

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RYAN P. DELESTON,

APPELLANT

APPELLATE CASE NO. 2013-002224

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)
STATE’S EXHIBIT #1 (VIDEO – MANTEK VIDEO)
STATE’S EXHIBIT #2 (DVD - DD PECKERS VIDEO)

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Volume III of V -- Direct Ex of Bobby Warthaw

1 A Yes, sir.

2 Q How old are you?

3 A Twenty-five.

4 Q And how far did you go in school, Bobby?

5 A Tenth grade.

6 Q Are you working?

7 A No, sir.

8 Q What part of town are you from?

9 A Downtown.

10 Q Okay. Where do you hang out?

11 A In West Ashley.

12 Q Where in West Ashley?

13 A In Ardmore.

14 Q And why do you hang out at Ardmore?

15 A Friends of the family.

16 Q You have a family member -- some family and

17 friends that live in the area?

18 A Yes, sir.

19 Q You have a 2007 conviction of escape and

20 possession of cocaine base in Dorchester County; is that

21 correct?

22 A Yes, sir.

23 Q And I believe you currently have charges

24 pending with our office for distribution of crack,

25 distribution of crack in the proximity to a school, and

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1 possession of crack; is that correct?

2 A Yes, sir.

3 Q And you also have charges in Berkeley County
4 for B and E motor vehicle?

5 A Yes, sir.

6 Q Possession of burglary tools and a habitual
7 traffic offender?

8 A Yes, sir.

9 Q Those are all pending against you right now; is
10 that correct?

11 A Yes, sir.

12 Q Have you been promised anything for your
13 testimony here today?

14 A No, sir.

15 Q And as I think I've already pointed out, if you
16 had your druthers, you wouldn't be here testifying
17 today, would you?

18 A No, sir.

19 Q Now, directing your attention to July the 15th
20 of 2012, did you and your cousin, Chris Singleton,
21 assist the Charleston Police Department in acquiring a
22 pistol from this man right here?

23 A Yes, sir.

24 Q Why? Why did you get involved?

25 A The money.

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1 Q You heard there was some reward money; right?
2 A Yes, sir.
3 Q How did you find out that -- how do you know
4 this guy?
5 A Through a friend.
6 Q Okay. And how did you know he was selling a
7 gun?
8 A A friend.
9 Q And who was that friend?
10 A Theran.
11 Q Theran Taylor?
12 A Yes, sir.
13 Q What's his nickname?
14 A Carlton.
15 Q And how did you get in touch with Mr. Deleston?
16 A Through the phone.
17 Q Did Theran give you his phone number, or did
18 Theran give Deleston your phone number, or do you
19 remember?
20 A He gave me his number.
21 Q He gave you his number?
22 THE COURT: Mr. Warthaw, you're going to have
23 to speak up. Lean into the microphone.
24 Q (By Mr. DuRant) So he gave you Deleston's
25 number; correct?

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1 A Yes, sir.
2 Q And did you call him?
3 A Yes, sir.
4 Q And was he trying to sell a gun?
5 A Yes, sir.
6 Q Do you remember how much he wanted for the gun?
7 A Like \$80.
8 Q Is that unusual?
9 A Yes, sir.
10 Q Why?
11 A People sell it for higher.
12 Q The going rate for a piece out on the street is
13 higher than \$80?
14 A Yes, sir.
15 Q Now, how did you get in touch with the police
16 on June the 27th of 2012?
17 A Called them.
18 Q Who called them?
19 A Me.
20 Q And where did you meet him?
21 A By the car wash.
22 Q On Savannah Highway?
23 A Yes, sir.
24 Q And what did you tell him?
25 A That I had some information.

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1 Q About somebody who wanted to sell a gun from
2 Ardmore?

3 A Yes, sir.

4 Q And do you remember meeting with a
5 Detective Andre Jenkins a couple of days later, on June
6 the 27th, at the Charleston Police Department?

7 A Yes, sir.

8 Q And what were you talking to Detective Jenkins
9 about?

10 A Buying a gun.

11 Q And did the gun buy ever go down then?

12 A No, sir.

13 Q And why was that?

14 A I was arrested.

15 Q Okay. You weren't arrested on the 29th. Why
16 didn't it go down on the 29th? Who backed out?

17 A Me.

18 Q You backed out?

19 A Yes, sir.

20 Q Okay. So after that fell through, how did you
21 get back involved with CPD about buying this gun?

22 A They contacted me.

23 Q And where were you then?

24 A In jail.

25 Q You had gotten arrested; right?

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1 A Yes, sir.

2 Q Do you remember what you were arrested for?

3 A They say I missed court.

4 Q You went in on a bench warrant?

5 A Bench warrant.

6 Q Okay. Now, do you remember when you got locked

7 up on that bench warrant?

8 A No, sir.

9 Q Do you remember when you got out on that bench

10 warrant?

11 A No, sir.

12 Q Do you remember how you got out on that bench

13 warrant?

14 A Through the police.

15 Q Okay. What did you tell the police?

16 A That I'll help them.

17 Q That you'd help them if what?

18 A If I get released.

19 Q If they got you out of jail; correct?

20 A Yes, sir.

21 Q Is that true?

22 A Yes, sir.

23 Q And did they get you out of jail?

24 A Yes, sir.

25 Q Now, let's talk about July the 15th of 2012.

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1 How did you get in touch with Ryan Deleston that day
2 about buying the gun?

3 A I called him.

4 Q Called him on your cell phone?

5 A Yes, sir.

6 Q And who did you get to help you with buying the
7 gun that day?

8 A A friend of mine was going to help me.

9 Q Who was that friend?

10 A His name is Dollar.

11 Q Dollar?

12 A (Moves head up and down.)

13 Q And you -- did Dollar end up helping you?

14 A No, sir.

15 THE COURT: Mr. Warthaw, you are needing to
16 speak more loudly, please.

17 Q (By Mr. DuRant) And why didn't Dollar help
18 you?

19 A He had to baby-sit.

20 Q So who did you get to substitute for Dollar?

21 A My cousin, Chris.

22 Q That would be Chris Singleton?

23 A Yes, sir.

24 Q Now, who agreed to wear a wire?

25 A Chris.

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1 Q Why didn't you wear a wire?
2 A Because I didn't want to.
3 Q Now, when you met at CPD that day prior to
4 doing this, do you recall being searched?
5 A Yes, sir.
6 Q And was Chris searched?
7 A Yes, sir.
8 Q And whose car will y'all use?
9 A A friend of mine.
10 Q Do you remember what kind of car it was?
11 A A Ford Focus.
12 Q Do you remember what color it was?
13 A Brown.
14 Q And do you know whether or not the car was
15 searched by the police officers too?
16 A Yes, sir.
17 Q And that was done right before y'all got in it
18 to leave; correct?
19 A Yes, sir.
20 Q Now, when y'all left Charleston Police
21 Department, who drove?
22 A I did.
23 Q Who had the buy money?
24 A Chris.
25 Q How much buy money did y'all have?

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1 A Like \$200.

2 Q And why did you have \$200? I thought you said
3 he was going to sell it for 80 earlier. Tell me the
4 deal you worked up.

5 A I was going to get my cushion out.

6 Q Is that what you call a "cush"?

7 A Yes, sir.

8 Q So what was the deal you had with Deleston?

9 A That he just give me \$50 back.

10 Q Okay. So you were going to sell it for 200,
11 and then he was going to give you a \$50 kickback; right?

12 A Yes, sir.

13 Q And why did y'all do that?

14 A Just to make it look better.

15 Q Make it look legit?

16 A Yes, sir.

17 Q Now, when y'all left Charleston Police
18 Department, where did y'all go?

19 A Behind the school.

20 Q No. I'm not talking about later. I'm talking
21 about when you left downtown, where did you do?

22 A To Ardmore.

23 Q And where did you go in Ardmore?

24 A In the apartments in the back.

25 Q Okay. And do you know which streets those are

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1 where those apartments are?

2 A It's, like, Evergreen, Evergreen and Balsam.

3 Q Okay. And let's see. Referring to State's
4 Exhibit Number 27, you've never seen this before, but do
5 you recognize the area?

6 A Yes, sir.

7 Q And what is this area back here called at
8 the -- kind of the intersection of Evergreen and
9 Sequoia?

10 A The Hole --

11 Q It's called the Hole?

12 A Yes, sir.

13 Q And these are apartments?

14 A Yes, sir.

15 Q Are these apartments too?

16 A Yes, sir.

17 Q And which apartments did you park in?

18 A The top one.

19 Q The one up here at the top?

20 A Yes, sir.

21 Q Okay. Was that the plan for you to go there
22 before you left downtown?

23 A Yes. Yes, sir.

24 Q Now, when you got there, did you stay in the
25 car?

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1 A No, sir.

2 Q You ended up getting out of the car; correct?

3 A Yes, sir.

4 Q How about Chris? Where did -- did he stay in

5 the car, or did he get out?

6 A He stayed in.

7 Q And how did you get in touch with Deleston when

8 you got to the Ardmore area?

9 A I called him.

10 Q Now, when you talked to him, was there any time

11 during the day that you -- that he wanted to meet you

12 somewhere else when you talked to him?

13 A Yes, sir.

14 Q Where did he want to meet you at?

15 A At Piggly Wiggly on Savannah Highway.

16 Q And why did he -- wanted you to meet him at the

17 Piggly Wiggly on Savannah Highway?

18 A Because whoever was bringing it was scared to

19 come to Ardmore.

20 Q Okay. Who was bringing it?

21 A George.

22 Q Do you know George?

23 A Yes, sir.

24 Q How do you and George get along?

25 A We don't get along.

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1 Q You beefing with George?
2 A Yes, sir.
3 Q And what did you tell Deleston?
4 A That me and him don't get along.
5 Q And so you weren't going to meet him anywhere
6 else; right?
7 A Yes, sir.
8 Q Do you remember at some point before
9 Mr. Deleston getting there giving your cell phone to
10 somebody in the apartments right next to those?
11 A Yes, sir.
12 Q And do you recall why that was?
13 A Because my phone was going dead.
14 Q You left it with that guy to charge it up?
15 A Yes, sir.
16 Q Now, when Mr. Deleston showed up, where did
17 y'all go?
18 A To the car.
19 Q And where did you get in the car?
20 A The driver's seat.
21 Q And where did Mr. Deleston get in the car?
22 A Behind me.
23 Q The back seat behind the driver?
24 A Yes, sir.
25 Q And where was Chris in the car?

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1 A The passenger seat.

2 Q And what did he do after he got in the car?

3 Mr. Deleston, I mean.

4 A Gave us the weapon.

5 Q Do you recall where he was carrying it on him?

6 A No, sir.

7 Q And he gave y'all the gun?

8 A Yes, sir.

9 Q Who gave him the money?

10 A Chris.

11 Q How much money was given to him?

12 A \$200.

13 Q And what did you do with the gun after he

14 passed it up to y'all?

15 A Put it in -- Tahoe. Put it under the seat.

16 Q Put it under whose seat?

17 A The passenger seat.

18 Q And you were aware that the car was wired too;

19 correct?

20 A Yes, sir.

21 Q With audio and video?

22 A Yes, sir.

23 Q I want to show you what's been marked as

24 State's Exhibit 24 and ask if you recognize that DVD?

25 A Yes, sir.

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1 Q And how do you recognize it?
2 A I put the star on it.
3 Q You have a mark on there?
4 A Yes, sir.
5 Q And what was the date of that?
6 A On the 30th.
7 Q Of what month?
8 A September.
9 Q Of what year?
10 A 2013.
11 Q Okay. How about State's Exhibit Number 25?
12 A Yes, sir.
13 Q And that's also your mark?
14 A Yes, sir.
15 Q Okay. And you've had an opportunity to look at
16 both of these videos; is that correct?
17 A Yes, sir.
18 Q And do these videos accurately reflect the
19 transaction that went on in the Ford Focus when you sold
20 the Defendant the gun?
21 A Yes, Sir.
22 MR. DURANT: Your Honor, we would offer State's
23 24 and 25 into evidence at this time.
24 THE COURT: Any objection?
25 MR. PENNINGTON: No, your Honor, no objection.

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1 take a long break. All right?

2 Mr. Warthaw, stay seated.

3 Please rise for the jury.

4 (The jury is escorted from the courtroom at

5 5:17 p.m.)

6 (A break was taken from 5:17 p.m. until

7 5:27 p.m., at which time, the proceedings continue as

8 follows:)

9 THE COURT: Thank you. Be seated.

10 (The jury is escorted into the courtroom at

11 5:27.)

12 MR. DURANT: Permission to publish State's 24,

13 your Honor?

14 (Video is played.)

15 Q (By Mr. DuRant) Can you see that, Mr. Warthaw?

16 A Yes, sir.

17 THE COURT: The screen behind you, Mr. Warthaw.

18 Q (By Mr. DuRant) Who is that getting in the

19 car?

20 A That's me.

21 (Video is played.)

22 Q (By Mr. DuRant) Who is that getting into the

23 back seat?

24 A Him.

25 Q "Him" is who?

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1 A Ryan.
2 (Video is played.)
3 Q (By Mr. DuRant) Is that how the transaction
4 took place?
5 A Yes, sir.
6 MR. DURANT: This is State's 25, your Honor.
7 (State's Exhibit Number 25 is published to the
8 jury.)
9 (Video is played.)
10 Q (By Mr. DuRant) Who is that camera on?
11 A Me.
12 Q I mean, it's pointed at you, but who is the
13 camera physically on?
14 A Chris.
15 Q Okay. And who is that grabbing the towel right
16 there?
17 A Me.
18 (Video is played.)
19 Q (By Mr. DuRant) What is that?
20 A The gun.
21 (Video is played.)
22 Q (By Mr. DuRant) After y'all made that
23 purchase, was that -- who put the gun under the seat
24 there at the end?
25 A I did.

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1 Q Where did y'all go?
2 A Behind the middle school.
3 Q And that middle school was where? on what
4 street? Do you know?
5 A Off of Wappoo.
6 Q Do you remember what school that was?
7 A I can't remember.
8 Q Was that the plan to meet up there afterwards?
9 A Yes, sir.
10 Q And what happened when y'all got to the middle
11 school on Wappoo Road?
12 A Officer Jenkins drove our vehicle off -- we
13 switched vehicles.
14 Q So y'all got out of the vehicle, and
15 Detective Jenkins got in the vehicle y'all were driving;
16 correct?
17 A Yeah. Yes, sir.
18 Q And where did you go?
19 A To an unmarked car.
20 Q Pardon me?
21 A To a unmarked car.
22 Q You got -- you and Chris got in an unmarked
23 car. And where did they take y'all?
24 A On Wappoo to the substation.
25 Q Okay. There's a crime scene office over on

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1 Wappoo?
2 A Yes, sir.
3 Q And that's where the gun was recovered?
4 A Yes, sir.
5 Q And does this appear to be the gun y'all
6 recovered?
7 A Yes, sir.
8 Q Now, after they -- the police got the gun out
9 of the car at the crime scene office, where'd you go?
10 Did you go back to Ardmore?
11 A Yes, sir.
12 Q Why?
13 A To get my cut of the money.
14 Q Okay. And you did that because why?
15 A Because that was part of the plan.
16 Q Okay. You made it -- wanted to make it look
17 legit still; right?
18 A Yes, sir.
19 Q How much did you get back from Mr. Deleston?
20 A \$50.
21 Q And what did you end up doing with that \$50?
22 A Giving it back to the Detective.
23 Q Detective Osborne over here?
24 A Yes, sir.
25 Q It kind of irritated you too, didn't it?

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1 A Yes, sir.

2 Q Because why? You wanted that 50, didn't you?

3 You ended up getting paid for this?

4 A Yes, sir.

5 Q Do you remember how much police paid you? I'm

6 not talking about Crime Stoppers now, but do you

7 remember how much you got from the police?

8 A About \$200.

9 Q And do you remember how much you got from Crime

10 Stoppers?

11 A It was 13,000.

12 Q That was the reward money; right?

13 A Yes, sir.

14 Q Now, do you remember meeting with Detective

15 Osborne three days after this gun purchase, on July the

16 18th, down at the police department?

17 A Yes, sir.

18 Q And what did he want you to do?

19 A Call him.

20 Q Call who?

21 A Ryan.

22 Q And why did he want you to call Ryan?

23 A To ask him about the weapon.

24 Q What did he want you to ask him about the

25 weapon?

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1 A If it was hot or not.
2 Q And did you agree to do that?
3 A Yes, sir.
4 Q Where did you make the call from?
5 A From his office.
6 Q And was the call recorded?
7 A Yes, sir.
8 Q And you were aware that the call was being
9 recorded?
10 A Yes, sir.
11 Q I show you what's been marked as State's
12 Exhibit 21 for identification, ask if you recognize this
13 CD?
14 A Yes, sir.
15 Q And how do you recognize it?
16 A The star.
17 Q Your star and your date that you put on there?
18 A Yes, sir.
19 Q And this is a phone call, a recording of the
20 phone call you made to Mr. Deleston on July the 18th; is
21 that correct?
22 A Yes, sir.
23 Q And this is a true and exact copy of the phone
24 call you made to Mr. Deleston on the 18th of July?
25 A Yes, sir.

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1 MR. DURANT: Your Honor, at this time, we'd
2 offer State's 21 into evidence, if there's no objection.

3 MR. PENNINGTON: No objection.

4 THE COURT: State's 21 into evidence without
5 objection.

6 (State's Exhibit No. 21 is admitted into
7 evidence.)

8 Q (By Mr. DuRant) And you listened to this phone
9 call in our office, did you not?

10 A Yes, sir.

11 Q Several times? And in conjunction with the
12 clerical staff in our office, did you help prepare a
13 transcript?

14 A Yes, sir.

15 Q Of what is on this tape?

16 A Yes, sir.

17 Q And as a matter of fact, how do you know this
18 is it?

19 A Same star.

20 Q Is it your star and your date on the bottom of
21 this?

22 A Yes, sir.

23 Q And does this transcript accurately depict what
24 was said on this conversation to the best that you could
25 understand?

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1 A Yes, sir.

2 MR. DURANT: Court's indulgence for a
3 moment?

4 THE COURT: Yes, sir.

5 MR. DURANT: Your Honor, at this time, we
6 would offer State's 21, which is the DVD, and
7 State's 33, which is the transcript, I believe without
8 objection.

9 MR. PENNINGTON: That's right. That's correct,
10 your Honor.

11 THE COURT: State's 33, no objection?

12 MR. PENNINGTON: That's the transcript, I
13 believe.

14 THE COURT: Correct.

15 MR. PENNINGTON: That's correct.

16 THE COURT: State's 33 into evidence without
17 objection.

18 (State's Exhibit No. 33 is admitted into
19 evidence.)

20 MR. DURANT: And, your Honor, we've made copies
21 of the transcript for the jurors. If you don't mind,
22 may I pass them out before we publish State's 21?

23 THE COURT: You may hand them to the
24 foreperson.

25 (Document is handed to the jury foreperson.)

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1 (Respite.)
2 (Audio is played.)
3 Q (By Mr. DuRant) Whose voice is that on that
4 call?
5 A Me and his.
6 Q Yours and whose?
7 A Ryan.
8 Q And when you say "Ryan," you're talking about
9 who? This fellow here?
10 A Yes, sir.
11 Q Okay. And he's saying Little B to you?
12 A Yes, sir.
13 Q Is that your nickname too?
14 A Yes, sir.
15 Q There must be a bunch of Little Bs over
16 in Ardmore. How many Little Bs they got over there?
17 A Couple.
18 (Audio is played.)
19 Q (By Mr. DuRant) What is a tone?
20 A It's a gun.
21 (Audio is played.)
22 MR. DURANT: Would you please answer any
23 questions that Defense counsel has for you?
24 THE COURT: Mr. Pennington.
25 MR. PENNINGTON: Thank you, your Honor.

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CROSS-EXAMINATION

1
2 **BY MR. PENNINGTON:**

3 Q Mr. Warthaw, I'm going to turn your attention
4 to the night of June 15th, early morning hours of June
5 16th, when Marley Lion was murdered. Okay?

6 A (Moves head up and down.)

7 Q All right. And when you nod "yes," actually,
8 you have to help the court reporter by speaking up and
9 saying, Yes, I understand.

10 A Yes, sir.

11 Q Okay. Great. Thank you.

12 You were not at Famous Joe's that night, were
13 you?

14 A No, sir.

15 Q You were not on Yew Street that night at almost
16 four in the morning when Marley Lion was shot?

17 A No, sir.

18 Q You did not see who shot Marley Lion?

19 A No, sir.

20 Q But 11 days after the murder, you had heard
21 through Cuz that Ryan had a gun that he wanted to sell
22 cheap; is that right?

23 A Yes, sir.

24 Q And it was clear to you, in the conversations
25 that you had with Ryan between that period of time --

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1 between June 27th and when the sale went down on July
2 15th, which is over two weeks, it was clear to you that
3 this gun was not in his hands. He had -- he had
4 somebody else that was holding the gun; right?

5 A Yes, sir.

6 Q And so he had to make calls to get that gun?

7 A Yes, sir.

8 Q And over the period of time, you began to sort
9 out that the person he was calling was Big George?

10 A Yes, sir.

11 Q Who he would sometimes refer to as "Big Homie"?

12 A Yes, sir.

13 Q And Big George is someone who you had had a
14 history with?

15 A Yes, sir.

16 Q You and George -- I think you put it this way
17 to the police, that if you see him, you shoot at him,
18 and if he sees you, he shoots at you; is that right?

19 A No, sir.

20 Q Well, you remember when you met with -- the day
21 before the police got you out of jail, you were in
22 custody at the county jail, but they brought you down to
23 the Lockwood police department?

24 A Yes, sir.

25 Q And you sat down with Detective Osborne, who's

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1 the gentleman with the glasses and the blue tie?

2 A Yes, sir.

3 Q And y'all had a lengthy conversation that
4 night, didn't you?

5 A Yes, sir.

6 Q And you told him that you were beefing with
7 George?

8 A Yes, sir.

9 Q And it was serious beefing. It could be
10 violent beefing?

11 A Yes, sir.

12 Q All right. Before we get to that conversation
13 with Detective Osborne, which is in July, let's go back
14 to your first meeting with the City police. Okay?

15 A Yes, sir.

16 Q You met with the detective -- I believe you met
17 with Detective Burckhardt on June the 27th in a car near
18 a car wash; is that right?

19 A Yes, sir.

20 Q And in that conversation, which was also
21 recorded, you were discussing, and I think Detective
22 Burckhardt asked you, Well, tell me -- and I don't
23 remember if he called you Bobby or Little B, but he said
24 something like, So tell me, what's your interest in
25 -- in getting involved in this?

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1 Do you remember him asking you that?

2 A Yes, sir.

3 Q And the first thing you said was that you
4 wanted some help with your charges?

5 A No, sir.

6 Q Well, let's go back to, you had pending charges
7 in Charleston County; right?

8 A Yes, sir.

9 Q You had just been arrested for the sale of a
10 pistol on June the 2nd of that same month?

11 A No, sir.

12 Q No, sir?

13 A No, sir.

14 Q By the North Charleston Police Department?

15 A That was months before that, but that charge
16 got dropped before any of this even happened.

17 Q Okay. Bear with me just a moment.

18 MR. PENNINGTON: Court's indulgence.

19 THE COURT: Take your time.

20 (Respite.)

21 Q (By Mr. Pennington) Mr. Warthaw, are you
22 familiar with what's called a rap sheet?

23 A Yes, sir.

24 Q Okay. Could it refresh your recollection to
25 take a look at the document and see if it can refresh

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1 you on the date of that arrest by the North Charleston
2 Police for unlawful carrying of a weapon?

3 A Yes, sir.

4 (Document is handed to the witness.)

5 Q (By Mr. Pennington) Just take a look right
6 here. You can look at this document. I'm not asking
7 any questions. I'm just asking you to take a look at
8 this document. And particularly, I'd call your
9 attention to this particular part of the document. Take
10 your time, and let me know when you're ready for the
11 next question.

12 A Yes, sir.

13 Q You ready?

14 A Yes, sir.

15 Q Have you looked at it carefully?

16 A Yes, sir.

17 Q So there appears that there was -- well, I'm
18 not going to ask you to testify from the document. Does
19 that refresh your recollection that on June the 3rd, you
20 were charged with unlawful carrying of a pistol in North
21 Charleston?

22 A Yes, sir.

23 Q Okay. All right. And -- well, let me correct.
24 It's weapon. Maybe it wasn't a pistol. Was it
25 something else?

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1 A It was a weapon, a pistol.

2 Q It was a pistol?

3 A Yes, sir.

4 Q Okay. Thank you.

5 And also, six days later you were charged with
6 possession of cocaine. That would have been June the
7 8th; right?

8 A Yes, sir.

9 Q And that would, again, been the North
10 Charleston Police Department?

11 A Yes, sir.

12 Q And based on the earlier conviction that the
13 Solicitor went over from 2011, that would be a second
14 offense -- second drugs offense; right?

15 A Yes, sir.

16 Q So possession of cocaine, second, to carry up
17 to a maximum of five years in jail; is that correct?

18 A No, sir.

19 Q No?

20 A (Moves head from side to side.)

21 Q What does it carry?

22 A I mean, it was simple possession. So it was
23 really like a misdemeanor.

24 Q Simple possession of cocaine is a misdemeanor?

25 A That's right. I think so.

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1 Q You're going to a magistrate's court on cocaine
2 cases now?

3 A I mean, it's like -- I mean, it's not really no
4 time, really, off of that charge.

5 Q Well, let's go back to March of 2011, when
6 you -- you didn't go to magistrate's court to get put on
7 probation. You had to come to big court in 2011, to
8 this building, and appear in front of a Circuit Judge
9 like Judge Harrington; right?

10 A Yes, sir.

11 Q In fact, it's highly likely that when you came
12 in March of 2011, you walked right past this courtroom
13 and went to 4D, where they do plea court.

14 A Yes, sir.

15 Q You remember going up right next door here and
16 entering that plea to possession of cocaine in March of
17 2011?

18 A Yes, sir.

19 Q So that would make it a big court offense,
20 wouldn't it?

21 A Yes, sir.

22 Q And they hung two years over your head on that,
23 didn't they?

24 A I can't remember.

25 Q Well, you knew you were on 18 months of

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1 probation; right?

2 A Yes, sir.

3 Q And if you violated the probation, you did know

4 you were going to the penitentiary?

5 A Yes, sir.

6 Q For up to two years?

7 A Yes, sir.

8 Q In addition to those kind of new charges that

9 you had in June of 2012, you also had some charges from

10 December of 2010 that were still sort of hanging around,

11 didn't you?

12 A No, sir.

13 Q Didn't you have Charleston City Police charges

14 of possession with intent to distribute cocaine?

15 A I got off probation before I caught the

16 distribution charge.

17 Q Okay.

18 A So y'all got y'all's dates mixed up.

19 Q So you don't still have pending a possession

20 with intent to distribute cocaine right now?

21 A Yes, sir.

22 Q You do?

23 A (Moves head up and down.)

24 Q From 2010?

25 A Yes, sir.

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1 Q Okay. So there is still a pending charge from
2 2010?

3 A Yes, sir.

4 Q And for possession with intent to distribute
5 cocaine, second offense, that's what we call a serious
6 offense, isn't it?

7 A Yes, sir.

8 Q Because it carries from five to 30 years in the
9 penitentiary?

10 A Yes, sir.

11 Q And then there's another ten-year offense for a
12 charge of possession or distribution in the proximity of
13 a school?

14 A Yes, sir.

15 Q So when you sat down and talked with
16 Detective Burckhardt and Williams, one of the things
17 that was on your mind, at least a concern, was that you
18 had had a couple of recent arrests?

19 A No, sir.

20 Q Not at all?

21 A No, sir.

22 Q Okay. Well, you did also mention something
23 else that was on your mind, and that was money; correct?

24 A Yes, sir.

25 Q And they said that there was a reward that was

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1 potentially available for information that would lead to
2 the arrest of the person in this case?

3 A Yes, sir.

4 Q And that interested you?

5 A Yes, sir.

6 Q And so in -- sometime between --

7 MR. PENNINGTON: Court's indulgence, your
8 Honor.

9 Q (By Mr. Pennington) Sometime between the 29th
10 of June and July 12th, you were put in jail?

11 A Yes, sir.

12 Q That was for a bench warrant?

13 A Yes, sir.

14 Q And you said that they said that you missed
15 court?

16 A Yes, sir.

17 Q You wanted to get out of jail, didn't you?

18 A I mean, I didn't -- I didn't -- I didn't see
19 where I missed court at, because the warrant was
20 supposed to get rescinded because they didn't send my
21 paperwork to my address.

22 Q So it was a -- a court mistake --

23 A Yes, sir.

24 Q -- that you got locked up?

25 A Yes, sir.

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1 Q And you don't like jail, do you?

2 A No, sir.

3 Q You were eager to get out of jail?

4 A Yes, sir.

5 Q And also eager to get back to maybe having a
6 crack at this reward money?

7 A Yes, sir.

8 Q And so you talked with Detective Osborne, and
9 you actually raised -- I'm talking now of the other
10 gentleman, the other detective -- in July, while you
11 were at the Lockwood department, hoping to get your
12 bench warrant lifted. Do you recall that conversation?

13 A Yes, sir.

14 Q And do you remember telling him the words, "I
15 really want the money," and Osborne replying, "Well, the
16 money is not off the table"?

17 A Yes, sir.

18 Q Do you also recall that Detective Osborne told
19 you explicitly that, it was a little outside the
20 ordinary for the police to be getting people out of
21 jail? Do you remember him saying that he was going to
22 have to pull some strings, call the prosecutor or call
23 your lawyer to get you out of jail?

24 A Yes, sir.

25 Q And that they would have to come to a Circuit

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1 Court Judge to get this Circuit Court bench warrant
2 lifted up off of you?

3 A Yes, sir.

4 Q And he told you -- do you remember he told you
5 that -- that this really needed to go right, because he
6 would revoke your bond if this did not go right?

7 A No, sir.

8 Q He told you that if you didn't get the gun,
9 you'd have to go back to jail?

10 A Yes, sir.

11 Q Okay. And do you recall later in the
12 conversation that you gave him some advice about how to
13 solve the case?

14 A Yes, sir.

15 Q You told him, What you need to do is arrest
16 Little B -- and you didn't mean you. You meant
17 Bryan Rivers -- and tell Little B that Ryan is calling
18 his name, and that you knew that Bryan Rivers would say
19 Ryan Deleston did it?

20 A Yes, sir.

21 Q But the real truth of the matter is, is that
22 back on the day of the murder, you had been up in
23 Ardmore, hadn't you, earlier in the day?

