashew Street?

2 And it's your testimony that that night after  
3 this whole incident, you claim that Ryan went in and  
4 washed with bleach, because you testified that you could  
5 smell him; right?

6 A Yes.

7 Q And that after that, he was bare-chested. He  
8 didn't have a shirt on?

9 A Correct.

10 Q And it's also your testimony that on the run  
11 away, the flight away from --

12 (Respite.)

13 Q (By Mr. Pennington) I'm going to refer you to  
14 what is State's Exhibit 7. Take a look at this just for  
15 a second and see if you can get oriented as to, perhaps,  
16 Savannah Highway and the Ardmore subdivision.

17 Do you recognize that?

18 A Yes.

19 Q Okay. And do you recognize that this area  
20 right here is where we've been talking about where --  
21 you have pled guilty to voluntary manslaughter of  
22 Marley Lion right in this parking lot?

23 A Yes.

24 Q And, now, you described that on your pathway  
25 out of there after the shooting, you did not run down

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1 Evergreen Street, did you?

2 A No.

3 Q In fact, you took a path that was through the  
4 back of these houses on Balsam Street?

5 A Yes.

6 Q And you put yourself right there where this gun  
7 is washed off and put under Jason's swimming pool;  
8 right?

9 A You asked if I put myself there?

10 Q You were there; right?

11 A Yeah, I seen them do that.

12 Q Uh-huh. You weren't over here on Evergreen  
13 Street. You were right there at the swimming pool where  
14 the gun was hidden?

15 A Yeah.

16 Q Now, during this whole time frame that we're  
17 talking about -- I'm going to go back to the time frame  
18 where y'all are behind the fence -- looking at State's  
19 4 right in this area, if you look straight down -- and I  
20 can even bring it closer if it would help you. Let's  
21 turn it this way. We want our jury to be able to see --  
22 that this is the parking lot -- this is where Marley was  
23 shot, wasn't he? Correct?

24 A Correct.

25 Q And you can see that white fence right here if

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1 you look straight down?

2 A Correct.

3 Q And it's your testimony that you went up to  
4 this area and pretty much stayed behind that white fence  
5 or way over here on this gravel part? The gravel is  
6 this part over here where you can drive through the  
7 parking lot and get to Yew Street?

8 A Yes.

9 Q All right. So in terms of who Marley would  
10 have seen, it's your testimony that that night you never  
11 came out from behind that white fence over into this  
12 parking area that I'm pointing at?

13 A No.

14 Q Speak up a little louder.

15 A No.

16 MR. PENNINGTON: Court's indulgence, your  
17 Honor.

18 THE COURT: Take your time..

19 (Respite.)

20 (Mr. Pennington speaks with Mr. Kozelski off  
21 the record.)

22 MR. PENNINGTON: Your Honor, the only other  
23 thing I would have would be to renew my request to  
24 explore the other matters that we took up *in limine* that  
25 I think the Court is familiar with and which, if.

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1 necessary, I can review with the Court *in camera* again.

2 THE COURT: There's no need to review. I stand  
3 by my initial rulings on the motions. Note your  
4 exception to the ruling.

5 MR. PENNINGTON: Thank you very much, your  
6 Honor. I have no further questions.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MS. WILSON:

10 Q Is that your Willie Dee? Is that your right  
11 white Willie Dee right there?

12 A No, ma'am.

13 Q And when you were arrested in late July of  
14 2012, you weren't living with Ryan anymore, were you?

15 A No.

16 Q You had moved out?

17 A Yes.

18 Q And when you were out there that night behind  
19 that fence -- do you recognize this, State's 23?

20 A Yes.

21 Q What is that?

22 A That's the murder weapon.

23 Q Okay. And you said that at one point behind  
24 that fence, Ryan Deleston handed you this gun?

25 A Yeah. He was trying to pass me the gun.

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1           Q     Did you take the gun and go back to Cashew  
2 Street?  
3           A     No.  
4           Q     What did you do with it?  
5           A     I gave the gun back to him.  
6           Q     You took this gun and put it back in his hands?  
7           A     Uh-huh, pushed it back in his hand.  
8           Q     So that he could do what?  
9           A     Rob Marley Lion.  
10          Q     And do you remember when you got arrested at  
11 the end of July of 2012 and they took you into an  
12 interview room? Do you remember that?  
13          A     Repeat that question.  
14          Q     Do you remember when you got arrested and  
15 Detective Osborne took you into an interview room?  
16          A     Yes.  
17          Q     Do you remember that small room?  
18          A     Yes.  
19          Q     Kind of a blank room?  
20          A     Yes.  
21          Q     No camera like that in there? You don't  
22 remember seeing a camera in there, do you?  
23          A     No.  
24          Q     You don't remember seeing a microphone in your  
25 face, do you?

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1 A No.

2 Q You didn't know you were being recorded, did  
3 you, at that time?

4 A No, not at that time.

5 Q Do you remember what you said when you were  
6 left in that room by yourself at 5:33:15? Do you  
7 remember what you said?

8 A I remember saying something like, I need to  
9 talk to my daughter or something.

10 Q Would it refresh your recollection to see a  
11 summary of what you said at 5:33 in the afternoon in  
12 that room?

13 A Yes.

14 (Document is handed to the witness.)

15 Q (By Ms. Wilson) Remember that?

16 A Yes.

17 Q What was it you said when you were sitting back  
18 in that room and you thought nobody was listening and  
19 nobody was looking? What did you say?

20 A I said: Fuck him. He did shoot that  
21 motherfucker.

22 MS. WILSON: That's all I have, your Honor.

23 THE COURT: Mr. Pennington.

24 MR. PENNINGTON: No further questions, your  
25 Honor.

Reported By:  
Rolayne M. Volpe, CCR, RPR  
Official Court Reporter for the State of South Carolina



State of SC vs Ryan Deleston  
Jury Trial, October 9, 2013  
Volume III of V -- Direct Ex of Rayshawn Milligan

1 THE WITNESS: Rayshawn Milligan,  
2 M-i-l-l-i-g-a-n.

3 THE COURT: All right. Sir, can you please  
4 spell your first name as well?

5 THE WITNESS: R-a-y-s-h-a-w-n.

6 THE COURT: Thank you.

7 Ms. Wilson.

8 MS. WILSON: Thank you, your Honor.

9 **RAYSHAWN MILLIGAN,**

10 having been first duly sworn by the Deputy Clerk of  
11 Court to tell the truth, the whole truth, and nothing  
12 but the truth, was examined and testified upon his oath  
13 as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. WILSON:**

16 Q Rayshawn, you have a nickname?

17 A Yes, ma'am.

18 Q What's that?

19 A Duke.

20 Q Back in 2012, where did you live?

21 A North Charleston.

22 Q Is that where you grew up?

23 A No, ma'am.

24 Q Where did you grow up?

25 A In Ardmore.

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1           Q     Who did you live with when you lived back in  
2     Ardmore back then?  
3           A     With my mother.  
4           Q     All right. At some point, were you adopted or  
5     did somebody else take you to raise?  
6           A     Yes, ma'am.  
7           Q     Who is that?  
8           A     At first, my grandmother.  
9           Q     And then who?  
10          A     And my grandfather.  
11          Q     Where did you live with your grandmother and  
12     granddaddy?  
13          A     They wasn't together at the time.  
14          Q     Well, did they both live in Ardmore?  
15          A     No. Neither one of them.  
16          Q     How old were you when you lived with them, your  
17     grandmomma and then your granddaddy?  
18          A     When I was with my grandmother, I was, like,  
19     nine.  
20          Q     Okay. And then when did you go with your  
21     granddaddy?  
22          A     Like, 13.  
23          Q     And did you stay with him until you moved out  
24     on your own?  
25          A     Yes, ma'am.

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1 Q Was his last name Milligan?  
2 A Yes, ma'am.  
3 Q Now, you have a brother named Julius; is that  
4 right?  
5 A Yes, ma'am.  
6 Q Did he grow up in the house with you and your  
7 grandmomma and then your granddaddy?  
8 A No, ma'am.  
9 Q And how about Stephanie, she's your sister?  
10 A Yes, ma'am.  
11 Q And did she grow up in the same houses with  
12 you?  
13 A No, ma'am.  
14 Q How old are you?  
15 A Twenty-six.  
16 Q And how much older than you is Julius?  
17 A I think seven years.  
18 Q Okay. How about Stephanie? Do you know how  
19 many years older she is?  
20 A Eight or nine.  
21 Q And does Stephanie have a condition?  
22 A Yes, ma'am.  
23 Q What is that?  
24 A She's a diabetic.  
25 Q Does she have any --

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1           A     Yeah.  
2           Q     -- complications from that diabetes?  
3           A     Yes, ma'am.  
4           Q     What are they?  
5           A     Her eye -- her eyes, she's blind, and her leg  
6     been amputated.  
7           Q     But she wasn't blind her whole life; right?  
8           A     No, ma'am.  
9           Q     Can she see to get around her house?  
10          A     In the light, yeah.  
11          Q     Okay. How about to drive? Is she able to  
12     drive?  
13          A     No, ma'am.  
14          Q     Can she cook for herself, things like that?  
15          A     Not really.  
16          Q     Okay. Do you know Stephanie's boyfriend, or  
17     who her boyfriend was in 2012?  
18          A     Yes, ma'am.  
19          Q     Who's that?  
20          A     Ryan --  
21          Q     Ryan who?  
22          A     -- Deleston.  
23          Q     What's the last name?  
24          A     Deleston.  
25          Q     Do you see him here today?

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1       A     Yes, ma'am.

2       Q     Where is he?

3       A     Right over here.

4       Q     What's he got on?

5       A     White shirt.

6       Q     Does he have on a tie?

7       A     No, ma'am.

8            MS. WILSON: Your Honor, please let the record

9 reflect he's identified the Defendant.

10           THE COURT: It will.

11       Q     (By Ms. Wilson) Back in June of 2012, was Ryan

12 living with Stephanie?

13       A     Yes, ma'am.

14       Q     And where did they live?

15       A     On Cashew.

16       Q     They've been living together for a couple of

17 years?

18       A     I'm not too sure. Like --

19       Q     Did you go see them a lot and hang out there?

20       A     Yeah. Every now and then.

21       Q     You weren't over there every day?

22       A     No.

23       Q     Do you know the exact date that Ryan moved in

24 with her?

25       A     No.

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1 Q Okay. But back in June of 2012, they were  
2 living together?

3 A Yeah.

4 Q I want to take you to the night of June 15th  
5 into the morning of June 16th, the night that  
6 Marley Lion was killed. Do you remember that?

7 A Yes, ma'am.

8 Q And at any point on the night of June 15th, did  
9 you have occasion to be at Stephanie and Ryan's?

10 A Yes, ma'am.

11 Q Tell the jury when you went and how you got  
12 there.

13 A At first, I went to my mother's house, and then  
14 I saw George Brown and Julius Brown going by to  
15 Stephanie Brown, my sister's house. And then I left  
16 from my mother's house down there to see what's up over  
17 at -- to see what was up with them.

18 Q Okay. When you talk about going to your  
19 momma's house, where did she live?

20 A White Oak.

21 Q Is that also in Ardmore?

22 A Yes, ma'am.

23 Q And you say you saw George. Is that Big  
24 George?

25 A Yes, ma'am.

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1 Q And your brother, Julius?  
2 A Yes, ma'am.  
3 Q What were they riding in?  
4 A George's black truck.  
5 Q And is that how you got to Cashew?  
6 A No, ma'am.  
7 Q But you knew they were going over to Cashew?  
8 A Yes, ma'am.  
9 Q How did you get over to Cashew?  
10 A Walked.  
11 Q How long of a walk is that from your momma's to  
12 Stephanie and Ryan's?  
13 A About five minutes.  
14 Q Okay.  
15 A Not even.  
16 Q And when you got over there -- well, let me ask  
17 you this: You said you -- where were you living at that  
18 point? Not with your momma; right?  
19 A No, ma'am.  
20 Q Where were you living?  
21 A On Dogwood.  
22 Q Where's Dogwood?  
23 A Down 61.  
24 Q All right. Who were you living with?  
25 A My girlfriend.

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1 Q Who's that?  
2 A April Foreman.  
3 Q Is that April in the courtroom back there?  
4 A Yes, ma'am.  
5 Q So you had just been to visit your momma and  
6 then go visit Ryan and Stephanie?  
7 A Yes, ma'am.  
8 Q Was your girlfriend happy about that?  
9 A No, not really.  
10 Q Okay. What'd y'all do over at Ryan and  
11 Stephanie's?  
12 A Drank, smoke, chill out.  
13 Q Drink what?  
14 A Beers.  
15 Q Smoke what?  
16 A Marijuana.  
17 Q And I believe when you first were talked to by  
18 the police back in August of 2012, you told them you  
19 were pretty drunk that night. Were you?  
20 A Yes, ma'am.  
21 Q And that you didn't know anything because you  
22 had been throwing up?  
23 A Yes, ma'am.  
24 Q Is that true?  
25 A No, ma'am.

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1 Q What part wasn't true?  
2 A Throwing up.  
3 Q How about the part about you not knowing  
4 anything, was that true?  
5 A No, ma'am.  
6 Q So y'all are over on Cashew, drinking, smoking.  
7 At some point do you leave to go downtown?  
8 A Yes, ma'am.  
9 Q Okay. Tell the jury who left and how y'all  
10 left.  
11 A We got in George truck and went downtown.  
12 Q All right. Who was driving?  
13 A George.  
14 Q And who else was in the car?  
15 A Me, George Brown, Julius Brown,  
16 Ryan Deleston Brown, Bryan Rivers, and me.  
17 Q And where was Julius sitting?  
18 A In the front.  
19 Q Where were you sitting?  
20 A In the back.  
21 Q The way, way back?  
22 A Yes, ma'am.  
23 Q Where -- what about Julius and Ryan Deleston?  
24 A Me and Bryan and --  
25 Q I'm sorry. Bryan and Ryan, where were they?

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1       A     They was in, like, the middle.  
2       Q     Did you know why you were all going downtown?  
3       A     We supposed to be going to a friend house.  
4       Q     To do what?  
5       A     Drink.  
6       Q     Well, what happened? Did y'all go there?  
7       A     No.  
8       Q     Why not?  
9       A     Because he called and said he was going on a  
10    date with his wife.  
11      Q     When did that call come in?  
12      A     After we got downtown.  
13      Q     So did y'all head on back to West Ashley?  
14      A     Not exactly.  
15      Q     Well, what exactly did you do?  
16      A     George Brown was, like, he know where a lick  
17    was at. And we ride around somewhere downtown, and we  
18    end up on a dark street.  
19      Q     A dark street?  
20      A     Yes, ma'am.  
21      Q     Do you know if George had a gun?  
22      A     No, ma'am.  
23      Q     What happened on this dark street?  
24      A     We pulled over to the side, and Bryan Rivers  
25    and Ryan Deleston get out.

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1 Q Yeah?

2 A And then --

3 Q Did you see what happened next?

4 A I saw when Bryan Rivers came back with a

5 pocketbook.

6 Q You didn't see what happened while he was gone?

7 A No.

8 Q You don't know what he did?

9 A No, ma'am.

10 Q Do you know what Ryan Deleston did?

11 A No, ma'am.

12 Q So after they get out of the car on this dark

13 street, the next thing you see is?

14 A Bryan Rivers coming back with a purse.

15 Q Did you see Ryan?

16 A No, ma'am.

17 Q When was the next time you saw Ryan?

18 A When we was leaving.

19 Q Leaving where?

20 A From off that street. And we saw Ryan. I

21 think he called and said he was by McDonald's.

22 Q Do you know who Ryan called?

23 A I think it was George.

24 Q Didn't call you?

25 A No.

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1           Q     Well, after Ryan and Bryan got out to do this  
2     lick, do you know if the police were called?  
3           A     No, ma'am.  
4           Q     Did you ever see any police?  
5           A     No, ma'am.  
6           Q     After George gets this call, did you see Ryan  
7     again?  
8           A     Yes, ma'am.  
9           Q     And where?  
10          A     By McDonald's.  
11          Q     What happened at McDonald's?  
12          A     He got in the truck, and we went back to West  
13     Ashley.  
14          Q     Do you know what was going on with the purse  
15     that Bryan Rivers had stolen?  
16          A     No, ma'am.  
17          Q     Do you know if they went through it?  
18          A     Yes, ma'am, they went through it.  
19          Q     Who went through it?  
20          A     Bryan Rivers.  
21          Q     And who else? Anybody?  
22          A     Deleston.  
23          Q     Any cash in that purse?  
24          A     No, ma'am.  
25          Q     How do you know?

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1       A     I don't.

2       Q     Did you go through it?

3       A     No, ma'am.

4       Q     Did you hear them talking about it?

5       A     Yes, ma'am.

6       Q     Well, who said what about the purse?

7       A     When Ryan Deleston get back in the car, he

8       asked anything was in it. And Bryan said, No, there

9       ain't nothing in it.

10      Q     After that, when you're going back to West

11     Ashley, was there any more talk about doing robberies?

12      A     Yeah.

13      Q     What talk was that?

14      A     Ride by Joe's and see if they was busy or not.

15      Q     Who wanted to ride by Joe's?

16      A     George Brown, Julius Brown, Ryan Deleston,

17     Bryan Rivers.

18      Q     How about you?

19      A     No. No, ma'am.

20      Q     Did it matter to you if you went by Joe's or

21     not?

22      A     No, ma'am.

23      Q     Did y'all go by Joe's?

24      A     Yes, ma'am.

25      Q     And did anybody make any comments when you went

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1 by there?

2 A Yes, ma'am.

3 Q Who?

4 A George Brown --

5 Q What did George have to say?

6 A -- and Julius Brown.

7 Q George and Julius?

8 A Yes, ma'am.

9 Q What did they have to say?

10 A They're not busy.

11 Q Is that a good thing or a bad thing, if you

12 know?

13 A I guess it was a good thing.

14 Q Where did y'all go after you cut through Joe's?

15 A To Cashew.

16 Q Back to Ryan and Stephanie's?

17 A Yes, ma'am.

18 Q Well, I think I skipped something. When Bryan

19 got out of the car downtown to do the robbery, did he

20 have anything?

21 A He had a pocketbook.

22 Q No. Before he did the robbery, did he have

23 anything?

24 A Not that I know of.

25 Q You never saw a gun?

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1           A       Not then, no, ma'am.

2           Q       Okay. All right. So you're back at Cashew  
3 after the purse and after riding through -- riding  
4 through Joe's, get back to Cashew. What do you do this  
5 time when you're back at Cashew?

6           A       Stop, drink some more.

7           Q       Smoke anymore?

8           A       Yes, ma'am.

9           Q       Did everybody hang out for the rest of the  
10 night?

11          A       Yes, ma'am, for awhile.

12          Q       Okay. Did anybody leave?

13          A       Yes, ma'am.

14          Q       Who?

15          A       Ryan Deleston, Julius Brown, and Bryan Rivers.

16          Q       Did you know where they were going?

17          A       Yes, ma'am.

18          Q       How did you know?

19          A       Because I heard them talking about it.

20          Q       About what?

21                 MR. PENNINGTON: Objection as to unattributed  
22 hearsay.

23                 THE COURT: Rephrase your question.

24          Q       (By Ms. Wilson) Who did you hear talking about  
25 where they were going, specifically?

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1           A     Julius Brown, Ryan Deleston, and Bryan Rivers.  
2           Q     What did Ryan Deleston say about where they  
3 were going, if you remember?  
4           A     I really don't remember.  
5           Q     Okay. Do you remember what Julius Brown said  
6 about where they were going?  
7           A     I really don't know.  
8           Q     Okay. How about Bryan Rivers?  
9           A     Don't remember.  
10          Q     But the three of them were talking?  
11          A     Yes, ma'am.  
12          Q     And do you know if at that point any of the  
13 three of them had a gun?  
14          A     Yes, ma'am.  
15          Q     And who had a gun?  
16          A     Ryan Deleston.  
17          Q     What gun did he have?  
18          A     George Brown one.  
19          Q     Where did he get it or how?  
20          A     I guess from George Brown.  
21          Q     Did you see George give him the gun?  
22          A     He got it out the car, out the truck.  
23          Q     Who did? Who?  
24          A     Ryan Deleston.  
25          Q     Did you see him get it out of the truck?

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1       A     Yes, ma'am.

2       Q     All right. When was that?

3       A     Like, before they went.

4       Q     What did he do with it after he got it?

5       A     Put it on his hip.

6       Q     What do you mean by that, when he put it on his  
7 hip?

8       A     Put it on -- put it on the side.

9       Q     Do you remember what he had on that night?

10      A     Yes, ma'am.

11      Q     What was that?

12      A     At first, he had on a white shirt --

13      Q     Uh-huh.

14      A     -- some blue pants and some white shoes.

15      Q     Uh-huh. Did he change?

16      A     Yes, ma'am.

17      Q     Into what?

18      A     A black shirt.

19      Q     Did he change his shoes?

20      A     No, ma'am.

21      Q     When the three of them left, what did you and  
22 George do?

23      A     Stayed at the house.

24      Q     Doing what?

25      A     Sitting there.

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1 Q And were y'all sitting inside or outside?  
2 A Sitting outside drinking a beer.  
3 Q In the carport?  
4 A Yes, ma'am.  
5 Q Did y'all have any music on?  
6 A Yes, ma'am.  
7 Q Did you know of anything that happened -- could  
8 you hear anything happen after the three of them left?  
9 A No, ma'am.  
10 Q Do you know about how long they were gone?  
11 A About 15, 20 minutes.  
12 Q And what happened when they got back?  
13 A They were arguing.  
14 Q Who was arguing?  
15 A Ryan Deleston and Julius Brown and  
16 Bryan Rivers.  
17 Q Do you remember what Bryan Rivers said to  
18 Ryan Deleston?  
19 A You stupid. You shouldn't have shoot that guy.  
20 Why you shoot that -- shoot that guy?  
21 Q What did Julius Brown say to him?  
22 A You -- same. Basically, the same thing. But  
23 in curse --  
24 Q In what?  
25 A Curse words.

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1           Q     What were those curse words? I know you might  
2 not want to say it here, but they need to hear exactly  
3 what he said.

4           A     You dumb motherfucker. Why did you  
5 shoot -- shoot the guy?

6           Q     Who said that?

7           A     Julius and Bryan -- Julius Brown and  
8 Bryan Rivers.

9           Q     Both of them?

10          A     Yeah.

11          Q     Did Ryan say anything?

12          A     Yeah.

13          Q     What did he say?

14          A     He was, like, damn, that shit crazy. I know I  
15 about to go to jail.

16          Q     Did he stay out there with y'all?

17          A     No, ma'am.

18          Q     Where did he go?

19          A     He went in the house.

20          Q     Do you know what he did in the house?

21          A     Yes, ma'am.

22          Q     What?

23          A     Changed his clothes.

24          Q     And do you know what he did with his hands?

25          A     Washed them.

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1           Q     Why do you say that?

2           A     Because he came out drying them off.

3           Q     And when you say he changed his clothes, when

4 he came out this time, do you remember what he had on?

5           A     He had on, like, shorts and a white shirt.

6           Q     And did he and Julius stay at the house for the

7 rest of the night?

8           A     No, ma'am.

9           Q     Do you know where they went?

10          A     They went back down the street.

11          Q     Did you go with them?

12          A     No, ma'am.

13          Q     Do you know what they got while they were gone?

14               MR. PENNINGTON:  Objection; hearsay, unless he

15 can -- has independent knowledge.

16               MS. WILSON:  That's what I'm asking.

17               THE COURT:  I'm going to overrule your

18 objection based upon hearsay to that particular

19 question.

20               You may answer.  Do you need her to repeat it?

21 Do you need her to repeat her question?

22               THE WITNESS:  Yes, ma'am.

23               THE COURT:  Thank you.

24          Q     (By Ms. Wilson)  Did you see what they got when

25 they -- when they left?

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1           A       They came back with -- with, I guess,  
2   the -- well, they came back with the gun.

3           Q       Okay. You said "I guess." Did you ever see  
4   the gun?

5           A       Yes, ma'am.

6           Q       Okay. Well, when did you see it?

7           A       When they came back.

8           Q       What did they do with it?

9           A       Tried to give it to George, and George Brown  
10   was, like, I don't want that. It's yours now.

11          Q       Who tried to give it to George?

12          A       Deleston.

13          Q       And George says what?

14          A       I don't want that. It's yours now.

15          Q       How was it -- you said that while -- while  
16   Julius and Bryan and Ryan were gone, you didn't have any  
17   idea that something had happened?

18          A       No, ma'am.

19          Q       What was it that gave you the clue that  
20   something bad had happened?

21          A       The way they had looked when they came back.

22          Q       Okay. And then you saw them arguing?

23          A       Yes, ma'am.

24          Q       Do you know what happened with the gun? You  
25   said he tried to give it to George. What happened with

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1 it?

2 A He wrapped it up and put it in, like, the  
3 little closet in the back, like, the little storage  
4 closet.

5 Q Do you know what it was wrapped up in?

6 A I think a towel.

7 Q And do you know what he -- what happened with  
8 the purse and the gun -- with the purse and  
9 Ryan Deleston's clothes?

10 A Got burn.

11 Q Who burned them?

12 A Ryan Deleston.

13 Q Do you know when he burned them?

14 A Right after he put the gun up.

15 Q But that night?

16 A Yes, ma'am, that night.

17 Q Do you know where he burned it?

18 A In the back of my sister's house,  
19 Stephanie Brown.

20 Q On Cashew Street?

21 A On Cashew Street.

22 Q Did you go back there and watch him burn them?

23 A No, ma'am.

24 Q Well, how did you know that he did that?

25 A I could have smelled the smoke.

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1 Q Did you see him walk back there?

2 A Yes, ma'am.

3 Q What did it look like he had in his hands?

4 A Clothes.

5 Q All right. Rayshawn, we're going to play  
6 State's Exhibit No. 1, which is going to be on that  
7 screen behind you and that screen there.

8 MS. WILSON: Go to 3:44.

9 (Ms. Wilson speaks with Mr. DuRant off the  
10 record.)

11 Q (By Ms. Wilson) While they're getting that set  
12 up, when you mentioned that -- I think you said they  
13 went to get the gun or they left, who left that night  
14 after the robbery at -- at Joe's?

15 A Ryan Deleston and Julius Brown.

16 Q So at first, all three left?

17 A Yes, ma'am.

18 Q All three came back?

19 A Yes, ma'am.

20 Q Then later, just two left?

21 A Yes, ma'am.

22 Q And that was Ryan and Julius?

23 A Yes, ma'am.

24 Q Okay. And I think you said that the gun was  
25 put in that storage room on the carport; right?

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1           A     Yes, ma'am.

2           Q     Who was the one who wrapped it up and put it  
3 back there?

4           A     Ryan.

5           Q     After he tried to give it to who?

6           A     George.

7           Q     Do you know if, at some point later, Ryan did  
8 give the gun to George?

9           A     No, ma'am.

10          Q     You never saw it again?

11          A     No, ma'am.

12                MS. WILSON: All right. If we -- your Honor,  
13 if we can play State's 1 at 3:44.

14                (Video is played.)

15          Q     (By Ms. Wilson) Do you know who that is?

16          A     Yes, ma'am.

17          Q     Who is it?

18          A     Julius Brown.

19          Q     How do you know?

20          A     I can tell by his walk --

21          Q     You remember seeing him that night?

22          A     -- and what he had on that night.

23          Q     And what he had on that night?

24          A     Yes, ma'am.

25                MS. WILSON: Okay. If we could go to 3:56:18.

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1 Q (By Ms. Wilson) And while they're getting  
2 there --  
3 MS. WILSON: Can you pause it?  
4 Q (By Ms. Wilson) Do you know who that is?  
5 A Yes, ma'am.  
6 Q How do you know?  
7 A Because I saw him before he went.  
8 Q And? And what?  
9 A What -- the clothes that he have on.  
10 Q Let me ask you this: Between Julius and  
11 Bryan Rivers and Ryan Deleston, who's bigger?  
12 A Ryan Deleston.  
13 Q And how tall are you?  
14 A Five-two.  
15 Q So you recognize those clothes?  
16 A Yes, ma'am.  
17 Q Now, after the gun was put up --  
18 MS. WILSON: You can take that down.  
19 Q (By Ms. Wilson) After the gun was put up and  
20 everybody was still back at Cashew, did you stay there  
21 for the rest of the night?  
22 A Yes, ma'am.  
23 Q Why?  
24 A Because I asked George Brown to take me home,  
25 but he says his taillights was out, and he didn't want

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1 to ride with his taillights being out.  
2 Q Now, his taillights -- he didn't mind riding  
3 downtown, did he?  
4 A No, ma'am.  
5 Q Was his taillights out then?  
6 A No, ma'am.  
7 Q Do you know when they went out?  
8 A I guess when we get back to Cashew.  
9 Q All right. So you wanted to go home. Why were  
10 you ready to go home?  
11 A Because of what had happened downtown.  
12 Q What was going on with your girlfriend?  
13 A And she was calling me and telling me that I  
14 have to come home because she have to work in the  
15 morning.  
16 Q She wasn't too happy?  
17 A Yes, ma'am.  
18 Q Still not too happy?  
19 A Yes, ma'am.  
20 Q How late did you stay there?  
21 A Until about 6:00.  
22 Q 6:00 in the morning?  
23 A Yes, ma'am.  
24 Q Do you know how late everybody else stayed  
25 there?

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1       A     Until about 6:00.  
2       Q     How did Julius get home?  
3       A     George Brown.  
4       Q     And you got home with George?  
5       A     Yes, ma'am.  
6       Q     And Bryan Rivers, did he stay?  
7       A     Yes, ma'am.  
8       Q     Because that's where he was staying; right?  
9       A     Yes, ma'am.  
10            (Ms. Wilson speaks with Mr. DuRant off the  
11 record.)  
12            MS. WILSON: Beg the Court's indulgence.  
13            THE COURT: Take your time.  
14            (Respite.)  
15            (Ms. Wilson speaks with Mr. DuRant off the  
16 record.)  
17            MS. WILSON: That's all I have, your Honor.  
18            THE COURT: Mr. Pennington.  
19            MR. PENNINGTON: Please the Court, your  
20 Honor.

21                                    **CROSS-EXAMINATION**

22 **BY MR. PENNINGTON:**

23       Q     Mr. Milligan you go by the nickname "Duke"?  
24       A     Yes, sir.  
25       Q     You also go by -- people sometimes call you

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1 Rayshawn Brown, don't they?  
2 A No, sir.  
3 Q You're never referred to as Rayshawn  
4 Brown Milligan?  
5 A Yeah. That's my name.  
6 Q Okay. So your name is Rayshawn Brown  
7 Milligan?  
8 A Yes, sir.  
9 Q So you're a Brown?  
10 A Yes, ma'am -- I mean, yes, sir.  
11 Q That's all right. Is your mother Dolores?  
12 A Yes, ma'am -- I mean, yes, sir.  
13 Q That's all right. You're doing fine. Relax.  
14 And so Dolores is Julius' momma?  
15 A Yes, sir.  
16 Q Julius is your brother, your older brother?  
17 A Yes, sir.  
18 Q Stephanie's your sister?  
19 A Yes, sir.  
20 Q She lives on Cashew?  
21 A Yes, sir.  
22 Q And you have children yourself, don't you?  
23 A Yes, sir.  
24 Q With April?  
25 A Yes, sir.

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1 Q How many children do you have?  
2 A Two.  
3 Q You love those kids?  
4 A Yes, sir.  
5 Q You look after those kids sometimes, don't you?  
6 A Yes, sir.  
7 Q You're concerned about their future?  
8 A Yes, sir.  
9 Q Now, the story that you're giving us today was  
10 not the story that you gave the day after your brother  
11 was arrested. Do you remember being called in on August  
12 the 1st of 2012 to the police station?  
13 A Yes, sir.  
14 Q And you talked to these detectives, these two  
15 men sitting right here, Detective Burckhardt and  
16 Detective Osborne from the City police?  
17 A Yes, sir.  
18 Q And you had a lengthy conversation with them,  
19 didn't you?  
20 A Yes, sir.  
21 Q In that lengthy conversation, you told them  
22 that at 3:00 a.m. you were drunk; right?  
23 A Yes, sir.  
24 Q And that when they asked you specifically to  
25 focus in on key issues, like, did you see a gun, you

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1 told them that you didn't see a gun that night?

2 A Yes, sir.

3 Q And, in fact, you didn't hear any discussion  
4 about a lick?

5 A Yes, sir.

6 Q You told the Detectives explicitly that you  
7 couldn't remember the clothes that Ryan had on; right?

8 A Yes, sir.

9 Q And you told them, though, that you thought  
10 that Bryan Rivers had on dark clothes, didn't you?

11 A No, sir.

12 Q Didn't -- on tape, you remember this -- in this  
13 interview room that you were with the detectives?

14 A Yeah.

15 Q Don't you recall telling them, when they said,  
16 Well, try to think. What kind of clothes did  
17 Bryan Rivers have on? And you said, I think he had on  
18 dark clothes?

19 A I don't really remember that.

20 (Respite.)

21 Q (By Mr. Pennington) It came after the part  
22 where you were telling them that Julius was your  
23 brother, and they told you that they were looking to see  
24 if you had information that could help Julius?

25 A Yeah.

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1           Q     And what you saw that night could be very  
2 important?

3           A     Yeah.

4           Q     And that you kept trying to say, Look, I can't  
5 remember anything that was said, but that you thought  
6 Bryan had on dark clothes?

7           A     I don't remember. I don't remember --

8           Q     You don't remember?

9           A     -- saying that.

10          Q     Do you recall describing that Julius was  
11 wearing slippers?

12          A     Yeah.

13          Q     So you remember that?

14          A     Yeah.

15          Q     You remember telling them that Julius had on a  
16 white tank top?

17          A     Yes, sir.

18          Q     And you remember telling them that you're not  
19 too sure about what Ryan was wearing?

20          A     Yes, sir.

21          Q     So you remember telling them that, but you  
22 don't remember telling them that he had on dark clothes?

23          A     Yes, sir.

24          Q     Let's turn to -- you told the detectives  
25 that -- well, Detective Osborne, who's the dark-haired

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1 man with glasses seated at counsel table, do you  
2 remember him during that interview? He was there in  
3 that interview?

4 A Yes, sir.

5 Q Do you remember how he kept asking you over and  
6 over, if you didn't hear Ryan and Bryan talking about  
7 their plans that night, and you said, No, I couldn't  
8 remember?

9 A Yes, sir.

10 Q And he kept suggesting to you that it really  
11 might help your brother, Julius, if you heard more of  
12 what was said?

13 A Yes, sir.

14 Q Now, the one thing that we all agree on is that  
15 you did get in the truck to go downtown, down to ride  
16 around and look for a lick; right?

17 A I didn't -- I wasn't trying to go -- at a  
18 friend's house downtown.

19 Q And you were in the truck where -- when George  
20 started talking about doing a lick?

21 A Yes, sir.

22 Q But you honestly, honestly didn't have anything  
23 to do with that?

24 A Yes, sir.

25 Q You were sort of just along for the ride, but

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1 you weren't down with any robbery?

2 A Yes, sir.

3 Q And you've not been charged with any robbery?

4 A Yes, sir.

5 Q But what you do know is that on that same night  
6 at Marley Lion's murder, that Bryan Rivers got out and  
7 came back with a purse?

8 A Yes, sir.

9 Q And that, after that, as y'all are headed back  
10 to West Ashley, you pick up Ryan Deleston at the  
11 McDonald's in the Crosstown?

12 A Yes, sir.

13 Q Now, you have a relationship with Bryan Rivers,  
14 don't you?

15 A I met him in school.

16 Q I'm not talking about back then. I'm talking  
17 about now.

18 A Like friend?

19 Q Yeah.

20 A Yeah.

21 Q Okay. And you've visited him at the county  
22 jail, haven't you?

23 A Yes, sir.

24 Q Since he's been locked up on this charge?

25 A Yes, sir.

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1           Q     You went out of your way and went up and saw  
2 him in April; right?

3           A     Yes, sir.

4           Q     April of this year, 2013?

5           A     Yes, sir.

6           Q     While this case was pending?

7           A     Yes, sir.

8                 MR. PENNINGTON: Court's indulgence a moment,  
9 your Honor.

10                THE COURT: Take all your time.

11                (Respite.)

12                MR. PENNINGTON: I have no further questions,  
13 your Honor.

14                THE COURT: Ms. Wilson.

15                                **REDIRECT EXAMINATION**

16 **BY MS. WILSON:**

17           Q     Rayshawn, Mr. Pennington asked you about your  
18 interview with Detective Osborne after your brother was  
19 arrested. Do you recall what you told the officers that  
20 day about a fire or about things being burned?

21           A     Yes, ma'am.

22           Q     What did you tell him that day on the --

23                 MR. PENNINGTON: Objection, your Honor. This  
24 is beyond the scope of my Cross and -- beyond the scope.

25                 THE COURT: Let her finish her question and

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1 then -- go ahead.

2 MS. WILSON: I'm asking what he was -- what he  
3 told them on the day after he was arrested.  
4 Mr. Pennington asked about that interview.

5 MR. PENNINGTON: But nothing about any kind of  
6 fire or any --

7 MS. WILSON: Exactly.

8 THE COURT: All right. Counsel, do not argue  
9 with each other. Overruled.

10 You may ask that question. You may need to  
11 repeat it for the witness.

12 Q (By Ms. Wilson) On August 1st, the day after  
13 Julius, your brother, was arrested, what did you tell  
14 Detective Osborne about a fire?

15 A I was burning a box.

16 Q That you were?

17 A Yeah.

18 Q And what else? What else was burned?

19 A Leaves.

20 Q Okay.

21 A And, like, a cloth.

22 Q And what?

23 A Like, a cloth.

24 Q Okay. What about Ryan Deleston? What did you  
25 tell them he burned?

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1           A     They didn't ask me about what Ryan Deleston  
2 burned.

3           Q     And you mentioned that on -- Mr. Pennington  
4 asked you about Deleston -- I'm sorry -- about your  
5 visiting Julius and Bryan in jail. And you have,  
6 haven't you?

7           A     Yes, ma'am.

8           Q     And you've visited Ryan Deleston in jail too?

9           A     Yes, ma'am.

10          Q     All three of them?

11          A     Yes, ma'am.

12          Q     Your friends?

13          A     Yes, ma'am.

14          Q     And back on August the 1st of 2012, when you  
15 were interviewed by the police, who were you trying to  
16 protect?

17          A     All of them.

18          Q     In what way? How were you going to protect  
19 them?

20          A     By not telling what I really knowed.

21          Q     Okay. And so when you talked to the police,  
22 you held back?

23          A     Yes, ma'am.

24          Q     You told them about a fire?

25          A     Yes, ma'am.

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1 Q And what about the gun? Do you remember  
2 talking with them about the gun?

3 A Yes, ma'am.

4 Q And what did you tell them about the gun?

5 A I told that I saw that gun before.

6 Q And who had it when you saw it before? Who did  
7 you tell?

8 A George Brown.

9 Q Okay. How about Ryan Deleston? Do you  
10 remember telling them that you had seen him with it?

11 A Yes, ma'am.

12 Q All right. I'm going to show you State's 23.  
13 Do you recognize that?

14 A Yes, ma'am.

15 Q Whose is that?

16 A George Brown's.

17 Q Who had it the last time you saw it?

18 A Ryan Deleston.

19 Q Okay. And when you last saw Ryan Deleston that  
20 morning, did he have on a shirt?

21 A Yes, ma'am.

22 Q Okay. What color shirt?

23 A White.

24 Q What had happened to his other shirt?

25 A He burned it.

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1 Q And did you tell the police that on August the  
2 1st?

3 A No, ma'am.

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

5 THE COURT: Take your time.

6 Q (By Ms. Wilson) Rayshawn, do you deny telling  
7 the police that you saw Ryan burning some clothes in the  
8 backyard? Do you deny that?

9 MR. PENNINGTON: Objection; leading, your  
10 Honor.

11 THE COURT: Overruled. You may answer.

12 A No, ma'am.

13 Q (By Ms. Wilson) You don't deny it?

14 A No, ma'am. I did told that he did burn his  
15 clothes.

16 Q Okay. Well, you just told the jury a couple of  
17 times that you didn't. I'm just trying to get it  
18 straight. Do you recall telling them that?

19 A Yes, ma'am.

20 Q And when was it that you knew that he burned  
21 some clothes?

22 A Later on that night.

23 Q Okay. What did he use to burn it?

24 A Lighter fluid.

25 Q You sound like you're asking. I don't know. I

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1 wasn't there.

2 A I'm telling you lighter fluid.

3 Q How do you know he used lighter fluid?

4 A I saw him got it.

5 Q And where did he go to do this?

6 A In the back of Stephanie Brown's house.

7 Q And you told them that on August 1st? Do you  
8 remember?

9 A Yes, ma'am.

10 Q Are you sure? If you're not sure, it's okay.  
11 I'm just --

12 A Not really.

13 Q You don't remember?

14 A No, ma'am.

15 Q Well, would it refresh your recollection to see  
16 a summary of what you told them? Would that help you  
17 remember if you saw a summary?

18 A Yes, ma'am.

19 (Document is handed to the witness.)

20 Q (By Ms. Wilson) Do you read okay? Can you  
21 read?

22 A Yes, ma'am. Read it?

23 Q Okay. No, don't read it. I just need to know  
24 if that refreshes your recollection of what you told the  
25 police on August 1st, 2012.

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1 (Respite.)

2 A Yeah.

3 Q (By Ms. Wilson) Does that help you remember?

4 A Yes, ma'am.

5 Q Well, what did you tell them back  
6 then?

7 A That Ryan was burning something in the  
8 backyard.

9 MS. WILSON: That's all, your Honor.

10 THE COURT: Mr. Pennington.

11 **RECROSS-EXAMINATION**

12 **BY MR. PENNINGTON:**

13 Q And in that same moment, in that same  
14 conversation, when you described that Ryan was burning  
15 something in the back with sticks and leaves, you told  
16 them he would -- you told the officers that he was not  
17 wearing a shirt, didn't you?

18 A Yes, sir.

19 Q Now, in terms of this visit, isn't it the truth  
20 that you've only had one visit with my client,  
21 Ryan Deleston, at the county jail, and that was last  
22 week, wasn't it?

23 A Yes, sir.

24 Q Because you took Stephanie Brown up there?

25 A Yes, sir.

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1 (Mr. Butler, Mr. Pennington, and Mr. DuRant  
2 approach the bench for a discussion off the record.)

3 THE COURT: You may continue.

4 MR. DURANT: Thank you, your Honor.

5 THE DEPUTY CLERK OF COURT: Please place your  
6 left hand here and raise your right hand.

7 (The oath is administered by the Deputy Clerk  
8 of Court, and the answers as follows:)

9 THE WITNESS: I do.

10 THE DEPUTY CLERK OF COURT: Thank you, sir.  
11 You may take your seat. Sir, if you would, please,  
12 spell [sic] your first and last name, spelling your last  
13 for the record, once you sit.

14 THE WITNESS: Spell both?

15 THE DEPUTY CLERK OF COURT: Yes, sir. That  
16 would be fine.

17 THE WITNESS: My name is Frank Middleton,  
18 F-r-a-n-k M-i-d-d-l-e-t-o-n.

19 THE COURT: Mr. DuRant, your witness.

20 MR. DURANT: Thank you, your Honor.

21 **FRANK MIDDLETON,**  
22 having been first duly sworn by the Deputy Clerk of  
23 Court to tell the truth, the whole truth, and nothing  
24 but the truth, was examined and testified upon his oath  
25 as follows:

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1                                    **DIRECT EXAMINATION**

2    **BY MR. DURANT:**

3            Q     Mr. Middleton, I know that you don't speak very  
4    loudly, so I would ask you to use that microphone as  
5    much as possible so the jury can hear you.    Okay, sir?

6            A     Yes, sir.

7            Q     Thank you.

8                    Could you tell our jury how old you are?

9            A     I am 65 years old.

10          Q     And what part of town are you from?

11          A     West Ashley, Ardmore subdivision.

12          Q     And how long have you been living in the  
13    Ardmore area?

14          A     From '69 until now.

15          Q     That's 1969?

16          A     Yes, sir.

17          Q     So a good long time?

18          A     Yes, sir.

19          Q     And do you have a lengthy criminal record?

20          A     Yes, sir, I do.

21          Q     How many times have you been in prison?

22          A     Three or four times.

23          Q     Okay.

24          A     Four.    About four times.

25          Q     Four times?

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1           A     Yes, sir.

2           Q     And do you know what periods of time those

3 cover?

4           A     Sir?

5           Q     Do you know what periods of time those cover?

6           A     Yes, sir. They cover from '66, '74, '95, and

7 2001 to 2008.

8           Q     Okay. So you've been in -- you've been in

9 prison four different times?

10          A     Yes, sir, I have.

11          Q     And the last time you were in prison was for a

12 conviction in 2001 for a strong-arm robbery; is that

13 correct?

14          A     That is correct.

15          Q     And how long did you do on that?

16          A     Seven years and seven months.

17          Q     You were actually sentenced to 15. You

18 actually served seven years and seven months; is that

19 correct?

20          A     That's correct.

21          Q     And where are you living right now?

22          A     I've been being in Charleston County Detention

23 Center. I was living in Ardmore on Balsam Street.

24          Q     But right now you're living in the Charleston

25 County Detention Center; correct?

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1           A     That's correct.

2           Q     And when did you go to the Charleston County  
3 Detention Center?

4           A     April 29th of 2012.

5           Q     Okay. And why are you in the Charleston County  
6 Detention Center?

7           A     I am accused of committing an armed robbery.

8           Q     And have you been in jail continuously since  
9 April the 29th of 2012; is that correct?

10          A     That's correct, sir.

11          Q     So you were not even out on the street at the  
12 time that Marley Lion was killed, which is the subject  
13 of this trial?

14          A     That's correct, sir.

15          Q     And you have not been privy to any of the  
16 street talk that goes on about who did what; is that  
17 correct?

18          A     That is correct.

19          Q     Now, what did we promise you for you to testify  
20 today?

21          A     When I spoke with you, sir, you told me that  
22 you could not make any deals or promises to me for  
23 anything.

24          Q     And -- but you're hoping for something, aren't  
25 you?

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1       A     Yes, sir, I am.

2       Q     And what are you hoping for?

3       A     Whatever leniency that I might can get.

4       Q     Okay. Well, let's go back a little bit. You

5       said you went to prison in 2001. When did you get out

6       of prison?

7       A     December the -- no. December 31st of 2008.

8       Q     Okay. When you got out of prison in December

9       of 2008, where did you go to live?