24 A Yes, sir.

25 Q And the real truth of the matter is that you

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1 had been out there when Shawn Turner was doing a video
2 shoot?

3 A It was not -- yeah, it was that night, yes,
4 sir.

5 Q Okay. A video shoot is like we're going to do
6 a music video?

7 A Yes, sir.

8 Q But something weird happened that night; right?

9 A No, sir.

10 Q Well, Bryan Rivers was out there, wasn't he?

11 A Yes, sir.

12 Q And Bryan Rivers pulled the pistol and started
13 waving it around, and that upset everybody, didn't it?

14 A Yes, sir.

15 Q He was intoxicated and acting a little crazy?

16 A Yes, sir.

17 Q And you told the detective that he was wearing
18 a black shirt?

19 A Yes, sir.

20 Q And some Willie Dee's?

21 A Yes, sir.

22 Q Ryan Deleston was not at that photo shoot. It
23 was Little B that was at the photo shoot?

24 A Yes, sir.

25 Q With a gun?

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1 A Yes, sir.

2 Q The day of the murder?

3 A Yes, sir.

4 Q Once again, you were not out there that night
5 at four in the morning when Marley Lion was shot?

6 A No, sir.

7 Q You do not know who shot Marley Lion?

8 A No, sir.

9 MR. PENNINGTON: Court's indulgence, your
10 Honor.

11 No further questions.

12 MR. DURANT: I have just a couple on Redirect.

13 **REDIRECT EXAMINATION**

14 **BY MR. DURANT:**

15 Q Mr. Warthaw, you're a criminal; right?

16 A Yes, sir.

17 Q If you weren't a criminal, he wouldn't be
18 trying to sell you a gun, would he?

19 A Yes, sir.

20 Q And on that video, that was a gun that he
21 passed up front to you, wasn't it?

22 A Yes, sir.

23 Q And that was \$200 that y'all gave him for it,
24 wasn't it?

25 A Yes, sir.

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1 Q And that was on videotape; right?

2 A Yes, sir.

3 Q And that's true regardless of what your record
4 is, isn't it?

5 A Yes, sir.

6 Q And when you say, How do you know Little B
7 would call when he's -- were talking about -- he was
8 asking you about why Little B would call Ryan's name,
9 why would that be?

10 A Because they had said you would have just -- he
11 would have tell on him, basically.

12 Q He would tell on him; right?

13 A Yes, sir.

14 Q Because what was the word on the street?

15 MR. PENNINGTON: Objection, your Honor.

16 THE COURT: What's the basis?

17 MR. PENNINGTON: Hearsay. What is the word on
18 the street?

19 THE COURT: I heard what he said.

20 Rephrase that question.

21 MR. DURANT: Okay.

22 Q (By Mr. DuRant) So I'm asking you why would --
23 why would Little B mention his name?

24 MR. PENNINGTON: Objection to why Little B
25 would do anything. He's not qualified to say why

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1 Little B --

2 THE COURT: If he knows, Counsel, he may
3 answer.

4 MR. PENNINGTON: Then I'd ask that foundation
5 be laid for that question.

6 Q (By Mr. DuRant) If you know.

7 A I mean, I don't really understand what y'all --

8 Q I think the jury understands. Hold on.

9 Why did you give Detective Osborne that advice?

10 A Because they was saying them two been together
11 that night.

12 Q Uh-huh. And of the two of them, who was the
13 most -- be the most likely to get the truth out of?

14 MR. PENNINGTON: Objection, your Honor. That
15 calls for a conclusion well beyond this witness'
16 knowledge.

17 THE COURT: Sustained.

18 Counsel, I don't want speaking objections.

19 MR. PENNINGTON: I'm sorry.

20 THE COURT: Rephrase your question.

21 Q (By Mr. DuRant) And of the two -- you know
22 both of them. Of the two of them, who is he most likely
23 to get the truth out of?

24 MR. PENNINGTON: Objection, your Honor.

25 A Little B.

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1 MR. PENNINGTON: I'd ask that be stricken.

2 THE COURT: Ladies and gentlemen, I have
3 determined that that last response is not for your
4 consideration. Please, if you wrote it down, please
5 remove it from your notes.

6 That objection was sustained. You may --

7 MR. DURANT: I'm sorry. I'm sorry.

8 THE COURT: He answered fairly quickly on that
9 one, so --

10 MR. DURANT: Okay.

11 THE COURT: Counsel, if you would like to
12 rephrase or reask another question.

13 MR. DURANT: No, your Honor --

14 THE COURT: All right. Mr. Pennington.

15 MR. DURANT: -- just to -- I have some argument
16 is all, but we can do that later.

17 THE COURT: All right. Mr. Pennington.

18 MR. PENNINGTON: If I may have the Court's
19 indulgence?

20 THE COURT: Take your time.

21 MR. PENNINGTON: No further questions, your
22 Honor.

23 THE COURT: All right. Is this witness
24 excused?

25 MR. DURANT: May we approach, your Honor?

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1 THE DEPUTY CLERK OF COURT: Thank you, sir.

2 THE COURT: Mr. Deleston, at this time I'm
3 going to explain to you certain of your rights. We
4 typically do this at the close of the State's case, but
5 there's been a lot of testimony over the past two days,
6 and I anticipate that there may be a point tomorrow that
7 the State will rest. And so I wanted you to have as
8 much time to go over these rights with your attorney.
9 Do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If at any time you do not
12 understand anything that I explain to you or you need me
13 to explain anything in further detail, please let me
14 know. Do you understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: At some -- when I ask you these
17 questions, and it will not be tonight, but we will have
18 reached the stage in the trial where you're going to
19 need to make the decision what type of defense you're
20 going to present.

21 You have a right to claim the protections given
22 to you by the Fifth Amendment to the Constitution of the
23 United States. This Amendment states, in part, that no
24 person shall be compelled in any criminal case to be a
25 witness against himself. That means that you cannot be

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1 required to testify in this case. You have the right to
2 testify on your own behalf; however, no one can make
3 your testify. This is a personal right, and no one can
4 waive this right except for you.

5 If you decide to testify, you will be subject
6 to the same rules that govern the other witnesses and
7 you may be examined and cross-examined on any relevant
8 issue in this case.

9 In addition, if you have convictions involving
10 dishonesty or false statements or for crimes punishable
11 by imprisonment for more than one year, and I determine
12 that the probative value of admitting that evidence
13 outweighs its prejudicial affect to you, the Solicitor
14 will be able to introduce your record to attack your
15 credibility.

16 Mr. Pennington, we've already addressed which
17 convictions would be appropriate for impeachment; is
18 that correct?

19 MR. PENNINGTON: Yes, ma'am.

20 THE COURT: And, Solicitor Wilson, you agree
21 with that?

22 MS. WILSON: Yes, ma'am.

23 THE COURT: If you decide to testify, this
24 decision on your part must be freely, voluntarily, and
25 intelligently made, with the knowledge of the

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1 protections given to you by the Fifth Amendment and the
2 consequences of your decision to testify.

3 If you decide not to testify, I will instruct
4 the jurors that they cannot give the fact that you did
5 not testify any consideration whatsoever, and I will
6 instruct them there's to be absolutely no prejudice to
7 you because you did not testify. As a matter of fact, I
8 instruct the jurors that they are not to discuss the
9 fact that you did not testify in the jury room
10 whatsoever. It is left entirely up to you whether or
11 not you testify. You have the opportunity over this
12 evening hour and throughout tomorrow to discuss with
13 your attorney, either together or separately, your
14 family, your friends, or anyone else, but the final
15 decision is left entirely up to you.

16 Do you understand what I have explained to you?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you need for me to explain any
19 of these issues in further detail to you?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Do you understand what convictions
22 could be used against you if you decide to testify?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You understand the instructions
25 that I will give to the jurors if you decide not to

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1 testify?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you had discussions with your
4 attorney regarding these issues?

5 THE DEFENDANT: Not yet.

6 THE COURT: Not yet? All right. Thank you.

7 Mr. Pennington, do you need for me to explain
8 anything further to your client regarding his right to
9 testify?

10 MR. PENNINGTON: I don't believe so, your
11 Honor. I believe that was a great -- a very thorough
12 explanation.

13 Obviously, in the run up to trial, there's been
14 discussions about the subject. Because he's in custody,
15 because we've been working very long hours, I would ask
16 for an opportunity to have -- we can start at 9:30
17 tomorrow. That way I'll have -- he will get here at
18 8:30. They'll bring him up here, and I would have a
19 chance to talk with him before we commence in the
20 morning, if that's all right.

21 THE COURT: Counsel, I could have him here
22 earlier than that if I instruct them to have him here;
23 correct?

24 MR. PENNINGTON: I think it would only be like
25 a 15-minute conversation. So I think we could work it

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1 having some technical difficulties. And so please give
2 your strict attention.

3 Ms. Wilson, call your next witness.

4 I'm sorry, Mr. DuRant.

5 MR. DURANT: Thank you, your Honor. The State
6 would call Christopher Singleton.

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

9 THE WITNESS: Yes.

10 THE DEPUTY CLERK OF COURT: Thank you, sir.
11 You may take your seat. Sir, please speak loudly and
12 clearly into that microphone whenever you respond to
13 your questions. And then, also, if you would, please
14 state your first and last name, spelling your last for
15 the record.

16 THE WITNESS: My name is Christopher Singleton,
17 S-i-n-g-l-e-t-o-n.

18 **CHRISTOPHER SINGLETON,**

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

23 **DIRECT EXAMINATION**

24 **BY MR. DURANT:**

25 Q Very good. We hear you well..

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1 What's your nickname, Chris?
2 A Little Chris.
3 Q And how old are you?
4 A Twenty-five.
5 Q How far did you go in school?
6 A I'm in college.
7 Q Okay. Where are you going to school now?
8 A Right now I go to Trident Tech, but I was going
9 to Voorhees College.
10 Q You're going to Voorhees College?
11 A Yeah. Right now -- I'm at Trident right now.
12 Q Oh. Okay. And what were you taking at Trident
13 Tech?
14 A Computer science.
15 Q Are you married?
16 A No.
17 Q Do you have any children?
18 A I have a little girl.
19 Q And what part of town are you from?
20 A I'm from West Ashley.
21 Q What part of West Ashley?
22 A Orange Grove.
23 Q Do you know Bobby Warthaw?
24 A Yeah.
25 Q What is your relationship with Bobby Warthaw?

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1 A That's my cousin.
2 Q Now, directing your attention to July the 15th
3 of 2012, did your cousin, Bobby Warthaw, ask you for
4 some help on something?
5 A Yes.
6 Q And what was that? What did he want you to
7 help him with?
8 A Getting a gun.
9 Q Buying a gun from somebody?
10 A Yeah.
11 Q And he had approached you about it and told you
12 about the situation?
13 A Yes.
14 Q Now, were you with Bobby when he -- at the
15 Charleston Police Department on July the 15th --
16 A Yes.
17 Q -- of 2012?
18 A Yes.
19 Q You went down there with him?
20 A Uh-huh.
21 Q Was the original plan for you to be involved?
22 A No.
23 Q Who was originally supposed to be involved?
24 A Our other friend.
25 Q And who was that?

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1 A I'm not really -- his name is Chris too, but
2 his name -- his nickname, Dollar. I don't know his real
3 name, like that.

4 Q And so when you were going down to the police
5 department with Bobby, your -- were you -- you were
6 going with the intention of helping him out at that
7 time?

8 A Yeah.

9 Q Okay. Because what happened to Dollar?

10 A He was busy at the time. He had --

11 Q And he got -- said he couldn't do it?

12 A Yeah.

13 Q So what did you -- what did you say?

14 A Bobby just asked me to do it. And, I mean,
15 well, we already been downtown, so he just asked me to
16 do it and I did it.

17 Q So you pretty much agreed, when you were down
18 at the police department, that you would help; is that
19 correct?

20 A Yes.

21 Q Now, after you agreed to help at the police
22 department, did you agree to wear a wire?

23 A Yes.

24 Q Were you searched prior to having that wire put
25 on?

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1 A Yes.

2 Q And, of course, when you were searched, you

3 didn't have a gun on you; did you?

4 A No.

5 Q If you'd had a gun on you, it would have been

6 found by the police, I would assume?

7 A Yeah.

8 Q Now, did you just wear audio recording or video

9 recorder or both?

10 A Both.

11 Q And who put that on you?

12 A The police. I don't know his name.

13 Q You don't know. One of the policemen?

14 A Yeah.

15 Q Whose car was being used?

16 A Bobby's friend.

17 Q And do you remember what kind of car it was?

18 A It was a Focus.

19 Q And do you remember what color it was?

20 A Tan.

21 Q Now, was the vehicle that y'all used searched

22 before y'all were allowed to get in?

23 A Yes.

24 Q Do you remember that -- being used to Dollar

25 (phonetic); didn't they?

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1 A Yeah, I believe so.
2 Q Now, when y'all left, who was driving?
3 A Bobby.
4 Q And where were you sitting in the car?
5 A In the passenger.
6 Q Who had the buy money?
7 A Me.
8 Q How much buy money did you have?
9 A \$200.
10 Q And where did you go when you left the police
11 department?
12 A Ardmore.
13 Q And where did you go in Ardmore?
14 A They called it the Hole.
15 Q And what is the Hole? What part of Ardmore is
16 the Hole?
17 A That's when -- where Evergreen and Balsam,
18 like, connect around the back.
19 Q On the back side where Sequoia is?
20 A Yeah.
21 Q And what's back in the Hole? What kind of
22 residences are back there?
23 A Section 8 apartments.
24 Q Two -- couple of different apartment complexes;
25 is that right?

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1 A Yeah.
2 Q Now, after y'all parked, did you stay in the
3 car?
4 A Yeah.
5 Q How about Bobby?
6 A He went outside the -- to meet him, I guess.
7 Yeah.
8 Q And now, when Bobby returned to the car, did he
9 return by himself?
10 A No.
11 Q Who was with him?
12 A I don't know his name, but --
13 Q Do you see the guy that was with him in the
14 courtroom today?
15 A Yeah.
16 Q Could you point him out to the jury?
17 A He's right there.
18 Q Would you describe what he's wearing?
19 A Black and white.
20 Q I'm talking about what is he wearing now.
21 Black and white?
22 A Yeah.
23 Q Is he the black gentleman sitting between the
24 two white gentlemen? How about that?
25 A Yeah.

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1 Q Okay. Now, when this fellow and Bobby returned
2 to the car, where did they get in the car?

3 A Bobby driver, and him -- him in the -- he was
4 in the back seat.

5 Q Back seat behind you or the back seat behind
6 Bobby?

7 A Behind Bobby.

8 Q And what did he do after he got in the car?

9 A He had the gun, and I bought it from him.

10 Q Do you remember where he pulled the gun out
11 from?

12 A I think his hip. I can't -- I don't know. I
13 think his hip, but I don't know.

14 Q Okay. And once he pulled the gun out and gave
15 it to y'all, what did you give him?

16 A I give him the money.

17 Q Did you try to talk him down a little bit?

18 A Yes.

19 Q And did he go for that?

20 A No.

21 Q Now, I want to play a portion of State's
22 Exhibit Number 24. You should be able to see it there
23 or there. And I may ask you a couple of questions.

24 (Video is played.)

25 Q (By Mr. DuRant) Who is that that just got in

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1 the car in the front seat?

2 A Bobby.

3 (Video is played.)

4 Q (By Mr. DuRant) And who is that?

5 A That's him.

6 Q The fellow you previously identified?

7 A Yeah.

8 THE COURT: Is that a yes?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you.

11 (Video is played.)

12 Q (By Mr. DuRant) Can you tell what that is he's

13 got in his hand right there?

14 A I guess that's the gun.

15 Q Was it in something?

16 A No.

17 Q But you -- I mean, it came out of something,

18 but it -- was it in something originally --

19 A No.

20 Q -- or do you remember?

21 A I can't really remember. I know after I got

22 it, I put it in a towel.

23 Q When you say a towel, you're talking about this

24 towel right here up at the top? Didn't y'all bring that

25 towel with you?

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1 A Yeah.
2 (Video is played.)
3 Q (By Mr. DuRant) I'd also like to play you a
4 portion of State's Exhibit Number 25.
5 (Video is played.)
6 Q (By Mr. DuRant) Where is -- do you remember
7 where that camera was?
8 A That was on me.
9 Q On you? Do you know what kind of camera it
10 was? Was it -- where on you was it?
11 A On my chest.
12 Q Okay. It was like a button or something?
13 A Yeah, it was wrapped around my chest. And I
14 think he put the speaker between the -- between
15 the -- they had given me a shirt to put on.
16 Q Okay.
17 (Video is played.)
18 Q (By Mr. DuRant) Who's that in the driver's
19 seat?
20 A That's Bobby.
21 (Video is played.)
22 Q (By Mr. DuRant) What is that right there?
23 A That's the gun.
24 Q That's after it was handed to you by whom?
25 A Him.

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1 Q "Him," meaning who?
2 A That guy right --
3 Q This fellow you previously identified; right?
4 A Yeah. Uh-huh.
5 (Video is played.)
6 Q What did you ask him then?
7 A Do you want 180?
8 Q And he wasn't going for that?
9 A No.
10 (Video is played.)
11 Q (By Mr. DuRant) What was that that Bobby put
12 under your seat?
13 A The gun.
14 (Video is played.)
15 Q (By Mr. DuRant) Now, after y'all purchased the
16 gun from the Defendant, where did y'all drive to?
17 A We drive behind that middle school. We had met
18 up with them with the gun behind the middle school.
19 Q That's where y'all had planned to meet when
20 y'all talked about this at the police department;
21 correct?
22 A Yes.
23 Q And where was that school located?
24 A That's off of Wappoo Road, I think.
25 Q Okay. The old St. Andrews High School? Is

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1 that --

2 A Yeah.

3 Q And what happened there?

4 A Took everything off -- they grabbed -- they
5 took the gun.

6 Q Did they do that there or they do that later at
7 the crime scene office?

8 A Well, as a matter of fact, yeah, they did that
9 because -- and they took the car.

10 Q Okay.

11 A We drive in different cars, and one of the
12 policeman drove the car we was in to the crime scene.

13 Q Crime scene office. And they got the car
14 there?

15 A Yeah.

16 Q And then that's where they removed the wire
17 from you?

18 A Yeah.

19 Q And how much did you get paid?

20 A Thirteen grand. No, I didn't get paid 13
21 grand, but that was the thing.

22 Q Well, you're supposed to -- you got how --
23 first of all, I'm not talking about the Crime Stoppers.
24 How much did the police pay, if you remember?

25 A I think 200 -- I mean,

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1 200-and-something -- yeah, \$200.

2 Q Okay. And then there was some Crime Stoppers
3 reward money; right?

4 A Yeah.

5 Q And I believe the testimony yesterday was that
6 it was \$13,000?

7 A Yeah.

8 Q How much of that did you get?

9 A About 1,200.

10 Q How much were you supposed to get?

11 A Like four or three.

12 Q How --

13 A Four or three grand. Like, three grand --
14 \$3,000.

15 Q So you were supposed to get three grand?

16 A Yeah.

17 Q And you ended up getting about 1,200?

18 A Yeah.

19 Q Why?

20 A Because Bobby -- Bobby greedy, you know. He
21 was greedy. He took everything.

22 Q What are Willie Dee's?

23 A That's Air Force Ones.

24 Q And what color are Air Force Ones?

25 A Black and white.

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1 Q Black or white or black and white?

2 A Black and white.

3 Q It'd be either; right?

4 A Yeah.

5 MR. DURANT: Would you please answer any
6 questions that Defense counsel may have?

7 THE COURT: Mr. Pennington.

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

10 THE COURT: Take your time.

11 MR. PENNINGTON: Thank you, your Honor. I
12 don't have any questions for Mr. Singleton.

13 THE COURT: All right. Is this witness
14 excused?

15 MR. DURANT: We would ask that he be excused,
16 your Honor.

17 THE COURT: Any objection?

18 MR. PENNINGTON: No objection, your Honor.

19 THE COURT: Mr. Singleton, you are free to step
20 down. Feel free to stay with us, but you're also free
21 to leave the courtroom. Thank you.

22 THE WITNESS: All right. Thank you.

23 (The witness steps down from the stand.)

24 THE COURT: Call your next witness.

25 MR. DURANT: The State would call Cheryl

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1 Fulton. Cheryl Fulton Turner, I should say.

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

4 THE WITNESS: I do.

5 THE DEPUTY CLERK OF COURT: Take your seat.

6 And, ma'am, if you would, please, state your first and
7 last name, spelling your last for the record.

8 THE WITNESS: Cheryl Turner, T-u-r-n-e-r.

9 THE COURT: Mr. DuRant, your witness.

10 MR. DURANT: Thank you, your Honor.

11 **CHERYL TURNER,**

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 her oath
15 as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. DURANT:**

18 Q Good morning. Would you please tell the jury
19 where you're employed?

20 A Charleston Police Department.

21 Q And what do you do for the Charleston Police
22 Department?

23 A I'm a robbery detective.

24 Q How long have you been with CPD?

25 A About seven years now.

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1 Q And what were you doing for the police
2 department on July 15th of 2012?

3 A I was an investigator with the field
4 intelligence.

5 Q What is the field intelligence unit?

6 A What we do is, we assist the detectives by
7 gathering information from the field. We do
8 surveillance operations, controlled buy operations, find
9 information from various confidential informants.

10 Q Okay. In that capacity, did you have the
11 occasion to become involved in the controlled buy of a
12 pistol in Ardmore subdivision on July the 15th of 2012?

13 A I did.

14 Q And who were y'all attempting to buy a pistol
15 from?

16 A Ryan Deleston.

17 Q Where did y'all meet to go over the operation
18 of the plan?

19 A We met at CPD headquarters.

20 Q And later on, y'all were riding -- you were
21 riding with somebody. Who did you ride with that day?

22 A I was riding with Lieutenant Jenkins and
23 Investigator Phil Gee (phonetic).

24 Q Okay. And where is Detective Jenkins this
25 week?

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1 A He is on vacation right now.

2 Q Okay. And how about Detective Gee?

3 A He is on active military duty.

4 Q Now, how did you know what Deleston looked
5 like?

6 A I was familiar with Deleston, and
7 Lieutenant Jenkins was also familiar with him. We had
8 stopped him recently in the past. We also had
9 photographs --

10 Q Do you see Mr. Deleston in the courtroom today?

11 A Yes, I do.

12 Q And could you point him out to the jury?

13 A In the white shirt.

14 Q And sitting at counsel table over here?

15 A Yes.

16 Q The one without the tie on?

17 A Yes.

18 Q Okay. Now, how many informants did y'all use
19 in the controlled buy?

20 A We used two.

21 Q Did you know either of the informants?

22 A I knew one of them.

23 Q Which one?

24 A I knew Bobby Warthaw.

25 Q So you didn't know Christopher Singleton, the

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1 other one that helped him out?

2 A Not prior to this operation.

3 Q What kind of vehicle were they in?

4 A They were in a tan Ford Focus.

5 Q Was that a Charleston Police Department car, or
6 did they drive their car?

7 A It was not. It was their car.

8 Q Do you know whether that car was searched prior
9 to them being allowed to use it in this operation?

10 A It was searched. It was searched by
11 Lieutenant Jenkins and Detective Shealy.

12 Q And how was the vehicle searched?

13 A They both manually searched it by hand, and we
14 also had a K-9 unit come out and search it.

15 Q And no indication there was any weapon in the
16 car; correct?

17 A None.

18 Q Was the car wired?

19 A It was. It was wired with audio and visual.

20 Q And were either of the informants wired?

21 A Christopher Singleton was.

22 Q And do you know whether the two informants were
23 searched prior to being allowed to go on this operation?

24 A Yes. They were both searched prior to this by
25 Sergeant Jenkins.

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1 Q And when you're dealing with informants, why do
2 you search them and their car prior to doing a
3 controlled buy situation?

4 A So that we can make sure that they don't bring
5 in any contraband; in this case, so that the gun that we
6 were trying to purchase from Deleston wasn't being
7 brought in by our informants.

8 Q So you just wanted to make sure that they
9 didn't bring the gun themselves and they're allegedly
10 sold; correct?

11 A Correct.

12 Q How much money was -- the buy money was given
13 to the informants?

14 A We gave them \$200.

15 Q And who was that given to?

16 A Christopher Singleton.

17 Q And do y'all make a record of the kind of
18 money -- the money you give to them?

19 A Yeah. It's pretty -- it's pretty -- I'm sorry.
20 The currency is basically photocopied. We record those
21 serial numbers of each bill that we give the informants.

22 Q And when the informants left to make the buy,
23 were they followed?

24 A Yes, they were.

25 Q By whom?

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1 A I was in a car with Sergeant Jenkins and
2 Investigator Phil Gee, and in another car was
3 Detective Shealy and Sergeant Osborne.

4 Q Detective Osborne being right here; correct?

5 A Yes. And both of us -- both cars followed him.

6 Q And they were followed from downtown to where?

7 A To the Ardmore area. We went down 17 and made
8 a -- watched them make a right onto White Oak and make
9 another right onto Evergreen.

10 Q And they didn't make any stops in between;
11 correct?

12 A They did not.

13 Q Now, once y'all watched them -- once y'all
14 watched them make that turn onto Evergreen -- well, let
15 me just. . .

16 I'm going to refer you to State's Exhibit
17 Number 27, if you can see it. And do you recognize this
18 aerial photograph?

19 A Yes.

20 Q And I know that this doesn't cover too much
21 of -- this is -- what highway is that down here?

22 A This is Highway 17, Savannah Highway.

23 Q So you said you observed them -- you observed
24 them to what point?

25 A We watched them make a right onto White Oak and

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1 then make another right onto Evergreen.

2 Q Okay. And do you know where the undercover
3 officers were in the area of the buy?

4 A They were down at Sequoia and Evergreen Street.

5 Q In this apartment; is that correct?

6 A Correct.

7 Q This apartment building?

8 A Yes.

9 Q Okay. And to that point, they didn't make any
10 stops; correct?

11 A None.

12 Q And once y'all -- once y'all watched them turn
13 and make that right onto Evergreen, where did y'all go?

14 A We went to the Best Western parking lot. It's
15 off of 17. It's at the -- it's at the dead end of
16 Cashew Street.

17 Q Okay. And why did y'all go to that particular
18 location?

19 A We were set at the location to watch Deleston's
20 house.

21 Q And I guess I should have done this earlier,
22 but let me ask you a couple other questions. Could you
23 tell the jury what you observed at about 3:03 p.m.?

24 A We watched a black Suburban pull into the
25 driveway at Deleston's residence.

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1 Q Okay. And I show you what's previously been
2 marked as State's 84 in evidence. Does that appear to
3 be the type of vehicle --

4 A Yes.

5 Q -- that you saw pull in to Mr. Deleston's
6 residence?

7 A It is.

8 Q And referring back to State's Exhibit Number
9 27, would you please point out to the jury where y'all
10 were posted up during the surveillance operation?

11 A We were right here at the end of Cashew Street.

12 Q Okay. And there's a fence, I believe, there;
13 is that correct?

14 A It's a chain-link fence.

15 Q Okay. And also a few bushes, apparently. I
16 believe the testimony previously, that Mr. Deleston
17 lived in this unit; is that correct?

18 A Correct.

19 Q And you said you saw that -- the truck arrived
20 at about 3:03 p.m. What happened right after that, at
21 about 3:06 p.m.?

22 A We watched Deleston approach the vehicle. And
23 then after approaching the vehicle, he walked towards
24 Evergreen and made the right onto Evergreen towards
25 Sequoia Street.

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1 Q And do you recall what Mr. Deleston was wearing
2 at that time?

3 A He was wearing a white T-shirt, blue jean
4 shorts, and also had a tan baseball hat on.

5 (Document shown to Defense counsel.)

6 MR. DURANT: Your Honor, we would offer State's
7 Exhibit 90 into evidence.

8 MR. PENNINGTON: No objection, your Honor.

9 THE COURT: State's 90 into evidence without
10 objection.

11 (State's Exhibit Number 90 admitted into
12 evidence.)

13 Q (By Mr. DuRant) And does State's Exhibit 90
14 accurately reflect what you saw Mr. Deleston wearing at
15 the time of the gun buy?

16 A It does.

17 (Document is published to the jury.)

18 Q (By Mr. DuRant) Now, once you saw Mr. Deleston
19 walking way down Cashew and taking the right onto
20 Evergreen, what did y'all do?

21 A We notified Sergeant Robertson and Detective
22 Olson, who were at the fixed location, that they were
23 coming -- that he was coming their way.

24 Q Told them he was coming and what he was
25 wearing; correct?

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1 A Correct.

2 Q And how long did that black Suburban stay at
3 Deleston's house?

4 A He was there for approximately ten minutes.

5 Q And where did y'all go after the informants
6 completed the purchase of the weapon?

7 A We waited until the black Suburban left the
8 residence, and then we went up -- or down 17 further on
9 the right around to -- excuse me, onto Wappoo Road at
10 St. Andrews Middle School.

11 Q And why were y'all meeting at St. Andrews
12 Middle School?

13 A We had predetermined that location.

14 Q And do you know who inform -- followed the
15 informants to that location?

16 A Detective Shealy and Sergeant Osborne did.

17 Q And what happened at St. Andrews Middle School?

18 A We removed both confidential informants from
19 the vehicle. Sergeant Jenkins searched them. And after
20 that, he got into the car, and he drove the car down to
21 our crime scene office, which is on Wappoo Road.

22 MR. DURANT: Thank you very much. Could you
23 please answer any questions that Defense counsel has?

24 MR. PENNINGTON: May it please the Court, your
25 Honor?

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1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q Officer Turner, you had been out and working in
5 this investigation for weeks before July 15th, hadn't
6 you?

7 A I was involved in the investigation, actively
8 investigating it. It was Sergeant Osborne and his
9 people.

10 Q Okay. The lead detectives were
11 Detectives Osborne and Detective Burckhardt?

12 A Yes.

13 Q Okay. And you had mentioned that you had
14 become familiar with the identity of my client,
15 Ryan Deleston, from a stop, but that was not a stop for
16 a criminal behavior, was it?

17 A It was not.

18 Q It was an attempt to ascertain his identity?

19 A We were familiarizing ourselves with the people
20 in the area.

21 Q Okay. Now, this was before the gun purchase?

22 A Correct.

23 Q All right. So the law enforcement had the gun
24 to initiate surveillance of my client's residence from
25 the days preceding July 15?

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1 A We did.