10      A     [REDACTED] in Ardmore.

11      Q     Okay. And so you lived there between 2008 and

12      when you went back to prison in April of 2012; is that

13      correct?

14      A     Yes, sir.

15      Q     Okay. While you were living in Ardmore, did

16      you get to know this fellow here?

17      A     Yes, sir, I do.

18      Q     Who is that?

19      A     That's Ryan.

20      Q     Okay. And where did you -- when did you first

21      meet Ryan?

22      A     I believe it was either in the late part of

23      2011, somewhere around 2012.

24      Q     And that was when you were living in Ardmore;

25      is that correct?

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1           A     That is correct.

2           Q     And how often would you see Mr. Deleston during  
3 the time you were living in Ardmore?

4           A     Off and on for the whole week. We might run  
5 into each other. Sometimes we might have conversation  
6 with each other.

7           Q     Did y'all hang out together on occasion?

8           A     Somewhat, we did.

9           Q     And how often would y'all hang out together on  
10 a weekly basis?

11          A     I'd say probably two or three days a week at  
12 night.

13          Q     Okay. And even when the times that you weren't  
14 really hanging out together, how often would you see  
15 him?

16          A     We'd just see each other in passing about seven  
17 days week, because where he lives, I would have to pass  
18 where he live at.

19          Q     Okay. So you basically saw him every day?

20          A     That is correct.

21          Q     Do you know his girlfriend?

22          A     Yes, 'sir, I do.

23          Q     And who was his girlfriend?

24          A     Stephanie Brown.

25          Q     And do you know where they lived on Cashew

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1 Street?

2 A I was locked up when they lived in Cashew

3 Street.

4 Q Okay. They lived at a different place before  
5 they moved to Cashew; is that right?

6 A Yes, sir.

7 Q Okay. Now, I want to jump ahead to July the  
8 4th of 2012. Do you recall meeting with a  
9 Detective Kosarko with the Charleston Police Department?

10 A Yes, sir, I recall that.

11 Q Did you ask to see him, or did he come to see  
12 you?

13 A I did not ask to see him, nor I did not call,  
14 nor did I write to see him.

15 Q So how did it come that you came to see him  
16 that day? How did he get in touch with you?

17 A He came to the county jail and asked to speak  
18 with me, and I sat and talked with him. And he said  
19 that the community that I lived in told him that I could  
20 help.

21 MR. PENNINGTON: Objection, your Honor, to what  
22 the community had told him. Hearsay.

23 THE COURT: Sustained. Rephrase your question.

24 Q (By Mr. DuRant) Did he come to you because you  
25 were from Ardmore?

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1 A That's correct, sir.

2 Q Okay. Where did you talk to him at?

3 A I talked with him at the Charleston County  
4 Detention Center. And about two hours later, he sent  
5 and had me brought to the police department.

6 Q Okay. And when you got down to the police  
7 department, what did he show you?

8 A He showed me the video of the shooting and  
9 asked if I could identify the person in the video.

10 Q Okay. And how many times did he allow you to  
11 see the video?

12 A I saw the video probably about five times. But  
13 on my second showing of the video, I told him who I  
14 thought the person was in the shooting. But to be sure  
15 I relooked at it several times.

16 Q Okay. And after looking at it several times,  
17 were you sure of who it was you saw on that video?

18 MR. PENNINGTON: Objection to leading, your  
19 Honor.

20 THE COURT: Overruled.

21 A Yes, sir. I was -- I told him who I thought it  
22 was.

23 Q (By Mr. DuRant) And who did you tell him you  
24 thought it was?

25 A I told him that that was Ryan. And I also



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1   stated to him that. . .

2           Q     And why did you -- why did you say that you  
3   thought it was Ryan?

4           A     Because of his briskness of how he approached  
5   the vehicle and the stance that he had --

6           Q     Okay.

7           A     -- used.

8           MR. DURANT:   Can we play 3:56?

9           And, Mr. Middleton, you can look on either one  
10   of these screens right here.

11           And if you would, just stop it when he  
12   approaches the car, Detective Osborne. And let it play  
13   until he gets up to the car.

14          Q     (By Mr. DuRant)   Okay.

15          A     Here, right there.

16          Q     And that person on the right-hand side  
17   approaching that white SUV, that's the person -- who did  
18   you tell Detective Kosarko that was?

19          A     I told them it was Ryan. I know I said that --  
20   that's a guy that I know lived in Ardmore by the name of  
21   Ryan.

22          Q     Okay. Did you know his last name at the time?

23          A     I know his last name, but I can't pronounce his  
24   last name.

25          Q     Okay. And did he end up showing you a picture?

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1           A     Yes, sir, he did.

2           Q     And you identified that picture as being the  
3 Ryan you were talking about?

4           A     Yes, sir.

5           Q     And the picture you identified was a picture of  
6 this man; is that correct?

7           A     Yes, sir.

8           Q     You know Bryan Rivers?

9           A     Yes, sir, I do.

10          Q     Okay. And how do you know Bryan Rivers?

11          A     He and I were roommates for a short period at  
12 the correctional institution.

13          Q     Okay. And what is Bryan Rivers' nickname?  
14 What does he go by?

15          A     Little B.

16          Q     And any possibility that could be Bryan Rivers?

17          A     No, sir.

18          Q     Why not?

19          A     This person -- the person in the showing of the  
20 video at the time was larger than Bryan and a little  
21 taller than Bryan is.

22          Q     Bryan is kind of skinny, isn't he?

23          A     Yes, sir.

24               MR. PENNINGTON: Leading, your Honor. I  
25 object.

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1 THE COURT: Watch your leading questions.

2 MR. DURANT: I have no further questions.

3 THE COURT: Thank you.

4 MR. DURANT: Hold on.

5 (Mr. DuRant speaks with Ms. Wilson off the  
6 record.)

7 THE COURT: Anything further, Mr. DuRant?

8 MR. DURANT: No, ma'am.

9 THE COURT: Mr. Pennington?

10 MR. PENNINGTON: Please the Court.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q Mr. Middleton, you're not saying that -- when  
14 you look at that video, that you can recognize the  
15 person's face, are you?

16 A I'm saying that --

17 Q Just answer the question. Are you saying you  
18 can recognize the person's face, yes or no?

19 A No, sir.

20 Q And you're not saying that you've recognized  
21 the man's clothing in the video either, do you -- are  
22 you?

23 A No, sir.

24 Q Now, when you told Detective Kosarko -- that  
25 conversation was on July the 4th of last year, wasn't

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1 it?

2 A Yes, sir.

3 Q And he didn't then immediately then go swear  
4 out a warrant and pick up Ryan Deleston on July 4th, did  
5 he?

6 A I have no idea what he did, sir.

7 Q Well, the one thing that is certain is that  
8 you're Bryan Rivers' roommate from prison?

9 A That is correct, sir.

10 Q Little B?

11 A Yes, sir.

12 Q Another thing that's certain is that on June  
13 the 15th and 16th, you were locked up in the county  
14 jail?

15 A Yes, sir, I was.

16 Q So you wouldn't have had an opportunity to see  
17 Bryan Rivers rob a couple downtown that night?

18 A I have no idea, no knowledge of it.

19 Q So you wouldn't have had an opportunity to see  
20 Bryan Rivers holding that same gun that night, robbing  
21 someone; correct?

22 A That is correct.

23 Q Another thing that's certain is that when you  
24 were in the community -- well, you said that you had  
25 gotten to know Ryan from about November or December of

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1 2011 until you went to jail in April; right?

2 A Yes, sir.

3 Q And, of course, during that period of time, you  
4 were also getting high; right?

5 A Yes, sir.

6 Q You smoked rock?

7 A Yes, sir, I did.

8 Q Now, the Solicitor raised this question about,  
9 that you didn't -- there was no street talk that you  
10 -- that came to your attention. Sir, you knew full  
11 well, from the news media, that there had been this  
12 slaying of Marley Lion, didn't you?

13 A Yes, sir, I did.

14 Q You knew that the police were eager to make an  
15 arrest in that case?

16 A I didn't have no idea of them being eager to  
17 make the arrest -- an arrest. I knew they were working  
18 the case.

19 Q And that the community was eager to see the  
20 person that did it caught; right?

21 A That I can't answer what the community would  
22 say, sir.

23 Q You're not sure if the police were eager to  
24 make an arrest?

25 A All I know is what I was told. I was asked if

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1 I could identify the person on the video.

2 Q Well, you remember that night, when  
3 Detective Kosarko got you down there on July 4th. He  
4 started out the conversation saying, You know the  
5 gravity of this case, don't you?

6 A I don't recall all that, sir.

7 Q And that we have a grieving family here.  
8 Remember him saying that?

9 A I believe I did hear him say that.

10 Q And when you went through the video, you  
11 started naming people that you thought was the guy in  
12 the white T-shirt that was walking by 11 minutes before,  
13 didn't you?

14 A Yes, sir, I did.

15 Q You named a fellow named Big Boy, who's a  
16 friend of Rafael Simmons?

17 A Yes, sir.

18 Q And that was wrong, wasn't it?

19 A Yes, sir.

20 Q And you named a guy -- you said that there was  
21 a fellow about 30 years old, a black man from Melrose  
22 who could have been that fellow walking by?

23 A That's correct, sir.

24 Q And that was wrong, wasn't it?

25 A Yes, sir, it was.

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1 Q Those identifications were incorrect?

2 A Yes, sir.

3 Q Turning to -- let's clarify a little bit.

4 You're not just in jail for armed robbery at this time,  
5 are you?

6 A I'm charged with armed robbery, a gun by a  
7 convicted felon, and eight shells of live ammo.

8 Q Okay. And you're also charged with the offense  
9 of possessing a firearm during the course of a violent  
10 crime?

11 A Yes, sir.

12 Q So on the armed robbery alone, you said that  
13 you were -- you're presently 64 years old?

14 A Sixty-five, sir.

15 Q Now 65. You were 64 then, when you met with  
16 the officer?

17 A That is correct.

18 Q And you were looking at an offense that, if  
19 you're convicted of strong-arm robbery, you well know  
20 that that's a minimum mandatory ten years; correct?

21 A I don't know roughly it's a mandatory of ten or  
22 not. I know I can get some time for it.

23 Q You know you can get up to 30 years, don't you?

24 A Probably so.

25 Q And then on the possession of a firearm with a

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1 violent crime, that's a five-year consecutive, isn't it?

2 A I ain't never been in this situation to know  
3 what that would carry.

4 Q Well, you know that you're in jail under a  
5 quarter of a million dollar bond?

6 A Yes, sir.

7 Q And that you couldn't get out on bond?

8 A That is correct.

9 Q And it sure would be nice if the solicitors  
10 could knock down that charge of armed robbery to  
11 something like the strong-arm that you did before,  
12 wouldn't it?

13 A It would be.

14 Q Because you know from your prior strong-arm  
15 that that's not an 85 percent. That's a 65 percent.  
16 You did seven years, seven months on your previous 15  
17 for strong-arm; correct?

18 A Correct.

19 Q So there's a difference between a strong-arm  
20 robbery conviction, because a strong-arm robbery is a  
21 maximum of 15, isn't it?

22 A That is correct, sir.

23 Q And there's no 85 percent requirement, is  
24 there?

25 A No, sir, there's not.



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1           Q     And so at that end of your interview with  
2 Detective Kosarko, after you had provided this  
3 information, do you remember looking up at him and  
4 saying, quote, What you going to try to do for me now?

5           A     I don't remember asking him for anything,  
6 because when we got to the station, he made it plain to  
7 me that he could not promise me anything, but he would  
8 appreciate my help. That -- I had no -- what was said  
9 when we went down there.

10          Q     You remember that when you asked him, What you  
11 going to do for me? He said, Well, I can't promise you  
12 anything right now, but I'll relay what you've done and  
13 see what we'll do later?

14          A     Sir, I do not remember asking him to do  
15 anything for me. He made it plain, at the Charleston  
16 County Detention Center on our first meeting, that he  
17 could not do anything for me, not promise me anything,  
18 but my help would be appreciated.

19          Q     Well, you recall that he showed you the video  
20 at 9:22 in the evening and that that went from about  
21 9:22 to about 9:35 p.m.?

22          A     Yes, sir, because he was talking to me and  
23 telling me how much the family was grieving and that he  
24 believed that I could help them. And I told him,  
25 like -- like I said, I told him who I thought it was on

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1 the video. And to be honest with you, there's no doubt  
2 in my mind that that's not Ryan.

3 Q Okay. I realize you're here to answer  
4 questions, but you have to wait for me to ask. Okay?

5 A Yes, sir.

6 Q My question is: Do you recall, at 9:49, when  
7 you asked the question, What are you going to try to do  
8 for me? The answer you got was: I'll talk to my  
9 sergeant. I don't know. That's something that we can  
10 talk about down the road. That goes from the supervisor  
11 to the Solicitor's Office? Do you recall that?

12 A I remember asking him if he could help me with  
13 my bond, but, like I said, he had already told me he  
14 couldn't make any promises to me as far as my charge  
15 was.

16 Q Okay. So y'all were really just talking about  
17 your bond at that time?

18 A We were not discussing my bond the whole time.  
19 I think --

20 Q I'm talking about at the end, specifically at  
21 the end.

22 A At the end -- at the end, I recall asking him  
23 if he could help me get a bond reduction because I had  
24 not been to a preliminary hearing yet on my charge. He  
25 told me that he would have to speak with his supervisor

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1 on that. I do not recall asking him what he could do  
2 for me on my charge.

3 Q Okay. Well, I didn't ask you about your  
4 charge. I just asked you, Did you ask the question:  
5 What are you going to try to do for me, question mark?

6 A Well, that's what I'm telling you. I don't  
7 recall asking him that.

8 Q All right.

9 A I asked him what he could do for me on my --

10 Q But you're not saying you didn't say that,  
11 because y'all did have a conversation about your bond?

12 A That's the only thing I talked to him about.

13 Q Because you were interested in getting your  
14 bond cut?

15 A Yes, sir, I was.

16 Q You wanted to get out of jail before this case  
17 went to court?

18 A Well, I mean, whether this came to court or  
19 not, I was just trying to get out of jail.

20 Q That's what I'm saying. You'd like to get out  
21 on bond?

22 A Yes, sir.

23 MR. PENNINGTON: Court's indulgence, your  
24 Honor.

25 THE COURT: Take your time.

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Official Court Reporter for the State of South Carolina

State of SC vs Ryan Deleston  
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1 (Mr. Pennington speaks with Mr. Kozelski off  
2 the record.)

3 MR. PENNINGTON: Nothing further, your Honor.  
4 Thank you.

5 THE COURT: Mr. DuRant.

6 MR. DURANT: Just a couple, your Honor.

7 THE COURT: Take your time.

8 REDIRECT EXAMINATION

9 BY MR. DURANT:

10 Q What did Detective Kosarko promise you?

11 A He didn't promise me anything.

12 Q What have we promised you?

13 A Y'all did not promise me anything.

14 Q And what did you tell Detective Kosarko on July  
15 the 4th as to who the shooter was?

16 A I told him that it was Ryan. And, like I said,  
17 I made it plain to him that there was no doubt in my  
18 mind that person -- Deleston --

19 Q Who did you tell this jury today was the  
20 shooter?

21 MR. PENNINGTON: Your Honor, this is not even  
22 responsive to a question. This is just a soliloquy.

23 MR. DURANT: It is very responsive.

24 THE COURT: Over -- Counsel, you do not need to  
25 argue with each other.

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1 Kosarko, K-o-s-a-r-k-o.

2 CRAIG KOSARKO,

3 having been first duly sworn by the Deputy Clerk of  
4 Court to tell the truth, the whole truth, and nothing  
5 but the truth, was examined and testified upon his oath  
6 as follows:

7 DIRECT EXAMINATION

8 **BY MR. DURANT:**

9 Q Officer Kosarko, could you tell the jury where  
10 you're employed?

11 A Charleston City Police Department.

12 Q And I believe you are now a sergeant in the  
13 patrol division; is that correct?

14 A Yes, sir.

15 Q What were you doing back in June of 2012?

16 A I was assigned as a detective with the violent  
17 crime unit up in central investigations.

18 Q In that capacity, did you have the occasion to  
19 come into contact with the Defendant Ryan Deleston --

20 A Yes, sir.

21 Q -- on June 21st of 2012?

22 A Yes, sir.

23 Q Where?

24 A At 643 Cashew Street.

25 Q That's in Ardmore subdivision?

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1           A     Yes, sir.

2           Q     And I believe that was Mr. Deleston's  
3 residence; is that correct?

4           A     Correct.

5           Q     Why? Why did you go talk to him?

6           A     The -- the night of the shooting, Officer Vance  
7 saw Mr. Deleston in the immediate area moments after the  
8 shooting, and he hadn't been interviewed at that point.  
9 So I was tasked by Sergeant Osborne to interview him.

10          Q     And I believe you met him on -- originally met  
11 with Stephanie Brown; is that correct?

12          A     Yes, sir.

13          Q     And how did you come to talk to Mr. Deleston?

14          A     Mr. Deleston was inside. I asked Stephanie to  
15 see if he'd come out and talk to me, and he did.

16          Q     Okay. And this is about, roughly, a week after  
17 the shooting, a little bit less?

18          A     Yes, sir.

19          Q     And what did you ask him about what he was  
20 doing at the home the night of the shooting?

21          A     I asked him what he was doing that night. He  
22 said that he was at 643 Cashew Street with Julius Brown,  
23 George Brown, and Bryan. He didn't know Bryan's last  
24 name at the time. He said that later in the evening,  
25 himself and -- he --

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1           Q       This is the same Bryan that was actually living  
2 there?

3           A       Correct.

4           Q       Okay. So he said what now?

5           A       He said that later on that evening, he and  
6 Julius decided to go to the gas station at Wappoo and  
7 17. They wanted to ride bikes across 17. And so they  
8 ended up walking to Dolores Brown's house, which is  
9 located on White Oak -- it's about a block away -- to  
10 get those bikes.

11                   On the way over there, they -- Bryan -- or Ryan  
12 heard the gunshots. They didn't think much of it  
13 because they said -- he said that they were used to  
14 hearing gunshots in that area, so they continued  
15 walking. Once they arrived at Dolores' house, he told  
16 me that an officer shined a flashlight on him, but they  
17 were not stopped. The officers were with two other  
18 parties at that time. They continued on. They got on  
19 the bikes. They rode around a Chick-fil-A parking lot  
20 and then returned back to Dolores', dropped off the  
21 bikes, and walked back to Cashew Street.

22           Q       Okay. So in essence, he denied having any  
23 knowledge of the shooting; is that correct?

24           A       That's correct.

25           Q       And where was he when the shooting occurred, he

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1 said?

2 A He said he was walking on the street.

3 Q And who was he with?

4 A Julius Brown.

5 Q And -- let me see how I can do this. Can you  
6 see this? And this is the State's Exhibit Number -- can  
7 you get that number?

8 A Four.

9 Q State's Exhibit Number 4. Do you recognize  
10 this aerial photograph?

11 A Yes.

12 Q This has previously been testified as Cashew  
13 Street and this being Mr. Deleston's house; is that  
14 correct?

15 A Yes.

16 Q What road is this?

17 A White Oak.

18 Q And do you know where on White Oak that  
19 Dolores Brown lives, the house he was going to see?

20 A If I remember correctly, it's this house here.

21 Q Right there at the intersection of --

22 A White Oak and Evergreen.

23 Q -- White Oak and Evergreen?

24 A Yes.

25 Q Okay. So who was at the house initially?

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1           A     It was Ryan, Julius Brown, as well as  
2     George Brown and Bryan.

3           Q     And where were Ryan -- I mean Bryan, Little B,  
4     and George Brown? Where were they when he said he left  
5     to go to his mother's house on White Oak?

6           A     They remained at Cashew Street.

7           Q     Okay. And where was he when he said that  
8     they -- he and Julius heard the shots?

9           A     They were somewhere on the street walking  
10    towards Dolores', somewhere around --

11          Q     In this one block right here?

12          A     Right.

13          Q     Okay. Now, moving on ahead just a little bit  
14    to July 4 of 2012, what did you do relative to this case  
15    on that date?

16          A     I was working the weekends or the holiday  
17    detective duty. I was tasked by Sergeant Osborne to  
18    pick up Frank Middleton from the county jail.

19          Q     And why were you tasked to pick up  
20    Frank Middleton from the county jail?

21          A     Well, at that time, with the case being  
22    relatively new still, we're still looking for any leads  
23    that were out there. Sergeant Osborne had a hunch that  
24    the -- due to Frank's long ties -- long-term connection  
25    with Ardmore, that he may know something or may have an

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1 idea of what was going on. So I went up and picked him  
2 up.

3 Q Okay. And where did you take him?

4 A Back to the headquarters.

5 Q Now, he was in jail at that time, obviously; is  
6 that correct?

7 A Yes, sir.

8 Q Do you know whether or not he was in jail at  
9 the time that Marley Lion was murdered?

10 A He was.

11 Q And when you took him downtown, did you have  
12 the occasion to show him any video?

13 A I did.

14 Q And what did you show him a video of?

15 A I showed him, initially, the video of the  
16 person, the white shirt, walking across the parking lot.  
17 After I showed him that, I showed him the video of the  
18 actual shooting that took place.

19 Q Do you recall how many people that he said  
20 could have been the guy in the white shirt?

21 A Three, maybe four.

22 Q Okay. How many people did he say were the one  
23 that went to the car and shot?

24 A One.

25 Q And who was that person?

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Volume III of V -- Cross-Ex of Craig Kosarko

1 A Ryan Deleston.

2 Q Would you please answer any questions that  
3 Defense counsel may have for you?

4 A Yes, sir.

5 THE COURT: Mr. Pennington.

6 MR. PENNINGTON: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. PENNINGTON:

9 Q Detective Kosarko, do you recall that toward  
10 the end of that meeting you had with Frank Middleton on  
11 July 4th in the evening --

12 A Uh-huh.

13 Q -- when he turned to you and said, quote: What  
14 you going to try to do for me?

15 A I do.

16 Q Okay. He was looking for some sort of legal  
17 help, either help with his bond or maybe with his  
18 charges?

19 A Yes, sir.

20 Q Let's go back to the conversation that you  
21 described with Ryan Deleston back on -- the June the  
22 21st. This was a few days after the 16th. You're over  
23 on Cashew. He was inside. You were talking with  
24 Stephanie Brown; correct?

25 A Correct.

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1           Q     He comes outside.  It's a voluntary  
2 conversation; correct?

3           A     Correct.

4           Q     And in that conversation, is it possible that  
5 he said that actually he was on the porch of Cashew when  
6 he heard the gunshots?

7           A     He may have at the time, but I'm not sure.

8           Q     Okay.  Now, in terms of the overcall context of  
9 how an investigation is done in this case, is it fair to  
10 say that this homicide created a lot of attention and a  
11 lot of work for the detective division at Charleston  
12 police?

13          A     Yes, sir.

14          Q     And do you recall in the days immediately after  
15 the shooting, that, in fact, there was a lot of press  
16 attention to the fact that appeared this innocent victim  
17 had been murdered at Famous Joe's?

18          A     Yes.

19          Q     And, in fact, there was even, I believe, the  
20 chief of police and the mayor called for people to come  
21 forward and provide information; do you recall that?

22          A     I do.

23          Q     There was talk of rewards, rewards for any  
24 information that -- reliable information that leads to  
25 an arrest; do you recall that?

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1           A     Yes.

2           Q     And that's part of the crime stoppers  
3 program?

4           A     Correct.

5           Q     And you recall that, even in the community,  
6 Representative Chip Limehouse and others were raising  
7 money to add to the reward so that there could be added  
8 incentive for people to come forward with information in  
9 this case?

10          A     Yeah. I don't recall that, but -- if that's  
11 the case.

12          Q     Okay. All right. Now, you've described that  
13 you got tasked by -- it was Detective Osborne who asked  
14 you to go and talk with Mr. Middleton and bring him in  
15 the station; right?

16          A     Yes, sir.

17          Q     But before July the 4th, the name of  
18 Ryan Deleston had come up in your investigation, hadn't  
19 it?

20          A     I believe so, yes.

21          Q     And that came from an individual who -- well,  
22 let me back up.

23                 You as detectives work as a team. Y'all  
24 exchange information, don't you?

25          A     We do.

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1 Q And in this case, Detective Osborne and  
2 Detective Burckhardt had a number of people that were  
3 out doing field interviews and then you would exchange  
4 what you got; right?

5 A Correct.

6 Q So around June the 27th, days before the  
7 Frank Middleton interview, the city police, at least,  
8 had been contacted by a Bobby Warthaw; right?

9 A Correct.

10 Q And Bobby Warthaw had said that he had been  
11 contacted or had field contact with a guy named  
12 Ryan Deleston, who wanted to sell a weapon, a pistol;  
13 right?

14 A Okay.

15 Q Are you not sure about when that occurred?

16 A Well, I wasn't -- I wasn't part of that whole  
17 scenario where Sergeant Osborne was dealing with  
18 Bobby Warthaw.

19 Q Okay. Do y'all create reports that you can use  
20 to refresh your memory about how the development of a  
21 investigation goes?

22 A Yes.

23 Q Would that be helpful to you to perhaps help  
24 you recall, before it turned into July, in June, when  
25 this tip came in?

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1           A     Sure.

2                     (Document is handed to the witness.)

3           Q     (By Mr. Pennington) Without describing it,  
4 just giving you a chance to look at this document and  
5 flip through and particularly with regard to where you  
6 get to this paragraph and then on to this paragraph.  
7 And once you've had a chance to review it, just let me  
8 know.

9                     (Respite.)

10           MR. DURANT: Counsel, do you mind letting me  
11 know what he's looking at?

12           MR. PENNINGTON: Oh, I'm sorry. Certainly.

13                     You can hold onto it. I'll just tell him.

14                     (Mr. Pennington speaks with Mr. DuRant off the  
15 record.)

16           THE WITNESS: Okay.

17           Q     (By Mr. Pennington) All right. Does that  
18 refresh you that around the end of June, June 27th,  
19 before you met with Frank Middleton, that there was  
20 somebody out in the community named Bobby Warthaw who  
21 had let the police know that there was a Ryan Deleston  
22 looking to sell a pistol?

23           A     Yes.

24           Q     And that really got the attention of this  
25 investigation, didn't it?

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1           A       It did.

2           Q       So that information was at least known to  
3 Bobby Warthaw at that time out in the community?

4           A       Uh-huh.

5           Q       Okay. And the reason that you understood that  
6 it was important to have contact with Frank Middleton  
7 was because he was someone that was -- had been involved  
8 in the Melrose -- I mean -- Melrose -- the Ardmore  
9 community for so long?

10          A       Correct.

11          Q       Knew lots of people?

12          A       Yes.

13          Q       Presumably would perhaps have his ear to the  
14 ground, might have heard something?

15          A       Exactly.

16          Q       Even though he's in jail, he would have friends  
17 that might have heard something?

18          A       Perhaps.

19                 MR. PENNINGTON: Court's indulgence, your  
20 Honor.

21                 THE COURT: Take your time.

22                 (Mr. Pennington speaks with Ms. Kozelski off  
23 the record.)

24                 MR. PENNINGTON: Thank you. I have no further  
25 questions.

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1 MR. DURANT: I have just one on Redirect.

2 **REDIRECT EXAMINATION**

3 **BY MR. DURANT:**

4 Q Is there any question that Mr. Middleton  
5 was not out in the community at the time this thing  
6 occurred?

7 A That's correct. He was in jail.

8 Q Mr. Warthaw wasn't in jail, was he?

9 A Correct.

10 MR. DURANT: Thank you.

11 THE COURT: Recross?

12 MR. PENNINGTON: No Recross, your Honor. Thank  
13 you.

14 THE COURT: Is this witness excused?

15 MR. PENNINGTON: No objection.

16 MR. DURANT: No objection from us, your Honor.

17 THE COURT: You may step down. You are free to  
18 go, but you may stay with us. Thank you.

19 THE WITNESS: Thank you.

20 (The witness steps down from the stand.)

21 THE COURT: Call your next witness.

22 MR. DURANT: State would call Rene Charles.

23 (The oath is administered by the Deputy Clerk  
24 of Court, and the witness answers as follows:)

25 THE WITNESS: Yes, sir.

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Volume III of V -- Direct Ex of Rene Charles

1           THE DEPUTY CLERK OF COURT: Sir, if you would,  
2 please, state your first and last name, spelling your  
3 last for the record.

4           THE WITNESS: Okay. First name is Rene, last  
5 name Charles, C-h-a-r-l-e-s.

6                           **RENE CHARLES,**  
7 having been first duly sworn by the Deputy Clerk of  
8 Court to tell the truth, the whole truth, and nothing  
9 but the truth, was examined and testified upon his oath  
10 as follows:

11                           **DIRECT EXAMINATION**

12 **BY MR. DURANT:**

13           Q     Good afternoon, Mr. Charles.

14           A     Yes, sir.

15           Q     Where are you employed?

16           A     I was born in the West Indies.

17           Q     And where are you employed, sir?

18           A     I'm employed with the City of Charleston Police  
19 Department.

20           Q     And what capacity are you employed by the City  
21 of Charleston Police Department?

22           A     I am a crime scene investigator.

23           Q     And how long have you been doing that for the  
24 Charleston Police Department?

25           A     Fifteen years.

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1 Q And as a crime scene investigator for the  
2 Charleston Police Department, did you have an  
3 opportunity to participate or respond to the shooting  
4 which occurred in the parking lot of 1662 Savannah  
5 Highway on June 16th of 2012?

6 A Yes, sir, I did.

7 Q And what time did you arrive on the scene, sir?

8 A I arrived on the scene at 4:35 a.m., in the  
9 morning.

10 Q A.m. or p.m.?

11 A A.m.

12 Q And upon arriving at the scene, who briefed you  
13 on what had happened, what had taken place?

14 A Officer Robert Deal briefed me about the  
15 shooting.

16 Q What did you observe upon arriving on the  
17 scene?

18 A Upon arrival of the scene, I observed the  
19 victim's car in the parking lot and the scene was  
20 secured. And also, there were several CPD officers on  
21 the scene.

22 Q And was the victim still on the scene when you  
23 arrived?

24 A No, sir, he was not.

25 Q He had already been transported?

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1           A     Yes, sir. Charleston County EMS transported  
2   him.  
3           Q     Who did you notify?  
4           A     I notified my crime scene supervisor about the  
5   shooting. That's --  
6           Q     And who was that?  
7           A     That's Officer Jennifer Wooley.  
8           Q     And did she respond as well?  
9           A     Yes, sir, she did.  
10          Q     And what did she do at the scene?  
11          A     She assist with the processing, with the  
12   photographing, measurements.  
13          Q     And where was the victim's car located in the  
14   parking lot?  
15          A     The victim's car was located in the parking lot  
16   between the Famous Joe building and the Mantek building,  
17   under the light pole.  
18          Q     And what was the condition of that vehicle?  
19          A     The condition of the vehicle, I observed one  
20   bullet hole on the driver's side door frame and also the  
21   rear --  
22          Q     At the top or the bottom of the car?  
23          A     The bottom of the car.  
24          Q     Okay.  
25          A     And also the rear driver's side door window was

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1 shattered.

2 Q Shattered?

3 A Broken glasses.

4 Q Okay. Any blood apparent?

5 A Yes, sir. I also observed a bloodstain on the  
6 exterior driver rear side door just above the rear  
7 driver.

8 Q And how about on the inside of the car? What  
9 did you observe inside the car?

10 A Yes, sir. I also observed bloodstain on  
11 the -- the back seat and also on the pillow.

12 Q And some broken glass, as well, I believe?

13 A Yes, sir. Broken glass, yes, sir.

14 Q What did you find on the ground immediately  
15 adjacent to the car?

16 A On the ground, I -- I observed a black T-shirt,  
17 the victim's cell phone, and then --

18 Q Both of those items were determined to belong  
19 to the victim Marley Lion; is that correct?

20 A Yes, sir, that is correct.

21 Q And what else was located in the parking lot  
22 that night?

23 A In the parking lot, I also located six fired  
24 shell casings.

25 (Document is handed to the witness.)

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1           Q       (By Mr. DuRant) Mr. Charles, I hand you what's  
2 previously been marked as State's Exhibits 9, 10, 11,  
3 12, 13, and 14, and ask if you recognize those items?

4           MR. PENNINGTON: If you can go by number,  
5 Bruce.

6           MR. DURANT: You want to do them individually?

7           MR. PENNINGTON: Doesn't matter. Just refer to  
8 them by number so we know what is going on.

9           MR. DURANT: Okay. Number 9 through 13.

10          THE WITNESS: Yes, sir.

11          MR. DURANT: Excuse me, 9 through 14.

12          Q       (By Mr. DuRant) What are those?

13          A       Yes, I know.

14          Q       What are those?

15          A       They are fired shell casings -- nine fired  
16 shells -- nine-millimeter fired shell casings.

17          Q       And what is the headstamp on those shell  
18 casings?

19          A       The headstamps, it's a nine-millimeters fired  
20 shell casing -- excuse me -- SNB BRC.

21          Q       Okay. Do you know what the BRC means?

22          A       Yeah. BRC, it's a make, Browning purchase.  
23 It's a make, company make.

24          Q       Now, you obviously -- did you, obviously,  
25 collected those into evidence; is that correct?

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1           A       Yes, sir, I did.

2           Q       And do those shell casings appear to be in  
3 substantially the same condition now as when you  
4 collected them on the June 16th of 2012?

5           A       Yes, sir, they are.

6           MR. DURANT: Your Honor, at this time, we'd  
7 offer 9 through 14 into evidence, if there's no  
8 objection.

9           THE COURT: Any objection?

10          MR. PENNINGTON: No objection.

11          THE COURT: State's 9 through 14 into evidence  
12 without objection.

13          (State's Exhibit Nos. 9 through 14 are admitted  
14 into evidence.)

15          Q       (By Mr. DuRant) What was eventually done with  
16 those shell casings after you collected them?

17          A       The fired shell casings were collected and then  
18 submitted to Crime Scene Investigator Mary Phillips for  
19 latents processing.

20          Q       For what purpose?

21          A       For latents processing.

22          Q       For?

23          A       For latents processing.

24          Q       When you say "latents processing," are you  
25 talking about seeing if there are any fingerprints on

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1 it?

2 A Yes, sir.

3 Q Okay. And then where did they go eventually?

4 Where were they analyzed?

5 A They end up going to SLED for further

6 investigation, further processing.

7 MR. DURANT: Okay. Your Honor, I think at this  
8 time we would offer State's Exhibit Number 8, I believe  
9 without objection.

10 MR. PENNINGTON: No objection, your Honor.

11 THE COURT: No objection?

12 MR. PENNINGTON: That's correct, your Honor.

13 THE COURT: State's 8 into evidence without  
14 objection.

15 (State's Exhibit No. 8 is admitted into  
16 evidence.)

17 Q (By Mr. DuRant) And, Mr. Charles, if you  
18 would, what is State's Exhibit Number 8?

19 A That's the crime scene diagram.

20 Q Mr. Charles, this is a laser pointer. If you  
21 need to refer to State's Exhibit Number 8, the red one  
22 is the laser pointer. Got it?

23 A Yes, sir.

24 Q You had indicated that measurements were taken  
25 that night. Are those measurements used in, basically,

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1 making these -- this crime scene diagram?

2 A Yes, sir, that is correct.

3 Q And, if you would, what is that marked as 101  
4 on the crime -- first of all, where's the victim's car?

5 A The victim's car was located right there  
6 between the Famous Joe's building and the Mantek  
7 building.

8 Q Okay.

9 A The light pole was right -- that location right  
10 there.

11 Q Okay. And what is number 101 on that diagram?

12 A Number 101, that's the victim's cell phone  
13 right there.

14 Q And how about 102?

15 A 102, it's the victim's black T-shirt right  
16 there.

17 Q And then how about 103, -4, -5, -6, -7, and -8?  
18 What are all of those?

19 A 103, 104, 105, 106, 107, 108, they are all  
20 fired shell casings, nine-millimeter fired shell  
21 casings.

22 (Document is shown to Defense counsel.)

23 MR. DURANT: Your Honor, at this time -- excuse  
24 the broken numbers. A couple of these have already been  
25 put in. We would offer State's 37, 39, 40, 41, 42, 44,

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1 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, I

2 believe without objection.

3 MR. PENNINGTON: That is correct, your Honor.

4 THE COURT: All right. Mr. Pennington, I can't  
5 see you around that board.

6 MR. PENNINGTON: There are no objections, your  
7 Honor.

8 THE COURT: No objection. The numbers listed,  
9 State's 37, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50,  
10 51, 52, 53, 54, 56, and 57 are in evidence without  
11 objection.

12 (State's Exhibit Nos. 37, 39, 40, 41, 42, 44,  
13 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, and 57 are  
14 admitted into evidence.)

15 THE COURT: You may continue.

16 MR. DURANT: Thank you, your Honor.

17 Q (By Mr. DuRant) In starting with --

18 MS. WILSON: Hold up one second. Hold up.  
19 Hold up.

20 (Ms. Wilson speaks with Mr. DuRant off the  
21 record.)

22 Q (By Mr. DuRant) Can you see the screen over  
23 here, sir?

24 A Yes, sir.

25 Q If you would -- we're just going to go through

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1 these State's Exhibits. If you would --

2 THE COURT: Mr. DuRant, could you please move  
3 the placard?

4 MR. DURANT: Pardon me?

5 THE COURT: Can you please move your --

6 MR. DURANT: I can't -- do you mind if I move  
7 it down, because I may need him to refer to --

8 THE COURT: All right. Thank you.

9 MR. DURANT: -- to the -- is that okay?

10 THE COURT: That's fine.

11 MR. DURANT: Thank you.

12 Could you put that in the slide show?

13 Q (By Mr. DuRant) And we'll just go through  
14 these very quickly. What does that depict, sir? This  
15 is State's Exhibit Number 37, I believe.

16 A That's the victim's vehicle parked in front of  
17 Mantek building.

18 Q That's the Mantek building back behind?

19 A Yes.

20 Q Is that correct?

21 A Yes, sir.

22 Q Okay. And there appears to be a white fence  
23 over there to the left. Do you know what's over behind  
24 that fence?

25 A Behind the white fence, I believe it's a --

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1 it's a residence behind it.

2 Q Okay.

3 A The white fence.

4 Q Do you know if they're using that residence for

5 a day care or not?

6 A I'm not sure on that, sir.

7 Q Okay. Thirty-eight?

8 A That's the Famous Joe building. That's the

9 parking lot.

10 Q So that would be the view kind of -- Famous

11 Joe's is to the left; is that correct?

12 A Yes, sir. That's Famous Joe on the left, and

13 that's Mantek on the right.

14 Q Okay. Thirty-nine?

15 A That's the -- the front of Famous Joe building,

16 and that's the victim's vehicle parked underneath the

17 SCE&G light pole.

18 Q Forward it.

19 A That's the photographs of the area -- the

20 parking lot area showing the Famous Joe building, the

21 victim's vehicle.

22 Q And that would be kind of on the Yew Street

23 side looking back -- looking back toward the direction

24 of Five Guys?

25 A Five Guys and all the other businesses.

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1 Q Okay. The next photo, please.  
2 A That's the photograph of the parking lot --  
3 Q Okay.  
4 A -- with the victim's vehicle parked.  
5 Q Keep going, please. This would be State's --  
6 A Here, that's the Mantek building on the left.  
7 And that's the victim's vehicle parked. And also, you  
8 can see the Famous Joe building on the -- on the  
9 right-hand side.  
10 Q Okay. What does that depict?  
11 A That takes you to Yew Street. That's the  
12 overall pictures showing direction, go towards Yew  
13 Street.  
14 Q That's kind of a cut-through over to Yew  
15 Street?  
16 A Yes, sir.  
17 Q Is that kind of the view from the victim's  
18 vehicle?  
19 A Yes, sir, that the view from the victim's  
20 vehicle.  
21 Q Going towards Yew Street?  
22 A Affirmative.  
23 Q State's Exhibit 44?  
24 A That's the victim's car. And as you can see,  
25 the cell phone on the ground, the victim's black

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1 T-shirt, and also the broken rear driver's side window.

2 Q Okay. Forty-five?

3 A And that's the -- that's the close-up pictures  
4 of the -- the exterior rear driver side window and also  
5 the bloodstain on the -- on the door above -- over the  
6 rear driver's side tire.

7 Q That's 46.

8 A That's the interior of the vehicle. And you  
9 can see the pillow with the bloodstain on it.

10 Q I know it's hard to see, but you had mentioned  
11 something about a -- this is going back to State's  
12 Exhibit Number 45. You mentioned something about a  
13 bullet hole. Can you --

14 A The bullet hole -- can I please stand?

15 Q Let me give you a pointer.

16 (Pointer is handed to the witness.)

17 A Thank you.

18 Q (By Mr. DuRant) Uh-huh.

19 A That's the location of the bullet hole right  
20 underneath the exterior driver's side doorframe right  
21 there.

22 Q Okay. State's Exhibit 46?

23 A That's the -- as you can see, the pillow inside  
24 the vehicle on the back seat with the bloodstain. And  
25 that's the --

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1 Q Shattered glass?  
2 A -- broken shattered window.  
3 Q Okay. Forty-seven?  
4 A Forty-seven, that's the location of the shell  
5 casings and also the black T-shirt -- or that's the  
6 shell casing, fired shell casing, fired shell casings,  
7 fired shell casings. Marked as item 107, that's fired  
8 shell casings, fired shell casings.  
9 Q Okay. Forty-eight?  
10 A Forty-eight, that's evidence marker 1. That's  
11 the cell phone, the victim's cell phone on the ground.  
12 Q And that would equate to item 101 on your crime  
13 scene diagram; is that correct?  
14 A Yes, sir. Yes, that's correct.  
15 Q Forty-nine?  
16 A Forty-nine, that's the victim's T-shirt, black  
17 T-shirt.  
18 Q And once again, 10 -- that one corresponds with  
19 102 on your crime scene diagram?  
20 A 103 corresponds with 1 -- 103. That's fired  
21 shell casings.  
22 Q Okay. So that would be --  
23 A On the crime scene diagram, that would be --  
24 Q That would be this one right here; correct?  
25 A Yes, sir. 103.

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1 Q Okay. Forty-nine, I believe?

2 A Forty-nine, that's one of -- that's evidence 4,  
3 correspond to 104 on the crime scene diagram. That's  
4 the fired shell casings.

5 Q That would be that one right there; is that  
6 correct?

7 A Yes, sir.

8 Q Okay. Next one, 52?

9 A Fifty-two, it's evidence marker 5, correspond  
10 to 105 in the crime scene diagram. That's a fired shell  
11 casing.

12 Q Okay.

13 A 106, that's evidence marker 6, correspond to  
14 106 in the crime scene diagram.

15 Q That one there?

16 A That would be fired shell casings.

17 Q Okay. And next item?

18 A Next item, it's evidence marker 7, correspond  
19 to 107 in the crime scene diagram. That's also a fired  
20 shell casings.

21 Q Okay. Next picture, please.

22 A Next picture, that's item 108, evidence marker  
23 108. In the crime scene diagram, it's 108. It's also a  
24 fired shell casings.

25 Q Okay. Next item, please.

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1           A       That's the headstamps of the fired shell  
2 casings, S&B nine-millimeters BRC.

3           Q       And that was the same -- same headstamp on all  
4 of the shell casings; is that correct?

5           A       Yes, sir, they're all the same headstamps.

6           Q       Thank you, sir. You may resume your seat.

7                   (The witness resumes his seat.)

8                   (Documents are shown to Defense counsel.)

9           MR. DURANT: Your Honor, at this time, we would  
10 offer State's 69, 70, 71, 72, 73, 74, 75, and 76 into  
11 evidence, I believe without objection.

12           MR. PENNINGTON: No objection, your Honor.

13           THE COURT: They are in evidence without  
14 objection.

15                   (State's Exhibit Nos. 69, 70, 71, 72, 73, 74,  
16 75, and 76 are admitted into evidence.)

17           Q       (By Mr. DuRant) And I'm going to start with a  
18 couple of the photographs that are already in evidence.  
19 But let me ask you this first: Also in connection with  
20 this investigation, what was done with the victim's  
21 vehicle after -- after you finished processing the crime  
22 scene?

23           A       The victim's vehicle was -- was stored to the  
24 crime scene office on Wappoo Road for further  
25 investigation.

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1           Q     Now, moving ahead to July the 30th, did you  
2     have the occasion to participate in the execution of the  
3     search warrant at 643 Cashew Street in Ardmore  
4     subdivision?

5           A     Yes, sir, I did.

6           Q     And during the execution of that warrant, did  
7     you have the occasion to recover a white Nike shoe?

8           A     Yes, sir, I did.

9           Q     Do you recall from where?

10          A     The Nike shoe was recovered at 643 Cashew  
11     Street in the second bedroom floor in front of the  
12     closet.

13          Q     I hand you what's been marked as State's  
14     Exhibit Number 20, I believe, which has been marked for  
15     identification, and ask if you recognize that shoe?

16          A     Yes, sir, I do.

17          Q     And what is it?

18          A     That's one Nike shoe. One white in color Nike  
19     shoe.

20          Q     Is that the shoe you collected on July 30th of  
21     2012 at 643 Cashew Street?

22          A     Yes, sir, it is.

23          Q     And is it in substantially the same condition  
24     now as when you collected it on that day?

25          A     Yes, sir.

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1 MR. DURANT: Your Honor, at this time we would  
2 offer State's 8, I believe, into evidence.

3 MR. PENNINGTON: No objection, your Honor.

4 THE COURT: State's 8 is already in. Are  
5 you --

6 MR. DURANT: Oh. I thought it had just been  
7 marked for identification before, so. . .

8 THE COURT: Are you talking -- the shoe?

9 MR. DURANT: The shoe, yes.

10 THE COURT: It's 20.

11 MR. DURANT: Oh, I'm sorry. My -- my mistake.

12 State's Exhibit 20 we would offer into  
13 evidence.

14 THE COURT: And, Mr. Pennington, as to 20?

15 MR. PENNINGTON: May we have the Court's  
16 indulgence.

17 THE COURT: Take your time.

18 MR. PENNINGTON: No objection, your Honor.

19 THE COURT: State's 20 into evidence without  
20 objection.

21 (State's Exhibit No. 20 is admitted into  
22 evidence.)

23 THE COURT: State's 8 is previously entered  
24 without objection.

25 MR. DURANT: I apologize for the snafu with the

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1 numbers, Judge.