2 Q Okay. And then it ultimately culminated

3 that -- I believe you testified that Bobby Warthaw drove

4 from the City police station on Lockwood over to

5 Ardmore?

6 A Correct.

7 Q On the 15th?

8 A Correct.

9 Q And that would have been at -- he left about

10 2:31 in the afternoon?

11 A The exact time, I'd have to check my notes.

12 Q Do you have your notes there?

13 A I do.

14 Q Do you want to -- please feel free.

15 A We left the police department about 2:15 --

16 Q All right.

17 A -- in the afternoon.

18 Q So y'all left Lockwood downtown at 2:15, and it

19 was about 2:31 that he arrived at Evergreen and Sequoia?

20 A Correct.

21 Q Okay. And then there was about a 30-minute

22 wait until this Suburban arrived over on Cashew Street?

23 A Correct.

24 Q So the -- we're talking about that black truck

25 that the Solicitor just pointed out in that photograph;

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1 correct?

2 A Yes.

3 MR. PENNINGTON: Thank you. That's all the
4 questions that I have, your Honor.

5 THE COURT: Mr. DuRant.

6 MR. DURANT: Nothing on Redirect, your Honor.

7 THE COURT: Is this witness excused?

8 MR. DURANT: We would ask that she be excused.

9 THE COURT: Any objection?

10 MR. PENNINGTON: No objection, your Honor.

11 THE COURT: Ms. Turner, you may step down.
12 Feel free to remain with us. Thank you.

13 (The witness steps down from the stand.)

14 THE COURT: Call your next witness.

15 MR. DURANT: The State would call
16 Jeff Robertson.

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

18 (Ms. Wilson speaks with Mr. Pennington off the
19 record.)

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

22 THE WITNESS: I do.

23 THE DEPUTY CLERK OF COURT: Thank you, sir.
24 You may take your seat.

25 MS. WILSON: Judge, may we approach briefly

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1 about scheduling?

2 THE COURT: You may.

3 (Mr. Pennington, Ms. Wilson, and Mr. Durant
4 approach the bench for a discussion off the record.)

5 THE COURT: Sir, if you'll state your full name
6 and please spell your last name.

7 THE WITNESS: My name is Jeffery M. Robertson,
8 R-o-b-e-r-t-s-o-n.

9 THE COURT: Thank you.

10 **JEFFREY M. ROBERTSON,**

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

15 **DIRECT EXAMINATION**

16 **BY MR. DURANT:**

17 Q Good morning.

18 A Good morning, sir.

19 Q Could you tell our jury where you're employed?

20 A I'm employed with the Charleston City Police
21 Department.

22 Q And how long have you been with the City police
23 department?

24 A Approximately 16 years.

25 Q And you don't look like your typical police

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1 officer. What do you do for them?

2 A Yes. I work in the special investigations
3 unit. We wear plain clothes, undercover --

4 Q Okay.

5 A -- covert operation and investigations.

6 Q And I understand.

7 And how long have you been doing that?

8 A Four and a half years.

9 Q Now, in that capacity, what unit are you with?

10 A Special investigation unit.

11 Q And what does the special investigations unit
12 do?

13 A We focus mainly on narcotics, but we also
14 participate in any -- any operation that requires police
15 officers who don't look like police officers, basically.
16 We do surveillance, covert operations, things of that
17 nature.

18 Q And in that capacity, and with regard to the
19 murder investigation involving Marley Lion, did you have
20 the occasion to work undercover on July the 15th of
21 2012?

22 A Yes, sir, I did.

23 Q And in what area were you working undercover?

24 A I was working in the area at the intersection
25 of Evergreen and Sequoia Street in West Ashley in the

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1 Ardmore subdivision.

2 Q And what is that area called?

3 A The Hole. Slang term is "the Hole."

4 Q Okay. And what is located -- where -- at the
5 Hole in the Ardmore subdivision?

6 A It's two apartment complexes, which are city
7 housing.

8 Q And do you frequently work in this area?

9 A Yes, sir.

10 Q Who were you working with that day?

11 A I was working with another detective, Detective
12 Bill Olson.

13 Q And at the time of the 15th, how long have
14 you -- had you been working undercover at that
15 particular area?

16 A Approximately two weeks.

17 Q And where were you located?

18 A We were located inside of 640 Sequoia Street,
19 Apartment 1.

20 Q And what was your cover?

21 A Our cover was as construction workers.

22 Q And I'll get to that in a second.

23 Now, was that an occupied apartment?

24 A No, sir. It was unoccupied and just completed
25 its renovation.

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1 Q And y'all were there under the guise that y'all
2 were renovating the apartment; is that correct?

3 A Yes, sir. We went in to carry tools and things
4 of that nature --

5 Q Okay.

6 A -- to look like we were working inside the
7 apartment.

8 Q I'd like to refer your -- your attention -- and
9 let me just do this. Make it easier.

10 (Mr. DuRant is setting up the easel.)

11 Q (By Mr. DuRant) Can you see that?

12 A Yes, sir.

13 Q Let me give you a laser pointer.

14 A Yes, sir.

15 Q Referring you to State's Exhibit 27, could you
16 show the jury where the Hole is?

17 A Approximately this area here.

18 Q And when you're saying "the Hole," you're --
19 there's -- where are the two apartment complexes that
20 you're talking about?

21 A The apartment complex that we were in was here.

22 Q Okay.

23 A And the other apartment complex is here.
24 That's 700 Sequoia.

25 Q Okay. And which -- which apartment were you in

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1 in that complex?

2 A We were in Apartment Unit Number 1, which is
3 right there.

4 Q That's the one closest to Sequoia Street?

5 A Yes, sir.

6 Q Okay. And where are the windows on that
7 apartment?

8 A There's windows on the front and back of the
9 apartment here and here, on the north and south sides of
10 the apartment.

11 Q So you had vision to this way and this way; is
12 that correct?

13 A Yes, sir. That's correct.

14 Q And what were you and your partner tasked to do
15 that day?

16 A We were tasked to conduct surveillance on a
17 controlled purchase of a firearm from the Defendant,
18 Ryan Deleston.

19 Q This would be Mr. Deleston over here; correct?

20 A Yes, sir.

21 Q What equipment did y'all have?

22 A We had cameras, both still pictures and video.
23 And we had a live audio feed that was transmitting the
24 ongoing conversation from the informant's vehicle.

25 Q Was one of the informants -- the car was wired;

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1 is that correct?

2 A The car was wired with the audio transmitter
3 that we could hear.

4 Q That was realtime transmission?

5 A That's correct.

6 Q Live transmissions. And why is that?

7 A So we could monitor the progress of the
8 transaction and also make sure of the safety of the
9 informants.

10 Q Okay. Now, if you would, could you tell the
11 jury what you saw happening about 2:30 p.m.?

12 A I observed the informants' vehicles drive down
13 Evergreen Street toward Sequoia and then make a
14 right-hand turn into the apartments around 700 Sequoia
15 Street.

16 Q Okay. And do you remember what kind of vehicle
17 the -- the informants were using?

18 A Tan Ford -- tan Ford Focus. Sorry.

19 Q And, if you would, could you just point out to
20 the jury, if you could -- I know it's kind of a far
21 shot, but -- where you saw them park the vehicle?

22 A Approximately this area.

23 Q In that parking lot?

24 A Yes, sir.

25 Q On the north side or the south side of the

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1 parking lot?

2 A It was on the north side of the parking lot.

3 Q Okay. And could you see the vehicle, where it
4 was parked?

5 A Yes, sir.

6 Q You had a clear view of it --

7 A Yes, sir.

8 Q -- from your location --

9 A Yes, sir.

10 Q -- at 640 Sequoia?

11 A Yes, sir.

12 Q And how did y'all know the car was about to get
13 there?

14 A We were informed by officers who had just seen
15 the informants leave, and they told us it was headed for
16 the area. Plus we began to hear the audio feed as it
17 got closer.

18 Q And y'all were in radio contact with everybody?

19 A Yes, sir. Yes, sir.

20 Q And how many people were in the informants'
21 vehicle?

22 A Two people.

23 Q And what happened after they parked?

24 A They parked, and I observed the driver, the
25 informant driver, get out of the vehicle and walk around

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1 the intersection of Evergreen and Sequoia.

2 Q Okay. And did you observe the front passenger
3 ever get out of the vehicle?

4 A He never got out of the vehicle.

5 Q And what happened at about five until 3:00?

6 A I observed the informant walking to the
7 apartment complex at 640 Sequoia to the south -- south
8 side of our apartment, and he walked to Unit 11.

9 Q And you can just point the general location
10 where that is.

11 A Yes, sir. Be this area here.

12 Q Okay.

13 A He walked to Unit 11. He knocked on the door,
14 made contact with a gentleman who was inside the
15 apartment, had a little bit of a conversation standing
16 right in front of the door, and he handed him a cell
17 phone. The occupant of the apartment went back into the
18 apartment, and the informant left the area. He never at
19 one time went inside the apartment. We never lost sight
20 of him.

21 Q Now, moving ahead about ten minutes to
22 3:05 p.m., what happened then?

23 A Sergeant Jenkins or, now, Lieutenant Jenkins,
24 radioed to me, saying that Defendant Deleston was
25 leaving Cashew Street, walking on Evergreen towards our

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1 location.

2 Q Okay. And did y'all pick him up on Evergreen
3 Street?

4 A We did.

5 Q Now, when you picked him up on Evergreen
6 Street, what did he do? Who did he -- who did he meet,
7 and where did he meet?

8 A We saw him walk straight down Evergreen to the
9 intersection of Sequoia, and he met with the informant,
10 who was waiting at that intersection.

11 Q And how did you know what he looked like?

12 A I'd been provided pictures prior to our
13 starting this entire operation. And I'd also seen him
14 in the area, both on foot and on a bicycle.

15 Q During your previous surveillance operations?

16 A Yes, sir.

17 Q So you knew what the subject looked like?

18 A That's correct.

19 Q Do you recall how he was dressed?

20 A He had on a white T-shirt, tan baseball cap,
21 light-colored blue jeans. He was smoking a cigarette
22 and talking on the cell phone.

23 Q And as a matter of fact, I believe -- let me
24 show you something.

25 I'd like to refer your attention to State's

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1 Exhibit 90. Is that how he appeared that day?

2 A Yes, sir.

3 Q As a matter of fact, y'all took that photo;
4 right?

5 A My partner, Detective Olson, did, yes, sir.

6 Q As he was walking to the gun buy; is that
7 correct?

8 A That's correct.

9 Q Now, where did he -- where did he meet
10 Mr. -- the informant?

11 A He met him at the intersection of Evergreen and
12 Sequoia just to -- basically, in the rear of the
13 apartment that we were in.

14 Q And where did they go?

15 A They walked straight down Sequoia and to the
16 informant vehicle.

17 Q And what happened when they got to the
18 informant vehicle?

19 A The informant got in the driver's seat, and
20 then Deleston got in the rear driver's seat.

21 Q And y'all were following the live audio at this
22 time?

23 A Yes, sir.

24 Q And so you could hear what was going on?

25 A We could hear some talk. It was very soft

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1 talk, so we couldn't tell exactly what was being said,
2 but we could tell that things were going smoothly.

3 Q Okay. And how long was Mr. Deleston in the
4 car?

5 A Approximately 45 seconds.

6 Q And what did he do when he got out of the car?

7 A He exited the car and walked straight down the
8 driveway to Sequoia Street, made a left, walked back to
9 Evergreen, and headed back to the direction of Cashew,
10 the same way he came in.

11 Q And where did the informants' car go?

12 A The informant backed out, made a left on
13 Sequoia, and then turned on Evergreen and headed back
14 towards White Oak. And as he was leaving, I heard on
15 our -- on the wire, I heard something to the affect of,
16 "we got it," which I assume is referring to the firearm.

17 Q Okay.

18 (Document is shown to Defense counsel.)

19 MR. DURANT: Your Honor, we would offer State's
20 88 and 89, I believe without objection.

21 THE COURT: Any objection, Mr. Pennington?

22 MR. PENNINGTON: No, your Honor, no objection.

23 THE COURT: State's 88 and 89 into evidence
24 without objection.

25 (State's Exhibit Nos. 88 and 89 are admitted)

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1 into evidence.)

2 Q (By Mr. DuRant) Like to refer you, first, to
3 State's Exhibit Number 88. What does that depict?

4 A That is the area of 700 -- 708 to 710 Sequoia,
5 and of the --

6 Q What is this where my cursor is?

7 A That's the informant vehicle.

8 Q And that's roughly the view y'all had from
9 where you were situated at the apartment?

10 A That's correct.

11 Q State's 89, what does that depict?

12 A That depicts the informant getting out of the
13 vehicle and walking towards the intersection at
14 Evergreen and Sequoia.

15 Q And I believe 90 we've already gone through; is
16 that correct?

17 A Yes, sir.

18 Q Now, you indicated that there was also some
19 video taken?

20 A That's correct.

21 Q I show you what's been marked State's Exhibit
22 Number 26 and ask if you recognize that item and, if so,
23 how?

24 A Yes, sir, I do.

25 Q What is that?

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1 A That is a video that was taken by my partner of
2 the controlled buy.

3 Q And this was taken at the time of the buy; is
4 that correct?

5 A That's correct.

6 Q And how do you know this is that video?

7 A I reviewed it and initialed it as being that
8 video.

9 Q Okay. And does it fairly and accurately depict
10 the transaction as y'all observed from 640 Sequoia
11 Street --

12 A Yes, sir.

13 Q -- on July the 15th of 2012?

14 A Yes, sir, it does.

15 MR. DURANT: Your Honor, we would offer State's
16 26, if there's no objection.

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: State's 26 into evidence without
19 objection.

20 (State's Exhibit No. 26 is admitted into
21 evidence.)

22 (Video is played.)

23 Q (By Mr. DuRant) Who is that?

24 A That's Defendant Deleston in the white T-shirt
25 and the informant wearing the tank top with the

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1 dreadlocks.

2 (Video is played.)

3 Q (By Mr. DuRant) How long did y'all remain at
4 that location after the transaction took place?

5 A Approximately an hour, hour and a half,
6 somewhere around there.

7 Q And what did you observe at about five minutes
8 after 4:00?

9 A I observed the informant vehicle drive back
10 into the area to 640 Sequoia. I observed the informant
11 get out, go back to Apartment 11, where he took the cell
12 phone to the first time, and he retrieved the cell phone
13 and then left.

14 MR. DURANT: Okay. Would you please answer any
15 questions that Mr. Pennington may have?

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. DuRant, will you take the board
18 down?

19 MR. DURANT: Yes, ma'am, I will. Sorry.

20 MR. PENNINGTON: And I have no questions, your
21 Honor.

22 THE COURT: Is this witness excused?

23 MR. PENNINGTON: As far as I'm concerned.

24 THE COURT: You may step down. Feel free to
25 remain with us, but you're also free to leave. Thank

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1 you.

2 THE WITNESS: Thank you.

3 (The witness steps down from the stand.)

4 THE COURT: Call your next witness.

5 MR. DURANT: State would call George Bradley.

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

8 THE WITNESS: I do, sir.

9 THE DEPUTY CLERK OF COURT: Thank you, sir.
10 Take your seat. Sir, if you would, please, state your
11 full name, spelling your last for the record.

12 THE WITNESS: George Bradley, B-r-a-d-l-e-y.

13 GEORGE BRADLEY,

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

18 DIRECT EXAMINATION

19 **BY MR. DURANT:**

20 Q Good morning, sir.

21 A Good morning.

22 Q Where are you employed?

23 A I'm employed with the Charleston Police
24 Department.

25 Q And for how long?

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1 A I've been there for 14 years now.

2 Q And what do you do for Charleston Police
3 Department now?

4 A I'm currently a sergeant in the administrative
5 division of the Team 4 office and also an assistant team
6 leader for our SWAT team.

7 Q As a member of the SWAT team, were you involved
8 in the controlled purchase of a handgun in Ardmore
9 subdivision on July the 15th of 2012?

10 A Yes, sir, I was.

11 Q And what was the role of the SWAT team in that?

12 A The day of the purchase, the SWAT team's
13 assignment was basically a security detail for the
14 informants that we were using at the time to make the
15 purchase. In the event that anything went wrong, we
16 were there to help -- assist with recovering the
17 informants and making sure that the area was safe.

18 Q Okay. And I'm assuming that y'all weren't
19 there in full paramilitary gear that you generally see
20 the SWAT team in; is that correct?

21 A No, sir, we weren't. We were in the standard
22 patrol uniform sitting outside the area. We had both
23 marked and unmarked vehicles in the area.

24 Q And were you able to monitor what was going on
25 with regard to the actual purchase of the weapon itself?

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1 A Yes, sir, I was.

2 Q Okay. And how were you able to do that?

3 A Through the radio communication with the
4 officers that were controlling the informants and the
5 radio traffic that we were talking back and forth so
6 everybody was aware of what was going on.

7 Q Now, after the sale had been completed, did you
8 happen to see a black Chevrolet Suburban leave the
9 Ardmore area?

10 A Yes, sir, I did.

11 Q And do you know how that vehicle happened to
12 get into the Ardmore area to begin with? What area did
13 it come from?

14 A From the information that we received, it came
15 in from what we considered the back side of Crull Drive
16 and coming into the back area of Ardmore.

17 Q That would be coming in from the 61 side as
18 opposed to Highway 17?

19 A That is correct.

20 Q Okay. And where did -- and after the sale had
21 been completed, where did you see this car?

22 A I observed the vehicle coming out of the
23 Ardmore neighborhood on White Oak Drive --

24 Q Uh-huh.

25 A -- approaching Savannah Highway in the area of

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1 Bessinger's.

2 Q And where were you at the time?

3 A I was sitting in an unmarked vehicle in the
4 parking lot of Bessinger's Barbecue there with a clear
5 view of the roadway.

6 Q And when you saw this vehicle, did you
7 recognize it?

8 A Yes, sir, I did.

9 Q And who did you recognize that vehicle as
10 belonging to?

11 A The vehicle belonged to George Brown.

12 Q And were you able to actually see the driver of
13 the vehicle?

14 A No, sir, I was not. Due to the tint on the
15 vehicle windows, I could not make a positive
16 identification.

17 Q So what did you do when you saw -- when you saw
18 the vehicle, where was it going? Which direction was it
19 headed?

20 A Going down White Oak Drive towards Savannah
21 Highway.

22 Q And what did you do when you saw the vehicle?

23 A Once the vehicle got past where we were parked,
24 we pulled in behind it and followed it to the light, and
25 I observed the tag on the vehicle, was able to run the

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1 tag.

2 Q And do you recall what the tag -- what the
3 tag -- who the tag came back to?

4 A The tag came back to George Brown, registered
5 to -- I believe it's [REDACTED] is the actual
6 address.

7 Q Okay. And did you know the informant used to
8 buy the gun in this case, Bobby Warthaw?

9 A Yes, sir, I do.

10 Q And, once again, after the gun sale, about an
11 hour after the gun sale, did you see him back in the
12 Ardmore area?

13 A Yes, sir, I did.

14 Q What did you see him do?

15 A We were back in the parking lot of Bessinger's.
16 I observed the vehicle come into the area of White Oak
17 and Evergreen, somewhere right there in that general
18 area. And I observed the subject walk up to the
19 vehicle.

20 Q And what did the -- was the subject wearing
21 when he walked up to the vehicle?

22 A He was a black male wearing a white shirt.
23 That's all we could see from our point of angle.

24 Q Could you see what was going on there?

25 A I could tell someone -- they were making some

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1 type of communication through the window, and that's all
2 we could observe.

3 Q Okay. Just want to refer you quickly to
4 State's Exhibit Number 27. You can remain seated, or I
5 can try to come around here.

6 A Sure.

7 Q And if you would, could you tell the
8 jury -- could you tell the jury where you were -- where
9 you were parked?

10 A Evergreen, White Oak, this is Savannah Highway.
11 This is Bessinger's barbecue. We were parked here on
12 the side of the building, basically, back over on the
13 corner right here.

14 Q And where did you see that black Suburban?

15 A The black Suburban came out. We picked it up
16 on White Oak Drive once it cleared the wood line here
17 approaching Savannah Highway.

18 Q And what did you do when you saw the Suburban?

19 A We basically left from this position, pulled
20 out of the back of Bessinger's, pulled in behind the
21 Suburban. It was stopped at the light at the time. Was
22 able to pull directly in behind the vehicle and get the
23 tag number.

24 Q That's when you ran the tag?

25 A That is correct.

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1 Q After you did that, where did you go?

2 A Once he circled and left, we basically circled
3 and pulled back into the parking lot and maintained our
4 position until we were told that everything was safe.

5 Q You had indicated earlier you saw the
6 informants' vehicle return. Where did you see it go?

7 A Sitting back in this area, we observed it
8 coming through here and -- basically in this area of
9 Evergreen and White Oak. We could see him, shy of
10 the tree line, basically pulled up right in through
11 there.

12 Q Okay. And where did this exchange take place
13 or transaction take place?

14 A Basically, in this area right through here.

15 Q Okay.

16 A I was able to pull up to see the car as it
17 pulled up.

18 Q All right. Referring you to State's
19 Exhibit 84, whose vehicle is that?

20 A That is George Brown's Suburban.

21 Q That's the car you saw out there the day after
22 the gun buy?

23 A That is correct.

24 MR. DURANT: Please answer any questions
25 Mr. Pennington may have for you.

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1 **MARY PHILLIPS,**
2 having been first duly sworn by the Clerk of the Court
3 to tell the truth, the whole truth, and nothing but the
4 truth, was examined and testified upon her oath as
5 follows:

6 **DIRECT EXAMINATION**

7 **BY MR. DURANT:**

8 Q Where are you employed, Ms. Phillips?

9 A With the City of Charleston Police Department.

10 Q And in what capacity?

11 A I work in the crime scene unit as the latent
12 recovery specialist.

13 Q How long have you been with the Charleston
14 Police Department?

15 A It'll be seven years next month.

16 Q Okay. And how long have you been associated
17 with the crime scene office at Charleston Police
18 Department?

19 A The same amount of time, seven years.

20 Q The whole time; correct?

21 A Yes, sir.

22 Q In that capacity -- I just wanted to ask you,
23 on June 19th, did you have occasion to come into contact
24 with, I think, what's been State's Exhibit 9 through 14
25 in evidence? They appear to be six shell casings.

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1 A I did.

2 (Document is handed to the witness.)

3 Q (By Mr. DuRant) Let me show those to you.

4 A I did.

5 Q Okay. And that was on June 19?

6 A Yes, sir.

7 Q And from whom did you acquire possession of
8 those items?

9 A Rene Charles.

10 Q And for what purpose?

11 A I processed them for any possible latent
12 fingerprints.

13 Q Okay. And did you recover any latent
14 fingerprints?

15 A No, sir.

16 Q Well, why not? They always do on TV.

17 A Yes, sir. Unfortunately, the heat that
18 acquires when a gun is fired a lot of times will
19 disintegrate any of the oils or residue on the shell
20 casings, which is what we get the fingerprints from.
21 It's from the oils in your skin.

22 Q Have you ever gotten one off of a shell casing?

23 A Not off of a fired one, no, sir.

24 Q What method do you use to try anyway?

25 A Well, first, with any item, we look at it first

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1 before any processing just to see if there's anything we
2 can see. The next step would be to use what we call a
3 super glue chamber. It heats the super glue mix, kind
4 of like the fume within the chamber. The glue would
5 adhere to the oils that would be left when you touch
6 something. And then in order to see them better
7 visually, we add a powder on top of that.

8 Q And all of that was to no avail; correct?

9 A Correct.

10 Q As a matter of fact, y'all actually shipped
11 these things to England, right?

12 A We did.

13 Q Tell me about that.

14 A There's new technology in England with a
15 company called Consolite Forensics. They're the --
16 currently really the only technology in the world that's
17 been found to recover fingerprints off of fired shell
18 casings. We just don't have that ability here.

19 Q And did they have any luck?

20 A No, they did not.

21 Q Now, moving ahead to July the 15th of 2012, did
22 you have the occasion to respond to the crime scene
23 office on Wappoo Drive?

24 A I did.

25 Q And around what time?

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1 A Oh, I believe it was roughly around 3:30.
2 Q And for what purpose?
3 A I was called there to collect a gun out of a
4 vehicle.
5 Q Okay. And where was the pistol located?
6 A It was beneath the passenger seat inside the
7 vehicle, just inside the front passenger seat.
8 Q Okay. And what did you do upon locating the
9 pistol?
10 A Photographs were taken of the weapon where it
11 was located, and then it was collected.
12 Q Okay. And I hand you what's been marked as
13 State's Exhibit Number 23 in evidence and ask you to
14 examine that and tell us if, in fact, that is the pistol
15 you collected from the vehicle on July the 15th, 2012.
16 A It is.
17 Q And what is the make and model of that pistol?
18 A It is a Sig Sauer. It's a 9mm Kurz P232.
19 Q And could you determine what the serial number
20 was at the time you collected it?
21 A Yes. Well, at the time of collection, it was
22 obliterated. It was scratched off.
23 Q Okay. It'd been scratched off. And did y'all
24 make any efforts to recover the serial number?
25 A We did.

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1 Q And how do y'all do that?

2 A Serial number restoration, a lot of times
3 when -- when guns are made, they have to be stamped to a
4 certain depth. Sometimes you can just sand it a little
5 bit and the scratches will make them appear.

6 In this case, we sanded it a little. We used a
7 form of chemical etching that also help those numbers
8 come back up a little bit. And we used a process called
9 Magnaflux, which is a magnetic particle inspection which
10 uses little magnets to get down into the grooves that
11 are formed when the gun is initially stamped with a
12 serial number. And a lot of times if you apply a magnet
13 on the other side, the little particles will go into
14 those holes in the grooves from the original stamp, and
15 it allows you to see the numbers more clearly. It just
16 depends on how obliterated the numbers were and how deep
17 they went when they scratched them.

18 Q Now -- and were y'all successful in recovering
19 the serial number from this weapon?

20 A We were.

21 Q And what was the serial number?

22 A It was S275151.

23 MR. DURANT: Your Honor, we offer State's
24 Exhibit 91 through 99, I believe without objection.

25 THE COURT: Any objection?

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1 MR. PENNINGTON: No objection, your Honor.

2 THE COURT: State's 91 through 99 into evidence
3 without objection.

4 (State's Exhibit Nos. 91 through 99 are
5 admitted into evidence.)

6 Q (By Mr. DuRant) I just want to run through
7 these real quick. And we're going to start with State's
8 Exhibit Number 91. And if you would, just tell the jury
9 what this depicts.

10 A This is the interior of the vehicle in which
11 the gun was recovered from.

12 Q Okay. Moving on to 92.

13 A That would be -- the gun was wrapped in a towel
14 underneath the passenger seat, and that's the picture of
15 it as we saw it.

16 Q Ninety-three?

17 A That would be the gun once it was removed from
18 the towel and pulled out from beneath the seat.

19 Q Ninety-four?

20 A That is a close-up of the weapon.

21 Q Ninety-five?

22 A The other side of the weapon.

23 Q Ninety-six?

24 A That would be -- we take all of our close-up
25 pictures with a scale so we can determine them better.

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1 Q And what is that over to the actual right of
2 the gun?
3 A That would be the ammunition magazine.
4 Q That was in the gun at the time you recovered
5 it; is that right?
6 A Yes, sir.
7 Q Ninety-seven?
8 A That's a close-up of the scratch where the
9 serial number had been obliterated.
10 Q So this area right -- the area -- I can't
11 point.
12 A Yes.
13 Q Okay.
14 A Right where that, like, silver --
15 Q Right in the center, is what you're talking
16 about?
17 A Yes.
18 Q Pardon?
19 A Yes, sir.
20 Q That's where the serial number is generally
21 located?
22 A On that weapon, yes, it is.
23 Q Ninety-eight?
24 A Just another close-up of the markings on the
25 weapon.

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1 Q And that shows it being a 9mm Kurz; is that
2 correct?

3 A Yes, sir.

4 Q Do you know what 9mm Kurz is?

5 A No.

6 Q That's okay.

7 A Not well enough.

8 Q I just threw that out there. If you don't,
9 that's fine.

10 And 99?

11 A Another photograph of the markings on the
12 weapon.

13 Q And I know it's hard to see, but that indicates
14 it's a Sig Sauer, made in Germany, Model P232; correct?

15 A Yes, sir.

16 MR. DURANT: Please answer any questions that
17 Mr. Pennington may have for you.

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Pennington.

20 MR. PENNINGTON: Thank you, your Honor. I have
21 no questions for Officer Phillips.

22 THE COURT: Any objection to this witness being
23 excused?

24 MR. PENNINGTON: Not at all, your Honor.

25 MR. DURANT: No, ma'am.

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1 follows:)

2 THE COURT: Anything before we bring in the
3 jury?

4 MS. WILSON: No, ma'am.

5 MR. PENNINGTON: No, ma'am.

6 (The jury is escorted into the courtroom at
7 11:24 a.m.)

8 THE BAILIFF: All jurors present.

9 THE COURT: Thank you. Be seated. Call your
10 next witness.

11 MS. WILSON: Thank you, your Honor. State
12 calls David Osborne.

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

15 THE WITNESS: I do.

16 THE DEPUTY CLERK OF COURT: Thank you, sir.
17 You may take your seat. And, sir, if you will, please
18 state your first and last name, spelling your last for
19 the record.

20 THE WITNESS: David Osborne, O-s-b-o-r-n-e.

21 **DAVID OSBORNE,**

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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DIRECT EXAMINATION

1

2 **BY MS. WILSON:**

3 Q Detective Osborne, where are you employed?

4 A Charleston Police Department.

5 Q And what are your current duties there?

6 A I am the detective sergeant of the violent
7 crimes unit.

8 Q How long have you been with Charleston Police
9 Department?

10 A For 11 years.

11 Q Before that, did you work in law enforcement?

12 A I did.

13 Q And where was that?

14 A With the New Orleans Police Department.

15 Q Did you participate in the investigation of the
16 murder of Marley Lion?

17 A I did.

18 Q And what was your role in that investigation?

19 A The same as it is now, detective sergeant
20 violent crime unit.

21 Q Were you the only investigator working on this
22 case?

23 A No, I wasn't. We had numerous detectives from
24 multiple divisions within the department.

25 Q Is that unusual in a murder case, that you have

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1 multiple detectives?

2 A No, it's not. This case was a little bit
3 different, because, I mean, when you watched the video,
4 it's pretty clear that we didn't have a lot of
5 witnesses, and it really was one of those, you know,
6 who-done-it type of murder investigations. We had no
7 suspects.