2 Q (By Mr. DuRant) What is the size of that shoe?

3 A It's a size 10, U.S. 10.

4 Q Getting back to State's 65 through 76 --

5 MR. DURANT: Can you put those up on the board?

6 Q (By Mr. DuRant) -- and just let me ask you a  
7 few questions briefly about those.

8 MS. WILSON: 65 or 67?

9 MR. DURANT: Excuse me, 67.

10 Q (By Mr. DuRant) What is -- this is State's  
11 Exhibit 67. What does it depict?

12 A That's the exterior of 643 Cashew. That's the  
13 exterior of the residence.

14 Q And the door to the right, do you know what  
15 that is?

16 A Right here?

17 Q Yes.

18 A That's the entrance of the living room area.

19 Q How about the other door to the left? Do you  
20 know what that is?

21 A That's the storage room area entrance.

22 Q Storage -- utility room --

23 A Utility room.

24 Q -- or storage closet?

25 A Yes, sir.

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1 Q Okay. State's Exhibit 68?  
2 A That's the kitchen table, the red hat on top of  
3 the kitchen table, and that's --  
4 Q And 69?  
5 A That's a red hat on the kitchen table.  
6 Q And 70?  
7 A Still the red hat on the kitchen table.  
8 Q Seventy-one?  
9 A Seventy-one, that's -- that's the kitchen area.  
10 That's the bleach, Pine-Sol, stove in the kitchen area.  
11 Q Seventy-two?  
12 A Seventy-two, that's the second bedroom. As you  
13 can see, the white shoes in front of the closet.  
14 Q That would be State's Exhibit -- what's now  
15 been in evidence as State's Exhibit 20; is that correct?  
16 A Yes, sir, that's correct.  
17 Q And State's Exhibit 73?  
18 A That's still a close-up of the white shoes.  
19 Q Seventy-four?  
20 A That's the white shoes with evidence marker  
21 correspond to 106.  
22 Q Seventy-five?  
23 A Seventy-five, that's an envelope with  
24 Mr. Ryan Deleston's name on it.  
25 Q And what is the address on that envelope?

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1 A It's 643 Cashew Street.

2 Q And Number 76?

3 A That's a envelope with Mr. Ryan Deleston's name  
4 on it from Roper St. Frances Hospital.

5 Q Also addressed to 643 Cashew; is that correct?

6 A Yes, 643 Cashew Street.

7 MR. DURANT: Thank you, sir. You can take your  
8 seat.

9 Would you please answer any questions that  
10 Mr. Pennington may have for you?

11 THE COURT: Mr. Pennington.

12 MR. PENNINGTON: Please the Court, your Honor.  
13 If I may just have the Court's indulgence for just a  
14 moment.

15 THE COURT: Take your time.

16 (Respite.)

17 **CROSS-EXAMINATION**

18 **BY MR. PENNINGTON:**

19 Q Officer Charles, you just finished going  
20 through those photographs from 643 Cashew Street?

21 A Yes, sir.

22 Q Those photographs and that search warrant was  
23 conducted on July 30th?

24 A Yes, sir, that is correct.

25 Q And so the homicide in this case was back on

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1 June the 16th?

2 A Yes, sir.

3 Q About six weeks before?

4 A Yes, sir, that's correct.

5 Q Okay. And do you know -- you work in the crime  
6 scene area --

7 A Yes, sir.

8 Q -- for the city police?

9 A Yes, sir.

10 Q And so you're familiar with trying to preserve  
11 items where, if there's a question about ownership,  
12 things can be either swabbed or sent to SLED for DNA  
13 testing?

14 A That is correct, yes, sir.

15 Q But the hat in this case was not sent for DNA  
16 testing?

17 A I'm not aware of that. I wasn't asked to do  
18 anything with the hat.

19 Q So it was not sent, as far as you know?

20 A As far as I know -- I don't know of -- no  
21 knowledge on that.

22 Q Nor was the shoe?

23 A The shoe, as far as I know, was collected and  
24 then placed into evidence.

25 Q Okay. But the shoe, as far as you know, was

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1 not sent for any kind of DNA testing?

2 A I'm not aware of that.

3 Q You're not aware that it was sent?

4 A Not aware that it was sent.

5 Q Okay. And when you went into the bedroom, the  
6 second bedroom of that house, you just found the one  
7 shoe sitting there?

8 A Yes, sir. It was the one shoe in the second  
9 bedroom floor.

10 Q Okay. And there are other photographs that  
11 were taken by the police department where the shoe is  
12 actually moved to a different location, sitting up, like  
13 on a table or something, but that's not where that shoe  
14 was originally found. The shoe was originally found on  
15 the floor by the other shoes in the photograph?

16 A Yeah. This particular shoe was found in the  
17 second bedroom floor in front of the closet.

18 Q In front of a closet?

19 A Yes, sir.

20 Q It wasn't on a table?

21 A No, sir.

22 MR. PENNINGTON: May I have the Court's  
23 indulgence, Judge?

24 THE COURT: Yes.

25 (Mr. Pennington speaks with Mr. DuRant off the

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1 record.)

2 MR. PENNINGTON: No further questions, your  
3 Honor. Thank you.

4 THE COURT: Mr. DuRant.

5 MR. DURANT: I have nothing on Redirect, your  
6 Honor.

7 THE COURT: Is this witness excused?

8 MR. PENNINGTON: No objection.

9 THE COURT: Sir, you may step down. You are  
10 excused. Feel free to stay with us.

11 THE WITNESS: Thank you.

12 (The witness steps down from the stand.)

13 THE COURT: Call your next witness.

14 MR. DURANT: State would call Jeff Miller.

15 (The oath is administered by the Deputy Clerk  
16 of Court, and the witness answers as follows:)

17 THE WITNESS: I do.

18 THE DEPUTY CLERK OF COURT: Thank you, sir.  
19 You may take your seat. Sir, if you would, please,  
20 state your first and last name, spelling your last for  
21 the record.

22 THE WITNESS: Jeffery Miller, M-i-l-l-e-r.

23 **JEFFERY MILLER,**

24 having been first duly sworn by the Deputy Clerk of  
25 Court to tell the truth, the whole truth, and nothing

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1 but the truth, was examined and testified upon his oath  
2 as follows:

3 **DIRECT EXAMINATION**

4 **BY MR. DURANT:**

5 Q Where are you employed, Mr. Miller?

6 A Charleston Police Department.

7 Q And what do you do for the Charleston Police  
8 Department?

9 A I'm a crime scene technician.

10 Q And how long have you been doing that for CPD?

11 A Crime scene, I've been 19 years.

12 Q And as a matter of fact, you've retired and  
13 come back as a civilian employee; is that correct?

14 A Correct. This December I'll have a total of 28  
15 years.

16 Q And in that capacity, did you have an  
17 opportunity to process the car that belonged to the  
18 victim, Marley Lion, in this case?

19 A Yes, I did.

20 Q And what kind of car was that?

21 A It was a Nissan.

22 Q Pathfinder?

23 A Yes.

24 Q And you processed that car on June the 16th, I  
25 believe?

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1       A     Correct.

2       Q     Whereabouts?

3       A     It's done in our bay at the crime scene office.

4       Q     And prior to the processing of the victim's

5 vehicle, did you have the occasion to view the

6 surveillance video, the shooting in this case, that came

7 from the Mantek video system?

8       A     Yes, I did.

9       Q     And based upon your view of the video, what

10 portion of the car were you directing your attention to?

11      A     The driver's side.

12      Q     Now, did you attempt to take contact DNA swabs?

13      A     Yes, I did.

14      Q     And what is a contact DNA swab?

15      A     A contact DNA swab, or it's also referred to as

16 touch DNA, is when somebody touches something, they may

17 leave behind skin cells. By you taking the swabs, we're

18 trying to lift those.

19      Q     And what areas on the car did you swab?

20      A     I did the door handles, and then I did one spot

21 on the driver's door.

22      Q     Now, so you had five swabs altogether; is that

23 correct?

24      A     Correct.

25      Q     And I'm directing your attention to what is

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1 referenced in your report as reported swabs 401 and 402.

2 Where were those swabs?

3 A Those were the driver's door handle.

4 Q Okay. And how about swab 403?

5 A Those were from, I think, the passenger side  
6 door handle.

7 Q Would you like to refer to your report?

8 A That was the spot on the driver's door.

9 Q Which spot on the driver's door?

10 A When I was developing the -- processing the  
11 car, I saw what looked like a mark. It could have been  
12 from somebody touching it or rubbing up against it. It  
13 didn't look like anything like with a hand. Maybe with  
14 an arm or even from clothing.

15 Q So your 401, 402, 403 -- 401 and 402 were from  
16 the driver's door handle, and 403 was from the exterior  
17 of the driver's door; is that correct?

18 A Yes.

19 Q And how about your 404? That came from the  
20 underside of the left rear door handle; is that correct?

21 A Yes.

22 Q And 405, where did that come from?

23 A That was on the other side of the door handle.

24 Q Okay. So 404 and 405 came from the back door  
25 handle. Everything else came from the driver's door;

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1 correct?

2 A Driver's door, yes.

3 Q Were those items sent to SLED for analysis?

4 A Yes, they were.

5 Q Was any DNA profile developed from your items,  
6 404 or 405, from the rear door handle?

7 A No.

8 Q How about with regard to 403, the smudge you  
9 think you swabbed on the driver's door, was there any  
10 DNA profiled developed from that?

11 A No.

12 Q How about your 401 and 402 that came from the  
13 driver's side door, the driver's door handle, what were  
14 the results of that?

15 A There was a mixture of three individuals.

16 Q And who was the major contributor?

17 A A Katie Ridgway.

18 Q And who could not be ruled out as a second  
19 contributor?

20 A The victim, Marley Lion.

21 Q Okay. And then there was what else there?

22 A Then there was some information about a Paige,  
23 which I believe is the victim's mother.

24 Q She was excluded; is that correct?

25 A Yes.

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1           Q     And do you know anything about whether there  
2 was sufficient DNA for any analysis -- any further  
3 analysis from these alleged --

4           MR. PENNINGTON:  Objection; leading..

5           MR. DURANT:  I'm sorry.

6           MR. PENNINGTON:  We're now getting into a -- a  
7 hearsay and sensitive issue.  So I think --

8           THE COURT:  Is your objection leading, hearsay?

9           MR. PENNINGTON:  Both.  Leading -- leading.

10          THE COURT:  Rephrase that question.  Thank you.

11          Q     (By Mr. DuRant)  What conclusion was drawn with  
12 regard to the third person that was apparently in this  
13 mixture?

14          A     I'm not sure about that one.

15          Q     Okay.  Now, how about fingerprints?  What  
16 efforts did you to fingerprint the door?

17          A     I processed the exterior of the doors.

18          Q     And just briefly, how do you go about  
19 recovering latent prints?

20          A     Just a fingerprint brush is dipped in black  
21 powder, and then it's applied to the surfaces, trying to  
22 raise any ridge detail of the fingerprint.

23          Q     And how many latent prints did you lift from  
24 the exterior of the vehicle?

25          A     A total was 15, but I got ten just from the

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1 driver's side.

2 Q And what was done with those latent lift cards  
3 that you made?

4 A Those are turned over to a latent examiner.

5 Q And are you aware of whether or not those were  
6 compared to our principals in the case, Ryan Deleston,  
7 George Brown, Bryan Rivers, and Julius Brown?

8 A Yeah. There was a comparison request put in  
9 for it.

10 Q And what was the result of that comparison?

11 A They were all negative.

12 Q Were you able to locate a bullet hole in that  
13 vehicle?

14 A Yeah. There was a bullet hole in the center  
15 part of the car down on the driver's side down at the  
16 bottom.

17 Q What was the condition of the left rear  
18 driver's side window?

19 A It was shattered. It was missing.

20 Q Did you -- could you find any locations on the  
21 interior of the car which were indicative of a bullet  
22 strike?

23 A No. I went through the interior of the car to  
24 find no -- nothing in the seats or any of the plastic  
25 indicating that a bullet had hit it.

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1 Q Were you able to recover the projectile from  
2 the door -- the frame underneath the driver's side door?

3 A No. The bullet had gone actually into the  
4 frame of the car, and trying to retrieve it would cause  
5 considerable damage because I didn't have the tools for  
6 it.

7 Q Basically, would have had to cut the car up to  
8 get it out?

9 A That's correct.

10 Q And were you able to determine any kind of  
11 trajectory from that shot?

12 A Yeah. Based on using trajectory rods, it  
13 looked like it traveled at a 20-degree downward angle.

14 Q Did you take -- you took photographs; is that  
15 correct?

16 A Yes, I did.

17 MR. DURANT: And -- your Honor, at this time,  
18 we would offer State's 58 through 66, I believe without  
19 objection.

20 MR. PENNINGTON: That's correct, your Honor.

21 THE COURT: State's 58 through 66 in evidence  
22 without objection.

23 (State's Exhibit Nos. 58, 59, 60, 61, 62, 63,  
24 64, 65, 66 are admitted into evidence.)

25 MR. DURANT: Could we have State's 58?



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1 Q (By Mr. DuRant) We'll go through these  
2 briefly, Mr. Miller. If you would, just show what they  
3 depict.

4 A That's the Nissan.

5 Q Do you have a pointer up there? Could you show  
6 the jury the location of the bullet hole that's in the  
7 frame?

8 A It's right -- right here.

9 Q Okay. State's 59, what does that depict?

10 A That's just more showing the back door and the  
11 rear quarter panel of the car.

12 Q The condition of the driver's side rear window;  
13 is that correct?

14 A Yes.

15 Q State's Exhibit 60?

16 A Just showing the broken glass in the car, and  
17 it's a little bit of blood.

18 Q Okay. That would be which seat?

19 A That's going to be the left rear passenger  
20 seat.

21 Q State's Exhibit 61?

22 A That's just showing more of the back seat.

23 Q What's that in the background there?

24 A That's a pillow.

25 Q State's Exhibit 62?

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1           A     That's a photo showing the location of some of  
2     the fingerprints I lifted.

3           Q     That would appear to be 1, 2, 5, and 6; is that  
4     correct?

5           A     Yes.

6           Q     And which door is that?

7           A     That's the driver's door.

8           Q     Okay. And the next one is State's Exhibit  
9     Number 63?

10          A     It still shows the fingerprint lifts and the  
11     numbers on the driver's door. And then you can see one  
12     of them is actually on the back door.

13          Q     Okay. But right there near where the driver's  
14     door comes to the back door; is that correct?

15          A     Yes.

16          Q     That's a new one. Seven and four are new.  
17     They weren't on the other previous exhibit; correct?

18          A     Right.

19          Q     And then State's Exhibit 64, what does that  
20     depict?

21          A     That's the prints that were lifted from the  
22     left rear door.

23          Q     Okay. That would be 8, 9, and 10; is that  
24     correct?

25          A     Yes.

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1           Q     I believe you previously testified that none of  
2 those were linked to any of the Defendants involved in  
3 this case?

4           A     That's correct.

5           Q     State's Exhibit 65?

6           A     That's the photo showing the dowel rod in that  
7 hole from the previous photo, in the direction the --

8           Q     That is what we refer to as the 20 percent  
9 trajectory?

10          A     Yes.

11          Q     And State's Exhibit 66?

12          A     That's to show you the angle, that it was  
13 slightly back toward the back of the car.

14               MR. DURANT: Court's indulgence?

15               THE COURT: Take your time.

16               (Mr. DuRant speaks with Ms. Wilson off the  
17 record.)

18               (Document is shown to Defense counsel.)

19          Q     (By Mr. DuRant) Mr. Miller, that same day,  
20 July -- June 16th, did you have an opportunity to go to  
21 the Medical University of South Carolina?

22          A     Yes, I did.

23          Q     For what purpose?

24          A     To collect the items that were taken by the  
25 medical examiner as evidence.

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1           Q     I'm going to hand you what's previously marked  
2     as State's Exhibits 15, 16, 17, 18, and 19, and ask if  
3     you recognize those items?

4                     (Document's are handed to the witness.)

5           A     Yes, I do.

6           Q     (By Mr. DuRant) What are they?

7           A     These are the bullets that I picked up in  
8     autopsy.

9           Q     And those were the bullets that were removed  
10    from whom?

11          A     From the victim, Marley Lion.

12          Q     By the medical examiner?

13          A     Correct.

14          Q     And where was the State's Exhibit 15 removed  
15    from?

16          A     From the lower part of his back.

17          Q     State's Exhibit 15?

18          A     Well, State's 15 is my number 911. I'm sorry.  
19    His lateral chest wall.

20          Q     State's Exhibit 16?

21          A     His upper thigh.

22          Q     State's Exhibit 17?

23          A     His -- I don't know if I'm saying this  
24    correctly. His iliac bone.

25          Q     Left iliac bone?

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1           A       Yes.

2           Q       State's Exhibit 18?

3           A       His right iliac f-o-s-s-a.

4           Q       Fossa, that would be, I think.

5                   How about State's Exhibit 19?

6           A       That was the left perineum, lower back.

7           Q       And do those projectiles appear to be in  
8 substantially the same condition now as when you  
9 collected them from the Medical University on  
10 June 16th?

11          A       Yes, they do.

12                   MR. DURANT: Your Honor, at this time, we would  
13 offer State's 15 through 19 into evidence, if there's no  
14 objection.

15                   MR. PENNINGTON: No objection, your Honor.

16                   THE COURT: State's 15 through 19 into evidence  
17 without objection.

18                   (State's Exhibit Nos. 15, 16, 17, 18, and 19  
19 are admitted into evidence.)

20          Q       (By Mr. DuRant) Do you know what was done with  
21 those projectiles eventually, sir?

22          A       Yes. They were taken to SLED for analysis.

23                   MR. DURANT: Would you please answer any  
24 questions Mr. Pennington may have for you?

25                   THE COURT: Mr. Pennington.

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1 MR. PENNINGTON: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q Mr. Miller, I first want us to start talking to  
5 you about fingerprints for a moment. You have those  
6 photographs that we were just looking at of the  
7 exterior, what would be the driver's side of the Nissan,  
8 where you were able to develop fingerprint evidence; is  
9 that correct?

10 A Correct.

11 Q And the goal was to try to find any  
12 fingerprints that would be linked to the suspects, the  
13 ultimate purpose of being able to show who touched that  
14 vehicle that might be linked in this case; right?

15 A Yes.

16 Q And so you were referring to the fact that they  
17 had been submitted, and that another analyst in your  
18 department had made comparisons with all the evidence  
19 that you've collected; right?

20 A For the latent exams, yes.

21 Q For the latent exams. I'm talking about the  
22 fingerprints. Latent exams are fingerprints; right?

23 A Yes.

24 Q Okay. And so there were what appears to be  
25 from the driver's side exterior door, the

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1 driver's -- the exterior door of the driver, there were  
2 at least four that possessed the quality and sufficient  
3 detail to allow an identification to be made; correct?

4 A Yes.

5 Q And then on the rear door, there were at least  
6 three lifts that were deemed to be of sufficient quality  
7 and had sufficient detail to allow an identification; is  
8 that correct?

9 A That's correct.

10 Q And so the examiner in your department,  
11 Ms. Kerstein, did a comparison with Ryan Deleston, and  
12 the result was that there was no match?

13 A That's correct, no match.

14 Q All right. There was also a comparison with  
15 the other Defendants in this case, Julius Brown and  
16 Bryan Rivers, and there was no match as well; correct?

17 A Correct.

18 Q So the fingerprint evidence really was a wash.  
19 It didn't have any real significance?

20 A Correct.

21 Q Now, the DNA, there was a desire to see if  
22 there could be any use of this new touch technology to  
23 see if there could be residual cells left behind by the  
24 perpetrator; right?

25 A That's correct.

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1 Q Because this new touch technology is so  
2 powerful, it can take just a couple of cells and magnify  
3 or amplify that so that you could get a DNA profile of  
4 whoever left the cells?

5 A Yes.

6 Q And that's the purpose of doing this touch DNA  
7 swab, to gather that and send it to SLED, who knows how  
8 to do that kind of testing?

9 A Correct.

10 Q And in this case, of course, you used gloves,  
11 because the goal here is to have it just suspect DNA.  
12 So you don't want your cells to perhaps shed and be a  
13 part of the examination; right?

14 A No, that's right.

15 Q And in this case, you've described that you  
16 swabbed the front door handle, front and back; correct?

17 A Yeah. One sample is taken from the outside of  
18 the door handle, and then the other sample is taken from  
19 the underside.

20 Q You did the exact same thing again on what  
21 would be the driver's side rear door handle; right?  
22 Correct?

23 A Yes.

24 Q And so in the photograph, because this is a  
25 Nissan Pathfinder SUV, the handle is not in the typical

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1 door handle by -- below the window, but it's actually up  
2 on the side of the door up, up in the window region;  
3 correct?

4 A Yes.

5 Q And then you also took a swab, a touch DNA  
6 swab, at the driver's door exterior?

7 A Yes.

8 Q All right. And, obviously, you've  
9 been -- you've been in touch with the SLED analyst,  
10 Ms. Webb, who did that, because you were giving us some  
11 of her results; right?

12 A Yes. I had a copy of the report.

13 Q Okay. And from what you learned from that  
14 report -- you've given us information -- but I've asked  
15 you to take another look at the chart that is attached  
16 where it describes what testing was done. There's a  
17 chart, looks like this, that has the profiles of  
18 Mr. Lion, his mother, and Katie Ridgway that were  
19 compared early on to driver's side door handle and  
20 driver's side rear door handle.

21 Do you see that?

22 A Well, I have that chart, but I don't understand  
23 that particular chart.

24 Q Okay. Well, what you -- what you see there, if  
25 you look carefully, is that there is a profile that was

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1 developed. You described how you were reading those  
2 reports, and you said that, where it says driver's side  
3 door handle, there are a group of numbers all the way  
4 across for that. Do you see that? Driver's side door  
5 handle?

6 A Yes.

7 Q And is it fair to say that what the SLED agent  
8 did is that she took the samples that you collected from  
9 the top and bottom, combined them, and then developed a  
10 profile of all the DNA that she found from that front  
11 door handle?

12 A I'm not sure.

13 Q All right. With regard to the rear door  
14 handle, there are no published numbers; correct?

15 A Correct.

16 Q And then with regard to the front door, the  
17 exterior swab, there's no mention of that, is there, in  
18 that chart?

19 A No.

20 Q And when you look at the summary of the report  
21 that you were going through, they talk about item 3  
22 being the swab of the exterior driver's door?

23 A Yes.

24 Q That, in fact, was not tested by SLED, was it?

25 MR. DURANT: I'm sorry. I didn't hear the

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1 question, Counsel.

2 Q (By Mr. Pennington) The swab of the exterior  
3 driver's door was, in fact, not tested?

4 A Yeah. According to this chart, I don't see  
5 three listed.

6 Q And then with regard to -- you gathered all  
7 this information early on in the case. The case  
8 occurred June 16th. You immediately did those swabs.  
9 You didn't wait; right?

10 A You mean -- wait for what? To --

11 Q Well, when you brought the car into the bay,  
12 you immediately went and did the swabs. You didn't wait  
13 for days before doing the swabs?

14 A No. No. No. It was processed that day.

15 Q Yeah. The same day --

16 A Yeah.

17 Q -- which would have been June the 16th of 2012?

18 A Correct.

19 Q All right. Now, after the arrest of the -- the  
20 suspects in this case, which was July 30th, sometime  
21 thereafter, there were -- are buccal swabs taken from  
22 each of them; correct?

23 A Yeah. I'm assuming so, yes.

24 Q A buccal swab is if you take a -- like a Q-Tip  
25 or something akin to that and you rub the inside of

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1 someone's cheek --

2 A Cheek.

3 Q -- to gather what would be cells that could  
4 then be submitted as a known source for developing a  
5 profile of that individual; correct?

6 A Correct.

7 Q And the goal there is that you then compare  
8 what would be a known sample of the suspect and compare  
9 it to the profile that is already been developed on the  
10 driver's side door handle?

11 A Yes.

12 Q And had they tested the exterior swab of the  
13 front door, they could have made a comparison of it too?

14 A Are we referring to the one that's not  
15 listed --

16 Q Right.

17 A -- the number 3?

18 Yes.

19 Q But in this case, there is no report of a test,  
20 because no test was done of the suspects' DNA against  
21 this -- these profiles; correct?

22 A I'm assuming that it was done. But according  
23 to this chart, their names aren't listed.

24 Q Why do you assume it was done? Have you seen a  
25 report that said it was done?

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1           A     No. I'm just going by what's here. They're  
2 not listed on this sheet.

3           Q     Have you talked with Ms. Webb about that it was  
4 not done?

5           A     No. I don't talk to the SLED analysts about  
6 the DNA.

7           Q     Would it be standard -- well, let me back up.

8                     Just so we know, you as -- what is your title  
9 at the police crime lab or property lab?

10          A     Crime scene technician.

11          Q     Do you have standard reports that you use in  
12 order to be able to document when new evidence comes in  
13 on each case?

14          A     Yes. It's all entered into a computer system.

15          Q     It's a -- what's called a Charleston Police  
16 Department property report?

17          A     Yes, that could be it.

18          Q     And it's coded by the case, and it describes  
19 the nature of the evidence that -- when it's taken in?

20          A     Correct.

21          Q     On or about December 27th, 2012, did  
22 Detective Burckhardt bring you the buccal swab of  
23 Bryan Rivers?

24          A     It's possible.

25          Q     Would it refresh you to take a look at these

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1 kind of reports?

2 A Yes.

3 (Document is handed to the witness.)

4 A Well, according to this, Richard Burckhardt  
5 collected and submitted it, and it was received by  
6 Linda Wilson.

7 Q (By Mr. Pennington) Okay. That's your  
8 department?

9 A Yes.

10 Q And so this is a record that would suggest that  
11 there was a buccal swab taken for evidentiary purposes  
12 from Bryan Rivers?

13 A Yes.

14 Q But you have no knowledge of whether it was  
15 ever tested?

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

17 Q So we won't know if Bryan Rivers' profile would  
18 have turned up on that door handle; correct?

19 A Correct.

20 Q And now, one of the other features about DNA  
21 that's kind of important is that, while DNA can only  
22 show the mathematical consistency -- let's say that I  
23 left a skin cell and you had an unknown -- well, let me  
24 back up.

25 Let's imagine, hypothetically, that you had an

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1 unknown and you had a profile. And then you -- it was  
2 mine. And then you took my buccal swab, and you did a  
3 comparison. Even if there was a perfect match, they  
4 don't say that it's the same. They just say that it's  
5 consistent to a very high degree of certainty based on  
6 statistical analysis; right?

7 A Well, they do use the numbers, like, in the  
8 millions. But I couldn't -- exactly how they word it.

9 Q Right. But the one thing that DNA -- even  
10 though it cannot absolutely say with complete certainty  
11 that it's the same person, one of the things that's  
12 really good about DNA is that if DNA has even one  
13 characteristic that's different than the unknown, it can  
14 exclude someone. In other words, if the unknown DNA and  
15 then you take someone else's, like mine, and I have  
16 something that's uniquely different than that, that's an  
17 exclusion. You can say with certainty that they don't  
18 match; isn't that correct?

19 A I believe so, yes.

20 Q And so, in this case, we also don't know  
21 whether or not -- had they run Ryan Deleston's DNA  
22 against that door handle, whether he could have been  
23 conclusively excluded from having been the persons  
24 leaving that DNA? We don't know?

25 A Correct, we don't know.

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1           Q     Among the things that were turned in to crime  
2 scene was the video that was taken from the Mantek  
3 Properties or at least a copy of the video; is that  
4 correct?

5           A     Yes.

6           Q     And is it fair to say that part of the reason  
7 that's done is to look for clues that might be contained  
8 on the video?

9           A     Yes.

10          Q     And so if a suspect appears to be actually  
11 leaning against an object, that would be a pretty good  
12 reason to use the touch DNA technology to see if there  
13 could be cells left behind?

14          A     Yes.

15          Q     And it doesn't require a whole lot of cells.  
16 It can be just a couple cells that could yield a result,  
17 a meaningful result?

18          A     Well, I don't know what the quantity is of the  
19 sample. That's totally up to a DNA analysis.

20          Q     Well, what I'm saying is, using this touch  
21 technology -- in the old days -- well, old days -- in  
22 the '80s and '90s, you actually needed a fair amount of  
23 biological material, didn't you?

24          A     You needed blood.

25          Q     Right. And now that's changed. Now just a

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1 couple cells is enough to get the PCR technology rolling  
2 and amplify it to be able to make a meaningful  
3 comparison?

4 A Correct.

5 MR. PENNINGTON: If I may just have the Court's  
6 indulgence?

7 THE COURT: Take your time.

8 MR. PENNINGTON: No further questions, your  
9 Honor.

10 **REDIRECT EXAMINATION**

11 **BY MR. DURANT:**

12 Q Do you have the DNA report with you, sir?

13 A Yes, I do.

14 Q May I see it?

15 (Document is handed to Mr. DuRant by the  
16 witness.)

17 Q (By Mr. DuRant) You said that -- that the  
18 State or SLED 3, which would be your swab of the -- the  
19 smear on the driver's side door --

20 A Correct.

21 Q -- was not tested; is that correct?

22 A Well, I was looking at the chart.

23 Q What does it say on that report as to that  
24 swab?

25 A On the results notes, it says that there was no

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1 human DNA detected.

2 Q So there's no human DNA detected on that swab?

3 A Right.

4 Q And it also says that there was no human DNA  
5 detected from the rear door swabs; is that correct?

6 A That's items 4 and 5.

7 Q So basically, all we're talking about here is  
8 the front door handle?

9 A That they did get something from, yes.

10 Q Do you have any indication that the assailant  
11 touched the front door handle?

12 A No.

13 MR. DURANT: Thank you.

14 THE COURT: Mr. Pennington.

15 MR. PENNINGTON: Thank you, your Honor.

16 **RECROSS-EXAMINATION**

17 **BY MR. PENNINGTON:**

18 Q Have you actually talked to Amanda Webb at SLED  
19 about her report?

20 A No.

21 Q So basically, you're just reading the report to  
22 us?

23 A Yes. I was just provided a copy of it.

24 Q Would it shock you if you found out that the  
25 language here that says, No human DNA was detected on

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1 item 3 is actually a reference to the fact that it was  
2 not analyzed?

3 A That's something that they would have to  
4 answer. I don't know.

5 MR. PENNINGTON: Okay. No further questions.

6 THE COURT: Is this witness excused? Is this  
7 witness excused?

8 MR. DURANT: Yes, your Honor.

9 THE COURT: Any objection?

10 MR. PENNINGTON: No objection.

11 THE COURT: Ladies and gentlemen, it's an  
12 appropriate time for us to take our mid-afternoon break.  
13 Do not begin your deliberations. You may leave your  
14 notepads in your chair.

15 Please rise for the jury.

16 (The jury is escorted from the courtroom at  
17 3:15 p.m.)

18 THE COURT: Thank you. Be seated.

19 You are free to go.

20 THE WITNESS: Thank you.

21 (The witness steps down from the stand.)

22 THE COURT: Stay with us if you wish.

23 Anything before we take our break?

24 MR. PENNINGTON: No, your Honor.

25 THE COURT: From the State?

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1 THE WITNESS: I do.

2 THE DEPUTY CLERK OF COURT: Thank you, sir.

3 You may take your seat. Sir, if you will, please, state  
4 your first and last name, spelling your last for the  
5 record.

6 THE WITNESS: Richard Wiersma, W-i-e-r-s-m-a.

7 **RICHARD WIERSMA,**

8 having been first duly sworn by the Deputy Clerk of  
9 Court to tell the truth, the whole truth, and nothing  
10 but the truth, was examined and testified upon his oath  
11 as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. DURANT:**

14 Q Good afternoon. Could you tell our jury where  
15 you're employed, sir?

16 A The City of Charleston Police Department.

17 Q And what do you do for the City of Charleston?

18 A I'm assigned with the crime scene unit.

19 Q And were you doing that same thing back in  
20 2012, specifically on August 2 of 2012?

21 A Yes, I was.

22 Q In that capacity, did you have the occasion to  
23 assist in serving a search warrant at 643 Cashew Street  
24 on August the 2nd of 2012?

25 A Yes.

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1 Q And about what time was that, if you recall?

2 A I believe it was around 2:00 p.m.

3 Q And what was the purpose or object of that  
4 search warrant?

5 A I believe detectives were looking for any  
6 charred remains or evidence of a fire and any  
7 accelerants that may have been used.

8 Q Okay. And were you able to discover any  
9 evidence of a fire?

10 A Yes, I did.

11 Q Where?

12 A It was in the backyard of the residence behind  
13 the left side of the house.

14 Q And how did you determine that there had been a  
15 fire at that location?

16 A There was a -- an area of exposed dirt that was  
17 surrounded by grass like the grass had been burned away.  
18 And then in that dirt pile, there was charred remains of  
19 items.

20 Q And what did you do with the charred remains  
21 that you found?

22 A I collected them and placed them in a paper  
23 bag.

24 Q Did you photograph that area also?

25 A Yes, I did.

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1           Q     I hand you what's previously been marked as  
2     State's Exhibit Number 32.

3                     (Document is shown to the witness and to  
4     Defense counsel.)

5                     MR. DURANT: Your Honor, I'd offer State's 32,  
6     I believe without objection.

7                     THE COURT: Any objection?

8                     MR. PENNINGTON: No objection, your Honor.

9                     THE COURT: State's 32 into evidence without  
10    objection.

11                    (State's Exhibit No. 32 is admitted into  
12    evidence.)

13            Q     (By Mr. DuRant) And what is State's 32,  
14    Mr. Wiersma?

15            A     These are the charred remains that I collected  
16    from the backyard.

17            Q     And you -- did you take the photographs when  
18    you went there as well?

19            A     Yes, I did.

20                    MR. DURANT: And, your Honor, at this time, we  
21    would offer State's 77 through 83, I believe without  
22    objection.

23                    MR. PENNINGTON: That's correct.

24                    THE COURT: State's 77 through 83 into evidence  
25    without objection.

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1           (State's Exhibit Nos. 77, 78, 79, 80, 81, 82,  
2 and 83 are admitted into evidence.)

3           MR. DURANT: And put State's 77 up, please.

4           MS. WILSON: Yep.

5           Q     (By Mr. DuRant) Okay. Were you aware there  
6 was another search warrant conducted at this same  
7 location like two or three days previous?

8           A     Yes, I was.

9           Q     So this is the second time y'all went there; is  
10 that correct?

11          A     Yes, yes.

12          Q     And what does State's 77 depict?

13          A     This is a photo of the kitchen of the residence  
14 on Cashew Street. It's in the corner by the sink and  
15 the stove.

16          Q     That's Clorox on the floor, I presume?

17          A     Yes, sir, a bottle of the Clorox bleach.

18          Q     State's 78?

19          A     This is a photograph of one of the bedrooms in  
20 the residence taken from the corner of the bedroom.  
21 It's an overall picture.

22          Q     Could you tell what that is on that stool  
23 there?

24          A     Yes. It's a -- it's a white Nike tennis shoe.

25          Q     Can you tell if that's a left or a right?

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1           A     I believe it's a right.  
2           Q     Okay.  Appears to be a right.  
3                     State's Exhibit 20 is the left; is that  
4 correct?  
5           A     Yes.  Yes, sir.  
6           Q     Right in front of you?  
7           A     Yes, sir.  
8           Q     State's Exhibit Number 79?  
9           A     This is a photograph of the backyard of the  
10 residence where the charred remains were found.  
11          Q     Okay.  So on the other side of the house would  
12 be what street?  
13          A     Would be Cashew Street.  
14          Q     So this is behind, looking back toward Cashew?  
15          A     Yes.  
16          Q     State's 80?  
17          A     This is another photograph of the same area,  
18 just from a different angle.  
19          Q     Is the pointer up there, sir?  
20          A     Yes.  
21          Q     Could you point out where -- the location where  
22 you collected the charred debris from?  
23          A     The charred debris was right in this area.  
24                     THE COURT:  You may stand up if you need to.  
25                     THE WITNESS:  Thank you.

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1 Q (By Mr. DuRant) State's Exhibit 81?

2 A It's a close-up of the charred area.

3 Q Eighty-two?

4 A Just another close-up.

5 Q And 83?

6 A Another close-up of the debris that was there.

7 Q Appears to be -- what does that appear to be in  
8 the middle, perhaps?

9 A Yeah. Some kind of buckle or -- there's some  
10 metal rings.

11 Q Okay. And did that -- this -- did that fire  
12 appear to be fresh, I mean, within the last week or two?

13 A No --

14 MR. PENNINGTON: Objection, your Honor. Calls  
15 for speculation.

16 THE COURT: Overruled.

17 Q (By Mr. DuRant) Did it appear to be a recent  
18 fire?

19 A No, sir.

20 MR. DURANT: Your Honor, we request to pass  
21 around State's Exhibit 32 to the jury.

22 THE COURT: You may -- you may approach the  
23 foreperson.

24 (State's Exhibit 32 is published to the jury.)

25 THE COURT: Thank you.

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1 MR. DURANT: Can you answer any questions  
2 Mr. Pennington may have for you?

3 THE WITNESS: Yes, sir.

4 THE COURT: Mr. Pennington.

5 MR. PENNINGTON: Thank you, your Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. PENNINGTON:**

8 Q Officer, when you're using this term "burn  
9 remains," let's make sure that we're absolutely clear.  
10 We're talking about debris. We're not talking about  
11 anything that would suggest that this is human remains  
12 or anything like that?

13 A Correct.

14 Q It was debris of some unknown origin?

15 A Yes, sir. An object, yes.

16 Q Okay. And as far as your -- you said that it  
17 did not appear to be recent. In terms of -- did you  
18 conduct any kind of testing to try to date what month or  
19 year that this occurred?

20 A No, sir.

21 Q And so it did not -- it did not appear to you  
22 that it happened in the last, say, five to six days?

23 A It didn't appear so, no.

24 Q Okay. But it's really kind of impossible for  
25 you to go back in time and say that, I know that this

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1 happened in the month of, say, July?

2 A Correct.

3 Q Or the month or June or the month of May. You  
4 just don't know?

5 A No, sir.

6 Q Did you do any kind of comparison of those  
7 objects to determine what those objects -- where they  
8 came from?

9 A No.

10 MR. PENNINGTON: Thank you. That's all I have,  
11 your Honor.

12 MR. DURANT: I just have one on Redirect.

13 **REDIRECT EXAMINATION**

14 **BY MR. DURANT:**

15 Q Are you aware of any tests that determines the  
16 age of a fire?

17 A No.

18 MR. DURANT: Nothing further.

19 THE COURT: Mr. Pennington.

20 MR. PENNINGTON: No follow-up.

21 THE COURT: This witness excused, Mr. DuRant?

22 MR. DURANT: He is, your Honor.

23 MR. PENNINGTON: No objection, your Honor.

24 THE COURT: You are excused. Feel free to  
25 remain with us, but you're also free to leave. Thank

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1     you.

2                   (The witness steps down from the stand.)

3           THE COURT:   Next witness.

4           MR. DURANT:   State would call George Brown.

5                   (The oath is administered by the Deputy Clerk  
6 of Court, and the witness answers follows:)

7           THE WITNESS:   Yes, sir.

8           THE DEPUTY CLERK OF COURT:   Thank you, sir.

9     Take your seat.   Sir, if you take your seat.   State your  
10 first and last name, spelling your last for the record.

11           THE WITNESS:   George Brown, B-r-o-w-n.

12           THE COURT:   Mr. DuRant.

13           MR. DURANT:   Thank you, your Honor.

14                   GEORGE BROWN,

15 having been first duly sworn by the Deputy Clerk of  
16 Court to tell the truth, the whole truth, and nothing  
17 but the truth, was examined and testified upon his oath  
18 as follows:

19                   DIRECT EXAMINATION

20   **BY MR. DURANT:**

21         Q     Mr. Brown, how old are you?

22         A     Twenty-eight years old.

23         Q     How far did you go in school?

24         A     Eleventh grade.

25         Q     And when you were going to school, where did

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1   you go to school?  
2       A     West Ashley High School.  
3       Q     And how long has it been since you've been in  
4   high school?  
5       A     Couple of years, since 2002.  
6       Q     Are you currently working?  
7       A     Yes, sir.  
8       Q     What are you doing right now?  
9       A     I work at Coastal Collision body shop.  
10      Q     And what kind of work have you done in the  
11   past?  
12      A     Mechanic work and detailing.  
13      Q     What part of town are you from?  
14      A     The Ponderosa subdivision in West Ashley.  
15      Q     And where is the Ponderosa subdivision?  
16      A     Savannah Highway.  
17      Q     How far out Savannah Highway? What's it near?  
18      A     C. E. Williams Middle School.  
19      Q     So that's a good ways out; right?  
20      A     Yes, sir.  
21      Q     But you hang out a lot in Ardmore, don't you?  
22   Why do you do that?  
23      A     Yes, sir.  
24      Q     Why?  
25      A     Just somewhere to hang out to drink.

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1 Q We'll get to that in a little bit. But who do  
2 you know in Ardmore that you hang out and drink with?

3 A Bryan Rivers, Julius Brown, Rayshawn, and  
4 Ryan Deleston.

5 Q Now, you've had a previous conviction for a  
6 financial transaction card fraud; is that correct?

7 A Yes, sir.

8 Q That occurred in 2007?

9 A Yes, sir.

10 Q You still on probation and parole for that?

11 A No, sir.

12 Q And in this case, you were originally arrested  
13 for accessory after the fact to murder; correct?

14 A Yes, sir.

15 Q And possession of a pistol with an obliterated  
16 serial number?

17 A Yes, sir.

18 Q And that was related to the Marley Lion case,  
19 the case we're trying here today; is that correct?

20 A Yes, sir. Yes, sir.

21 Q Those charges are still pending against you,  
22 aren't they?

23 A Yes, sir.

24 Q And not only are they pending against you,  
25 you've also been charged with some more offenses related

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1 to this incident, haven't you?

2 A Yes, sir.

3 Q And another incident that occurred just

4 previous to it?

5 A Yes, sir.

6 Q Do you recall what those are?

7 A Armed robbery.

8 Q Accessory before the fact to --

9 A Yes, sir. Armed robbery.

10 Q -- attempted armed robbery for Marley Lion's

11 case; correct?

12 A Yes, sir.

13 Q And you've also been arrested for accessory

14 before the fact of armed robbery --

15 A Yes, sir.

16 Q -- for the couple downtown that was robbed?

17 A Uh-huh.

18 Q We are going to talk about that a little bit

19 more in a little bit. And all of those charges are

20 still pending against you?

21 A Yes, sir.

22 Q And you add up all those charges, it's a lot of

23 years, isn't it?

24 A Yes, sir.

25 Q Now, when you went to Ardmore, you said even

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1    though you lived in Ponderosa, you went to Ardmore a  
2    good bit.  Where did you generally go when you went to  
3    Ardmore?

4           A     On Cashew Street.

5           Q     And who lived at Cashew Street?

6           A     Stephanie Brown.

7           Q     And who is Stephanie Brown?

8           A     Julius' sister.

9           Q     That would be Julius Brown?

10          A     Yes, sir.

11          Q     Is Stephanie the one -- is the one, I believe,  
12    that's a diabetic and has sight --

13          A     Yes, sir.

14          Q     -- problems and a missing leg; correct?

15          A     Yes, sir.

16          Q     Was it unusual for y'all to hang out at her  
17    house?

18          A     No, sir.

19          Q     Who was her boy?

20          A     Ryan Deleston.

21          Q     Who is Ryan Deleston?

22          A     My Codefendant sitting right there.

23          Q     What's he wearing?

24          A     A white shirt.

25          Q     Sitting at this table right here?

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1       A     Yes, sir.  
2       Q     With a tie or without a tie?  
3       A     Without a tie.  
4       Q     Okay. And how long have you known  
5 Ryan Deleston?  
6       A     About two months before the murder.  
7       Q     Now, you said you also hung out with  
8 Julius Brown?  
9       A     Yes, sir.  
10      Q     And Rayshawn Miller?  
11      A     Yes, sir.  
12      Q     Who are they?  
13      A     Those are brothers of Stephanie Brown.  
14      Q     And who is older?  
15      A     Julius.  
16      Q     And which one are you closer to, Julius or  
17 Rayshawn?  
18      A     Rayshawn.  
19      Q     What's Rayshawn's nickname?  
20      A     Duke.  
21      Q     And your last name is Brown, and their last  
22 name is Brown. Are you related to them?  
23      A     No, sir.  
24      Q     There's no blood relationship there?  
25      A     No, sir.

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1           Q     And when I say -- here it is.  
2                     Referring you to State's Exhibit 27, can you  
3 see that?  
4           A     Yes, sir.  
5           Q     Can you see where Cashew Street is?  
6           A     Yes, sir.  
7           Q     And would you point out to the jury where  
8 Stephanie and Ryan lived?  
9           A     This is a dead end there -- area.  
10          Q     That's a dead -- that's Evergreen and Cashew  
11 going toward the parking lot?  
12          A     It's one house and then it's their house right  
13 here.  
14          Q     The second house?  
15          A     Yes.  
16          Q     Not the house on the end, but the house right  
17 next to it?  
18          A     Yes, sir.  
19          Q     Correct?  
20                     How do you know Little B?  
21          A     Friend of Rayshawn's. I met him when he got  
22 out of prison.  
23          Q     And he got out of prison relatively recently?  
24          A     Yes, sir.  
25          Q     When this thing happened; right?

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1           A     Yes, sir.                                 |  
2           Q     Had you just known him since he got out of  
3 prison?  
4           A     Yes, sir.  
5           Q     So you'd only known him for a couple of weeks?  
6           A     Yes, sir.  
7           Q     Do you know where he was staying at the time?  
8           A     On Cashew Street.  
9           Q     Let's talk a little bit about Friday, June the  
10 15th and going into the morning of Saturday, June the  
11 16th. Where were you that night?  
12          A     Cashew Street.  
13          Q     How did you get over to Cashew Street?  
14          A     I drove my vehicle, a black Suburban.  
15          Q     And when you got over to Cashew Street that  
16 night, do you recall about what time of the day it  
17 was -- or the night it was when you got there?  
18          A     It just started getting dark. I'd say around  
19 7:00, 7:30.  
20          Q     And who was over there when you got there?  
21          A     Julius Brown and Ryan -- Bryan Rivers and  
22 Ryan Deleston and Rayshawn Milligan.  
23          Q     Okay. So Bryan Rivers was there?  
24          A     Yes, sir.  
25          Q     And?