8 Q Initially?

9 A Initially.

10 Q So let me ask you this: Initially, was
11 Ryan Deleston the sole focus of your investigation?

12 A No, not at all.

13 Q How about Julius Brown and Bryan Rivers? Were
14 they the sole focus initially?

15 A No.

16 Q Are you familiar with a guy named Frank
17 Middleton?

18 A Yes.

19 Q How are you familiar with Mr. Middleton?

20 A I was familiar with Mr. Middleton whenever he
21 got arrested for an armed robbery.

22 Q And he's the older gentleman or -- excuse me,
23 the older man who testified earlier this week?

24 A That's right.

25 Q Lengthy record?

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1 A He does.

2 Q And you knew where he was from; is that right?

3 A Yes. He was from Ardmore and had ties to
4 Ardmore.

5 Q And when Marley Lion was killed, did you have
6 any concern that Frank Middleton was the killer?

7 A No.

8 Q Why not?

9 A He was locked up. He was in jail at the time.

10 Q Now, as a result of what you knew about
11 Frank Middleton, what did you ask or task the detectives
12 working with you to do?

13 A I asked Detective Kosarko and Detective
14 Jonathan Lang (phonetic) -- they were on the night shift
15 at that time -- to go by the jail, talk to Frank and see
16 if he had any information, and more importantly, whether
17 he was willing to share that with us.

18 Q Okay. And at that point, had Ryan Deleston
19 come on your radar?

20 A Yes.

21 Q And tell the jury how it was that he first
22 became someone y'all were interested in.

23 A Well, firstly, he was seen by officers -- CPD
24 officers that were responding to the -- to the murder
25 that night. They saw him walking in the area of White

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1 Oak and Evergreen, which was only about two blocks from
2 the scene of the murder. So we had -- we put him -- or
3 these officers had put him out there on the scene on
4 that night.

5 Q And that night other men of that age were seen
6 in the neighborhood as well; is that right?

7 A That's correct.

8 Q And, in fact, I believe when Officer Vance saw
9 Mr. Deleston, he was talking with some other folks.

10 A We had -- there were four total of interest
11 initially. Derek Anderson, Maurice Simmons, those are
12 the two that you're referring to, and there was also a
13 Rafael Ward who was seen, along with Ryan Deleston.

14 Q And were those men interviewed down at the CPD
15 also?

16 A Yes, they were.

17 Q At some point?

18 A That's correct.

19 Q Okay. And around -- or on June 21st, which
20 would have been five days after the 16th --

21 A That's correct.

22 Q -- Ryan Deleston was interviewed?

23 A That's correct.

24 Q And as a result of his interview, did some
25 other folks become of interest?

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1 A Yes, they did. Ryan gave individuals as
2 alibis. Primarily, Julius Brown was his alibi, along
3 with George Brown and Bryan Rivers.

4 Q And George Brown was someone that y'all had
5 already started to talk to; is that right?

6 A That's correct.

7 Q Why was that?

8 A I had spoken to George at that point, because I
9 was working other cases in which George had come up.

10 Q Okay. So just by happenstance, you were
11 talking with George about other cases and sort of looped
12 in to talk with him about this?

13 A That's correct.

14 Q And then on the 21st, Ryan Deleston gives y'all
15 the names Julius Brown and Little B, or Bryan Rivers?

16 A That's correct.

17 Q As the people he was with that night?

18 A That's correct.

19 Q Now, in addition to that, did y'all look at
20 other people in the initial stages of the investigation?

21 A Early on it -- we were getting Crime Stopper
22 tips, so we interviewed numerous people as a result of
23 that. We were working with several different theories
24 early on. And, you know, we were canvassing the area.
25 One thing in particular that we had looked at was

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1 Marley's background. We started talking to people that
2 he knew to see if it was maybe an acquaintance. We --

3 Q How about Katie Ridgway, the girl that Marley
4 was with that night? Was there anything interesting or
5 concerning about her apartment complex?

6 A There was. Where Marley had dropped Katie off
7 just prior to being murdered -- Katie lives in an
8 apartment complex, and, coincidentally, right next to
9 Katie is a bunch of members from a "Blood" gang lived.
10 So we were thinking that maybe it was possible that when
11 Marley dropped off Katie, some of these member of the
12 Bloods followed Marley to the Famous Joe's and maybe
13 executed him in some sort of gang initiation.

14 So we ended up looking into that and executing
15 search warrants, making several arrests, but that didn't
16 pan out.

17 Q Several arrests unrelated to the murder?

18 A Right. Gun arrests, dope arrests, things like
19 that.

20 Q So that didn't pan out?

21 A No.

22 Q And you mentioned looking for witnesses. How
23 did y'all search for eyewitnesses of people who maybe
24 weren't on the video that we've all seen but were in the
25 area? What did y'all look for?

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1 A Basically, what we did was, we started
2 canvassing the businesses that were open at that time of
3 the night, you know, thinking maybe they might have saw
4 something unusual or suspicious. We also did multiple
5 canvasses in the Ardmore subdivision itself.

6 Q Let me ask you this: You've seen the video
7 that we played in court and which the jury is going to
8 have to play at their leisure. At one point -- and I
9 don't believe this has actually been shown -- after
10 Marley was shot, there is a white guy that goes through
11 the parking lot.

12 A Right.

13 Q Do you know who that was?

14 A I cannot recall his name, but I do know that we
15 interviewed him.

16 Q Phillip Teevan, does that sound right?

17 A That's correct.

18 Q And did he cooperate with police?

19 A He did.

20 Q Did he have any information about the shooting
21 itself?

22 A No, he didn't.

23 Q Okay. And during this interview,
24 Detective Osborne, did you and other detectives
25 interview people that you knew were criminals?

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1 A Yes, we did.

2 Q People that you knew had credibility issues and
3 bad records?

4 A Several.

5 Q Okay. Why was that?

6 A Well, our thought was, another possibility was
7 that if the individuals that did this come from the
8 Ardmore subdivision, then that's where we had to go to
9 try to figure out what happened. Normally, when you're
10 trying to talk to individuals that do have criminal
11 records, they're less than forthright or less than
12 willing to talk to us. But time and time again, we were
13 getting that, even in the criminal community, this was a
14 senseless murder, and they were willing to sit down with
15 us.

16 Q So you had a number of criminals that came in
17 and were interviewed?

18 A Yes.

19 Q Okay. And --

20 A People that normally it was difficult to get
21 them to come in. Let's put it that way.

22 Q You had white people coming in?

23 A Yes.

24 Q Black people coming in?

25 A Yeah.

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1 Q Both giving you tips because it was senseless
2 in their mind?

3 A That's right.

4 Q Now, also during this period, Detective, was
5 there a full-on search for video?

6 A Yes.

7 Q And we've seen the Mantek video.

8 A Right.

9 Q How long after the shooting was it that y'all
10 were able to get that video from Mr. Mantek and take a
11 look at it and realize it captured the execution?

12 A Mr. Mantek was out of town, but he was able to
13 give us a maintenance worker, and we ended up getting it
14 that morning, I would say, around ten o'clock.

15 Q Okay. And as a result of what was seen on the
16 video, did y'all also try to get videos from stations,
17 stores, Pep Boys, wherever, all up 17?

18 A We had a meeting with pretty much every
19 detective in Central. And our original goal was to try
20 to retrieve every video from every convenience store
21 that was open in West Ashley during that time frame.

22 Q What was one of the main things you were
23 looking for?

24 A The description of the shooter that we had from
25 the video.

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1 Q Which was?

2 A We had a general description. We were looking
3 at six-foot-tall, black male, broad shoulders, fit, and
4 he appeared to be wearing some sort of black shirt with
5 some horizontal stripe design on it.

6 Q So when y'all pulled the videos of the
7 stations, did you look for people with striped shirts
8 coming in?

9 A Yes, ma'am, we did.

10 Q Did you find any that fit what you saw on the
11 video?

12 A No, we didn't find anyone.

13 Q Now, regarding that video, did -- the video
14 from Mantek -- at some point, did you or your superiors
15 make a decision to release portions of the video to the
16 public?

17 A Yes, we did.

18 Q And why was that?

19 A Well, when you look at the video, we thought --
20 and also based on what Marley had said -- that there
21 were two suspects: One, the shooter, and we also
22 thought that individual walking through the parking lot
23 was casing the area. So our original thought was, we
24 would release just the shooter first, see if we could
25 develop some leads, some tips. And if that led us to

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1 the person that was casing the area, we thought that it
2 would be advantageous to us not to let him know that we
3 thought that he was casing the area. So after we
4 released the shooter, we just didn't get any tips that
5 led us to anything that would further the investigation.

6 Q And after you didn't get any tips on just the
7 shooter, you released what?

8 A Then we released the second part of the
9 individual walking through the parking lot.

10 Q The individual being?

11 A Julius Brown.

12 Q At that time, you didn't know it was Julius?

13 A At that time, we didn't know, no.

14 Q Now, we've played the video several times, and
15 the portion of the video that shows Marley when he pulls
16 in and he gets out and goes back in the back of his car,
17 moves his guitar at one point, gets his pillow out, and
18 gets in the back seat, all of those things that Marley
19 was doing, was that released to the public?

20 A No, it was not.

21 Q Never?

22 A Never.

23 Q Now, you mentioned that we have this video, you
24 have the shooting on video, but you still don't have a
25 suspect?

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1 A That's correct.

2 Q Did you or any others in your department do
3 anything to try to enhance this video to make it crystal
4 clear so you could see the face?

5 A We had sent it off to secret service and had
6 them try to enhance it.

7 Q Did you have any luck with that?

8 A No, they weren't able to improve the quality.

9 Q Have you never watched CSI?

10 A I have.

11 Q Do you not know that you can just enhance a
12 video to tell -- to see the whites of somebody's eyes?

13 A Would have been nice.

14 Q You weren't able to do that?

15 A No, we weren't.

16 Q But you tried.

17 All right. You mentioned that the suspect
18 that -- the general description you had was broad
19 shoulders, six feet, fit. After Ryan Deleston was a
20 suspect and he had been interviewed, and also, he
21 mentioned Julius Brown and Bryan Rivers, did you review
22 the video again with those guys in mind, Julius and
23 Bryan?

24 A We all did.

25 Q Okay. And how did Julius fit into the

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1 description of the shooter?

2 A He didn't match. I mean, we all viewed it. We
3 all agreed. We had met with Julius at that time.
4 Julius was about five-foot-five to five-foot-six.
5 The -- Marley's car had been measured -- or car just
6 like it. The -- not counting the roof rack, but the top
7 of the car was at five-foot-seven or -- I think it was
8 five-foot-six or five-foot-seven or maybe
9 five-foot-seven, five-foot-eight. But either way,
10 Julius was way too short. You can tell that the shooter
11 was much taller than the car's roof.

12 Q George Brown?

13 A George Brown was the right height, but George
14 was much bigger. I had already talked to George before.
15 I estimated George was close to 300, and our booking
16 records showed that he was 300 pounds, and that was just
17 too big.

18 Q And Bryan Rivers?

19 A Too skinny. Bryan's the right height or close
20 to it. I mean, I put Bryan like at five-foot-ten,
21 five-foot-eleven. That's what our booking records
22 showed. We thought the shooter would be right around
23 six foot, so that was good. The size was just off.
24 Bryan was about 150, 160, way too skinny. You could
25 tell that the shooter has broad shoulders. He's a big

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1 guy.

2 Q How about Ryan Deleston? How did he fit?

3 A He fit perfect. He was the right size. He was
4 the right height. And then you could tell with Bryan --
5 with Ryan that he was a big, fit guy.

6 Q And did you also -- I believe we've heard some
7 testimony from the crime scene folks -- try to get
8 fingerprints from Marley's car, the area around that
9 rear passenger door, to see if that would help out any?

10 A We did.

11 Q Any luck?

12 A No luck with the fingerprints.

13 Q How about DNA? We heard some talk about that
14 yesterday, and we'll hear some more today.

15 A Yeah, we didn't have any luck with the DNA. We
16 were told initially that the DNA came back to a female.
17 So we thought with --

18 Q Which DNA?

19 A The DNA recovered from the driver's side door
20 handle.

21 Q Front door handle?

22 A Front door handle.

23 Q Okay.

24 A So --

25 Q Let me ask this --

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1 MR. PENNINGTON: Your Honor, I'm going to
2 object to further hearsay from the DNA expert.

3 MS. WILSON: I can move on. She's coming.
4 She'll be here after lunch.

5 THE COURT: Thank you.

6 Q (By Ms. Wilson) You've seen that video how
7 many times?

8 A A number of times.

9 Q Does the shooter touch the front door handle?

10 A I don't believe he does.

11 Q The front drive -- the driver door handle?

12 A Right.

13 Q Okay. Now, at some point after the shooting,
14 did you believe there was a reason to think you might be
15 able to recover the murder weapon?

16 A Yes.

17 Q What made you think that?

18 A On June the 27th, we -- CPD received a phone
19 call from Bobby Warthaw. Bobby had indicated to us that
20 he believed that he had a -- that he would be able to
21 get in touch with an individual by the name of
22 Ryan Deleston to possibly purchase a gun that he thought
23 might be the murder weapon.

24 Q At that point, when you're getting that
25 information, did you know what kind of gun you were

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1 looking for?

2 A I did.

3 Q How did you know?

4 A We had -- we had had the ballistics recovered
5 from the murder scene, and we knew that we were looking
6 for a 9mm Kurz, which is a kind of peculiar, kind
7 of unusual gun. The shell casings say 9mm, but what
8 it actually is, it's -- that's an -- a European
9 measurement. An English equivalent would be like
10 a .380.

11 Q So before you had the weapon, you knew what the
12 murder weapon was?

13 A We knew the caliber, yes.

14 Q You knew the caliber. Okay.

15 All right. So tell the jury, from the
16 investigation perspective, how this gun buy proceeded.

17 A When -- when Bobby came in, he brought
18 Theran Taylor and Ryan Conyers (phonetic). Initially,
19 you know, when they told us what was --

20 MR. PENNINGTON: Objection to what they told,
21 your Honor.

22 MS. WILSON: Your Honor, it's not offered for
23 the proof --

24 THE COURT: Is there an exception?

25 MS. WILSON: It's not offered for the proof.

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1 of this is because they thought it was the murder
2 weapon. It's not offered to prove --

3 MR. PENNINGTON: Sure.

4 MS. WILSON: -- that it's the murder weapon,
5 and we are going to prove it through other testimony
6 that it is. So I think it's --

7 MR. PENNINGTON: I don't have a problem with
8 that. My problem, your Honor, is only that his
9 characterizations are a bit sloppy, and I don't want
10 more hearsay or opinions coming in without some sort of
11 chance to object.

12 MS. WILSON: Okay. Well, I'll try to tighten
13 up some.

14 THE COURT: You can tighten up, and you'll just
15 object --

16 MR. PENNINGTON: I'll be objecting.

17 THE COURT: You'll be objecting.

18 MR. PENNINGTON: Right.

19 MS. WILSON: Thank you, Judge.

20 (End of side-bar.)

21 THE COURT: You may continue.

22 Q (By Ms. Wilson) Okay. So I believe you
23 mentioned that Bobby Warthaw had come to you?

24 A Yes.

25 Q And were you interested in using him as an

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1 informant?

2 A No, not at all.

3 Q Why not?

4 A We wanted to use -- well, Bobby had a criminal
5 record. So what we -- what we prefer to do was to have
6 Bobby be the middleman, and then we could use an
7 undercover officer, or UC, to actually make the gun buy.
8 That was what we tried --

9 Q UC is an undercover officer?

10 A Yes.

11 Q So your initial plan was to try to get an
12 undercover officer, police officer, involved in the gun
13 buy?

14 A That's what we wanted to do, right.

15 Q Why didn't that work?

16 A We set up an operation and we tried. Two days
17 after, he made -- he made contact with us on June the
18 27th. On June the 29th, we tried it. We had everything
19 set up, and Bobby was supposed to go try to make contact
20 with Ryan. But instead, Bobby drove through Ardmore and
21 never got out of his car.

22 Q He was leading you on?

23 A That's what we thought, yeah.

24 Q So at that point, was Bobby enthusiastic about
25 helping y'all?

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1 A No, he wasn't enthusiastic. And we weren't
2 sure that he was really trying to help us.

3 Q Okay. And after that first try that Bobby
4 really didn't try, what happened with Bobby?

5 A He stopped answering our phone calls for the
6 next couple of days. And then a few days later I
7 received word that he had been arrested.

8 Q For what?

9 A A bench warrant.

10 Q Did you cause that to happen?

11 A No, I did not.

12 Q So he gets arrested on a bench warrant.
13 Where's he put?

14 A He's in the Charleston County jail.

15 Q And after you found out that he had been
16 arrested and was in jail, what did you do?

17 A I went and interviewed him. I think the date
18 was on July the 11th.

19 Q For what?

20 A Well, I wanted to find out if Bobby had any
21 personal knowledge that might help further the
22 investigation. I wanted to find out what he was doing
23 that night, to get a statement from him concerning that.
24 I also thought that maybe I could try to broach the
25 topic of getting back trying to purchase the gun.

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1 Q Because now he's motivated; right?
2 A He's motivated.
3 Q Because?
4 A He's in jail and he wants out.
5 Q Did Bobby at first want to work with y'all
6 again on this attempt to buy the murder weapon?
7 A I don't know that he was really thrilled about
8 doing it, but he did like the idea of getting out of
9 jail.
10 Q Did he ask you about getting out of jail?
11 A He did.
12 Q And?
13 A I told him I'd have to look into that. I had
14 never done that before.
15 Q And what did you do? Who do you call?
16 A I called up Solicitor Greg Voigt. He works
17 with the Solicitor's Office. I ran it through him and
18 told him what we were trying to do, told him what Bobby
19 had said that he would do if he were -- you know, got
20 out of jail and asked if it was even possible.
21 Q To have the bench warrant lifted?
22 A Right.
23 Q So these weren't new charges that Bobby had.
24 It was a failure to appear or something like that on
25 some other charges?

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1 A That's correct.

2 Q And at some point, did Mr. Voigt lift that
3 bench warrant?

4 A He did.

5 Q And Bobby got out of jail?

6 A He did.

7 Q When was that?

8 A I believe it was on July the 12th. I think it
9 was the next day.

10 Q All right. And at that point, after Bobby got
11 out of jail, was he willing to work with y'all again?

12 A He was.

13 Q And what happened this second go-around working
14 with Bobby?

15 A So on July the 13th, he went back into the
16 Ardmore subdivision. And we had -- we had surveillance
17 units there the entire time. So on July the 13th, he
18 went back in there. He did park his car this time. He
19 did get out. He did make contact with individuals.

20 Q And did you -- at any point, because of the
21 past experience when Bobby just drove through and did
22 nothing, did you do anything to try to figure out
23 whether or not Bobby was for real this time and was
24 sincerely trying to do the gun buy?

25 A Well, I mean, the whole time that I was talking

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1 to Bobby, I did express to him on numerous occasions
2 that I had reservations on whether he was really trying.
3 The next day, on July the 14th, he had called me back.
4 And then he said that he thought that he could make it
5 happen that night. And, again, I told him that I was
6 having a hard time believing that he could make anything
7 happen at that point.

8 Q How did you feel about doing an operation at
9 night?

10 A When he told me that he could do it that night,
11 I told him that, you know, first of all, he hadn't given
12 me any opportunity or any warning that we could do it
13 that night. I didn't like that idea because it's going
14 to be dark. We had surveillance issues at dark, safety
15 issues at night. I asked him if he could try to arrange
16 it the following morning during the daytime.

17 Q Did you do anything as far as phone calls, or
18 did Bobby do anything as far as phone calls to show that
19 he was for real?

20 A So while he was on the phone with me, and I'm
21 expressing to him that I'm -- you know, I doubt that
22 he's going to be able to do this, he tells me that he
23 can prove it. And he said, I'll call him right now.

24 And I tried to tell him, No. Don't call him
25 now. Don't call him now.

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1 He said, No, no. I'll put you on three-way.

2 Listen.

3 And I'm -- before I --

4 Q Were you at the police station?

5 A No. I was off. I was at home watching a movie
6 at my family's house, my brother's house. And then he
7 made the phone call, so I had to run downstairs because
8 I was trying to get him to stop, but he had already did
9 it. And then the phone call is going on and I'm
10 listening.

11 Q Could you hear the call?

12 A I could.

13 Q And did it appear they were talking about doing
14 a buy, a sale?

15 A It did, yes.

16 Q And you didn't have your recorder with you at
17 that point?

18 A I did not have my recorder, no.

19 Q What happened the next day? Did y'all make
20 some arrangements?

21 A We did. After Bobby got off the phone, he told
22 me that he would call me back and arrange it for the
23 next day, so he did. So I called up our SWAT team, our
24 narcotics team, our field intelligence unit, several
25 other officers and had them meet me at the station the

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1 following morning, anticipating a phone call from Bobby.

2 Q And eventually did you hear from Bobby?

3 A I did.

4 Q Did he come up to the police station?

5 A He did come to the police station, yes.

6 Q At that point, did y'all make another call?

7 A Yes.

8 Q All right. And what was the number that was
9 called that time?

10 A It was (843) 926-7567.

11 Q And since that time, have you seen that number
12 again?

13 A Yes.

14 Q And who gave that number as their number?

15 A Ryan Deleston gave that as his number when he
16 was interviewed by Detective Kosarko. He also gave that
17 number whenever he was arrested on July 30th.

18 Q So that was the number that y'all called when
19 Bobby came in on this day?

20 A That's correct.

21 Q All right. And when -- when the call was
22 placed this time, you were at CPD. Did you record that
23 call?

24 A No, I didn't.

25 Q Why not?

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1 A It was still a little tenuous, the whole Bobby
2 situation. He didn't want to wear a wire. He didn't
3 want to do a lot of things that we asked him to do. So
4 I didn't want to push him and try to record it because I
5 thought he might just shut the whole thing down.

6 Q Did he let you overhear it?

7 A He did.

8 Q What was the substance of that call? Did you
9 take notes during the call?

10 A I did.

11 Q All right. And tell the jury what that was.

12 A Do you mind if I just look at my notes --

13 Q No. That's fine.

14 A Okay. So --

15 Q And this would have been on July 15th; is that
16 right?

17 A Yes, July 15th.

18 Q One day shy of one month?

19 A That's correct.

20 Q Okay.

21 A All right. So Bobby says, Hey, man, said he
22 want that thing -- hey, my man said he want that thing.

23 The male voice said, Okay. Where you at?

24 Bobby said, I got him with me now. I'll be
25 there in 30 minutes.

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1 The male said, All right, now, I ain't messing
2 around. You better be serious.

3 Bobby said, I got him with me now. We on the
4 way.

5 The male said, All right.

6 Q And since that time, have you had occasion to
7 hear Mr. Deleston's voice?

8 A I have.

9 Q And does his voice sound like the man that you
10 heard that day on the phone?

11 A Yeah. It sounded like the same guy.

12 Q Did y'all move forward with the gun buy?

13 A We did.

14 Q What happened?

15 A So around 2:30 that day, Bobby and Christopher
16 left in their car, and they went into the Hole, which is
17 in Ardmore. They were followed by Lieutenant Jenkins,
18 Detective Fulton, and Detective Gee. We were behind
19 them. I was in an unmarked car with a narcotics
20 detective, Detective Shealy.

21 Q Let me ask you this: Before all of that, did
22 somebody give them some money to make the purchase?

23 A I did. From CPD funds, I took \$200,
24 photocopied it before I gave it to them, and gave it to
25 Christopher.

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1 Q And the price was \$200; is that right?
2 A That's correct.
3 Q Was that the original price?
4 A No.
5 Q What was the original price?
6 A The original price that Ryan wanted for the gun
7 was \$80.
8 Q Did Bobby -- did that raise any red flags for
9 you or Bobby?
10 A It did, yes.
11 Q Now, if you could explain -- there's been a
12 little bit of the testimony -- the price went up to
13 \$200; right?
14 A That's correct.
15 Q And then there was something about Bobby was
16 going to get 50 bucks back?
17 A That's right.
18 Q What -- what did that have to do with the plan?
19 A That was Bobby's idea, which we thought was a
20 pretty good idea. Bobby said that we should bump it up
21 to 200, and then I would then go back to Ryan after the
22 deal and get --
23 Q "I" being Bobby?
24 A "I" being Bobby. -- would then get \$50 back as
25 a kickback. He said that would make it look more real.

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1 Q Because you're ripping off the seller -- the
2 buyer?

3 A The buyer, right.

4 Q The buyer thinks the gun's 200, but the gun's
5 only 150. And so that's a thing between Bobby and the
6 seller?

7 A That's right. And what Bob -- and from Bobby's
8 perspective, he wouldn't be involved in this for
9 nothing. So it'd make it look more realistic to Ryan if
10 he got something out of it.

11 Q Speaking of Bobby's plan, what was Bobby's
12 original plan about how he would go do the gun buy for
13 y'all?

14 A So the original plan that Bobby presented to us
15 was, Bobby said that he, Ryan Conyers, and Theran Taylor
16 would be in the house. Okay? Then Ryan could bring the
17 gun, and then they would do the gun transaction inside
18 of a house. Then we could then come in, the police, as
19 he said, bust down the door and then beat up Ryan and
20 Bobby to make it look more real to Ryan.

21 Q Like a burglary/robbery-type thing?

22 A Like it was a burglary/robbery. But more
23 important, the police would then, like, literally beat
24 up Ryan Conyers and Bobby in front of Deleston to make
25 it more real.

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1 Q How did that sound to you?
2 A No, we weren't going to do that.
3 Q So y'all shift gears at this point?
4 A Right.
5 Q So you give him the money, you recorded it,
6 it's \$200, you followed Bobby and his cousin to do the
7 deal?
8 A That's correct.
9 Q Okay. And surveillance units -- we heard all
10 about that -- picked him up there as well?
11 A That's correct.
12 Q They didn't make any stops, pick up any guns on
13 the way?
14 A No. Straight to the Hole.
15 Q Okay. All right. You said straight to the
16 Hole; right?
17 A That's correct.
18 Q Just as an aside that we've seen maps galore,
19 about how far is the Hole from Famous Joe's, that
20 parking lot?
21 A It's about .3 miles.
22 Q Okay. And so Cashew Street is a little less
23 than that or right at about .3?
24 A Cashew's right at about .3. I guess the Hole
25 would be a little further, maybe .4 or something.

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1 Q Couple of blocks beyond Cashew?
2 A That's correct.
3 Q When the deal went down, were you able to see
4 it happen?
5 A No.
6 Q Other officers were tasked with doing that?
7 A That's correct.
8 Q When was the -- were you able to hear it, the
9 deal?
10 A No. Detective Shealy and I, we tried to get
11 behind a brick hindrance, which is just adjacent or a
12 little bit back of the Hole, thinking that we could hear
13 the transmission from there, but it was too scratchy,
14 and we really couldn't pick it out. So we just decided
15 to relocate to the Bessinger's, and then pick up Bobby
16 and Christopher as they were coming out.
17 Q But there were microphones in the car?
18 A That's correct.
19 Q Microphone on Chris Singleton?
20 A That's correct.
21 Q They didn't know whether or not you could hear
22 it?
23 A No, they didn't know.
24 Q They probably thought you could?
25 A Sure. I -- assumed that we could.

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1 Q When did you see Bobby again?

2 A When they came out, when they were driving the
3 Focus out of Evergreen and taking a left onto White Oak.

4 Q Where did y'all go?

5 A We got in behind them, and then we followed
6 them as they took a right from White Oak onto Savannah;
7 followed them all the way down to Wappoo, and hung a
8 right on Wappoo, and then went to the West Ashley Middle
9 School.

10 Q What happened at the middle school?

11 A At the middle school, they were searched again
12 by Lieutenant Jenkins. Lieutenant Jenkins took
13 possession of the car, drove it to the crime scene
14 office. Bobby and Christopher got in the car with me
15 and Shealy, and then we went to the crime scene office.

16 Q Do you know if Bobby ever went back and got his
17 \$50 supposed cut?

18 A He did.

19 Q And how do you know?

20 A Well, because we told him to go back in there.
21 And then after he did, he met me back at CPD station.
22 He then gave me the \$50 that Ryan had given to him. I
23 compared the \$50 serial numbers that he had to the 200
24 that we had given him before, and they matched.

25 Q And so just so we're clear, when you

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1 went -- before he went and got the \$50, he met y'all at
2 the school, y'all recovered the gun, he was searched,
3 didn't have any money on him?

4 A That's correct.

5 Q Went back down in the Ardmore area, then comes
6 to you. He's got 50 bucks?

7 A Right.

8 Q It matches the serial numbers?

9 A That's right.

10 Q Did y'all also pay Bobby and his cousin?

11 A They were both paid \$100 that day.

12 Q What about the 13,000 somebody gave him?

13 A That was through Crime Stoppers.

14 Q Is Crime Stoppers separate than the police
15 agencies?

16 A It is.

17 Q Is it a private organization or nonprofit?

18 A Yeah, nonprofit, private.

19 Q Do you know how it is they make the decision of
20 how much to give or who to give the money to?

21 A No --

22 MR. PENNINGTON: Objection to hearsay, your
23 Honor.

24 THE COURT: If he knows, he can answer.

25 THE WITNESS: No, I don't know.

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1 Q (By Ms. Wilson) Okay. At some time after this
2 buy on July 18th, I believe, did you have Bobby come
3 back in to make a telephone call?

4 A I did.

5 Q And what was the purpose of that?

6 A I asked Bobby to try to call Ryan and tell him
7 that he had learned that the gun was hot, had been used
8 in a crime.

9 Q This time did he let you record the call?

10 A He did.

11 Q All right. And was the same phone -- phone
12 number used to make this call as the previous calls?

13 A It was.

14 Q Or previous call.

15 And that's State's Exhibit 33, which was a
16 transcript of the tape that we heard yesterday?

17 A Yes, that's correct.

18 Q Okay. And Mr. Deleston didn't admit that the
19 gun had been used in a murder?

20 A No, he didn't.

21 Q At any point -- at any point after the gun was
22 recovered, was it sent off for testing?

23 A Yes.

24 Q And what was -- what did y'all ask SLED to
25 compare that gun to?

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1 A We asked SLED firearm experts to compare the
2 gun to shell casings recovered from the murder scene, as
3 well as projectiles recovered from Marley's body.

4 Q And was there a match?

5 A Yes. The gun that was purchased from Ryan was
6 the murder weapon.

7 Q Now, let's move ahead to July 30th. Were you
8 involved in the planning of the takedown and arrest of
9 the Defendants in this case?