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1           A     Julius Brown.  
2           Q     Julius Brown.  
3           A     Ryan Deleston.  
4           Q     Ryan Deleston.   And Rayshawn?  
5           A     Yes, sir.  
6           Q     How about Stephanie?   Was she there?  
7           A     Yes.   She was in the house.  
8           Q     And what were y'all doing?  
9           A     Drinking, listening to music.  
10          Q     And when you were drinking and listening to  
11 music, were you inside or outside?  
12          A     Outside.  
13          Q     And I believe you were also smoking some weed  
14 there that night?  
15          A     Yes, ma'am -- yes, sir.  
16          Q     How frequently did you hang out at Stephanie's  
17 house?  
18          A     On a regular basis.  
19          Q     Now, at some point that night or early the next  
20 morning, tell us about going downtown.  
21          A     We went downtown to a friend's house, and then  
22 we talked about finding some people to rob.  
23          Q     And y'all were going to whose house initially?  
24          A     Horace Jones.  
25          Q     And what -- and -- but the real reason y'all

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1 were going down there was why?

2 A To rob somebody.

3 Q And who all went?

4 A Julius Brown, Bryan Rivers, Ryan Deleston,  
5 Rayshawn Milligan, and me.

6 Q Everybody who was at Cashew except for  
7 Stephanie; right?

8 A Yes, sir.

9 Q Where were -- how did y'all get down there?

10 A I drove my vehicle, black Suburban.

11 Q And. . .

12 MR. DURANT: Court's indulgence?

13 (Document is shown to Defense counsel.)

14 MR. DURANT: Madam Court Reporter, do you have  
15 84 already in evidence?

16 THE COURT REPORTER: Yes.

17 MR. DURANT: Your Honor, at this time, I would  
18 offer State's Exhibits 85, 86, and 87, I believe without  
19 objection.

20 MR. PENNINGTON: That's correct, your Honor.

21 THE COURT: 85, 86, and 87 into evidence  
22 without objection.

23 (State's Exhibits Nos. 85, 86, and 87 admitted  
24 into evidence.)

25 Q (By Mr. DuRant) And I'd first like to show you

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1 State's Exhibits 85 -- 84 and 85, and ask if you can  
2 identify -- this is State's Exhibit 84, State's Exhibit  
3 85.

4 Whose vehicle is that?

5 A That's my vehicle.

6 Q As a matter of fact, a picture of that vehicle  
7 was taken right out on the parking garage, wasn't it?

8 A Yes, sir.

9 Q Do you remember where everybody was in the car  
10 when y'all went?

11 A Julius was in the front seat, and Ryan and  
12 Bryan and Rayshawn was in the back seat.

13 Q Okay. And where all did y'all go downtown?

14 A By the College of Charleston on Market, the  
15 Battery. Then we rode on Rutledge Street.

16 Q And what were y'all looking for?

17 A Mainly people who were drunk and under the  
18 influence.

19 Q Why were y'all looking for people that were  
20 drunk or under the influence?

21 A So we can rob them and get the money from them.

22 Q Are --

23 THE COURT: Mr. Brown, I'm going to need you to  
24 speak loudly.

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: Can you lean into the microphone?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Thank you.

4 MR. DURANT: Should I let him have this one  
5 now?

6 THE COURT: Can you speak up?

7 THE WITNESS: Yeah, I can speak up.

8 THE COURT: All right. There he goes.

9 MR. DURANT: Okay.

10 THE COURT: Thank you.

11 MR. DURANT: These ladies and gentlemen have to  
12 hear what you have to say. Okay, George? So if you  
13 could speak up.

14 Q (By Mr. DuRant) Why were you looking for drunk  
15 people?

16 A They said it was an easier target.

17 Q "They" being you and the rest of them?

18 A Yes, sir.

19 Q So you were a part of that; right?

20 A Yes, sir.

21 Q Did you have a gun at the time?

22 A Yes, sir.

23 Q And whose gun was it?

24 A My gun.

25 Q And where did you keep your gun?

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1           A     Under the seat area on the floorboard.  
2           Q     Okay. I'd like you to refer your attention to  
3 State's Exhibits 86. Do you recognize that photo?  
4           A     Yes, sir.  
5           Q     What is that a photo of?  
6           A     Inside my vehicle.  
7           Q     On the driver's side?  
8           A     Yes, sir, driver's side.  
9           Q     And driver's side floorboard, obviously?  
10          A     Yes, sir.  
11          Q     Since you got all those pedals there.  
12                How about State's Exhibit 87?  
13          A     That's where the firearm was hidden.  
14          Q     Would you show the jury where you used to hide  
15 your firearm in that car? You can use this pointer, and  
16 you can stand up if you want.  
17          A     (Witness complies.)  
18          Q     Okay. Back -- is there a little depression  
19 back in there?  
20          A     Yes, sir.  
21          Q     Can you see that when you got the gun back  
22 there and all the insulation and stuff over that?  
23          A     No, sir.  
24          Q     Now, did anybody else in this group of friends  
25 you were with have a car?

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1       A     No, sir.

2       Q     You were the only one with wheels?

3       A     Yes, sir.

4       Q     And just so there'll be no mistake, I'm going  
5 to hand you what's State's Exhibit 23 in evidence.

6           (Document is handed to the witness.)

7       Q     (By Mr. DuRant) And, if you would, tell us if  
8 you recognize that.

9       A     Yes, sir. It's my gun.

10      Q     Where did you get that gun?

11      A     I bought it off the street.

12      Q     Who did you buy it from?

13      A     Kid named Josh.

14      Q     Where is Josh from?

15      A     Out of the West Ashley area.

16      Q     I believe he's now deceased, isn't he?

17      A     Yes, sir.

18      Q     Didn't you tell us that?

19      A     Yes, sir.

20      Q     Now, I notice -- where's the serial number on  
21 that gun?

22      A     Scratched off.

23      Q     And was the serial number on it scratched off  
24 on that gun when you bought it?

25      A     Yes, sir.

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1 Q Okay. So we're back downtown, and y'all are  
2 looking for drunk people to rob, preferably drunk  
3 people. Tell us what happened around Rutledge Avenue.

4 A Ryan and Bryan got out of the vehicle and  
5 started walking.

6 Q And why did they get out of the car and start  
7 walking?

8 A So they can catch some couples walking down the  
9 avenue.

10 Q Had y'all seen a couple walking down the road?

11 A No, sir. I didn't see the couple. They saw  
12 the couple.

13 Q But that's why y'all stopped?

14 A Yes, sir.

15 Q And who got out of the car?

16 A Ryan Deleston and Bryan Rivers.

17 Q Okay. Who had your gun?

18 A Bryan Rivers.

19 Q And where did he get your gun?

20 A From me.

21 Q And where did you get your gun to give it to  
22 Bryan Rivers?

23 A From out of that area right there, sir, where I  
24 just showed you.

25 Q Now, who all stayed in the truck?

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1       A     Julius Brown, Rayshawn, and myself.  
2       Q     And who came back to the truck?  
3       A     Bryan.  
4       Q     What did Bryan have when he came back to the  
5 truck?  
6       A     A purse.  
7       Q     What kind of purse?  
8       A     A cream-colored purse.  
9       Q     Big purse, little purse?  
10      A     Big purse.  
11      Q     Light colored; dark colored?  
12      A     Light colored.  
13      Q     Where was Ryan Deleston? I thought you said  
14 he'd gotten out too.  
15      A     Yeah. They started running, and they split up.  
16      Q     So he didn't come back to the car with Bryan?  
17      A     No, sir.  
18      Q     Where did you pick up Ryan?  
19      A     From McDonald's.  
20      Q     How did y'all know where he was -- he would be?  
21      A     He met up with Horace Jones, the house we went  
22 to when we first went downtown.  
23      Q     I mean, how did y'all know where to pick up  
24 Ryan?  
25      A     He called the cell phone.

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1 Q Okay. Whose cell phone did he call?  
2 A Julius.  
3 Q What was in the purse?  
4 A Credit cards, papers.  
5 Q How much cash?  
6 A No cash.  
7 Q When did y'all go through the purse?  
8 A They went back through the purse when we got to  
9 West Ashley.  
10 Q Did they go through the purse before you got  
11 back to West Ashley?  
12 A No, sir. Not to my knowledge.  
13 Q Why did y'all start talking about Joe's?  
14 A Because they didn't find any cash in the purse.  
15 Q Well, I guess they went through the purse  
16 before they got back to Cashew?  
17 A I didn't see anyone going through the purse  
18 until we got to the gas station.  
19 Q But y'all started talking about going to Joe's  
20 before you got back to Cashew, didn't you?  
21 A Yes, sir.  
22 Q Who was talking about going to Joe's?  
23 A Julius came up with the plan, and he was  
24 speaking to Ryan and Bryan about it. And I was -- they  
25 asked me to be the driver.

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1 Q Okay. And that occurred where?  
2 A At the BP gas station.  
3 Q And what gas station?  
4 A Savannah Highway.  
5 Q When did y'all go to the gas station?  
6 A When we left from downtown.  
7 Q So you went to the gas station?  
8 A Yes, sir.  
9 Q And then you went to the gas station to where?  
10 A To Cashew -- well, first we went through Joe's  
11 parking lot, then went to Cashew Street.  
12 Q And why would you go through Joe's parking lot?  
13 A Case the parking lot.  
14 Q Okay. What were y'all looking for?  
15 A They were looking to see if anyone else was at  
16 Joe's.  
17 Q Now, you've previously been shown a video of a  
18 car riding through Famous Joe's parking lot at 3:09 on  
19 the Mantek video, 3:09 their time. Have you seen that  
20 video?  
21 A No, sir.  
22 Q Did you not see that in my office?  
23 A Oh, yes, sir. When you showed it. Yes, sir.  
24 Q Okay. Was that your car?  
25 A Yes, sir.

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1 Q And was that when you were driving through to  
2 case Joe's?

3 A Yes, sir.

4 Q Now, after y'all rode through the parking lot,  
5 where did you go?

6 A Back to Cashew Street.

7 Q And what happened when y'all got back to Cashew  
8 Street?

9 A Ryan Deleston and Julius Brown and Bryan Rivers  
10 were talking about going back up to rob Joe's before  
11 they left.

12 Q And how about you? Were you going to go up  
13 there with them?

14 A No, sir. They asked me to drive, and I told  
15 them no.

16 Q Why didn't you drive?

17 A I didn't want to be seen.

18 Q You didn't care -- mind being seen downtown.  
19 Why did you care about being seen all of the sudden?

20 A I didn't want to be any part of them robbing  
21 Joe's.

22 Q So where did you stay?

23 A On Cashew Street.

24 Q And who stayed with you?

25 A Me and Rayshawn.

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1 Q Why didn't Rayshawn go?  
2 A No reason. He just stayed with me.  
3 Q Now, what did they do when you told them that  
4 you weren't going to drive?  
5 A They left on foot.  
6 Q And do you know how far it is from Cashew up to  
7 Famous Joe's?  
8 A About two to three blocks.  
9 Q Who had your gun when they left?  
10 A Ryan Deleston.  
11 Q And how did he get the gun?  
12 A He had it since we got back to Cashew Street.  
13 Q Well, I mean, did he get it from you?  
14 A Yes, sir.  
15 Q So did -- how did you get your gun back from  
16 Bryan from the downtown robbery?  
17 A I had got it back from him so I can hide it.  
18 Q And you hid it in that same place?  
19 A Yes, sir.  
20 Q What happened with that gun when you got back  
21 to Cashew Street?  
22 A I took it out.  
23 Q And you gave it to who?  
24 A Ryan.  
25 Q Ryan being -- just because I can't hear, let's

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1   refer to Bryan as "Little B" --  
2       A     Okay.  
3       Q     -- and Ryan as "Ryan Deleston."  
4       Who did you give the gun to when you got back  
5   to Cashew?  
6       A     Ryan Deleston.  
7       Q     Do you know where he had the gun?  
8       A     On his waistline.  
9       Q     Like, in his -- in his --  
10      A     Yes, sir.  
11      Q     -- belt?  
12      A     Yes, sir.  
13      Q     Now, after some period of time, who came back  
14   to Cashew?  
15      A     Ryan Deleston, Little B, and Julius Brown.  
16      Q     They all came back pretty much together?  
17      A     Yes, sir.  
18      Q     And what happened when they got back to Cashew?  
19      A     Little B and Julius starting talking, and Ryan  
20   went straight in the house.  
21      Q     What were Little B and Julius talking about?  
22      A     Saying, he's stupid. He didn't have to do that  
23   shit.  
24      Q     What was their state of mind?  
25      A     What was whose state of mind?

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1 Q Julius and Bryan.  
2 A Aggravated, frustrated at Ryan.  
3 Q Happy, sad --  
4 A Sad.  
5 Q -- angry?  
6 A Angry.  
7 Q Now, you said Ryan went inside. Did he stay  
8 inside?  
9 A No, sir.  
10 Q When he came back out, what was different?  
11 A He changed his clothes, and he smelled like  
12 bleach.  
13 Q Do you remember anybody telling him to go wash  
14 up?  
15 A Yes, sir. Julius.  
16 Q Did you end up seeing that gun again that night  
17 after the shooting?  
18 A Yes, sir.  
19 Q And who had the gun?  
20 A Ryan Deleston.  
21 Q And what did he do with it?  
22 A He set it on the arm of the couch.  
23 Q And what did he do with it after he set it on  
24 the arm of the couch?  
25 A Put it in the storage room.

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1           Q     And what did he put it in before he put it in  
2     the storage room?  
3           A     A sock.  
4           Q     And when you say "storage room," where was the  
5     storage room?  
6           A     On the carport -- on the back of the carport.  
7           Q     And when y'all say y'all were hanging out  
8     outside, where do y'all hang out outside?  
9           A     On the carport.  
10          Q     What did you think when you heard these guys  
11     saying he didn't have to do that?  
12          A     That he shot someone.  
13          Q     Why did you think he shot somebody?  
14          A     Because he came back and washed his hands.  
15     They were talking.  
16          Q     Okay. So you gleaned that from what they were  
17     saying?  
18          A     Yes, sir.  
19          Q     Had you and Duke heard the shots?  
20          A     No, sir.  
21          Q     Why not?  
22          A     We had music playing.  
23          Q     Pardon me?  
24          A     We were playing music.  
25          Q     Where? From a car? inside? what?

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1           A       From the car.

2           Q       Do you recall Ryan going anywhere after he  
3 returned to Cashew?

4           A       Yes, sir. Him and Julius went back down the  
5 street.

6           Q       Do you know why they went back down the street?

7           A       He said he left his baseball cap.

8           Q       Now, when they returned from that little  
9 excursion, what did he do with his clothes?

10          A       He burned it.

11          Q       Where did he burn it?

12          A       In the backyard.

13          Q       And what was done with the purse that was taken  
14 from the downtown robbery?

15          A       They burned that also.

16          Q       And how do you know?

17          A       I walked back there to see what was going on,  
18 and I saw it.

19          Q       Okay. Went back there for what purpose?

20          A       Originally, to use the restroom.

21          Q       You could see where this stuff was being  
22 burned?

23          A       Yes, sir.

24          Q       Now, how much longer did you end up staying  
25 there that night?

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1           A     Until the morning.

2           Q     And why did you stay until the morning?

3           A     Because I was intoxicated, and there was too

4 much police around there.

5           Q     There were a bunch of police around there,

6 weren't there?

7           A     Yes, sir.

8           Q     Now, when you did leave, was it daylight or

9 still dark?

10          A     Daylight.

11          Q     And who left with you?

12          A     Julius Brown and Rayshawn.

13          Q     And where did you take Rayshawn?

14          A     Home on 61.

15          Q     And where did you take Julius?

16          A     Home in North Charleston, Horizon Village.

17          Q     And when did you find out that someone had

18 actually been killed at Famous Joe's?

19          A     On the news that day.

20                MR. DURANT: Court's indulgence?

21                THE COURT: Take your time.

22                (Mr. DuRant speaks with Ms. Wilson off the

23 record.)

24          Q     (By Mr. DuRant) Later on, did you have the

25 opportunity or have you had the opportunity to see the

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1 video of the shooting in this case?

2 A Yes, sir.

3 Q Did you see it back when it happened? I mean,  
4 back near the time when the shooting happened?

5 A Yes, sir. On the news, yes, sir.

6 Q Okay. And you've also seen it several times  
7 getting ready for trial, haven't you?

8 A Yes, sir.

9 Q Who is the shooter?

10 A Ryan Deleston.

11 Q How do you know that?

12 A I saw him on the footage.

13 Q And how do you know that was Ryan and not  
14 Bryan?

15 A Ryan too skinny -- well, Bryan's too skinny,  
16 and the person in the video looks stocky, more like  
17 Ryan Deleston.

18 Q How about the clothing?

19 A Yes, sir, the clothing.

20 Q What about the clothing?

21 A That was the clothing Ryan had on when he left.

22 Q Do you recall what kind of shoes he had on?

23 A No, sir.

24 Q If you don't, that's fine.

25 You also -- when you watched the video, did you

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1 see the fellow in the white T-shirt who walked by the  
2 truck?

3 A Yes, sir.

4 Q Who was that?

5 A Julius Brown.

6 Q We're going to play a portion of State's  
7 Exhibit 1. And if you would, you can either look at it  
8 behind you or over there, whichever is clearer.

9 (Video is played.)

10 MR. DURANT: Can you back that up? I don't  
11 think he was looking. Can you back it up just a minute?

12 (Video is played.)

13 Q (By Mr. DuRant) And who is that person?

14 A Ryan Deleston.

15 Q And, once again, any possibility that that  
16 could be Bryan, Little B?

17 A No, sir.

18 (Video is played.)

19 Q (By Mr. DuRant) And who is that shooting?

20 A Ryan Deleston.

21 Q Do you recall if Ryan said anything to you when  
22 he came -- when they got back to Cashew that time?

23 A No, sir.

24 Q Okay. Let's move on a little bit. So I guess  
25 when you left that morning, you took the gun with you;

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1 right?

2 A No, sir. The gun was left there at that  
3 moment.

4 Q Why didn't you take the gun with you?

5 A Because Ryan had already hidden it.

6 Q And -- but that ain't the last time you saw  
7 that gun?

8 A No, sir.

9 Q As a matter of fact, you got the gun back,  
10 didn't you?

11 A Yes, sir.

12 Q Tell us about that.

13 A Me and Julius Brown went back over there.  
14 Julius got the gun and carried it to his house.

15 Q Pardon me? I can't hear you.

16 A Julius Brown got the gun from Cashew Street,  
17 and it was carried to his house in Horizon Village.

18 Q Where did he get it from Cashew Street?

19 A Out of the carport area.

20 Q Out of the room?

21 A Yeah. The closet area.

22 Q And how did he get back over to his house with  
23 the gun?

24 A I was driving.

25 Q You took him home?

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1           A     Yes, sir.

2           Q     And when he got home, who got out of the car?

3           A     He got out of the car.

4           Q     And what did he get out of the car with?

5           A     The gun.

6           Q     Now, you tried to help get rid of that gun,  
7 didn't you?

8           A     Yes, sir.

9           Q     And how did you try -- how did you help get rid  
10 of that gun -- try to get rid of the gun?

11          A     See if someone was going to purchase it.

12          Q     Pardon?

13          A     See if someone was going to purchase it, buy  
14 it.

15          Q     Did you find somebody that you thought was  
16 going to purchase it?

17          A     Yes, sir.

18          Q     Who was that?

19          A     A kid from up in the neighborhood, Ponderosa.

20          Q     Out of what neighborhood?

21          A     Ponderosa.

22          Q     The neighborhood that you're from?

23          A     Yes, sir.

24          Q     And why didn't that sale go through?

25          A     Because he knew where it was coming from, the

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1 Ardmore area, and he knew it was hot.

2 Q And so the sale fell through at that point?

3 A Yes, sir.

4 Q Did you ever get the gun back from Julius for  
5 the purpose of selling it to this kid?

6 A Yes, sir.

7 Q And what happened when the sale didn't go  
8 through?

9 A I carried it back to Julius.

10 Q Now, let's talk about July the 15th of 2012.  
11 Who did you hear from about the gun that day?

12 A Ryan Deleston.

13 Q And how did you hear from Ryan?

14 A He called me on the cell phone.

15 Q And where were you?

16 A In Goose Creek.

17 Q And what did he want?

18 A He wanted me to bring the gun so he could sell  
19 it.

20 Q Did he say he had somebody that was going to  
21 buy the gun?

22 A Yes, sir.

23 Q What did you do?

24 A I went to Julius' house and got it from him and  
25 carried it to him.

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1 Q And when you went over to Ardmore, how did you  
2 go into Ardmore? Did you go down -- in the 17 side or  
3 the 61 side?  
4 A 61 side.  
5 Q And who was at Cashew when you got there?  
6 A Ryan Deleston and Stephanie Brown.  
7 Q Who got the gun out of your truck?  
8 A Ryan Deleston.  
9 Q And did you give it to him or he get it out  
10 himself?  
11 A No, sir. He got it out himself.  
12 Q Did he know where you kept the gun in the  
13 truck?  
14 A Yes, sir.  
15 Q And what did you do?  
16 A I walked in the house and carried  
17 Stephanie Brown's cigarettes.  
18 Q And where did Ryan go?  
19 A He walked off and went around the corner.  
20 Q Walked off which way? Here, I'll let you look  
21 at State's 27 again. You see that?  
22 A Yes.  
23 Q This is Cashew Street here. Which way did he  
24 walk?  
25 A He walked off Cashew Street and went toward

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1 Evergreen Street.

2 Q And which way did he go when he got to

3 Evergreen?

4 A Toward the right.

5 Q So he went down this way on Evergreen?

6 A Yes, sir.

7 Q Okay. And where was he when you came back out  
8 from -- did you just go give her cigarettes and come  
9 right back out, or did you stay and talk?

10 A I was speaking with Stephanie, and when I came  
11 out the house, he was walking back up in the yard.

12 Q Okay. Now, of course, what you've told this  
13 jury today is the same thing that you told the police,  
14 isn't it?

15 A No, sir.

16 Q When did the police first talk to you?

17 A July 30th.

18 Q And what did you tell them, if you remember?

19 A I don't remember everything, but I told them I  
20 didn't know anything about it.

21 Q That's pretty much it. You said you didn't  
22 know nothing about it?

23 A Yes, sir.

24 Q Correct?

25 A Yes, sir.

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1 Q Didn't know anything about the shooting, didn't  
2 know anything about this gun?  
3 A Yes, sir.  
4 Q Right?  
5 And was that the truth?  
6 A No, sir.  
7 Q How about the next day? What happened the next  
8 day?  
9 A They spoke to me.  
10 Q Or was it that day?  
11 A The next day?  
12 Q Yeah. Was it -- was it that day or the next  
13 day that you got arrested?  
14 A The next day, the 31st.  
15 Q 31st of July?  
16 A Yes, sir.  
17 Q And who did you talk to? I think the first  
18 time you talked to Detective Osborne; is that right?  
19 A Yes, sir.  
20 Q And he's the one that said you didn't know  
21 nothing about a gun?  
22 A Yes, sir.  
23 Q Do you remember who you talked to the second  
24 time when -- on the 31st?  
25 A Detective Williams, if I'm not mistaken.

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1 Q He was a -- a black detective?  
2 A Yes, sir.  
3 Q And, of course, you told him the truth?  
4 A Yes, sir.  
5 Q You did?  
6 A Not complete truth, but I told him, you know,  
7 more than I told Detective Osborne.  
8 Q Well, if you told him anything, you told him  
9 more than you told Detective Osborne?  
10 A Yes, sir.  
11 Q And do you remember what you told him?  
12 A Not completely everything.  
13 Q Do you remember if you told him about the fire?  
14 A The fire?  
15 Q Yeah. Burning of the clothes.  
16 A Yes, sir, I told him about that part.  
17 Q Do you remember if you told him about the --  
18 him washing his hands off? Ryan, I'm talking about.  
19 A I'm not going to lie and say I do say that.  
20 Q Okay. Fact of the matter is, you told so -- so  
21 many lies it's hard for you to kind of keep them  
22 straight, isn't it?  
23 A At first, yes, sir.  
24 Q Okay. So you told him part of the truth then?  
25 A Yes, sir.