10 A Yes, I was.

11 Q And what was the plan?

12 A At that time in the investigation, we had had
13 arrest warrants to charge Ryan Deleston with murder,
14 possession of a firearm by -- during commission of a
15 violent crime, possession of a firearm with an
16 obliterated serial number, and also attempted armed
17 robbery. We had an arrest warrant to charge
18 Julius Brown with obstruction of justice. He had lied
19 to us. He had provided a false alibi for Ryan. We also
20 had search warrants to search residences that Ryan had
21 either used or been seen coming out of: [REDACTED], [REDACTED]
22 [REDACTED] as well as, I think, [REDACTED], which
23 was his mother's house.

24 Q Was that -- Cashew was the place where Ryan and
25 Stephanie lived; right?

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1 A That's correct.

2 Q Evergreen was Ryan's momma?

3 A That's correct.

4 Q And then the White Oak was at Stephanie and
5 Julius' momma?

6 A That's correct.

7 Q Okay.

8 A And I also wanted to talk to George Brown. We
9 didn't have any arrest warrants for him, but they had
10 all sort of used each other as alibis. So I figured if
11 one was involved, they all were. So I wanted to talk to
12 George as well.

13 Q Okay. And how did -- how did that operation
14 unfold, the takedown of the Defendants?

15 A So the way we did it was, we had set up
16 surveillance and -- in that area. And the game plan
17 that he had, what we wanted to do was to send in -- set
18 up surveillance and then send in SWAT, narcotics,
19 whatever we needed to get into the area and then arrest
20 Ryan first.

21 After we had arrested Ryan, we wanted to back
22 everyone out. We didn't want to execute anymore arrest
23 warrants, anymore search warrants at that time. We were
24 going to wait two or three hours, then we were going to
25 come back in with SWAT, narcotics, full force again. We

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1 wanted to leave the impression --

2 Q Whether or not it was true, you wanted to leave
3 an impression?

4 A That's right. We don't know whether he's going
5 to talk to us or cooperate or not, but we wanted the
6 others to think that he had. So when we were to come
7 back in, we wanted everyone to think that he had talked
8 to us and he was cooperating, in hopes that that would
9 encourage the others to cooperate as well.

10 Q Did it work out as smoothly as you had hoped?

11 A Never does.

12 Q Okay. What happened?

13 A Well, I mean, it didn't work out that bad. But
14 Ryan had left, so he was out of Ardmore before we could
15 really get in there. He was in --

16 Q So the word -- you couldn't arrest him in
17 Ardmore, so the word wasn't just going to get out?

18 A It didn't get out like the way we wanted it to,
19 no. But what we were able to do was, once we arrested
20 Ryan, we brought him back in. We then flooded the area
21 after that. And then the game plan was to take either
22 Julius or Bryan Rivers, go back out, and then come back
23 in a couple of hours later.

24 Q And do the same thing there?

25 A And do the same thing then. Fortunately, when

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1 we went back in, Bryan and Julius were actually
2 together, or within close proximity, so we went ahead
3 and arrested them both at the same time.

4 Q And Bryan was initially arrested for what?

5 A Bryan was arrested -- because we were doing a
6 bunch of different operations at that time, trying to
7 drum up activity, trying to drum up leads. Bryan had
8 sold imitation or fake drugs to an undercover officer.

9 Q Did you tell him that's what he was arrested
10 for?

11 A No. When I brought him in, I did not inform
12 him of that.

13 Q Why not?

14 A Well, I thought that I could lead Bryan into
15 believing that he was in there in reference to the
16 murder. And sure enough, I mean, I -- Bryan never asked
17 what he was in there for. And that's what he thought
18 too. So I thought that -- what I wanted to tell Bryan
19 was that Ryan had already rolled on him and already
20 implicated him in the crime, in hopes that Bryan would
21 then point the finger at Ryan.

22 Q You mentioned that there were search warrants
23 being executed at the same time; is that right?

24 A That's right.

25 Q And that was on July 30th; right?

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1 A That's correct.

2 Q Okay. At that -- on the first round of search
3 warrants, did y'all have a reason to search for any kind
4 of burned-out area?

5 A No.

6 Q Were you searching in part for white Willie
7 Dee's, striped shirts?

8 A We did have that on there, yes.

9 Q So you were looking for those things?

10 A Right, yeah.

11 Q The second -- you did a second round of search
12 warrants; is that right?

13 A That's correct.

14 Q And was one of the reasons to look out for the
15 burned-out area?

16 A That's right.

17 Q And why was that?

18 A Because through our interview with Rayshawn
19 and, I believe, Julius too, there was talk that Ryan had
20 started a fire to destroy evidence on the night of the
21 murder. We didn't know that until we had spoken to
22 Julius and Rayshawn.

23 Q So that's on July 31st, which is now six weeks
24 after the murder?

25 A Yes, that's right.

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1 Q Now, you mentioned that you're bringing these
2 guys and hoping that each of them thinks the other is
3 rolling?

4 A That's right.

5 Q Describe to the jury -- I think they'll see --
6 but describe to the jury what your interview room is
7 like.

8 A I mean, it's, you know -- it's kind of a small
9 room. I mean, there's enough room for a few chairs in
10 there, a couple of individuals. But it's all white
11 walls, and then there's a table in there with a few
12 chairs.

13 Q Is it obvious that the room is wired for sound
14 and video?

15 A No.

16 Q Do you tell the people that you're interviewing
17 that they're being recorded?

18 A No.

19 Q And that's legal?

20 A Yes.

21 Q Happens every day?

22 A Right.

23 Q When you brought Bryan Rivers in that day, do
24 you recall what shoes he had on?

25 A I do.

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1 (Document is shown to the witness.)
2 Q (By Ms. Wilson) Show you State's Exhibit 109.
3 What are those?
4 A These are black Nike Air Force Ones.
5 Q And whose are those?
6 A Those are Bryan Rivers'.
7 Q How did you come to be in possession of them?
8 A He was wearing them at the time he was
9 arrested.
10 MS. WILSON: Your Honor, we'd offer State's
11 109.
12 MR. PENNINGTON: No objection.
13 MS. WILSON: And the bag that they belong in.
14 MR. PENNINGTON: No objection.
15 THE COURT: Is there an objection,
16 Mr. Pennington?
17 MR. PENNINGTON: There is no objection.
18 Q (By Ms. Wilson) Now --
19 THE COURT: Hold up. Hold up one second.
20 We're good. 109 has previously been admitted.
21 Q (By Ms. Wilson) Now, let me backtrack a minute
22 back to the video. You testified that it wasn't
23 released to the public, the video was not?
24 A Not in its entirety, no.
25 Q The part of Marley --

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1 A That's right. Right.

2 Q -- rearranging things?

3 When the Defendants were brought in, were they
4 shown the video?

5 A They were -- they were shown portions of it,
6 but they weren't shown that part that you're referring
7 to.

8 Q Which portion were they shown?

9 A They were shown the shooter. They were shown
10 the person that was walking through the parking lot.

11 Q But not the early part of Marley?

12 A That's right.

13 Q And how about the video of the gun buy? Were
14 any of them shown that?

15 A I don't know. I don't think so, but I don't
16 know.

17 Q Okay. Now, back in June of -- and July of
18 2012, were you aware of a robbery that had taken place
19 downtown around Rutledge Avenue an hour or so before
20 Marley was killed?

21 A I am aware of it now, yes.

22 Q Were you -- you personally aware of it back
23 then?

24 A I really don't remember. I mean, we were so
25 tied up with this, I don't think so, no.

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1 Q Did you or other detectives in your department
2 make a connection between the robbery that was downtown
3 and the Marley Lion murder?

4 A No, we hadn't.

5 Q And when was it that you were asked to look
6 into it to see if there was a connection?

7 A That was about a month, maybe two months ago.

8 Q Okay. And who asked you to look into it?

9 A Originally, it was Investigator Jeff Osburn,
10 who works for you at the Solicitor's Office.

11 Q And were you able to confirm or pull up that
12 there was a robbery in the Rutledge area that night
13 before Marley was killed?

14 A I was.

15 Q And were you able to confirm what the
16 description of the suspect who did that robbery was?

17 A Yes.

18 Q What was the BOLO, or what was the description
19 given of the suspect who robbed the couple downtown?

20 A I believe it was about five-foot, black male,
21 five-foot-ten or five-foot-eleven and 150, 160 pounds.

22 Q And what kind of clothing was the suspect
23 supposed to have been wearing?

24 A He -- I believe the female victim said that he
25 was wearing a brown shirt with khaki shorts.

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1 MR. PENNINGTON: Objection to hearsay.

2 Objection to hearsay.

3 MS. WILSON: It's not offered for the truth.

4 MR. PENNINGTON: Doesn't matter. It's still --

5 THE COURT: Counsel, may I add -- I told you
6 about speaking objections.

7 (Ms. Wilson and Mr. Pennington approach the
8 bench.)

9 (Side-bar, out of the hearing of the jury, as
10 follows:)

11 MS. WILSON: Not offered for the truth is not
12 hearsay.

13 MR. PENNINGTON: I think what we're getting
14 into is a description of what he was wearing that night
15 from the victims of that, who, as far as I know, have
16 not yet -- they're -- I don't know if they're going to
17 be called or not. They could be. So I think that the
18 relevance of this to the State's prosecution is to
19 establish that Bryan was wearing a certain outfit that
20 would be --

21 MS. WILSON: That's not what I'm offering.
22 It's not offered for the truth. Their description is
23 the brown T-shirt and khakis. He didn't have on a dark
24 brown T-shirt and khakis, and that's my point. The
25 victims are wrong.

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1 MR. PENNINGTON: Well, my problem is, is that I
2 realize that is her purpose, which is an innocent
3 purpose. But my concern is, is that the jury is capable
4 of misconstruing and not understanding and seeing this
5 as evidence that that night he's wearing khakis, which
6 would be disastrous and completely inconsistent with our
7 case. The other descriptors was that he was wearing
8 dark clothes. Everybody agrees he's wearing dark
9 clothes. I think this adds confusion and prejudice, and
10 it's based on hearsay. I don't understand how it's
11 relevant, and I don't think it's admissible.

12 THE COURT: I disagree. It's noted in --

13 MS. WILSON: If we get him here, we can get him
14 here.

15 (End of side-bar.)

16 THE COURT: All right. You may continue.

17 Q (By Ms. Wilson) And in the clothing -- you
18 said black male, five-ten to five-eleven. What was the
19 weight description given?

20 A 150 to 160.

21 Q And the clothing was?

22 A I think it was a tan shirt with khaki shorts.

23 Q Okay. And what was described as having been
24 stolen?

25 A It was a beige-colored purse with credit cards

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1 and a wallet.

2 Q And at that point, you said CPD had made no
3 connection?

4 A That's correct.

5 Q And back in June, up until a month or so ago,
6 did CPD draw any significance of a black SUV rolling
7 through the Famous Joe's parking lot at 3:09 in the
8 morning?

9 A No, we did not pick up on that.

10 (Document shown to Defense counsel.)

11 MS. WILSON: Your Honor, we'd offer, I believe
12 without objection, State's 106, which is a booking
13 report on George Brown; State's 107, a booking report on
14 Julius Brown; and State's 117, a booking report on
15 Ryan Deleston, I believe without objection.

16 THE COURT: Any objection?

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: State's 106, 107, and 117 into
19 evidence without objection.

20 (State's Exhibit Nos. 106, 107, and 117 are
21 admitted into evidence.)

22 Q (By Ms. Wilson) And State's 106, the booking
23 report of George Brown?

24 A That's correct.

25 Q Height, weight?

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1 A George is listed at five-foot-ten, 300 pounds.
2 Q Julius Brown, State's 107?
3 A Julius is listed at five-foot-seven, 160
4 pounds.
5 Q And. . .
6 MS. WILSON: Can you tell me what number Bryan
7 Rivers is, his booking report? Never mind. I got it.
8 Q (By Ms. Wilson) State's 108, which was
9 previously admitted, Bryan Rivers' booking report, what
10 is his height and weight?
11 A He's listed at five-eleven, 162 pounds.
12 Q Okay. And the description of that robbery was
13 five-ten to five-eleven, 150 to 160?
14 A That's correct.
15 Q Right on?
16 A Right.
17 MR. PENNINGTON: I object again to that, your
18 Honor, and ask that it be stricken.
19 THE COURT: On what basis?
20 MR. PENNINGTON: Same grounds as previously
21 stated.
22 THE COURT: Overruled.
23 Q (By Ms. Wilson) State's 117, the booking
24 report of Ryan Deleston?
25 A He's listed six foot, 215 pounds.

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1 Q Forty-five-pound difference? Help me with my
2 math.

3 A That's correct, yeah.

4 Q 115 -- 215?

5 A 215 and 160; right?

6 Q Fifty-five pounds.

7 A Fifty-five.

8 Q Fifty-five-pound difference.

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

10 MR. PENNINGTON: Your Honor, I have a matter of
11 law to take up with the Court.

12 THE COURT: Please approach.

13 (Ms. Wilson and Mr. Pennington approach the
14 bench.)

15 (Side-bar, out of the hearing of the jury, as
16 follows:)

17 MR. PENNINGTON: Your Honor --

18 THE COURT: Just for scheduling, how much
19 longer?

20 MS. WILSON: I'm done.

21 THE COURT: Okay.

22 MR. PENNINGTON: Your Honor, having heard the
23 testimony now, I renew my objection strenuously with
24 regard to this hearsay that was just tendered, which is
25 offered for the truth of the matter asserted, and it is

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1 directly contradictory to what we know from the other
2 witnesses. But beyond that, it is hearsay; in other
3 words, it's unreliable. And so what I am concerned
4 about is, is that they have offered tan shirt, khaki
5 shorts as to Bryan Rivers. The jury has heard it. It's
6 out there. It's hearsay. It's unreliable. It's
7 inaccurate. But the jury could rely on it.

8 Our theory of our case is that he was dressed
9 in all black that night. The facts are, is that I
10 believe now the jury could consider the fact that he's
11 not only smaller in stature, but that he is dressed
12 differently and, therefore -- and it's been repeated
13 several times, not just the height and weight -- if it
14 had been height and weight, I couldn't quarrel. But we
15 have witnesses who are not here, who have testified to
16 clothing descriptions that are inconsistent, and I
17 object, as it's highly prejudicial. And at this point,
18 I'd move for a mistrial.

19 MS. WILSON: First of all, we aren't offering
20 it -- the reason I was offering it -- and I think this
21 is a totally legitimate reason -- is, he's made a big
22 deal of Marley Lion's description of the two men who
23 robbed him or attempted to rob him, and has set out to
24 establish that Marley Lion gave his description. My
25 point is, the victims who have guns in their faces are

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1 often wrong.

2 Now, because I am not offering it for the
3 truth, I am prohibited from arguing it in closing
4 arguments that Bryan Rivers had on khakis that night. I
5 can't argue that. What I can argue is that victims are
6 wrong.

7 Now, the other option is --

8 MR. PENNINGTON: Well, would you -- could we
9 perhaps have a stipulation that the victims were wrong?

10 MS. WILSON: We could have a stipulation if I
11 don't get the victim in. I've got that victim. He can
12 come in and tell it himself. That might be a better
13 thing to do. I think it is something -- if we don't get
14 the other victim in, I will stipulate that I cannot
15 argue that Bryan Rivers had on khaki pants.

16 MR. PENNINGTON: Well, I get that. But what
17 I'd like is a stipulation that says that the victim was
18 mistaken about the clothing description.

19 MS. WILSON: No, I'm not doing that. That's --

20 THE COURT: Let's kind of focus in on
21 what's -- if you are giving the stipulation, then your
22 request for a mistrial is withdrawn?

23 MR. PENNINGTON: What I gather is, there's a
24 refusal for any stipulation as to the clothing being
25 inaccurate.

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1 another break to -- to make that arrangement.

2 MR. PENNINGTON: That will be fine.

3 THE COURT: All right. Thank you.

4 (A lunch break is taken at 12:25 p.m. until
5 1:01 p.m.; at which time, the proceedings continue as
6 follows:)

7 THE BAILIFF: Jurors all present, your Honor.

8 THE COURT: Thank you. Please be seated.

9 Detective, I advise you you're still under
10 oath.

11 **CROSS-EXAMINATION**

12 **BY MR. PENNINGTON:**

13 Q Detective Osborne --

14 I'll let you finish your sip.

15 -- this case received a lot of news media
16 converge from the moment it occurred; didn't it?

17 A It did.

18 Q It was fairly clearly an innocent victim?

19 A Yes, sir.

20 Q And a very serious crime?

21 A Yes.

22 Q A very senseless crime from all appearances?

23 A Yes.

24 Q Right from the beginning?

25 A Yes.

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1 Q It even got the attention of Mayor Riley --

2 A It did.

3 Q -- who spoke publicly about seeking the
4 community's help to solve the crime?

5 A He did.

6 Q And it got the attention of your boss,
7 Chief Mullen?

8 A All the murders do.

9 Q And in this case in particular, there was a
10 press conference with Chief Mullen as well?

11 A There was.

12 Q And so you described it -- you were -- you had
13 a big role in managing the investigation?

14 A I did. I wasn't alone, but I did. The case
15 agent was Detective Burckhardt, he was a manager so to
16 speak; and my boss, Lieutenant Jack Weese (phonetic), I
17 would say us three sort of managed the case together.
18 There was a lot going on.

19 Q A lot going. But you were in a position where
20 you were close enough to the action that you're able to
21 come here today and testify about the key steps; is that
22 correct?

23 A That's correct.

24 Q And you describe, at the beginning of the case,
25 as far as the city police were concerned, there were no

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1 suspects?

2 A We weren't able to develop suspects right away,
3 no, sir.

4 Q So it became, as you said, the classic
5 who-done-it?

6 A Yeah. And when I say "suspects," I mean viable
7 suspects. We had suspects; we interviewed them and
8 eliminated them, but, yes, that's correct.

9 Q And you said, at the beginning of your Direct
10 testimony, that it's fair to say that Ryan Deleston was
11 certainly not the sole focus of this investigation?

12 A That's correct.

13 Q Now, let's go through the chronology a little
14 bit to reconstruct how this actually flowed. You
15 described that one of the reasons that Ryan came to your
16 attention in the process, was that Officer Vance had
17 been out at about 4:20 in the morning and had
18 encountered Ryan at 635 White Oak?

19 A The time, I'm not sure of. But yes.

20 Q Were you here when he testified?

21 A I thought you meant, would I know. No, I
22 didn't know that. But I did hear him say that, yes.

23 Q Okay. All right. And he described that he saw
24 him there in a white shirt --

25 A Yes.

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1 Q -- white tank top?

2 A I believe so, yes.

3 Q And he -- as a result of that information,
4 there was no arrest warrant that was drawn up that night
5 or in the days that immediately followed for Ryan, based
6 on him being over at Delores Brown's house?

7 A That's correct.

8 Q Now, two days past -- and I believe you skipped
9 a lead that came in. The city police was contacted by a
10 Leroy Townsend, who named Bryan Rivers as a suspect; is
11 that correct?

12 A It's not incorrect. It's not -- I mean,
13 there's more to it than that. But, yes, generally
14 speaking, yes.

15 Q So the name Bryan Rivers came up two days after
16 the murder?

17 A That's correct.

18 Q Okay. And so we now move forward about six
19 days, and that's when -- the next big break was when
20 Bobby Warthaw said that Ryan Deleston was out trying to
21 sell a pistol?

22 A That's right.

23 Q And that certainly got your attention?

24 A It did.

25 Q And so that became a focus. And you've

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1 described at length with the Solicitor how there were
2 attempts to make a buy. At first, he was excited;
3 correct?

4 A All right. So let me answer the first part.
5 It wasn't -- that wasn't all we were doing.

6 Q Well, I understand. I don't want to
7 mischaracterize that. I apologize for that.

8 A And the reason for that is, is because Bobby
9 told us that Ryan was selling a gun. I mean, Bobby
10 thought it was the murder weapon; we weren't convinced.
11 Even if Ryan was selling a gun, that doesn't mean he was
12 selling the murder weapon, so that doesn't help us with
13 our murder investigation. So we kept doing a lot of
14 other stuff tracking down the other Crime Stopper leads,
15 tracking down the other suspects. We were doing them
16 both together.

17 Q Right. And so that rocks along, but there's no
18 arrest warrant for Ryan Deleston at that point, based on
19 Bobby's intuition and the fact that he says that
20 Ryan Deleston might be able to sell a gun? There's no
21 arrest warrant for murder?

22 A That's right.

23 Q And so you go now to the beginning of July, and
24 that's when you indicate that you thought it would be
25 useful to have someone go visit Frank Middleton in the

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1 county jail?

2 A That's right.

3 Q And it wasn't because you thought that
4 Frank Middleton had had his ear to the ground out in the
5 community. It was because Frank has enough contacts in
6 the community that even inside the county jail, he would
7 be in a position to maybe get some intel?

8 A I felt that was a possibility, yes.

9 Q Okay. So with so many contacts -- you know, in
10 the jail, there's, like, phone usage; right?

11 A Right.

12 Q And people can go and make videoconference
13 visits, so a visitor can come and sign up and get on a
14 visit's list?

15 A That's right.

16 Q And then have a videoconference at the jail?

17 A Correct.

18 Q And so information does flow to and from the
19 street at the jail?

20 A That's right.

21 Q So we get to July 4th, and then we -- I want to
22 focus for a minute about this description question that
23 you raised. You described that my client is six foot
24 tall?

25 A That's correct.

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1 Q And according to the booking report that you
2 referred to for Bryan Rivers, he was reported on July
3 30th as being 5-11?

4 A That's correct.

5 Q So there's an inch difference?

6 A That's correct.

7 Q Okay. And -- but the key thing in your mind is
8 that as you looked at the video, the big key thing in
9 your mind is the shoulders?

10 A No.

11 Q Big shoulders?

12 A No. That's not the key thing. The key thing
13 to differentiate those two individuals would be the
14 size. Yes.

15 Q The size? The shoulder?

16 A Yes.

17 Q Okay. And you formed an opinion; didn't you?

18 A Not just me. We all looked at it, and we all
19 formed an opinion that the guy that did this was a
20 broad-shouldered individual, large-framed.

21 Q You're one of the managers in this case?

22 A I am.

23 Q And you formed an opinion?

24 A I did as well.

25 Q Okay. And so -- but let's go back now to

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1 the day of the crime when we were doing the CSI work.
2 The -- there were great pains taken to not just examine
3 Marley's truck there on the scene at Famous Joe's, but
4 it was also moved over to Wappoo Road, where you have a
5 crime scene office; correct?

6 A That's correct.

7 Q And the purpose there was to do the fingerprint
8 analysis that we've seen photographs of?

9 A Just -- well, that too. But to process the
10 vehicle in a more controlled environment.

11 Q Right. The idea is to not have stray evidence,
12 to be able to isolate things, and pick up the fine
13 points?

14 A Part of it, yes, sir.

15 Q So you described that -- in your canvassing,
16 you recognize that one of the most useful tools can be
17 surveillance videos?

18 A Correct.

19 Q And so you obtained the Mantek video, the one
20 that we've looked at of the shooting of Mr. Lion at
21 10:00 a.m. Saturday morning?

22 A About that. It might have been a little
23 earlier, but about that.

24 Q Okay. You still had the truck at that time?

25 A That's correct.

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1 Q Okay. And from the video, you can see that the
2 suspect approaches and then moves around and then leans
3 against the vehicle, can't you?

4 A That's tough to tell from my perspective what
5 type of contact he made from the vehicle. That's
6 certainly possible.

7 Q It is tough to tell, because all you're going
8 on is the same thing that we all look on when we look at
9 the video, isn't it?

10 A That's correct.

11 Q And so it's really hard to tell what was
12 touched?

13 A It's hard to tell exactly what areas he
14 touched. From my perspective and my belief, I do not
15 believe that he touched, like, the door handle, for
16 example.

17 Q Well, when you look at the video, there are
18 scenes in which he actually appears to be leaning on the
19 truck?

20 A I think.

21 Q The shooter is leaning on the truck?

22 A I think that might be fair, yeah.

23 Q Would it refresh you to take a look at a still?

24 A Sure. I'll look at it.

25 (Document(s) are handed to the witness.)

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1 A Listen, I mean, it's -- again, I would say
2 that's possible. But, I mean, he may not be touching
3 it. You know, that's tough to say.

4 Q Well, the nice thing about investigation work
5 is that we don't go off of our just guesses or hunches
6 or assumptions. We actually go out and we gather
7 evidence; right?

8 A That's correct.

9 Q And that's why there were pains taken to swab
10 the exterior of the truck?

11 A That's correct.

12 Q But nobody swabbed the exterior rear door?

13 A Which one?

14 Q The exterior, driver's side, rear door.

15 A No, I thought they did.

16 Q I'm not talking about the handles. I'm talking
17 about the exterior of the door. There was no swab of
18 the exterior, rear door, was there?

19 A There was.

20 Q Would it refresh you to take a look at the
21 report?

22 A That door window was swabbed; the door handle
23 was swabbed.

24 (Document is handed to the witness.)

25 A What am I looking at?

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1 Q Okay. Again, we're not -- I'm not asking a
2 question. But I'm pointing out --

3 MS. WILSON: Can I see what you are looking at?

4 MR. PENNINGTON: It's the DNA report from SLED.

5 THE COURT: Hold on one second. Let Ms. Wilson
6 get. . .

7 (Document is handed from the witness to
8 Ms. Wilson.)

9 (Document is handed back to the witness and
10 Ms. Wilson resumes her seat.)

11 Q (By Mr. Pennington) The description that we
12 have, that was provided to SLED, is that the driver's
13 door, exterior was swabbed; correct?

14 A Right. That's what I read off that, yeah.

15 Q And so as far as we know, there was not a swab
16 of the driver's side, rear door?

17 A Oh, no, I don't believe there was, no.

18 Q Okay. What was swabbed was the driver's side
19 rear door handle, front and back?

20 A That's correct.

21 Q And in that, they could not find DNA on the
22 handle?

23 A On which one? They did find DNA on the one
24 handle.

25 Q I'm sorry. On the rear handle?

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1 A That's correct.

2 Q Now, I'm going to turn fast-forward to July
3 30th, the day of arrest of my client, Mr. Deleston, and
4 you described that the police actually arrested him at
5 about -- it was Monday morning, July 30th, at about 8:30
6 in the morning?

7 A That's correct.

8 Q And that was as he was coming off of a CARTA
9 bus down near the market?

10 A That's correct.

11 Q Dressed in his Bubba Gump restaurant uniform?

12 A Correct.

13 Q Okay. And from there, he was taken to -- I
14 mean, to the Lockwood Boulevard Police Department?

15 A That's right.

16 Q These shoes, the black shoes that have been
17 referred to as, I believe, State's 109, those shoes were
18 not recovered from Bryan Rivers on June 16th, 2012, were
19 they?

20 A No.

21 Q They were recovered on July 30th, when he was
22 arrested, so that's six weeks later?

23 A Right. The day of his arrest.

24 Q In your experience as a detective, you're aware
25 that eyewitnesses often get facts incorrect?

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1 A That's correct.

2 Q They can be flawed or mistaken about clothing
3 descriptions?

4 A Correct.

5 Q They can even be flawed or mistaken about
6 heights?

7 A They can be.

8 Q Or mistaken about weights?

9 A They can be.

10 Q Okay. And that's why if you look at the
11 -- from your training at the academy and from your
12 knowledge as a sergeant investigator, you know that
13 mistaken eyewitness I.D. can often even be the greatest
14 source of false conviction?

15 A I don't know that from my experience, no.

16 Q All right. Now, when you described
17 Bobby Warthaw as tentative about what he wanted to do,
18 he certainly wasn't tentative about wanting some money
19 out of this?

20 A No, he was not.

21 Q And so he -- when you met with him on July
22 12th, weeks before -- well, actually, three days before
23 the buy, but weeks before the arrest, he was asking you
24 about the money?

25 A Oh, yes.

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1 Q And he gave you explicit advice on how you
2 might approach an interrogation with Little B; didn't
3 he? On tape?

4 A Yeah, I know it was recorded. I spoke to him
5 for quite a while. I can't remember everything that was
6 said. I do remember him telling me to go after Little B
7 because Little B would be likely to roll on Ryan.

8 Q That's right. What he said was: Is that, in
9 his opinion, what you needed to do is to tell Little B
10 that Ryan's saying that he's the shooter, and then, of
11 course, he would then turn it around and say that Ryan
12 is the shooter?

13 A Right.

14 Q And that's exactly what happened?

15 A We didn't need Bobby's advice for that. That's
16 a common police tactic.

17 Q Okay. You also had, on that same date, in that
18 same interview, Detective Osborne, the tip from Bobby
19 that he had seen a pistol in Bryan Rivers' hands the
20 same day of the murder?

21 A That's correct.

22 Q He had been out there at the Shawn Turner video
23 shoot?

24 A That's right.

25 Q And that Bryan was intoxicated and acting

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1 crazy?

2 A That's correct.

3 Q And was waiving a gun around. And that was
4 upsetting to Bobby and his friends?

5 A That's correct.

6 Q And he told you in that interview, that Bryan
7 was wearing a black shirt and Willie Dee's?

8 A I believe so.

9 Q And he told you explicitly that Ryan Deleston
10 was not present at that photo shoot?

11 A That's right.

12 Q That was the day of the murder?

13 A That's correct.

14 Q On August 1st, when you interviewed Rayshawn
15 Milligan -- this is the brother of Julius -- he
16 basically was saying to you, look, I was drunk, and I
17 just don't know or remember anything. Is that a fair
18 summary?

19 A That's correct.

20 Q And you stressed to him over and over, that it
21 might help your brother, Julius, if you were able to say
22 more about what was coming from the other people? Do
23 you remember that?

24 A What was said that night? That's correct.

25 Q That's right.

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1 A That's correct.

2 Q And you thought it might incentivize him if you
3 told him, Look, this could help your brother?

4 A Right.

5 Q Do you recall the day before, when you were
6 able to sit down with Bryan Rivers at the city police
7 department?

8 A On the 31st or the 30th?

9 Q I'm sorry. The 30th.

10 A Yes.

11 Q The day of the arrest?

12 A Yes.

13 Q In that videoconference room, or in the
14 interview room, that has video?

15 A On the 30th, yes.

16 Q On the 30th. You explicitly told Bryan that it
17 was your belief that Ryan was the killer?

18 A I did.

19 Q And you invited him over and over again to say,
20 Get on the team?

21 A Probably, yeah.

22 Q Get on board with these other fellows. Hang
23 Ryan. Is that what you said?

24 A Sounds like something I would say.

25 Q And at 6:59 that evening, you told him that you

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1 wanted everyone to roll on Deleston?

2 A Correct.

3 Q Either you get on board now, or you're going to
4 be in more trouble?

5 A Correct.

6 Q Because his story wasn't cutting it?

7 A Didn't make any sense.

8 Q The next day, even though you didn't get the
9 story that you were looking for because Bryan Rivers did
10 not say that he was involved or there; right?

11 A That's not exactly accurate. Bryan Rivers did
12 say he was there. Bryan Rivers didn't tell the whole
13 truth.

14 Q All right. Well, you brought him back the next
15 day, and you invited him again, that you wanted him to
16 be on board, to send Ryan up the river?

17 A I tried again the next day, yes.

18 Q About 4:19 in the afternoon on the 30th?

19 A To tell us the whole story. I tried it again,
20 yes.

21 Q So it's pretty clear to those guys what you
22 were looking for?

23 A The truth, yes.

24 Q Well, your truth is, is that you had decided
25 that Ryan Deleston was the shooter? You had an opinion?

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1 A I had more than that. I had a lot of opinions.
2 But what we wanted to get out of each one of them was
3 the truth. Not just that Ryan was the shooter or the
4 killer, but their involvement, as well; what they did to
5 contribute to Marley's death.

8 THE COURT: Take your time.

11 MR. PENNINGTON: Thank you, your Honor. I have
12 no further questions at this time.

13 THE COURT: Ms. Wilson.

14 MS. WILSON: Beg the Court's indulgence?

15 THE COURT: Take your time.

16 (Respite.)

17 REDIRECT EXAMINATION

18 BY MS. WILSON:

19 Q Detective Osborne, Mr. Pennington asked
20 you several questions about what was swabbed and all
21 that. On that video, does the shooter come up to the
22 front door and tug on that handle?

23 A No. You cannot see that.

24 Q And were you in charge on who swabbed what on
25 the vehicle?

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1 A No. I sat down with the crime scene Jeff
2 Miller, who was here earlier, we watched the video
3 together, and then Jeff made the determinations on what
4 to swab.

5 Q And did you decide what SLED would test or what
6 they wouldn't?

7 A No. In fact, we had several conversations with
8 SLED and -- I did personally -- requesting them to
9 analyze certain evidence and to do certain things and
10 ran into a lot of resistance with that.

11 Q And -- and this Bobby Warthaw deal again, SWAT
12 team is out there?

13 A Yes.

14 Q You've got people stationed in that apartment
15 building with video?

16 A Yes.

17 Q You've got plain clothes officers posing as
18 construction workers all around?

19 A Yes.

20 Q Were y'all nervous about that deal?

21 A Yes.

22 Q Was your liability high, high, high?

23 A Very high.

24 Q Was Bobby Warthaw possibly in danger?

25 A Yes.

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1 Q He was making a buy of possibly a loaded gun?
2 Didn't know? Right?

3 A From an individual we thought was the killer.

4 Q He put himself at great risk?

5 A He sure did.

6 Q And you mentioned that -- or Mr. Pennington
7 asked you about Bobby suggesting to you this tactic to
8 get Ryan -- get Bryan and Little B, and he'll roll?

9 A Right.

10 Q And you said common police tactic?

11 A Yes.

12 Q Tell the jury what you mean by that.

13 A That's really common. We have different
14 strategies that we use in the interview room. If you
15 have multiple defendants, you'll try to pit one
16 defendant against the other. You'll tell that
17 defendant, Hey, look, you know, he's telling us this,
18 he's telling us that, he's rolling on you, he's putting
19 it all on you. You try to encourage them to roll
20 backwards.

21 Q Do you tell one defendant the whole story that
22 another defendant is telling you?

23 A No.

24 Q Okay. When you say you -- you -- you go back
25 and forth, y'all have more than one interview room?

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1 A Right.

2 Q Do y'all sometimes tell them, Hey, so-and-so is
3 down the hall?

4 A Yes.

5 Q And do you tell them the story to feed you
6 back?

7 A No.

8 Q Okay. Well, tell the jury how it works.

9 A I mean, you don't ask leading questions, you
10 know. You'll say, Well, isn't it true y'all were trying
11 to rob Famous Joe's? And then, you know, try to
12 encourage certain things. I mean, we had a bunch of
13 different theories, but we didn't know exactly what
14 happened. Just, for example, we thought that it was
15 possible that maybe they had posted up on Famous Joe's
16 behind Famous Joe's. So I tried to tell them, Y'all
17 were sitting behind Famous Joe's; that's where y'all
18 were hanging out waiting for him, weren't you? And they
19 said no.

20 And you kind of gauge their reaction. If it's
21 a definite no, no, well, then you move on to another
22 theory in the hope to get a little bit of feedback, and
23 you kind of roll with that.

24 Q And you mentioned that Little B's story didn't
25 make sense?

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1 A At all.

2 Q Julius' story didn't make sense?

3 A Not at all.

4 Q Little B was telling you --

5 MR. PENNINGTON: Objection. Leading.

6 Q (By Ms. Wilson) What was Little B telling you?

7 THE COURT: Thank you.

8 THE WITNESS: All right. Little B's story --
9 initial story -- well, I mean, the first story was, I
10 was inside drunk and didn't go anywhere. Then it got to
11 the point to where he said -- and he's getting closer
12 and closer to putting himself at the scene. And the
13 last story that he ended up telling me was, that he just
14 happened to be walking down the road, minding his own
15 business, and then he observed Ryan shoot Marley. And
16 it just -- it didn't make any sense that they came from
17 the same location, from Cashew, and Ryan is in the
18 middle of doing a robbery, and we see Julius Brown on
19 the video, we know all three of them have put themselves
20 together using each other as alibis, and he just
21 happened to walk by a murder. It just didn't make any
22 sense.

23 Q (By Ms. Wilson) You didn't buy it?

24 A No.

25 Q And Julius, what was his claim about walking

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1 through the parking lot?

2 A All right. So Julius's last story was, yes,
3 Ryan is the killer. But what he said was, I was walking
4 through the parking lot to do a drug deal. But, yet, he
5 knew that Ryan was about ready to do -- Ryan and Bryan
6 were about ready to rob Famous Joe's. So I asked him, I
7 said, Well, Julius, that makes no sense at all. Why
8 would you pick a location for a drug deal in the same
9 parking lot if you know two individuals are about ready
10 to do a lick? And Julius really had no explanation for
11 that.

12 Then he said that when he went through the lot,
13 he went through Marley's car -- went by Marley's car,
14 then he said he waited there. But he was walking in the
15 neighborhood, and he said he just waited there. But he
16 wasn't involved in the robbery. I told him, I said,
17 Julius, that doesn't make any sense. If there were 12
18 minutes past from the time that Julius walked by the
19 car, if all you're doing is walking by, you would have
20 kept on walking and going home, especially since you
21 knew they were about ready to do a robbery. It just
22 didn't make any sense.

23 Q And you challenged him on that?

24 A I did.

25 Q And when Bryan Rivers came in, as

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1 Mr. Pennington asked, not on the day of the murder, but
2 the day he was arrested, he had on these shoes?

3 A Correct.

4 Q And what style of shoe is this?

5 A They're Nike Air Force One.

6 Q And what is the slang term for a Nike Air Force
7 One?

8 A Willie Dee's.

9 MS. WILSON: That's all, your Honor.

10 THE COURT: Mr. Pennington.

11 MR. PENNINGTON: Thank you, your Honor.

12 **RECROSS-EXAMINATION**

13 **BY MR. PENNINGTON:**

14 Q So, Detective Osborne, what I'm hearing you say
15 is that when you are interviewing people in those kinds
16 of settings, you often know that they're not going to be
17 telling you the truth at the beginning?

18 A You can almost count on it.

19 Q That's right. You know you're dealing with
20 liars?

21 A Correct.

22 Q And so your strategy is to try to get them to
23 come off of the story that they have been giving you and
24 give you a story that you believe is the truth?

25 A No. I try to get them to tell me the truth.

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1 Q Well, when you give people the answer and you
2 know they're liars, what better way to help someone
3 who's looking for a lie that would please you, than tell
4 them what the lie is supposed to be?

5 A If that were the case, they would have taken
6 several other opportunities that I gave to them. I
7 mean, I tried to tell them something like -- like I
8 said, that I thought they had posted up behind Famous
9 Joe's. They each had the opportunity to take that, but
10 all of them said, no, that wasn't true.

11 Q But, Detective, you're not naive, you know
12 about this code of silence, code of the street, don't
13 rat somebody out, that kind of thing. People are always
14 resistant in giving you information, aren't they?

15 A Not always.

16 Q Well, suspects in cases like this?

17 A Frequently.

18 Q Yes. And so when you finally boxed them in,
19 you fed the answer that you were looking for?

20 A What I thought had happened and -- and that's
21 what I told them. I said, Look, this is what it looks
22 like. It looks like this; it looks like that. They
23 didn't always take it.

24 MR. PENNINGTON: No further questions.

25 THE COURT: You may step down. Call your next

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1 witness.

2 MS. WILSON: Your Honor, we need to call a
3 witness out of order. We'd call Dr. Stanley Kaplan.
4 -- I mean, Michael Caplan.

5 Stanley Kaplan is the SAT guy, and I continue
6 to call him that.

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

9 THE WITNESS: I do.

10 THE DEPUTY CLERK OF COURT: Thank you, sir.
11 You may take your seat. State your first and last name
12 for the record, spelling your last name for the record.

13 THE WITNESS: Thank you. My name is Michael J.
14 Caplan. Last name is spelled C-a-p-l-a-n.

15 MICHAEL J. CAPLAN, M.D.,
16 having been first duly sworn by the Deputy Clerk of
17 Court to tell the truth, the whole truth, and nothing
18 but the truth, was examined and testified upon his oath
19 as follows:

20 DIRECT EXAMINATION

21 BY MS. WILSON:

22 Q Dr. Caplan, where are you employed?

23 A I'm employed at the Medical University of South
24 Carolina.

25 Q And how long have you been at MUSC?

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1 A I've been at MUSC on and off since 2004. I was
2 there from July, 2004 to 2008, then I left and came back
3 in January, 2011, and I've been there since then.

4 Q And are you a licensed physician in South
5 Carolina?

6 A Yes, I am.

7 Q And how long have you been practicing medicine?

8 A I've been practicing medicine since 1987, when
9 I received my M.D. degree.

10 Q And where did you receive that training?

11 A I received my medical training at the
12 University of Connecticut School of Medicine.

13 Q And can you outline your training for the
14 jury.

15 A Sure. After receiving my medical training
16 at University of Connecticut, I then went to do a
17 postgraduate training after medical school, in
18 pathology, which is a specialty that deals specifically
19 with how the human body responds to disease. And I did
20 that at the University of Michigan from 1987 until 1992.
21 Following that, I then did a one-year Fellowship in
22 forensic pathology. And forensic pathology is a
23 subspecialty that specifically uses the tools of
24 pathology to deal or resolve problems of the law or
25 public interest. And I did that Fellowship at the

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1 New York City office of the chief medical examiner from
2 1992 to 1993. I also did a year of training in
3 pediatric pathology, which studies diseases affecting
4 children, infants, and even unborn babies, fetuses; and
5 that was at the Children's Hospital, Pittsburgh, from
6 2003 to 2004. So that's the extent of my training.

7 Q And as a result of your training, have you had
8 occasion to perform autopsies?

9 A Yes, I have.

10 Q Do you have any idea how many autopsies you
11 have performed?

12 A Yes, I have a rough idea.

13 Q And what is that?

14 A I have either directly performed or supervised
15 somewhere between 22- and 2,400 autopsies.

16 Q Are you a member of any specialized groups or
17 associations in your field?

18 A Yes, I am.

19 Q And what are those?

20 A I am a member of the Society for Pediatric
21 Pathology; National Society, and also on the education
22 committee for that society; I've also been a member of
23 The Academy of Forensic Sciences; American Academy of
24 Forensic Sciences; and the National Association of
25 Medical Examiners in the past.

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1 Q Have you been qualified to testify as an expert
2 in the area of forensic pathology before?

3 A Yes, I have.

4 Q How many times and what courts? Roughly?

5 A Yeah. Roughly, I would say somewhere --
6 between deposition and trial testimony, somewhere
7 between 125 and 175, somewhere in there. And the courts
8 have included New York City, Queens County; Washtenaw
9 County, Michigan; Wilmington; and other counties in the
10 state of Delaware; and counties in -- multiple counties
11 in South Carolina, including Charleston, Berkeley,
12 Beaufort; and also some counties in Georgia as well.

13 MS. WILSON: Your Honor, at this time, we'd
14 offer Dr. Caplan as an expert in the field of forensic
15 pathology.

16 THE COURT: Any objection?

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: Ladies and gentlemen, normally, a
19 person cannot give opinion testimony. Typically, when a
20 person testifies, they must testify as to either what
21 they saw, heard, or sensed by smell or something of that
22 nature. There is an exception in our law when someone
23 is qualified because of their education or experience,
24 they are permitted to give their opinion in certain
25 areas if the Court qualifies them that way. This

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1 witness will be qualified in the area of forensic
2 pathology to give opinion testimony in that area. That
3 does not mean that you must accept the opinion; it is
4 simply evidence for you to use in any way that you see
5 fit.

6 Ms. Wilson.

7 MS. WILSON: Thank you, your Honor.

8 (Document is shown to Defense counsel.)

9 MS. WILSON: Your Honor, at this time, we'd
10 offer, I believe without objection, State's 110, 111,
11 112, 113, 114, 115, and 116, which are sketches related
12 to the autopsy of Marley Lion.

13 THE COURT: Any objection?

14 MR. PENNINGTON: Not at all, your Honor.

15 THE COURT: State's 110 through 116 into
16 evidence without objection.

17 (State's Exhibit Nos. 110, 111, 112, 113, 114,
18 115, and 116 are admitted into evidence.)

19 MS. WILSON: Thank you, your Honor.

20 Q (By Ms. Wilson) Now, Dr. Caplan, while working
21 at MUSC, did you have occasion to perform an autopsy on
22 Marley Lion on the afternoon of June 16th, 2012?

23 A Yes. The only correction was that it began in
24 the morning and extended into the afternoon.

25 Q Okay. And what was Marley Lion's age at the

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1 time of autopsy?

2 A To my understanding, Marley Lion was 17 years
3 old.

4 Q What was his height?

5 A He was approximately six feet, three and a half
6 inches.

7 Q And weight?

8 A About 235 pounds.

9 Q And when you received Mr. Lion's body, how was
10 he clothed?

11 A He had some khaki pants that were underneath
12 him, he also had some boxer-style shorts that were also
13 underneath his body, and he also had socks of two
14 different colors on his right and left feet.

15 Q Now, his pants and his boxer shorts, had they
16 been cut --

17 A Yes.

18 Q -- as part of his treatment?

19 A Yes. That is my understanding.

20 Q And when you performed -- you performed an
21 external overview of the body; is that correct?

22 A That is correct.

23 Q And could you tell if he had undergone any sort
24 of medical treatment?

25 A Yes, I could.

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1 Q What were the most obvious things that you
2 could see in your examination that were evidence of his
3 treatment?

4 A The most obvious things were -- to begin with,
5 he had a breathing tube put down his mouth, what we call
6 an endotracheal tube. And then what was most obvious
7 after that was that he had a large incision that went
8 entirely across his chest, from basically one armpit to
9 the other and below the levels of the nipples. It's
10 what we call a thoracotomy incision, basically going all
11 the way across the chest. He also had other obvious
12 interventions that he had; where he had a tube that was
13 going into the chest cavity on the right side, and he
14 also had a site in the right groin where there had been
15 a cut down, meaning, an incision had been made to gain
16 access to the blood vessels to provide resuscitation for
17 him. There were other interventions, but those were the
18 most obvious that I saw.

19 Q And did the fact that he had undergone
20 treatment earlier that day affect your ability to
21 perform an autopsy?

22 A Not in my opinion.

23 Q Based on your further examination of Marley, do
24 you have an opinion, to a reasonable degree of medical
25 certainty, as to the manner and the cause of his death?

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1 A Yes, I do.

2 Q And what is that opinion?

3 A In my opinion, cause of death was a gunshot
4 wound to the chest with perforations or injuries of the
5 abdominal aorta, the spleen, and the liver. And the
6 manner of death, in my opinion, was homicide.

7 Q Now, Doctor, I'm going to show you State's
8 Exhibits 110 through 116. Have you had a chance to look
9 at these before?

10 A Yes, I have.

11 Q And would those exhibits that have been
12 admitted help you to explain to the jury the nature of
13 Marley's wounds and injuries?

14 A Yes, they would.

15 MS. WILSON: Okay. If we could start with
16 State's 110. Could we lower the lights just a little?

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

18 Q (By Ms. Wilson) Now, Doctor, we're at a little
19 bit of a disadvantage. We don't have the -- the Elmo
20 thing that you can draw on, and the laser pointer won't
21 show up on the TV. So I'm going to ask you to use this
22 old-timey thing right here.

23 A Sure. I can do that.

24 Q And if we'll start with State's Exhibit 110,
25 which is at the top, labeled GSW for gunshot wound and

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1 bullet number one and GSW number six. If you could
2 explain to the jury what State's 110 shows.

3 THE WITNESS: Your Honor, is it okay for me to
4 stand?

5 THE COURT: It is.

6 THE WITNESS: Okay. Thank you.

7 So what I'm showing here is this -- this
8 is a picture of a diagram of the decedent's body --
9 Marley Lion's body. And what we're seeing here is --
10 this red circle, that represents the approximate site of
11 the entrance gunshot wound that went to the left side of
12 Marley Lion's chest. So that would have been the
13 entrance wound. Right here, that represents, on the
14 back, on the right side of the back, the site where the
15 bullet that corresponded to this gunshot wound, where
16 that bullet was recovered at the time of the autopsy,
17 where I recovered it at the time of the autopsy. So
18 this would be the entrance wound, and that would be the
19 site of recovery and bullet.

20 And whenever we do an autopsy where we have
21 gunshot wounds, we always have to determine whether --
22 given an entrance, whether a bullet actually made an
23 exit through the body or whether it stayed in the body
24 where we recover it. So we try to follow the path of
25 the tract.

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1 So, again, this and this are the same wound
2 tract. That's number one. And we give these numbers --
3 arbitrary numbers, we're not specifying an order, but
4 just to keep ourselves organized, is why we do that.

5 Q (By Ms. Wilson) So you don't necessarily know
6 that -- although it's labeled as GSW 1, that that was
7 the first shot to Marley?

8 A That is correct.

9 Q Okay. And, faintly, just to the left of that
10 red circle is a yellow arrow. And is that the direction
11 of the -- of the wound tract?

12 A Yes. Yeah, that would roughly be the direction
13 of the wound tract, going across the body from left to
14 right, okay? Obviously going into the body cavities.
15 But, yeah, going from left to right and really not at
16 any upward or downward deviation. This entrance wound
17 was about 24 inches below the top of the head, and where
18 we recovered the bullet was about 24 and a half inches
19 below the top of the head. So very, very close. So,
20 yes, it did go across this way.

21 Q And was there -- let's look at the other wound
22 on the arm.

23 A So this wound that we're referring to as
24 gunshot wound number six, this is the only wound that
25 was a through-and-through, where there was -- I'm sorry.

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1 This was one of the -- one of the two wounds in the body
2 that was a through-and-through, meaning there was an
3 entrance and an exit. Okay? And these are very, very
4 close together. And so what we're looking at, we're
5 looking at the back of a foreman, a little bit below the
6 elbow process. And these two wounds, again, entrance
7 and exit, and very, very -- it is actually difficult to
8 tell what's entrance and what's exit. But they take a
9 very, very short path through the soft tissues in the
10 foreman. They don't strike bone or fracture a bone.
11 They take the short path through the soft tissues, and
12 then the bullet exits.

13 Q And those two wounds on the back of his
14 left foreman, same side of the body where you have
15 that -- that entrance wound at the chest; right?

16 A That's correct.

17 Q Would the entrance wounds on the foreman be
18 consistent if Marley had done like that?

19 A Yes. Yes. In my opinion, if he
20 had -- basically flexed his -- bent his foreman, then
21 the position of those wounds in the foreman would
22 approximately line up with the entrance wound that's on
23 the left side of the chest.

24 Q Now, so bullet path number one, gunshot wound
25 one, can you tell the jury what organs were affected in

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1 that path?

2 A Yes. So this path here went -- took a path in
3 the chest, it went in between the ninth and the tenth
4 ribs, and then it went just below the diaphragm, the big
5 muscle that helps us breathe; and then after it went
6 into the diaphragm -- through the diaphragm, then it
7 entered into the abdominal cavity. As it went across
8 the abdominal cavity, it cut some soft tissues, and then
9 the next major organ it entered was the spleen. So the
10 spleen was just underneath the rib cage between that
11 ninth and tenth rib.

12 After it went through the spleen, it then went
13 through the aorta, the major artery that takes blood to
14 all of our organs, and enters the aorta just between the
15 chest and the abdominal regions, but, technically, in
16 the abdominal cavities. So it went through the spleen,
17 it went through the aorta, and then the next organ it
18 went through was the liver.

19 And then after going through the liver, it then
20 went back through the right side of the diaphragm
21 muscle, but then it ended up stopping and lodging in one
22 of the muscles in the back of our body that goes to the
23 arm, and lies on the right side of the back, at about
24 the same level where the entrance was. So the spleen,
25 the abdominal aorta, and the liver were the three major

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1 organs that were injured in this path.

2 Q Dr. Caplan, was that the fatal wound?

3 A Yes. In my opinion, it was.

4 Q And did you notice any stippling or
5 pseudostippling?

6 A Yes, I -- I did -- I did not notice stippling.
7 I did notice pseudostippling. And -- can I elaborate?

8 Q Yes. Tell us what that is.

9 A Okay. So stippling -- the term that we use
10 stippling -- or tattooing is another term. Stippling
11 refers to any completely burned or unburned gunpowder
12 that actually rubs against the skin and forms tiny,
13 tiny, little pinpoint abrasions. It's very, very
14 uniform. And that's how we distinguish stippling. It
15 usually takes some distance from between where the gun
16 is fired and the body to produce that.

17 Now, there are things that can mimic stippling,
18 and those are called pseudostippling. So, for example,
19 if things like -- that break up, like glass or wood or
20 little particles of dirt, if those abrade the skin,
21 those can produce a pattern that can look like
22 stippling, except that they're not because those are not
23 as uniform: they have different sizes and different
24 shapes, and usually be -- the difference can usually be
25 discerned between true stippling and tattooing, or what

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1 we call pseudostippling. And, as I said, any object in
2 between the weapon and the skin of the victim could
3 potentially produce that pattern:

4 Q Like car glass window?

5 A Correct. That is one -- that is one object
6 that could produce that.

7 Q I'm going to show you State's Exhibit 35, which
8 has already been produced. Can you see the bullet on
9 there that you recovered?

10 A Yes, I can.

11 Q And that is -- that matches up with gunshot
12 wound one; is that correct?

13 A Correct. What you just showed me was -- was
14 the site of recovery of this gunshot wound, this bullet
15 right here.

16 MS. WILSON: Your Honor, again, if I can
17 publish this to the jury?

18 (Document is published to the jury.)

19 Q (By Ms. Wilson) And you said that was the
20 fatal wound?

21 A In my opinion, that was the fatal wound in this
22 case.

23 Q Okay. If we could move to State's Exhibit 111,
24 and that is gunshot wound and bullet number two.

25 A Correct. So this wound -- now we're looking at

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1 a view from the side of Marley Lion. And so we're
2 looking at the outer side of his left thigh. Okay?
3 Right here. This was -- so where I was saying that the
4 gunshot wound number one was about 24 inches below the
5 top of the head, just to make sure I remember this
6 correctly -- this was lower. This was about 38 inches
7 below the top of the head, so lower. And this bullet
8 took a path -- a very -- that instead of going into the
9 body cavities, this bullet actually remained in the soft
10 tissue.

11 So it took a path through some of the tough
12 connective tissue, and then back over where the gluteal
13 muscles are, and then it actually rested in the back
14 muscles over here in the back. So it took a path that
15 goes from -- here's the arrow. It went from left to
16 right, it went from slightly front to back, and then it
17 went upward, because this was about 31 inches below the
18 top of the head. So this wound was associated only with
19 some bleeding in the soft tissues and no other major
20 injuries.

21 Q And you said "upward," so that would have meant
22 the bullet would either -- if he were standing upright,
23 the bullet would have been -- having to come up from the
24 floor?

25 A Correct.

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1 Q Or if he was laying over or moving away, the
2 bullet could have been coming from at an angle away?

3 A Correct. Correct. And so --

4 Q And it appeared to go up?

5 A Right. So when I use the term "upward," to
6 clarify, what I'm talking about is assuming that the
7 body is in what we call the anatomic position, where the
8 body is -- a person is standing and their palms are
9 faced out. So --

10 Q Just like that?

11 A Correct.

12 Q Those diagrams?

13 A Yeah, just like in these diagrams. Correct.

14 Q If we could go to State's 112.

15 Okay. That's gunshot wound and bullet three.

16 A Right. So now we're a little bit in front of
17 where we were on gunshot wound number two. And this
18 represents the entrance, right here, for number three.
19 This was sort of in -- in between the last -- the side
20 and the front of the thigh. It's what we call the
21 anterior lateral. It's right -- kind of between the
22 side and the front of the thigh. Pretty much at a
23 similar level to the last one that I just talked about.
24 This one, you could tell, had an upward path because
25 there was an abrasion. Okay? Where the skin was

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1 scraped below there, and the actual perforation of where
2 the bullet entered, was just a little slit on the top of
3 this abrasion. So this bullet took a path through the
4 skin, through the soft tissues, and then it actually
5 grazed the top of the hip bone -- in the front of the
6 hip bone, the site where some of the muscles that flex
7 our hip and our leg, our thigh. So this one basically
8 took a path going upward and slightly from right to
9 left.

10 Q Was that a fatal wound?

11 A This was not a fatal wound. This also was
12 associated only with some bleeding in the soft tissues
13 around where the path of the bullet was.

14 Q No doubt painful?

15 A Yes, in my opinion.

16 Q State's 113, gunshot wound and bullet number
17 four?

18 A So I had said that number six was
19 through-and-through, the one on the foreman. This is
20 another wound that entered the body, exited, but then it
21 re-entered, and so we recovered the bullet, because on
22 the second time it re-entered, it stayed in the body.
23 So this -- this wound right here was on the -- also on
24 kind of the front -- between the front and side of the
25 thigh. And this was the lowest wound of all. Those

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1 other wounds were up in here, around 38 inches below the
2 top of the head; whereas, this one was about 45 inches
3 below the top of the head.

4 So what this wound did -- what this tract did,
5 is that this took a very short path through the thigh,
6 but then what happened is, is that it -- it then exited
7 right in the groin crease, right near -- at the middle
8 of the groin crease, right near where the left side of
9 the scrotum is. And then it re-entered. And so --
10 meaning, that this hole where the exit was and this hole
11 here, matched up -- or approximated perfectly. And so
12 then it took a path through here and then actually went
13 right above the pubic bone that sits right here. So it
14 went in the front of the thigh, in the left side of the
15 scrotum, above the pubic bone, and then it actually took
16 a course from left to right. And we recovered this
17 bullet on the -- in the soft tissues of the right side
18 of the thigh. And as I said, this was about 45 inches
19 below the top of the head. And if I could just refer
20 for a second.

21 Q Okay.

22 A This was about 37 inches below the top of the
23 head. So this was clearly -- but slightly upward. But
24 this path that I'm showing you here is consistent with
25 the fact that this was an entry re-exit, re-entry, so

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1 the path would have changed.

2 Q How is it, then, that a bullet can seem to take
3 a circular path instead of a straight line?

4 A Well, there are a number of factors that
5 explain that, but one of them has to do with the
6 position of the body, and -- or the relative position of
7 the shooter. So, again, the simplest case is if
8 somebody is standing straight, or if a bullet is shot
9 completely at a 90-degree angle, then you can assume
10 it's going to take a straight shot through the body.
11 But if the body -- if that relationship between the
12 muzzle of the gun and the body is not in a straight
13 line, a 90-degree angle, and the body is in any kind of
14 contorted position, either bent or rotated somehow, then
15 that can cause any number of a variant -- or different
16 pathways to take place.

17 So -- and another thing that can affect it is,
18 if a bullet strikes bone, then that can also alter the
19 pattern here and -- now, in this particular case, if it
20 did hit bone, it didn't fracture any bone. I guess the
21 answer to that question is, really, because the body can
22 be in so many different positions at the time, it can
23 alter the path of a bullet when -- when the body is in
24 one of those contorted positions.

25 Q State's Exhibit 114, gunshot wound and bullet

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1 five, at bullet graze 7?

2 A Okay. So this -- now we're looking --
3 everything so far has been on the left side. Now we're
4 looking at the right side, and this is more in front of
5 the thigh. And this was a wound -- that entrance wound
6 right here was on the front of the thigh, and what
7 you're not seeing here is that -- I mentioned that there
8 was that large cut-down site where the -- where the
9 doctors had tried to find a blood vessel to be able to
10 resuscitate Marley Lion. So actually that cut-down site
11 was just above -- just above where this gunshot wound
12 was. Okay?

13 And what this wound did -- and this one, again,
14 was high -- this was also around 35 or 36 inches below
15 the top of the head. This one took a path through the
16 soft tissues of the groin here, but then what it did, it
17 went beneath a muscle that we call the soleus muscle,
18 which is a powerful muscle that helps us flex our thigh
19 or our hip. And it went underneath that muscle and
20 struck the hip bone there, and we recovered this bullet
21 right in that area. So this took a course going through
22 -- again, going through right here, just -- just below
23 the cut-down site, and then recovering it here.

24 And then this mark right here is what I call a
25 graze wound. And a graze wound is defined as a wound

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1 where there -- where the gun -- the bullet does not
2 penetrate the skin. So, basically, a graze wound is a
3 form of an abrasion, a rubbing or scraping of the skin.
4 But in this case, it was a very thin band consistent
5 with a gunshot wound. And, so, in my opinion, this
6 graze wound here, if -- if this surface was in contact
7 at any time with this surface --

8 Q Like this?

9 A Yes. So -- so if that -- if the thigh was
10 flexed, then as that bullet went in, it would have
11 allowed that to strike part of the skin of the bottom of
12 the abdomen there and produced that injury.

13 Q So one bullet created two injuries, you know,
14 at a bend? If it comes in like that, it's going to --
15 it entered the bottom part; right?