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1 Q But not the whole truth?  
2 A (Moves head up and down.)  
3 Q How did that go for you?  
4 A I got arrested.  
5 Q You sure did. And what did you get arrested  
6 for?  
7 A Accessory after the fact of murder and  
8 possession of a firearm with obliterated serial number.  
9 Q And where did you go after you got arrested?  
10 A Straight to jail.  
11 Q And when you got to jail, you were booked;  
12 correct?  
13 A Yes, sir.  
14 Q And --  
15 (Document is shown to the witness and to  
16 Defense counsel.)  
17 Q (By Mr. DuRant) And they took a photograph of  
18 you when you were booked? Correct?  
19 A Yes, sir.  
20 Q And I have -- I'll show you what's been marked  
21 as State's Exhibit 34.  
22 MR. DURANT: I would offer it, I believe,  
23 without objection, your Honor.  
24 MR. PENNINGTON: That's correct, your Honor.  
25 THE COURT: State's Exhibit 34 into evidence

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1 without objection.

2 (State's Exhibit No. 34 admitted into  
3 evidence.)

4 Q (By Mr. DuRant) And who is that fellow?

5 A That's me.

6 Q Okay. And is that how you looked July the 31st  
7 of 2012?

8 A Yes, sir.

9 Q You look pretty clean-cut now. You didn't look  
10 so clean-cut back then.

11 Why didn't you just tell them the truth to  
12 begin with?

13 A I didn't want to put myself in the middle of  
14 what they had going on or what was going on.

15 Q There were a bunch of reasons, weren't there?

16 A Yes, sir.

17 Q Who was at the top of the list?

18 A Julius.

19 Q No. Who was at the top of the list? Who were  
20 you protecting more than anybody?

21 A Myself.

22 Q There you go.

23 How about the other guys? Why didn't you just  
24 spill your guts about what they did?

25 A Because of Julius.

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1 Q Did you want to be a snitch?  
2 A No, sir.  
3 Q Why?  
4 A Little -- it happened.  
5 Q You've had that experience before, haven't you?  
6 A Yes, sir.  
7 Q Where somebody accused you of snitching?  
8 A Yes, sir.  
9 Q And what happened to you?  
10 A I got shot.  
11 MR. PENNINGTON: Objection; relevance, your  
12 Honor.  
13 THE COURT: Overruled.  
14 Q (By Mr. DuRant) What happened to you?  
15 A I got shot five times.  
16 Q That has nothing to do with this case?  
17 A No, sir.  
18 Q It has nothing to do with Ryan Deleston?  
19 A No, sir.  
20 Q Correct?  
21 But that was your experience?  
22 A Yes, sir.  
23 Q Now, moving ahead to January the 22nd of this  
24 year.  
25 (Document is shown to Defense counsel.)

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1           Q     (By Mr. DuRant) Do you remember entering into  
2 a proffer agreement with the Solicitor's Office?  
3           A     Yes, sir.  
4           Q     And at that time, did you have a lawyer?  
5           A     Yes, sir.  
6           Q     And is your lawyer here today?  
7           A     Yes, sir.  
8           Q     And what's your lawyer's name?  
9           A     Aaron Mayer.  
10          Q     That's him seated on the front row there?  
11          A     Yes, sir.  
12          Q     And he told you that we were interested in  
13 talking to you?  
14          A     Yes, sir.  
15                (Document is handed to the witness.)  
16          Q     (By Mr. DuRant) And State's Exhibit 22, with  
17 the exception of this irrelevant stuff that's been  
18 marked out on page 2, is that a copy of the proffer  
19 agreement that you signed?  
20          A     Yes, sir.  
21                MR. DURANT: Your Honor, we would offer State's  
22 22 into evidence, I believe without objection.  
23                MR. PENNINGTON: That's correct.  
24                THE COURT: State's 22 into evidence without  
25 objection.

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1 (State's Exhibit No. 22 is admitted into  
2 evidence.)

3 Q (By Mr. DuRant) And what were you -- what  
4 charges were you facing when you entered into that  
5 proffer agreement?

6 A Accessory after the fact of murder and  
7 possession of a firearm.

8 Q And what was your understanding of that proffer  
9 agreement? What did you understand the proffer  
10 agreement to do?

11 A That would help the situation out a little bit  
12 better.

13 Q What were you required to do under the proffer  
14 agreement?

15 A Be truthfully honest, and anything that I say  
16 wouldn't be used against me.

17 Q That's pretty much what it says?

18 A Yes, sir.

19 Q That if you're truthful, then we can't use your  
20 words against you?

21 A Yes, sir.

22 Q How did that work out for you?

23 A It didn't work out.

24 Q And why didn't it work out?

25 A Because I didn't tell you everything.

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1 Q No, you didn't. And, George, what was it that  
2 you just didn't want to tell us about?  
3 A That it was my gun.  
4 Q Yeah. That was part of it.  
5 A Yes, sir.  
6 Q How about the downtown robbery?  
7 A Yes, sir.  
8 Q Did you tell us about that?  
9 A No, sir.  
10 Q How about Ryan, to case the parking lot? Did  
11 you tell us about that?  
12 A No, sir.  
13 Q And then what happened when we found out you  
14 were lying?  
15 A The agreement was taken away.  
16 Q And what happened then?  
17 A I got two more charges.  
18 Q And those are the accessory before the fact to  
19 armed robbery and attempted armed robbery?  
20 A Yes, sir.  
21 Q And what have you been promised for your  
22 testimony here today?  
23 A Nothing.  
24 Q You don't -- you're not protected by the  
25 proffer anymore; right?

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1           A     No.  No, sir.  
2           Q     Everything that you've told us can be used  
3 against you; right?  
4           A     Yes, sir.  
5           Q     So what are you hoping for?  
6           A     Things look better for me telling the truth  
7 today.  
8           Q     You're hoping for the best?  
9           A     Yes, sir.  
10          Q     But you got no immunity?  
11          A     No, sir.  
12          Q     Right?  
13               And you know you're going to prison?  
14          A     Yes, sir.  
15          Q     Pardon?  
16          A     Yes, sir.  
17               MR. DURANT:  Court's indulgence.  
18               THE COURT:  Take your time.  
19               MR. DURANT:  Would you please answer any  
20 questions that Mr. Pennington may have for you?  
21               THE COURT:  Mr. Pennington.  
22               MR. PENNINGTON:  Please the Court.

23                               **CROSS-EXAMINATION**

24   **BY MR. PENNINGTON:**

25          Q     Mr. Brown, we all agree here that after the

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1 murder of Marley Lion, your gun came back into your  
2 possession again?

3 A No, sir.

4 Q Well, didn't you just testify that you and  
5 Julius went back and picked it up?

6 A Yes, sir. I got it like a week later, but I  
7 did not receive the gun that same night.

8 Q Okay. So a week later you and Julius went back  
9 to get your gun; correct?

10 A Yes, sir.

11 Q And then took that gun to North Charleston?

12 A Yes, sir.

13 Q Because that's where Julius stayed?

14 A Yes, sir.

15 Q In Horizon Village?

16 A Yes, sir.

17 Q With his girlfriend?

18 A Uh-huh.

19 Q And when you nod, the court reporter --

20 A Yes, sir.

21 Q Thank you. That's good.

22 That's on [REDACTED]?

23 A Sir?

24 Q Is that -- Horizon Village on [REDACTED]?

25 A Yes, sir.

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1           Q     Is that the address?  
2           A     Yes, sir.  
3           Q     And that's where the gun was kept --  
4           A     Yes, sir.  
5           Q     -- pretty much?  
6                    Unless you were in the midst of trying to turn  
7 it yourself by selling it to someone in Ponderosa?  
8           A     Yes, sir.  
9           Q     And so there was -- you were interested in  
10 getting rid of the gun, selling the gun?  
11          A     When I was asked, yes, sir.  
12          Q     Okay. So a fellow came up from Ponderosa and  
13 says, Do you have a gun to sell?  
14          A     Well, not like -- not in that same way.  
15          Q     Not like that. You were looking to sell the  
16 gun, weren't you?  
17          A     No, sir.  
18          Q     Didn't you want to get rid of that gun?  
19          A     Yes, sir.  
20          Q     Okay.  
21          A     But I wasn't asking around. I was asked.  
22          Q     Okay. And there was a period where you went to  
23 North Charleston, got the gun, and then you hid it in  
24 the woods near your home in Ponderosa?  
25          A     Yes, sir.

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1 Q You live on [REDACTED] down in Ponderosa?  
2 A Yes, sir.  
3 Q , And then when that didn't work out, you  
4 returned it back to Julius?  
5 A Yes, sir.  
6 Q You care about Julius?  
7 A No, sir.  
8 Q Julius is your friend?  
9 A Yes, sir.  
10 Q He's somebody that you were looking out for?  
11 A Yes, sir.  
12 Q And there are times where you've been referred  
13 to as his cousin; is that right?  
14 A Yes, sir.  
15 Q But that's more of a -- kind of a loose  
16 statement of affection rather than a blood-kin kind of  
17 thing?  
18 A Yes, sir.  
19 Q But in some ways, he is close enough to be kind  
20 of like family, isn't he?  
21 A Not necessarily. Not necessarily.  
22 Q Well, yes or no?  
23 A No, sir.  
24 Q He's not?  
25 So when you were telling the Solicitor a moment

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1   ago that when you were thinking about who you were  
2   protecting and you said Julius --

3       A     And that's because of what could have happened  
4   to me being shot, not because of family or anything.

5       Q     Okay. Now, let's turn our attention to, well,  
6   about a month after the murder of Marley. Okay?

7       A     Yes, sir.

8       Q     And we know that you went and got the gun from  
9   Julius' and brought it to Ardmore to sell it; right?

10      A     Yes, sir.

11      Q     Ryan had called you and said that he thought he  
12   had a buyer to help you get rid of the gun; right?

13      A     He told me he had a buyer. He didn't say to  
14   help me get rid of the gun, no, sir.

15      Q     Well, it's your gun; correct?

16      A     Yes, sir.

17      Q     And so this wasn't the first conversation that  
18   you had had with Ryan. There had been numerous  
19   conversations for days before this, where Ryan had been  
20   talked to by a guy named Bobby Warthaw about a purchase  
21   of the gun?

22      A     Yes, sir.

23      Q     So there had been other times where it had been  
24   clear that Mr. Warthaw was interested in getting the gun  
25   from y'all or at least from Ryan?

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1           A     First time I heard of that was on the 15th when  
2 he actually got it from me. I never knew who it was  
3 before.

4           Q     So you didn't -- while you didn't know the name  
5 Bobby Warthaw, you knew that Ryan had been approached  
6 about a purchase, and he had a buyer in Ardmore?

7           A     Yes, sir.

8           Q     And there had been other occasions where you  
9 had tried to get the gun and make the sale, but it had  
10 fallen through?

11          A     Actually, sir, that was the first time, when he  
12 told me on the 15th, when I brought it. There wasn't  
13 any time before that. That's when I also found out --

14          Q     Had there been other dates where y'all talked  
15 about doing it, but it didn't quite come together?

16          A     We talked about me selling it prior to that,  
17 but there was never any dates of him getting rid of it.

18          Q     So you drove the gun in you secret compartment  
19 to the Cashew Street address?

20          A     Yes, sir.

21          Q     And when you were arrested on -- actually, let  
22 me back up.

23                   On July 30th, you were asked to come to the ATF  
24 offices to be interviewed by the City police; correct?

25          A     Yes, sir.

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1 Q And you met with Detective Osborne?  
2 A Yes, sir.  
3 Q And --  
4 A And a female officer.  
5 Q I'm sorry?  
6 A And a female detective also.  
7 Q Right. A lady officer.  
8 A Yes, sir.  
9 Q Officer Glover?  
10 A Yes, sir.  
11 Q And you didn't tell them at that time that you  
12 had been holding the gun -- that -- well, let me back  
13 up.  
14 They told you that the gun had been sold;  
15 right?  
16 A Yes, sir.  
17 Q And they accused you of having some part in the  
18 sale of that gun?  
19 A I was told I was on surveillance handing the  
20 gun over to Ryan.  
21 Q Okay. Slow that down and say it one more time.  
22 A I was told I was on surveillance handing the  
23 firearm over to Ryan.  
24 Q Okay. All right. And so all during that  
25 interview on the 30th, you said, No, that's not true?

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1           A     Well, I told them, if they have me on  
2     surveillance, then it's true. But if they don't, it's  
3     not true. I told them I was on surveillance pulling up  
4     in the yard, but I was not on surveillance giving him  
5     the firearm, because he grabbed it himself [sic].

6           Q     And so in effect, you were telling them that,  
7     no, you didn't deliver a gun?

8           A     In some sense, yes, sir.

9           Q     Well, wasn't that the real meat and potatoes of  
10    the conversation? They were accusing you of bringing  
11    the gun, and you said, No, that's not true?

12          A     Yes, sir.

13          Q     You said you were bringing cigarettes to  
14    Stephanie Brown?

15          A     Yes, sir. I --

16          Q     And you insisted over --

17                THE COURT: Please don't talk over each other.

18                MR. PENNINGTON: Excuse me. Excuse me.

19          Q     (By Mr. Pennington) Go ahead and finish.

20          A     Yes, I did carry cigarettes also.

21          Q     And so you just skipped over the part about the  
22    gun?

23          A     Yes, sir.

24          Q     Okay.

25          A     As I stated before, I did lie the first day I

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1 was interviewed.

2 Q Okay. You weren't just by yourself, but you  
3 had your father, who had taken you down there?

4 A Yes, sir.

5 Q Obviously the police didn't believe you, and so  
6 you came back on July 31st with your father to be  
7 re-interviewed?

8 A Yes, sir.

9 Q Correct?

10 Okay. And that was with Detective Williams and  
11 Detective Glover again, the same lady, but a different  
12 officer, a different male detective?

13 A Yes, sir.

14 Q And, again, you told them that you hadn't been  
15 holding this gun; right?

16 A Yes, sir.

17 Q And you went so far as to bring your dad, and  
18 your dad believed you, didn't he?

19 A Yes, sir.

20 Q And, in fact, your dad came with you and really  
21 spoke up for you and said that he believed what you were  
22 saying?

23 A That was before I started telling the truth.

24 Q Right. That was on July 31st --

25 A Yes, sir.

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1 Q -- when you brought your dad down?

2 A Yes, sir. He was with me on the 30th also.

3 Q But what you were really doing was that you  
4 weren't telling the truth, were you?

5 A The first and the second day at first, yes,  
6 sir.

7 Q You were lying to the police?

8 A Yes, sir.

9 Q And you lied to your father?

10 A Yes, sir.

11 (Respite.)

12 Q (By Mr. Pennington) Now, Julius is in trouble  
13 in this case for his role in this murder, isn't he?

14 A Yes, sir.

15 Q And you were initially in trouble in this case  
16 for what boils down to the fact that the police --  
17 because you brought that gun to Cashew, as you now  
18 admit, you were charged with accessory after the fact of  
19 murder, meaning kind of being involved in a cover-up of  
20 murder; right?

21 A Yes, sir.

22 Q And that, by itself, could carry up to 15 years  
23 in the penitentiary?

24 A Yes, sir.

25 Q But you also had the charge of the fact that

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1 the gun that you owned had an obliterated serial number,  
2 so that was another five years of exposure?

3 A Yes, sir.

4 Q Now you have new charges of, not accessory  
5 after the fact of the Marley Lion murder, but accessory  
6 before the fact; correct?

7 A Yes, sir.

8 Q And that can carry the same thing -- well,  
9 actually, you're charged not with accessory before the  
10 fact of a murder. You're charged with accessory before  
11 the fact of the armed robbery -- attempted armed robbery  
12 of Marley Lion; correct?

13 A Yes, sir.

14 Q So that can carry up to 20 years?

15 A Yes, sir.

16 Q Accessory before the fact of an attempted armed  
17 robbery?

18 A Yes, sir.

19 Q Okay. And you're also charged with, now, the  
20 accessory before the fact for supplying the gun in the  
21 Rutledge Avenue armed robbery?

22 A Yes, sir.

23 Q And so that can carry and will carry no less  
24 than ten years under the armed robbery statute; correct?

25 A Yes, sir.

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1 Q And that's not 85 -- that's not 65 percent  
2 time. That's 85 percent time; correct?

3 A Yes, sir.

4 Q So as Mr. DuRant was questioning you, you don't  
5 have a deal?

6 A No, sir, I don't.

7 Q In many respects, you're now at the mercy of  
8 the prosecutors, aren't you?

9 A Yes, sir.

10 Q They decide the charge that you go to court  
11 for; right?

12 A Yes, sir.

13 Q They can make you go to court on the charge of  
14 armed robbery, and you've already admitted that you were  
15 an accessory before the fact of armed robbery; correct?

16 A Yes, sir.

17 Q So, really, they're going to decide based on  
18 how you do here today?

19 A Yes, sir.

20 Q One of the core truths of this case is, is that  
21 you did not see Ryan Deleston rob that lady over on  
22 Rutledge Avenue, did you?

23 A No, sir.

24 Q In fact, you picked up Ryan at the McDonald's  
25 on the Crosstown?

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1           A     Yes, sir.  
2           Q     By himself?  
3           A     Yes, sir.  
4           Q     No purse?  
5           A     No, sir.  
6           Q     And the other truth is, is that you've seen  
7 this video, but you were not down there on Yew Street to  
8 see who did what, were you?  
9           A     No, sir.  
10          Q     You did not actually see with your own eyes  
11 down on Yew Street who shot this victim?  
12          A     Yes, sir.  
13          Q     You know what other people have told you about  
14 it; correct?  
15          A     I know what I saw on the video.  
16          Q     You know what you saw in the video, and you  
17 know what other people have told you?  
18          A     Yes, sir.  
19          Q     So when you see that arm sticking out in that  
20 second part and say that you absolutely know that that's  
21 Ryan Deleston --  
22          A     You can see the sleeve of the shirt, sir.  
23          Q     Oh, okay.  
24          A     That's how you know it's the same person.  
25          Q     I see.

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1           A     And I looked at the video. I know it's the  
2 same person, Ryan Deleston.

3           Q     That night you were drinking?

4           A     Yes, sir.

5           Q     And smoking weed?

6           A     Yes, sir.

7           Q     Too drunk to get in the car and drive home  
8 despite all the activity that had been going on?

9           A     Actually, I wasn't. I was just trying to avoid  
10 getting pulled over.

11          Q     Okay.

12          A     I wasn't intoxicated, but I wasn't too drunk to  
13 drive, sir.

14          Q     Well -- and you also had -- you -- the one  
15 thing you did know is, is that you decided to stay right  
16 there at Cashew?

17          A     Yes, sir.

18          Q     I'm going to go beyond the June 16th date and  
19 go to about June 30th. This is still about the month  
20 before you were arrested.

21                You went to a Brown family reunion, didn't you?

22          A     Yes, sir.

23          Q     Out at Edisto?

24          A     Yes, sir.

25          Q     Now, you know that -- you've already testified

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1 that Bryan essentially lives with, is boyfriend and  
2 girlfriend with Stephanie Brown?

3 A Yes, sir.

4 Q And you witnessed Stephanie getting upset with  
5 Ryan on that occasion and slapping him, didn't you?

6 A Yes, sir.

7 Q And as a consequence, there were words and Ryan  
8 slapped Stephanie?

9 A No, sir, I didn't see that part.

10 Q You didn't see that part. Well, you saw  
11 Little B. Little B was at that reunion too, wasn't he?

12 A Yes, sir.

13 Q And he jumped in on that. And there was a  
14 little tussle between Bryan, Little B, and Ryan?

15 A Yes, sir.

16 Q And some hard words?

17 A Words that I didn't hear, sir. I was from a  
18 distance.

19 Q Okay. Little B slapped Ryan?

20 A I didn't see who slapped who first. I saw when  
21 him and Stephanie were arguing.

22 Q I'm talking about after the argument between  
23 the man and the woman, I'm talking about Little B  
24 slapping Ryan.

25 A Sir, I didn't see that part.

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1 Q Okay. The family was upset because they felt  
2 that Ryan had been disrespecting Stephanie?

3 A Yes, sir.

4 Q And so even after the thing was done at Edisto,  
5 when y'all went back to Ardmore, there was still hard  
6 feelings between Little B and between Ryan?

7 A Yes, sir. They told Little B not to come back  
8 over to the house.

9 Q In many ways, the Brown family felt that Ryan  
10 was mooching off of Stephanie, didn't they?

11 A Yes, sir.

12 Q She got a check?

13 A Yes, sir.

14 Q And he didn't have a job?

15 A Yes, sir.

16 MR. PENNINGTON: If I may have the Court's  
17 indulgence, your Honor?

18 THE COURT: Take your time.

19 Q (By Mr. Pennington) Let's absolutely be clear  
20 about this business about you being shot five times  
21 because someone accused you of being a snitch. That has  
22 nothing to do with this case?

23 A No, sir.

24 Q When did that happen?

25 A 2010, 2011.

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1 Q Okay. That has nothing to do with  
2 Ryan Deleston?

3 A No, sir.

4 Q It has nothing to do with Marley Lion?

5 A No, sir.

6 Q Okay.

7 (Mr. Pennington speaks with Mr. Kozelski off  
8 the record.)

9 MR. PENNINGTON: Thank you, your Honor. No  
10 further questions.

11 MR. DURANT: I have nothing further.

12 THE COURT: Is this witness excused?

13 MR. DURANT: Yes, your Honor.

14 THE COURT: Any objection?

15 MR. PENNINGTON: No objection, your Honor.

16 THE COURT: You may step down. You are free to  
17 go, but you may stay with us. Thank you.

18 (The witness steps down from the stand.)

19 THE COURT: Call your next witness.

20 MR. DURANT: We call -- State would call  
21 Bobby Warthaw, your Honor.

22 (The oath is administered by the Deputy Clerk  
23 of Court, and the witness answers as follows:)

24 THE WITNESS: Yes, sir.

25 THE DEPUTY CLERK OF COURT: You may take your

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1 seat. And, sir, if you would, please, state your first  
2 and last name, spelling your last for the record.

3 THE WITNESS: Bobby Warthaw, W-a-r-t-h-a-w.

4 THE COURT: Mr. DuRant.

5 MR. DURANT: Thank you, your Honor.

6 **BOBBY WARTHAW,**

7 having been first duly sworn by the Deputy Clerk of  
8 Court to tell the truth, the whole truth, and nothing  
9 but the truth, was examined and testified upon his oath  
10 as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. DURANT:**

13 Q Good afternoon, Mr. Warthaw. I'm going to have  
14 to ask if you -- here. Let's put this up here. I'm  
15 going to have to ask you to speak up because people in  
16 this jury have to hear what you have to say. Okay?

17 A Yes, sir.

18 Q Please speak in the microphone.

19 You don't want to be here today; right?

20 A No, sir.

21 THE COURT: I need you to speak up.

22 THE WITNESS: No, sir.

23 THE COURT: Thank you.

24 Q (By Mr. DuRant) And you're here because you've  
25 been served a subpoena; correct?

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