16 A Correct.

17 Q And abraded the top part?

18 A That's correct.

19 Q Or grazed the top part?

20 A But, again, bottom and top here are very, very
21 close together.

22 Q Okay. So of these wounds, there was one that
23 was fatal; is that correct?

24 A Yes. In my opinion, there was one that was
25 fatal, and that was the wound that injured the aorta,

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1 the spleen, and the liver.

2 Q Did Marley also have some contusions on his
3 face and head?

4 A Yes. Yes, he did.

5 Q Or lacerations?

6 A Yes. He had some other injuries on his head
7 and face.

8 Q State's 115. What does that represent?

9 A This right here, we're looking at the left
10 cheek or the -- the hard part of the cheek of
11 Marley Lion. And what this represents is an abrasion.
12 This was actually a scrape, where the skin was scraped
13 right across that part of the face right there. So I
14 call that an abrasion, scraping of the skin there.

15 Q Could that abrasion be consistent with a fall
16 on pavement or gravel, something like that?

17 A Yes. It could be consistent with a fall on any
18 surface because that's a protuberant part. That's a
19 part of the face that sticks out because it's right
20 against bone.

21 Q And State's 116. What does that represent?

22 A Here we have a -- three different injuries.
23 These two injuries here and here actually have very
24 smooth margins. Okay? So the skin wasn't abraded, but
25 it was cut, but very, very superficial. So these are

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1 what I would call sharp force injuries. They were not
2 abrasions, but due to a sharp object. This injury,
3 though, on the left side of the forehead, this was a
4 laceration in the middle, and that's what the light red
5 is. And a laceration is an actual tearing of the skin
6 and the tissues. And then surrounding that was abrasion
7 where the skin was rubbed around the laceration. And so
8 this is what I call a blunt force injury, because these
9 margins were rough and irregular.

10 Also, you could put a probe inside that wound,
11 and there was some separation of the tissues of the skin
12 and the bone in here where this happened. And so this
13 is what we call an abraded laceration. Basically
14 meaning, it's a tear with a scraping of the skin around
15 it.

16 Q It was a pretty big size, wasn't it?

17 A Yes. Yes. This was actually the -- the actual
18 laceration was about an inch long by about a
19 quarter-inch wide, and the abrasion around was about two
20 inches in diameter.

21 Q And, again, consistent with maybe a fall to
22 pavement?

23 A Yes. This would be consistent with -- again,
24 because that ridge of the forehead is protuberant, then
25 that would be consistent with any -- any fall that would

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1 be a part of the surface, it would be most likely to
2 strike that.

3 Q You can have a seat. We can turn the lights
4 back up.

5 (The witness resumes the witness stand.)

6 Q (By Ms. Wilson) Now, Doctor, I'm going to show
7 you what's already been introduced as State's 15, 16,
8 17, 18, and 19. Can you tell the jury what your role
9 was in collecting these projectiles?

10 A Yes. So all of these projectiles that you have
11 in front of me, these were projectiles that I recovered
12 in the course of following the tracts of all those
13 bullets that we've discussed. And so I recovered those
14 bullets, and then they were put in a safe place where
15 they could be identified, they were photographed, and
16 then they were put in individual envelopes, and they
17 were separate to indicate the specific site of the body
18 where they were recovered.

19 Q And then they were handed over to the
20 Charleston Police Department --

21 A Yes.

22 Q -- for further testing?

23 A That is correct. Charleston City police.

24 MS. WILSON: Dr. Caplan, thanks for coming in.
25 That's all I have.

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1 THE WITNESS: I do.

2 THE COURTROOM DEPUTY CLERK: State your first
3 and last name for the record, spelling your last name
4 for the record.

5 THE WITNESS: My name is Chris McCandlish.
6 Last name is spelled M-c-C-a-n-d-l-i-s-h.

7 **CHRISTOPHER DEAN McCANDLISH,**
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 MS. WILSON:**

14 Q And how old are you, Chris?

15 A I am 25.

16 Q And do you live here in Charleston?

17 A Yes, ma'am.

18 Q What kind of work do you do?

19 A I work for a social media marketing company.

20 Q How long have you been living in Charleston?

21 A About three years.

22 Q I want to take you back to the early morning
23 hours of June 16th, 2012, between about 2:45 a.m. and
24 3:00 a.m.; do you remember that night?

25 A I recall.

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1 Q Okay. What were you doing that night, or those
2 early morning hours?
3 A I was walking back from a restaurant and bar
4 downtown.
5 Q What restaurant?
6 A Pane e Vino on Warren Street.
7 Q On Warren Street?
8 A Yes, ma'am.
9 Q Can you tell the jury some things that that is
10 around or what Warren is near?
11 A Well, Pane e Vino is near King Street. Warren
12 is between Radcliffe and Vanderhorst, I want to say.
13 Q So that's moving upper King across Calhoun;
14 right?
15 A Yeah. Upper King.
16 Q Okay.
17 A It doesn't cross Calhoun.
18 Q Right. Right.
19 A Right. Yeah.
20 Q But it's off upper King, I guess?
21 A Right.
22 Q And so you had been to the restaurant. Did you
23 have someone with you?
24 A Yeah, my girlfriend at the time.
25 Q No longer with her?

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1 A No.

2 Q Still friends?

3 A Yeah.

4 Q Okay. Good. After you left the bar, where

5 were y'all walking?

6 A We were walking back to my house.

7 Q Okay. And it was dark?

8 A Right.

9 Q And tell the jury what happened to you.

10 A We were coming back from downtown. I had

11 actually carried Lorna up part of the way because she

12 had kind of fallen earlier. And so I just picked her up

13 and carried her. So I had set her down when we arrived

14 at Rutledge Avenue. And I lived, at the time, at

15 Rutledge and Cannon, behind Fuel Restaurant, and I'd set

16 her down and --

17 Q Had Lorna had a big night?

18 A Yeah. Because she had some friends in town.

19 Q Okay. So you carried her part of the way, set

20 her down?

21 A Right.

22 Q All right.

23 A And we started walking back to my house. We

24 were almost there. And then I heard someone behind us.

25 I didn't feel threatened. I didn't feel like they were

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1 coming at us, just happened to hear someone behind us.
2 And she was on the road -- the street side of me at the
3 time, which was my right. We were walking north on the
4 left side of Rutledge, and I -- when I heard somebody
5 behind us, I just kind of -- instinctively just kind of
6 switched her to the other side of me. And as soon as I
7 got her to that side, we just -- you know, the guy was
8 in front of us with a gun, so. . .

9 Q What did the guy do?

10 A He told Lorna to give him her purse, which she
11 did. And then he told me to give him my wallet, and I
12 told him I did not have it.

13 Q Okay. What was he doing with the gun?

14 A Pointing it at us.

15 Q And what kind of voice was he using?

16 A Just, you know, louder than a whisper, but
17 not --

18 Q Was it matter of fact, or was he yelling at you
19 or --

20 A No. It was more just urging.

21 Q But you saw the gun?

22 A Yeah.

23 Q And you said Lorna gave the purse. You told
24 him you didn't have a wallet?

25 A Right.

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1 Q Was he by himself?
2 A To -- as far as I could tell.
3 Q You only saw one guy?
4 A Right.
5 Q And after Lorna gave the purse, did you see
6 which direction he ran?
7 A He ran off to my right.
8 Q Okay.
9 A So it seemed southeast.
10 Q Did you see where he went?
11 A I did not.
12 Q Did you hear anything after he ran off?
13 A I heard a car door.
14 Q Did you think that was him getting in a car?
15 A Yeah.
16 Q Did you try to spot the car to see where he was
17 going or --
18 A Yeah, I looked around. I didn't -- didn't see
19 anything moving, so. . .
20 Q Did y'all call the police?
21 A I did, yeah.
22 Q And did it take the police very long to get
23 there?
24 A No.
25 Q And did you have a description of what this

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1 robber looked like?

2 A Yes, ma'am.

3 Q And did you give that description to the
4 police?

5 A Yes, ma'am.

6 Q And what was that description?

7 A I said he was approximately, you know, probably
8 30s. I think I said late 20s, early 30s. I'm not
9 totally sure on that. And then I said he seemed to me
10 to be about, you know, 5-9, 5-10; 150 to 160 pounds;
11 short, afro-type hair.

12 Q What kind of build?

13 A You know, medium build. I mean, he was smaller
14 than I was, so. . .

15 Q Do you remember telling them that he had a thin
16 build?

17 A Yeah.

18 Q Okay. And what did you tell them about the
19 clothing he had on?

20 A Well, I told them that I thought he had, you
21 know, a -- a solid, darker-colored shirt, possibly
22 brown. I really didn't -- you know, I wasn't too sure
23 about the -- the clothes were the part that I wasn't --

24 Q It was dark?

25 A Right.

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1 Q It was a dark color?

2 A My impression was that it was a darker color,
3 solid, and that his pants were lighter than the shirt.

4 Q Did you tell him that he had on khaki pants?
5 Do you recall that?

6 A Yeah, I -- I guess I did.

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

8 THE COURT: Mr. Pennington.

9 MR. PENNINGTON: Please the Court, your Honor.

10 CROSS-EXAMINATION

11 BY MR. PENNINGTON:

12 Q Mr. McCandlish, you said you're 25 years old?

13 A Yes, sir.

14 Q How tall are you?

15 A Six feet.

16 Q And this was at 2:45 a.m. that we're talking
17 about?

18 A Yeah, approximately.

19 Q It was dark out?

20 A Uh-huh.

21 Q And you had been drinking too?

22 A Yeah, earlier in the night.

23 Q Okay. And you were -- your attention in some
24 ways was focused on Lorna, who was -- you were helping
25 home?

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1 A I mean, when -- before it happened.
2 Q That's what I'm talking about.
3 A Yeah.
4 Q And so you said that the assailant came up from
5 behind; correct?
6 A Uh-huh.
7 Q Okay. And I think you have to say either yes
8 or no for the court reporter.
9 A Yes.
10 Q She can't interpret this. Doesn't read well in
11 the transcript.
12 A Yes.
13 Q And describe the gun for me.
14 A It was a small, black -- seemed like a 9mm, but
15 I -- you know, that's was my impression.
16 Q Okay. You certainly knew he had a gun? You
17 could see he had a gun?
18 A Correct.
19 Q And that was frightening, I take it?
20 A No, it was endearing. Yes, it was frightening.
21 Q All right. You can make light of it now, but
22 it wasn't funny then, was it?
23 A No.
24 Q And you were worried?
25 A Yes.

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1 Q And so this assailant demanded your wallet and
2 her purse, and then he took off?

3 A Yes, sir.

4 Q And he ran what would be toward Calhoun Street?

5 A That -- that was my -- I mean, he took off
6 behind us, so that would point him towards Calhoun. I
7 couldn't follow him, so. . .

8 Q Okay. All right. And you've mentioned today
9 that you thought he had a dark shirt, but you couldn't
10 describe the color; correct?

11 A I -- you know, I mean, talking about it a year
12 later, I think if I said it was brown at the time, I
13 suppose at the time I thought that. So, yeah, I would
14 say, you know, brown. I was just -- what stands out
15 strongly is that it seemed, you know, darker, solid
16 shirt.

17 Q Obviously you were concerned about everything
18 that was going on. You weren't just sitting there
19 calmly taking notes of what was going on. You were
20 dealing with Lorna and this robbery?

21 A Right. Yeah. I mean, I was -- I guess. I
22 mean, I can't -- I don't know. All I know is I -- I
23 seemed to have taken pretty accurate notes, because
24 I -- you know, I described him physically pretty
25 -- pretty accurately, apparently, so. . .

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1 Q And that's based on information that you have
2 been told after the fact?

3 A Right.

4 Q You've been told -- you have been given
5 information that someone came forward and admitted doing
6 this robbery to you?

7 A Correct.

8 Q And so they gave you some confirmation that he
9 had a certain weight and height and build?

10 A Correct.

11 Q Okay. And so let's talk about -- you said a
12 moment ago that his pants, they seemed lighter to you;
13 correct?

14 A Yes.

15 Q All right. Now, did -- you're aware that Lorna
16 described dark pants?

17 MS. WILSON: Objection, your Honor. Hearsay.

18 THE COURT: Is there an exception?

19 Q (By Mr. Pennington) Did she describe, in your
20 presence, in the heat of the moment --

21 MS. WILSON: Objection. Hearsay.

22 Q (By Mr. Pennington) -- afterwards, the
23 description of the clothes she saw?

24 MR. PENNINGTON: That's my question.

25 THE COURT: Hold on one second.

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1 MR. PENNINGTON: Before you answer.

2 THE WITNESS: No.

3 THE COURT: Please don't answer that. Thank
4 you.

5 Ms. Wilson's objection was to hearsay. Is
6 there an exception?

7 MR. PENNINGTON: Excited utterance. Present
8 sense impression.

9 THE COURT: Rephrase that question.

10 MR. PENNINGTON: All right.

11 Q (By Mr. Pennington) In the aftermath of that
12 robbery, did Lorna describe to you the clothing that she
13 saw while she was still experiencing, sort of, the
14 trauma of the events that were going on?

15 A No.

16 Q Okay. You indicated to the police that night
17 that you thought that you had seen this offender before?

18 A I don't think I -- you know, I -- I think he --
19 he -- I think I said I possibly could have seen him in
20 the paper before.

21 Q Okay. So you described -- you told them, I
22 believe, in the police report, or something along the
23 lines of, that you had seen a picture of this particular
24 offender before, and you'd be able to identify him if
25 you saw him again?

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1 A I did -- yeah, I did feel like I would be able
2 to identify him.

3 Q Okay. But that didn't happen? You weren't
4 able to make an identification ultimately?

5 A I didn't have the opportunity, sir.

6 Q Okay. Were you -- and that's sort of my point.
7 No one brought you a photo array of the suspect before
8 you got the confirmation that someone had admitted? No
9 one brought you some pictures and asked you to make an
10 identification, did they?

11 A Not of them -- not of any of the current
12 suspects.

13 Q Okay. You only saw one person attempting to
14 rob you?

15 A Correct.

16 (Mr. Pennington speaks with Mr. Kozelski off
17 the record.)

18 MR. PENNINGTON: Thank you, your Honor. No
19 further questions.

20 THE COURT: Ms. Wilson?

21 MS. WILSON: No, ma'am.

22 THE COURT: Is this witness excused?

23 MS. WILSON: Please.

24 THE COURT: You may step down. Feel free to
25 remain with us, but you are excused and free to go.

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1 Thank you.

2 Call your next witness.

3 MR. DURANT: State would call Amanda Webb.

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

6 THE WITNESS: I do.

7 THE DEPUTY CLERK OF COURT: Thank you, ma'am.

8 You may take your seat. State your first and last name
9 for the record, spelling your last name for the record.

10 THE WITNESS: Amanda Webb, W-e-b-b.

11 AMANDA WEBB,

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 her oath
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. DURANT:

18 Q Good afternoon, Ms. Webb.

19 A Good afternoon.

20 Q Could you tell our jury where you work.

21 A I work at the South Carolina State Law
22 Enforcement Division in the forensic's department, DNA
23 case work department.

24 Q And what do you do in the DNA case work
25 department?

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1 A I work any criminal case throughout the state
2 that has a DNA request on it.

3 Q And when you say in the DNA department, you're
4 a DNA analyst?

5 A Yes, that's correct.

6 Q You analyze DNA?

7 A Yes.

8 Q And if you would, could you relate to our
9 jurors what your educational background is?

10 A I have a Bachelor of Science in forensic
11 chemistry and a Master's of Science in forensic science.
12 And upon graduation, I started at SLED and did my
13 training at SLED and have been an independent casework
14 analyst for approximately five years.

15 Q Okay. And what is your -- what are your duties
16 at SLED? What do your duties consist of?

17 A When criminal cases are submitted and have a
18 DNA request, and also a body fluid identification
19 request, I will perform those analyses, and I will look
20 for body fluids. I could look for blood, semen, and
21 saliva. And also, if there's a DNA request, I try to
22 develop a DNA profile from an evidentiary item, and then
23 also known standards are submitted. And that's DNA
24 that's taken from a known individual, so we know whose
25 DNA it belongs to. So if a DNA profile is developed

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1 from an item of evidence, I can compare it to a known
2 person to see if it might match or not match or no
3 conclusive statement can be made.

4 Q And have those DNA analyses been primarily
5 in-house at SLED?

6 A Yes, it has.

7 Q And are you certified by SLED to conduct DNA
8 analysis?

9 A Yes, I am.

10 Q Have you previously been qualified as an expert
11 in DNA analysis in the courts in this state?

12 A Yes, I have.

13 Q Upon how many cases?

14 A About a dozen.

15 MR. DURANT: Your Honor, at this time, we'd
16 offer Ms. Webb as an expert in DNA analysis, if there's
17 no objection.

18 MR. PENNINGTON: No *voir dire* and no question,
19 your Honor.

20 THE COURT: She will be so qualified. You may
21 continue.

22 MR. DURANT: Thank you, your Honor.

23 Q (By Mr. DuRant) Let's talk about this case.
24 Your SLED Lab Number L12-07313. You originally received
25 some evidence from the Charleston County -- or

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1 Charleston City Police Department; is that correct?

2 A Yes, sir, it is.

3 Q And am I correct that that consisted of five
4 DNA swabs?

5 A Yes. That's right.

6 Q And known standards for Marley Lion, Elizabeth
7 Paige, and Katie Ridgway?

8 A Yes, that's correct.

9 Q Okay. And that was pursuant to a request from
10 the Charleston Police Department; is that correct?

11 A Yes, sir, a DNA analysis request.

12 Q Okay. And let's start with swabs four and
13 five, to begin with, which came from the exterior rear
14 door, side handle of the victim's car. What were the
15 results of your analysis of those two swabs?

16 A No DNA profile was developed from these swabs
17 from the exterior rear driver's door handle. And what
18 that means is that there wasn't enough DNA present to
19 get any information from -- from the analysis of the
20 swabs.

21 Q Okay. And that's why you did this little
22 chart, and you have DNA results for that as being a
23 dash, dash, dash, dash, dash, all the way across?

24 A Yes, that's correct. That means no result was
25 obtained.

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1 Q So no DNA profile developed from the rear
2 driver's side door handle?

3 A Yes, that's right.

4 Q Period. Okay. You have also what was your
5 Item No. 3, which was a swab of a spot on the driver's
6 door?

7 A Yes, sir.

8 Q Is that correct?

9 A (Moves head up and down.)

10 Q And tell us about the DNA profile you developed
11 from that particular item.

12 A No human DNA was detected on that item. And
13 the difference between that and no DNA developed, is
14 that in our testing, there's different phases, and one
15 of the phases is to find out how much DNA we have to
16 work with. That's an important part of the process
17 because I need to know how much DNA is there before I do
18 my final step of analysis, because there's a certain
19 amount of DNA that we target before we put on the final
20 step of the instrument, and so I need to know how much
21 DNA I'm working with essentially. And for this
22 particular item, the exterior of the driver's door on
23 this swab, when I quantitated to find out how much DNA
24 there was, it was determined that there was just no DNA
25 on that swab altogether; so, therefore, I knew that it

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1 would be fruitless to take it to the final step because
2 I wouldn't be able to develop a DNA profile.

3 Q Okay. So nothing from the rear door handle;
4 nothing from the swab of the spot on the driver's door?
5 How about the driver's door handle?

6 A Yes. The front driver's door handle, if you
7 make -- a DNA profile was developed from that, and it
8 was a mixture of at least three individuals. And a
9 mixture just means that there were multiple donors of
10 DNA. Meaning, in this case, there were at least three
11 people who came into contact with that door handle in
12 some form or another. And sometimes when you're looking
13 at mixtures, you can discern or sort of pull out an
14 individual, especially if you have known standards to
15 compare it to. And in this instance, I did have some
16 known standards that I ran and was able to discern some
17 individuals.

18 I found that the DNA profile developed from the
19 major contributor matches the DNA profile of Katie
20 Ridgway. And a major contributor is just someone who
21 donates more DNA or deposits more DNA on that item. So
22 she was the -- Katie Ridgway had placed more DNA on that
23 door handle.

24 And the probability of randomly selecting an
25 unrelated individual who would have had a DNA profile

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1 matching the major contributor is approximately 1 in 2.9
2 trillion. And also then comparing the minor
3 contributor, the person who had donated less DNA,
4 Marley Lion, couldn't be excluded as a minor contributor
5 to that item.

6 And then also, Elizabeth Paige's DNA was ran
7 as well, because that was another standard that was
8 submitted, and she was excluded as a contributor to the
9 mixture.

10 Q Now, sometime later, you received some other
11 evidence from Charleston Police Department relative to
12 this case; is that correct?

13 A Yes, that's correct.

14 Q And amongst that, did you receive buccal swabs
15 from Ryan Deleston, Julius Brown, and Bryan Rivers?

16 A Yes, that's correct.

17 Q Okay. And what were you asked to do?

18 A I was asked to run those and analyze those
19 standards and compare to any DNA profile developed from
20 the evidence.

21 Q Being swabs from the victim's car; is that
22 correct?

23 A Yes. That's correct.

24 Q And did you do that?

25 A I did not do that analysis.

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1 Q And why did you not do that?

2 A Well, after looking at this mixture, I was
3 able to attribute the DNA -- like I said, the major to
4 Katie Ridgway and then the minor to Marley Lion. And
5 then what DNA remained from a third person was an
6 insufficient amount of DNA to really do a comparison
7 against anyone else. So, therefore, I didn't analyze
8 the standard submitted, and those were returned to the
9 submitting agency.

10 Q What is contact DNA anyway?

11 A Contact DNA --

12 Q Or touch DNA?

13 A Touch DNA. Uh-huh. It's when a person just
14 comes into contact with an item, like, they place their
15 hand on something, or in this case, a door handle. You
16 know, you grab the door handle. And then what happens
17 is a transfer of skin cells. And your skin cells sort
18 of slough off, and they will get -- they will then be on
19 the item. And then if enough skin cells are deposited
20 on an item, then I can perform DNA analysis and
21 sometimes get a profile. A lot of times with touch DNA,
22 it's difficult to get a profile unless somebody's
23 handled an item for a long time or repetitively over
24 many uses.

25 Q Has SLED changed its policy recently on contact

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1 DNA?

2 A No, it hasn't.

3 Q Okay. So I believe earlier it was asked -- it
4 was stated that you could develop a DNA profile from a
5 single human cell, or epithelial cell; is that correct?

6 A No, that's not correct.

7 Q And how much DNA do you -- you also spoke
8 earlier about quantitative analysis. How much DNA do
9 you have to have to reliably develop a profile?

10 A We target about one nanogram of DNA, and that
11 equates to approximately 175 to 200 skin cells in this
12 instance.

13 Q Okay. But you were asked to -- to make a
14 comparison with the buccal swab from Rivers, Deleston,
15 and Brown; is that correct?

16 A Yes, I was.

17 Q And whose decision was it not to run the
18 analysis?

19 A That was my decision.

20 Q And that decision was based upon?

21 A That was based upon the little bit of
22 information I had. I didn't feel like it was enough
23 information to make a comparison.

24 Q And would that be -- certainly not enough to
25 include anyone; is that correct?

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1 A That's correct.

2 Q How about to exclude anyone?

3 A No, it wouldn't be possible.

4 MR. DURANT: Court's indulgence?

5 THE COURT: Take your time.

6 (Mr. DuRant speaks with Ms. Wilson off the
7 record.)

8 Q (By Mr. DuRant) And also something else about
9 DNA -- just one other question -- it is -- if you have
10 it, you can't tell when it was deposited; correct?

11 A That's correct. There's no -- no time stamp on
12 DNA.

13 MR. DURANT: Okay. Thank you very much.

14 THE COURT: Mr. Pennington?

15 MR. PENNINGTON: Please the Court, your Honor?

16 **CROSS-EXAMINATION**

17 **BY MR. PENNINGTON:**

18 Q Ms. Webb, you have been trained in the use of
19 touch DNA and developing touch DNA; is that correct?

20 A That's correct.

21 Q And this is a very powerful tool, in the sense
22 that it is -- it can yield results that we couldn't get
23 before when we needed larger samples of, like, blood.
24 You can amplify smaller samples; is that correct?

25 A Yes. Technology has progressed over the years

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1 to where we don't need as much DNA as years ago. We can
2 get profiles from less amounts.

3 Q In fact, there's a process called -- I believe
4 it's called PCR, where you amplify the DNA that you have
5 as a way -- you start with a small amount and then you
6 amplify it in order to be able to do the test?

7 A Yes, that's correct.

8 Q And so you're not restricted to just what you
9 start with, but you have a way of multiplying the size
10 of the amount of cell or the amount of tissue or
11 whatever the source is, through the PCR process;
12 correct?

13 A In a way. We're still restricted by starting
14 material. If there's still not enough there, only a
15 certain amount is able to amplify. So if it's still
16 less than the target DNA that we like to find, then it's
17 possible that even with the amplification, you might not
18 find anything useful.

19 Q You used that term "might." SLED's developed
20 some -- some cutoffs, some thresholds, that they like to
21 use as rules of thumb in order to control and manage the
22 workload you have to process; is that correct?

23 A Yes, that's correct.

24 Q And so if this case was important enough, you
25 have the ability to override that threshold limitation

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1 and go ahead and test the data; don't you?

2 A I --

3 Q You have that discretion?

4 A I can't override any protocol that we use.

5 Q Well, you have the ability -- if a test is
6 asked for, you have the ability to go ahead and do it
7 even if you haven't found, through your quantitative
8 tests, that you have the same sample that you would like
9 to have?

10 A If there is enough information to make a
11 comparison and there is a request, then the request --
12 the requests will be taken --

13 Q Honored?

14 A Yes, honored. Thank you.

15 Q Okay. And so in this instance, you didn't
16 communicate back to the Solicitor's Office and say, You
17 know what? We don't feel like we've got enough for a
18 threshold, so we won't do the test? It's just -- there
19 was no test; right?

20 A Well --

21 Q You didn't get permission not to test?

22 A Well, I -- when I looked at the data, and after
23 taking into consideration Katie Ridgway's DNA profile
24 and Marley Lion's profile, and when I looked at it, I
25 didn't think what was left over was really enough for a

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1 comparison, and that's when I expressed to the
2 Solicitor's Office that I didn't think it would be valid
3 to go ahead and continue testing any of the other
4 standards, and so that's when they were returned.

5 Q And so they agreed with you at that stage, that
6 you didn't have to do any more testing?

7 A Yes, uh-huh.

8 Q There was no further request on the part of the
9 State to go forward with the test, even though they had
10 known samples of the suspects that they could compare
11 against that standard -- against the unknowns; correct?

12 A They used my word, yes.

13 Q Okay. Well, the truth of the matter is, is
14 that you don't ever know what's going to come from a
15 test until you run the test? Isn't that what science is
16 based on?

17 A You don't know what's going to come from a test
18 on evidence items. You have a best guess -- like, if
19 it's a blood item, I would assume that it's probably
20 just one person's DNA profile. If it's something like a
21 door handle, we oftentimes find mixtures. I know that
22 from a known standard from a person, I will only get one
23 DNA profile. So I don't -- I don't know what -- what
24 can sometimes turn into evidence profiles until I test
25 it.

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1 Q And that's because you can't really see cells,
2 can you?

3 A No.

4 Q And you really can't see DNA?

5 A No.

6 Q The real analysis occurs doing the test, not
7 from the eyeballing the situation?

8 A Yes.

9 Q Correct?

10 A Yes, that's correct.

11 Q Okay. So in this instance, had you run the
12 test for the front door handle, where you did have DNA,
13 if my client has an allele, which is a part of DNA that
14 is inconsistent with the DNA that is on the door, you
15 would be able to say that that was not his DNA; correct?

16 A When there is enough information to compare,
17 yes.

18 Q Well, listen to my question now. My question
19 is: Obviously you can only test what you have. That's
20 a given. And so my question is, is if you took my
21 client's profile and you compare his known profile to
22 the known data that you have, you could at least exclude
23 him from that data if he has a differential allele?

24 A It's not quite as simple as just one different
25 allele. We have to take in consideration multiple

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1 locations. And there just wasn't -- there was only two
2 out of 16 locations here where there was anything really
3 left to compare. And with -- with touch DNA and low
4 level DNA, it's to be interpreted with caution. And,
5 in fact, in most of the time, it's just a matter of
6 it's -- it's insufficient for interpretation, and that's
7 the case here.

8 Q But we really don't know what data you would
9 have gotten because you didn't run the test; correct?

10 A I don't know what the standard profiles would
11 have been.

12 Q Okay. In the same way -- in the same way,
13 you don't know what the standard profile is for
14 Bryan Rivers?

15 A That's correct.

16 Q So you don't know how similar his DNA would be
17 to the known DNA that you developed from the front door
18 handle?

19 A That's correct.

20 Q In addition to that, I guess we're all human;
21 right? I mean, we all make mistakes, you would agree?

22 A Yes.

23 Q And so it's important to rely on the
24 data -- let the data speak for itself; you would agree?

25 A Absolutely.

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1 Q An example of a mistake would be, that when I
2 contacted you last week and I asked you about item
3 three, swabs from the exterior door, you looked at your
4 chart, and because it was not listed, item three was not
5 listed on the chart, you assumed that you had to run the
6 test, and that was a mistake, wasn't it?

7 A I don't remember the exact details of the
8 conversation. If I said it wasn't tested, then that was
9 a mistake, because it was -- there was a test performed
10 on it.

11 Q And another example can be -- of mistakes that
12 can occur, is that you were not, in this case, given the
13 opportunity to test any swabs from the exterior rear
14 door on the driver's side of this vehicle? In other
15 words, you had the door handles, front and back, of the
16 driver's side. You had the exterior driver's door swab,
17 but you were not submitted any swabs of the rear door,
18 were you?

19 A Yes, I was. That would be items four and five,
20 were the exterior of the rear driver's door handle.

21 Q Okay. Listen to my question. The door handle
22 we covered. I'm now asking you: Were you given an
23 opportunity to test any swabs from the exterior of the
24 door itself?

25 A Oh, the door itself. I'm sorry. I

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1 misunderstood. Not of the rear door. I believe I
2 retrieved from the front driver's door..

3 MR. PENNINGTON: Court's indulgence, your
4 Honor?

5 I have no further questions.

6 THE COURT: Redirect?

7 MS. WILSON: Beg the Court's indulgence?

8 THE COURT: Take your time.

9 MR. DURANT: I just have a couple, your Honor.

10 **REDIRECT EXAMINATION**

11 **BY MR. DURANT:**

12 Q Bottom line is, you didn't have enough DNA left
13 on those front door handles to --

14 MR. PENNINGTON: Objection to leading, your
15 Honor.

16 THE COURT: Rephrase your question.

17 Q (By Mr. DuRant) How much -- did you have
18 sufficient DNA on the front door handle to make a
19 reliable interpretation?

20 A No, I did not.

21 Q And was that communicated to us?

22 A Yes, I did.

23 Q And did we rely on your expertise?

24 A Yes, you did.

25 MR. DURANT: Thank you, ma'am.

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1 THE COURT: Mr. Pennington?
2 MR. PENNINGTON: No follow-up, your Honor.
3 THE COURT: Is this witness excused? Any
4 objection?
5 MR. PENNINGTON: No objection from me, your
6 Honor.
7 MR. DURANT: None from us, your Honor.
8 THE COURT: You are free to remain with us, but
9 you're also excused from the courtroom.
10 THE WITNESS: Thank you, your Honor.
11 THE COURT: Call your next witness.
12 MR. DURANT: State would call Suzann Cromer.
13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)
15 THE WITNESS: I do.
16 THE DEPUTY CLERK OF COURT: Thank you. You may
17 be seated. State your first and last name for the
18 record, spelling your last name for the record.
19 THE WITNESS: My name is Suzann Cromer,
20 C-r-o-m-e-r.
21 **SUZANN CROMER,**
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 her oath
25 as follows:

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DIRECT EXAMINATION

1
2 **MR. DURANT:**

3 Q Good afternoon, Ms. Cromer. Can you tell the
4 jury what you do for a living?

5 A I am a firearm and tool mark examiner for the
6 State of South Carolina. I'm employed by the South
7 Carolina Law Enforcement Division, commonly referred to
8 as SLED.

9 Q What is a firearm and tool mark examiner?

10 A What we do is look at ammunition components,
11 bullets, cartridge cases, shotgun shells to determine
12 whether they were fired by or loaded into and extracted
13 out of a specific weapon.

14 Q And you've been doing that for how long at
15 SLED?

16 A Thirteen and a half years.

17 Q And what is your training and education in the
18 area of firearms and tool mark examination?

19 A I have a bachelor's degree from Clemson
20 University. I did some graduate work at the University
21 of South Carolina in criminal justice. I did an
22 internship at the SLED laboratory while I was there. I
23 was hired on, and I completed SLED's in-house training
24 program for firearm and tool mark examiners. It is a
25 three- to five-year intense study program where we take

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1 written tests, oral tests, practical exercises. It's
2 more of an apprenticeship where we work closely with
3 those other firearms examiners and prep cases and work
4 cases with them. I have taken and attended seminars
5 through the Association of Firearm and Tool Mark
6 Examiners, which is an international organization for
7 our profession. I have taken classes through the South
8 Carolina chapter of the International Association of
9 Identification. I have taken classes with the Bureau
10 of Alcohol, Tobacco, and Firearms on serial number
11 restoration and Integrated Ballistic Identification
12 System.

13 Q And are you authorized by SLED to conduct
14 firearm examinations?

15 A Yes, I am.

16 Q Have you ever been qualified as an expert in
17 the field of firearms identification?

18 A Yes, sir, I have.

19 Q On how many occasions?

20 A Approximately 68 times.

21 Q And in what court?

22 A Federal court, state court, family court, and
23 coroner's inquest.

24 MR. DURANT: Your Honor, at this time, we'd
25 offer Ms. Cromer as an expert in the field of firearms

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1 identification.

2 THE COURT: Any objection?

3 MR. PENNINGTON: No objection.

4 THE COURT: She will be so qualified. You may
5 continue.

6 Q (By Mr. DuRant) Ms. Cromer, and, again, could
7 you please explain to our jury, in general terms, how
8 you go about determining whether a particular shell
9 casing or a particular projectile was fired from a
10 particular firearm.

11 A Okay. When I receive ammunition components,
12 what I do is, I look at them and I determine what
13 caliber it is, and on bullets, in particular, I look to
14 determine their general rifling characteristics. The
15 general rifling characteristics are the caliber of the
16 bullet and the type of rifling that is on it. There are
17 two different types of rifling, and rifling has
18 different number of lands and grooves.

19 And what rifling is, is rifling is put in the
20 gun barrel by the manufacturer to put the bullet into a
21 spin so it will go more accurately toward its target.
22 Very similar to a quarterback who throws the football,
23 he puts it into the tight spiral so it will go more
24 accurately. So that rifling is made up of lands and
25 grooves, raised and depressed areas, and you can have a

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1 different number of lands and grooves. So I look at
2 that. And then, it can spin to the left or to the
3 right, so I determine that.

4 I look at the suspect firearm that I'm given.
5 Right away, if it has different general rifling
6 characteristics, I know that I can rule that firearm
7 out. Say, if my evidence bullet had five right and my
8 gun is a six right, I know that that bullet was not
9 fired by that gun. But if it has the same general
10 rifling characteristics, what I will do is, I'll look at
11 the firearm, and then I'll shoot that firearm with
12 similar ammunition to what I received in the case into a
13 bullet recovery tank.

14 Now, at SLED, our department is on the second
15 floor of our laboratory, so that's where our tank
16 starts, and it goes all the way down to the first floor.
17 And we shoot into the water tank, because the water will
18 slow down the bullet without adding to or taking away
19 from any of the markings that are left by the firearm.

20 Then I'll take those test fires that I've
21 knowingly fired from that gun, and I go to my comparison
22 microscope. And it allows me to look at these two items
23 to each other. And what I'm doing is getting myself
24 familiar with how that firearm works, how it marks the
25 bullets, how it marks the cartridge cases. I'll -- once

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1 I finish comparing my tests, then I'll start looking at
2 my evidence versus my tests.

3 I'll render my conclusion. We render one of
4 four conclusions:

5 Positive. Yes, it's fired by this gun;

6 Negative. No, it was not;

7 Unsuitable. This piece of evidence is just too
8 damaged or does not have enough markings for me to
9 render a conclusion either way;

10 Or inclusive. I can't rule this gun out, but I
11 can't say it was him either. It's just not enough
12 marks.

13 Once I decide on a conclusion, I will find
14 another firearm examiner who will have to come behind me
15 and make -- agree with my conclusion before I'm allowed
16 to report that out.

17 Q Okay. And is that what you did in this case?

18 A Yes, it is.

19 Q And regarding this case, which I believe is
20 your SLED Lab Number L1207313, did you have the occasion
21 to receive some evidence from the Charleston Police
22 Department?

23 A Yes, sir, I did.

24 Q Okay. And let's start with, I believe, nine.
25 State's 9, 10, 11, 12, 13, and 14.

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1 (Handed to the witness.)

2 Q I'd like you to take a look at those and see if
3 you had an opportunity to examine those before.

4 (Respite.)

5 A Yes, sir. These were my items 14 through 19,
6 and they are all still in a sealed container with my
7 initials and seal date.

8 Q And those all appear to be shell casings; is
9 that correct?

10 A They are fired cartridge cases, yes.

11 Q Okay. And now I would like you to look at
12 State's Exhibit 15, 16, 17, 18, and 19.

13 (Handed to the witness.)

14 Q See if you had the opportunity to examine that
15 item before. Those items, I should say. Excuse me.

16 (Respite.)

17 A Yes, sir. State's Exhibits 15 through 19 were
18 my items 7, 9, 10, and 11. And, again, they're all
19 still in a sealed container with my initials and seal
20 date in two different locations.

21 Q Finally, I'd like you to take a look at
22 State's Exhibit Number 23 and see if you have had an
23 opportunity to examine that firearm.

24 (Handed to the witness.)

25 A What I'm doing is looking for my markings. I

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1 scribe firearms in three different locations.

2 Yes, sir. This was my item 20 in this case.

3 Q So those were all submitted to you by the
4 Charleston Police Department --

5 A Yes.

6 Q -- is that correct?

7 A Yes, sir, they were.

8 Q Let's start out with the shell casings. Your
9 State's Exhibit 9 through 14, your items 14 through -- 9
10 through 14, rather; your items 14 through 19. Can you
11 tell us who the manufacturer of those are?

12 A These were manufactured by a company called
13 Sellier & Beloit -- or it could be pronounced Sellier &
14 Beloit.

15 Q And what is the caliber?

16 A This is a .380 auto caliber cartridge case.

17 Q Well, if it's a .380 caliber cartridge case,
18 why does it say 9mm BR, period, C on the back?

19 A A 9mm, that's short for a 9mm Browning Corto.
20 That is just another name for a .380 auto. A .380 auto
21 has multiples names. You can call it 9 by 7mm; 9mm
22 Browning Corto; 9mm Kurz; it's all .380, though.

23 Q That's basically a -- a European designation,
24 the 9mm or Kurz; is that correct?

25 A That's correct.

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1 Q Now, in -- that's why I'm assuming that 9mm
2 Browning and Kurz is stamped upon State's Exhibit 23,
3 the firearm that you examined; is that correct?

4 A Yes, that is correct.

5 Q Now, you -- with regards to State's Exhibit 23,
6 the pistol, did you have an opportunity to test fire
7 that?

8 A Yes, sir, I did. I test fired this particular
9 firearm eight times.

10 Q Okay. And let's start out with the shell
11 casings. Did you have an opportunity to compare the
12 shell casings from the tested fired to the shell casings
13 that were submitted to you in this case, State's
14 Exhibits 9 through 14?

15 A Yes, sir, I did.

16 Q And what conclusion did you reach?

17 A I concluded that these cartridge cases were
18 fired by this firearm.

19 Q And how did you reach that conclusion?

20 A I based that on my -- on the breechface
21 markings on the cartridge cases and the chamber marks.

22 Q What is a breechface impression?

23 A The breechface is a part of the firearm, back
24 in here -- up here, where the head of the cartridge
25 rests during firing. The head of the cartridge is

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1 department, the head stamp, the numbers, and the primer
2 in it. And during the firing process, the firing pin
3 will come through the breechface, hit the primer, it
4 starts sparks, the sparks go through a flash hole,
5 lights the gunpowder, all that pressure is building
6 up, the pressure pushes the bullet down the barrel,
7 but it also pushes the cartridge case back into that
8 breechface, the firearm. So any imperfections that were
9 left by the manufacturing process can be imprinted on
10 the breechface of the cartridge case.

11 Q And what is a chamber mark?

12 A The chamber is the actual part of the firearm
13 that the cartridge sits in to be fired. So any
14 imperfections in that walls of those chambers can be
15 imprinted on the cartridge case body.

16 Q Okay. And based upon -- and this is a
17 microscopic examination; is that correct?

18 A Yes, that's correct.

19 Q You have, like, one of those double microscope
20 things that y'all use?

21 A My comparison microscope actually looks like
22 I'm looking through binoculars, but I have two stages, a
23 left and a right; and I usually always put evidence on
24 the left, my test on the right. And through those
25 binoculars, it allows me to look at the two items

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1 together at the same time.

2 Q Okay. And let's talk about the projectiles,
3 State's Exhibits 15 through 19, that were recovered from
4 the autopsy of the victim in this case. Did you have
5 the occasion to test those against the projectiles from
6 your test fire?

7 A Yes, I did.

8 Q And what conclusion did you reach with regard
9 to that?

10 A I concluded that all of these bullets, State's
11 Exhibits 15 through 19, were fired by this firearm.

12 Q State's Exhibit 23; is that correct?

13 A That is correct.

14 Q And how did you arrive at that conclusion?

15 A I based that on the individual identifying
16 characteristics in the rifling impressions. This
17 firearm had six right riflings; these bullets had six
18 right riflings. And what I'm looking at are those
19 individual markings that were made during the
20 manufacturing process, those individual imperfections
21 that were imprinted on these bullets.

22 Q Had you previously indicated that your work is
23 always checked by another examiner? Did that happen in
24 this case?

25 A Yes, sir, it was.

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1 Q And who was that?

2 A I actually had two different examiners look at
3 the bullets. Due to time constraints, when I received
4 the firearm, I was getting ready to go on vacation, so I
5 had one examiner previously confirm with me about all of
6 these bullets being fired by the same gun. And before I
7 went on vacation, I had another examiner look at it to
8 agree with me. And then I had a -- the original
9 examiner, when I got back from vacation, looked at all
10 of it again. So I had an agent, James Green, and my
11 retired Lieutenant Ira Parnell.

12 Q Okay. And Ira Parnell has been doing this
13 since Methuselah's days; right?

14 A He has 40-plus years of experience.

15 MR. DURANT: Thank you very much. Would you
16 please answer any questions that Mr. Pennington may
17 have?

18 THE COURT: Mr. Pennington?

19 MR. PENNINGTON: Thank you, your Honor.

20 **CROSS-EXAMINATION**

21 **BY MR. PENNINGTON:**

22 Q Agent Cromer, you wrote a report -- or, rather,
23 I suppose, an E-mail, reporting to the Charleston City
24 Police that you had been able to make a match of the
25 shell casings and the projectiles with the weapon, and

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1 that information -- let me strike that. You may not
2 have sent an E-mail at all.

3 A I don't believe I did that.

4 Q Let's start over. Let's completely start over.
5 Do you recall calling Judy Gordon at the Charleston
6 police on July 12th -- July 20th, 2012, to report that
7 you had had a positive match?

8 A Let me check my notes, please.

9 Q Sure.

10 A Yes, I do remember that.

11 Q So the date that you notified the Charleston
12 police was July 20th, 2012?

13 A That's correct.

14 Q So that would be ten days before the arrest in
15 this case?

16 A I do not know when the arrest took place.

17 Q Okay. The person you notified is the director
18 of forensic services, Judith Gordon?

19 A The person I talked to was Judy Gordon, from
20 Charleston Police Department.

21 MR. PENNINGTON: I have no further questions,
22 your Honor.

23 THE COURT: Mr. DuRant?

24 MR. DURANT: I have nothing on Redirect.

25 THE COURT: May this witness be excused?

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1 (A break is taken from 3:22 p.m. until
2 3:42 p.m.; at which time, the proceedings continue as
3 follows:)

4 THE COURT: All right. Let's bring in the
5 jury.

6 (The jury is escorted into the courtroom at
7 3:43 p.m.)

8 THE COURT: Mr. Pennington, I understand that
9 we are not set for the bench conference at this time, so
10 I will allow you to place everything on the record, your
11 continuing objection to my previous rulings and issues.

12 MR. PENNINGTON: Thank you very much, your
13 Honor.

14 MR. DURANT: Are you ready, your Honor?

15 THE COURT: I am. Thank you.

16 MR. DURANT: As a preliminary matter, your
17 Honor, at this time the State would offer State's 102
18 into evidence, I believe, without objection, which is a
19 timeline of the d.d. Peckers' surveillance video, which
20 was previously introduced into evidence, basically, just
21 showing the time frames of when various things occurred.

22 MR. PENNINGTON: No objection, your Honor.

23 THE COURT: State's 102 into evidence without
24 objection.

25 (State's Exhibit No. 102 is admitted into

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1 evidence.)

2 MR. DURANT: State would call Lamart Williams.

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

5 THE WITNESS: I affirm.

6 THE DEPUTY CLERK OF COURT: Have a seat. State
7 your first and last name for the record, spelling your
8 last name for the record.

9 THE WITNESS: S. Lamart Williams, W-i-l-l-
10 i-a-m-s.

11 S. LAMART WILLIAMS,

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 MR. DURANT:

18 Q Detective Williams, I'd like to ask you to
19 keep your voice up, because you can be a little bit
20 soft-spoken at times, and the jury needs to hear what
21 you have to say today. Okay?

22 A Yes.

23 Q Where are you employed?

24 A City of Charleston Police Department.

25 Q And how long have you been with the city of

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1 Charleston Police Department?

2 A Eight and a half years. Total of 20 years of
3 law enforcement experience.

4 Q And where was your law enforcement experience
5 prior to coming to the CPD?

6 A Orangeburg County Sheriff's Department,
7 Columbia Police Department.

8 Q And what are your current duties at the
9 Charleston Police Department?

10 A Task force member with the Bureau of Alcohol,
11 Tobacco, and Firearms.

12 Q And you're assigned to that agency on a
13 temporary basis; is that correct?

14 A Yes, I am.

15 Q And before that, what were you doing at
16 Charleston City Police Department, and specifically back
17 on July the 30th of 2012?

18 A Member of the homicide violent crime division.

19 Q Now, in that capacity, did you have the
20 occasion to meet with the Defendant, Ryan Deleston, on
21 July 30th of 2012?

22 A Yes.

23 Q And about what time of day was that, sir?

24 A About 9:15 a.m.

25 Q And where did that take place?

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1 A City of Charleston Police Department, Lockwood
2 Boulevard.

3 Q And where in the actual police department did
4 you meet with Mr. Deleston?

5 A Central investigations, which is housed
6 upstairs at the police department.

7 Q There's an interview room up there?

8 A It is.

9 Q Those rooms are wired for audio and video, are
10 they not?

11 A Yes.

12 Q Is it apparent that they're wired for audio and
13 video?

14 A No, it's not apparent.

15 Q Now, when you met with Mr. Deleston on the 30th
16 of July, was he in custody?

17 A He was.

18 Q And why?

19 A We had a pending arrest warrant for possession
20 of a stolen firearm -- correction. -- possession of a
21 firearm with a obliterated serial number.

22 Q And that resulted from the controlled buy on
23 July the 15th; is that correct?

24 A That's correct.

25 Q And who was with you when you met with

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1 Mr. Deleston that morning?

2 A Detective Burckhardt.

3 Q Now, what did you do when the first -- the two
4 of you first went in there to meet him that morning?

5 A Detective Burckhardt introduced himself and I
6 to Mr. Deleston, and I then proceeded to get basic
7 information from him: name, date of birth, level of
8 education, phone numbers, and such.

9 Q Okay. Do you recall what his level of
10 education was?

11 A He said that he attended -- he obtained his
12 GED, and he was at the job corps, but I don't remember
13 what site.

14 Q All right. Was he advised of his Miranda
15 Rights?

16 A He was.

17 Q And what did you use to advise him of his
18 Miranda Rights?

19 A Miranda card. That's what we typically use at
20 the police department.

21 Q I hand you what's been marked as State's
22 Exhibit 28 and ask if you recognize that item?

23 A I do.

24 Q And what is that?

25 A It's the Miranda warning card.

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1 Q Okay. And did you advise him of his rights
2 exactly as they appear on that card?

3 A I did.

4 Q And whose signature is that as the warning
5 officer?

6 A It's my signature.

7 Q And how about the signature as the witness?

8 A Detective Burckhardt's signature, yes.

9 Q Okay. And when were those warnings
10 administered?

11 A Approximately 9:25 a.m. on the 30th of July,
12 2003 -- 2012.

13 MR. DURANT: Okay. Your Honor, at this time,
14 we would offer State's 28 into evidence.

15 THE COURT: Any objection?

16 MR. PENNINGTON: No objection, your Honor.

17 THE COURT: State's 28 into evidence without
18 objection.

19 (State's Exhibit No. 28 is admitted into
20 evidence.)

21 Q (By Mr. DuRant) Now, during the time you
22 advised him of his rights, did he appear to understand
23 what you were saying?

24 A Yes, he appeared to understand.

25 Q Did he tell you he understood his rights?

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1 A He did.

2 Q Did he sign a statement indicating --

3 A Yes, he did.

4 Q Did he appear confused?

5 A No, he didn't.

6 Q Did he respond appropriately to your questions?

7 A He did.

8 Q Did he appear to be under the influence of

9 alcohol or drugs or any other intoxicants?

10 A No, he did not.

11 Q And he was interviewed on two different

12 occasions that day; is that correct?

13 A He was.

14 Q One being in the morning; one being that

15 evening; correct?

16 A Yes.

17 Q Now, after you advised him of his rights, did

18 he indicate -- did he tell you he was willing to answer

19 questions, and did he answer questions?

20 A He did.

21 Q At any time during this entire process, that

22 morning or that evening, did you or anyone else, to your

23 knowledge, promise him anything?

24 A No, we did not.

25 Q Threaten him in any way?

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1 A No, sir.

2 Q Offer him leniency if he talked to you?

3 A No, sir.

4 Q Did you threaten him or his family or his loved
5 ones?

6 A No, sir.

7 Q Did you offer any reward or inducement if he
8 talked to you?

9 A No, we did not.

10 Q Now, once y'all got in and read him his rights,
11 who took the lead on the interview?

12 A Detective Burckhardt.

13 Q And how did that go?

14 A Detective Burckhardt and Mr. Deleston started
15 clashing -- started being a little argumentative and
16 such.

17 Q And what did Mr. Deleston do?

18 A Said he didn't want to talk anymore. He didn't
19 want to talk, sir. Something so that effect.

20 Q How long did that occur into the interview?

21 A Ten minutes.

22 Q And what did y'all do when you told him
23 that -- when he told you he didn't want to talk anymore?

24 A We left the room.

25 Q Was he allowed to leave?

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1 A No, he was not.
2 Q And why not?
3 A As I said, he -- he was being detained. He had
4 an active warrant for, you know, possession of a firearm
5 with a obliterated serial number.
6 Q So he was not free to leave; right?
7 A No, he was not.
8 Q But y'all left the room --
9 A We left the room.
10 Q -- is that correct?
11 A That's correct.
12 Q Now, how long were you out of the room?
13 A Approximately five minutes.
14 Q And did you stick your head in the room?
15 A Yes, I did.
16 Q For what purpose?
17 A To check on him, to ask if he wanted something
18 to drink.
19 Q Did he want anything to drink?
20 A He did not. He did not.
21 Q Just tell us what happened when -- when you --
22 A I stuck my head in the room and asked if he
23 wanted anything. He said, no, he didn't want anything.
24 And he started talking to me, and he invited me to sit
25 down.

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1 Q He started to ask you questions and stuff;
2 correct?

3 A Yes.

4 Q And what did he end up doing, after he's asking
5 these questions?

6 A He started talking about --

7 Q What did he tell you to do, is what I'm asking?

8 A Told me to sit down.

9 Q He said, Sit down, and what?

10 A He wanted to talk to me. Talk to you for a
11 minute. Let me talk to you.

12 Q So what did you do?

13 A Sat down and talked to him.

14 Q Okay. Now, moving ahead about 30 minutes into
15 the interview, did he mention something about an
16 attorney to you?

17 A He did.

18 Q How did that come up?

19 A Mr. Deleston was inquiring about the warrant,
20 and I was explaining to him about the warrant. And he
21 mentioned -- or he stated something to the fact that,
22 that we couldn't charge him with that because we didn't
23 catch the gun on him. I mentioned to him that we had
24 him on surveillance of video footage, and he said he
25 wanted to see the video. I need a lawyer, because if I

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1 have a lawyer, I can see the video.

2 Q And that happened about 30 minutes into the
3 interview; is that correct?

4 A Yes.

5 Q Did you view that as a request for an attorney
6 by him?

7 A No, I did not.

8 Q Did you expect that he was asking for the
9 assistance of an attorney to assist him in the interview
10 process?

11 A No, he did not.

12 Q What did you think he was asking for?

13 A He was merely asking to see the video. He
14 wanted to review the video footage.

15 Q Now, by way of contrast, there was another
16 occasion in the interview, about a little over an hour
17 later, where he mentioned an attorney again. Do you
18 remember that?

19 A Yes.

20 Q Tell us how that came up.

21 A I was showing Mr. Deleston the still footage --
22 the pictures which he identified himself in that --

23 Q These are just still photos of what, sir?

24 A Still photographs of the surveillance camera
25 during the transaction of him selling a pistol.

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1 Q Showing him selling the gun to the informant in
2 this case; correct?

3 A That's correct.

4 Q Okay. And what did he do while you were
5 showing those photographs?

6 A He said something like, he needed a phone to
7 get a lawyer down here, because the pictures didn't mean
8 crap, basically. That didn't prove nothing; that's what
9 he was saying.

10 Q Okay. I don't think he used the word "crap,"
11 but that's essentially what he said?

12 A Right. Yeah, he did use some other words.

13 Q And what did you do?

14 A I simply asked him twice, do you want a lawyer?
15 Are you asking for an attorney? And he says no.

16 Q Okay. So at that time, you did think he was
17 asking for an attorney; is that correct?

18 A Well, I was confirming if he was asking for an
19 attorney.

20 Q And he said that he didn't want an attorney?

21 A He said no.

22 Q And, to the best of your knowledge, did he
23 mention anything about an attorney for the rest of the
24 interview that morning, or the interview at that time?

25 A No, he did not.

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1 Q Now, moving on a little bit, was there a point
2 where he claimed to be tired?

3 A Yes, he did.

4 Q And when was that?

5 A It was about 11:50. Right about 12 o'clock.

6 Q And what did you do when he told you he was
7 tired?

8 A I left the room.

9 Q Okay. And do you know how long he was left
10 alone?

11 A He was left alone for about -- maybe about -- I
12 think about two hours.

13 Q Okay. And during that time, do you know what
14 he did?

15 A Took a nap, bathroom break, smoke break.

16 Q Read the newspaper?

17 A Read the newspaper.

18 Q And going back to that, during this entire
19 interview process, was he allowed to go to the bathroom
20 when he wanted to?

21 A Yes.

22 Q Was he taken outside for smoke breaks?

23 A He was.

24 Q Did he have anything to eat or drink?

25 A He did.

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1 Q And if he would have asked, you would have
2 given it to him; is that correct?

3 A That's correct.

4 Q Sometimes you would ask even if he didn't ask?

5 A That's correct.

6 Q Now, after that couple of hour break, did y'all
7 continue to talk to him?

8 A We did.

9 Q Okay. And do you remember how much longer you
10 talked to him during -- I call it the morning session?

11 A I think it was about 50 minutes.

12 Q Okay. And did he ever admit to any involvement
13 in the Marley Lion shooting?

14 A He did not.

15 Q Did he ever -- did he admit having sold the gun
16 to the informant?

17 A He did.

18 Q And was he formally placed under arrest at the
19 end of the interview?

20 A He was.

21 Q And do you recall what he was formally arrested
22 for?

23 A Yes.

24 Q What was that?

25 A Murder, attempted armed robbery, possession of

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1 a firearm during commission of a violent crime,
2 possession of a firearm with obliterated serial number.

3 Q And do you recall what time -- that morning
4 session, what time it ended?

5 A Three o'clock p.m.

6 Q Now, in the meantime, where -- after y'all
7 finished talking to him, where was he kept?

8 A He was then moved downstairs to a holding cell.

9 Q At the Charleston Police Department
10 headquarters --

11 A Yes.

12 Q -- is that correct?

13 A Yes.

14 Q And you left and did other things connected
15 with this case; is that correct?

16 A That's correct.

17 Q I believe you went down to the ATF office and
18 talked to Julius Brown?

19 A Yes.

20 Q Brought him down and continued interviewing
21 him?

22 A Yes.

23 Q Okay. Moving ahead to 8:00 p.m. that night,
24 did you have an occasion to meet with the Defendant once
25 again?

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1 A I did.

2 Q And where was that?

3 A Same room, upstairs at the police department,
4 investigation division.

5 Q And who were you with on that occasion?

6 A Detective Burckhardt.

7 Q And, once again, was this interview audio and
8 video recorded?

9 A Yes, it was.

10 Q Did you read him his Miranda Rights again?

11 A I reminded him, basically, he still -- he was
12 still covered under the Miranda from earlier that
13 morning, and he had the right to remain silent, and
14 anything you say can be used against him, and he had the
15 right to an attorney.

16 Q Okay. He indicated he understood he was still
17 under Miranda?

18 A Right..

19 Q And did he continue to talk to y'all?

20 A He did.

21 Q And on this session, what did he end up telling
22 you about the Marley Lion issue, initially?

23 A He indicated that he and his friends was in the
24 yard on Cashew Street and a gentleman by the name of
25 Tino came up to them and -- and he admitted that he was

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1 the one that shot Marley Lion.

2 Q Okay. And he, of course, was told -- y'all had
3 already checked out Tino and knew he wasn't involved?

4 A Yes.

5 Q And after that, what did he tell you,
6 generally?

7 A He said that -- basically, he, Julius Brown and
8 Bryan Rivers went to rob Famous Joe's, and he indicated
9 that -- he identified Julius Brown as the person walking
10 across in front of the car of Marley Lion's vehicle, and
11 he said that Bryan Rivers had the firearm and went up to
12 the vehicle and shot into the vehicle.

13 Q So he said Bryan Rivers was the one that shot
14 the vehicle?

15 A Yes.

16 Q The victim. Excuse me.

17 And how did Marley Lion -- how did Marley Lion
18 figure into this? Because they went out to rob Joe's,
19 what did he say about that?

20 A He said that when he went up to rob Joe's --
21 when they went up to rob Joe's employees, not the
22 business, but the employees, as they were closing up and
23 coming out, and when they got there, the employees were
24 coming out, Marley was just pulling in, and so the
25 employees got in their vehicle and left, so they decided

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1 to rob Marley.

2 Q And both of these interviews were video
3 recorded; is that correct?

4 A Yes.

5 MR. DURANT: Your Honor, at this time, we would
6 offer State's Exhibit Number 29 and State's Exhibit 30.

7 THE COURT: Any objection?

8 MR. PENNINGTON: Subject to my earlier issues,
9 your Honor, I have no additional claims, but I stand on
10 my original objections.

11 THE COURT: State's 29 and 30 are into evidence
12 over your objection, pursuant to our motions prior to
13 start of the trial.

14 (State's Exhibit Nos. 29 and 30 are admitted
15 into evidence.)

16 Q (By Mr. DuRant) Just a little bit more.
17 Now, State's Exhibit 29 and 30, they're two different
18 interviews; correct?

19 A Yes.

20 Q And according to State's Exhibits 29 and 30,
21 Mr. Deleston was on that videotape from 8:48 in the
22 morning until 3:00 p.m.; correct?

23 A Yes.

24 Q And then there was a -- about a five-hour gap.
25 And then he was on tape again from about 8:00 until

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1 about 10:30 in the evening?

2 A That's correct.

3 Q So that's a total of about -- how many hours?

4 A About 14.

5 Q Okay. Now, you've been through that videotape
6 -- both of those videotapes; is that correct?

7 A That's correct.

8 Q How much of that 13 hours was he actually being
9 questioned concerning his involvement in this thing?

10 A He was interviewed for approximately four hours
11 and 20 minutes or so.

12 Q And that's on both occasions?

13 A That's together, yes.

14 Q And I hand you what has been marked -- been
15 marked as State's Exhibit 21 and ask if you recognize
16 that document, sir?

17 A Yes, sir.

18 Q And what is that?

19 A This is the time lapse of the span during which
20 Mr. Deleston was alone, and -- which was verified by me,
21 watching the video.

22 Q That just shows the time spans during that
23 period where he was not being questioned; is that
24 correct?

25 A That's correct.

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1 Q And you've compared that against State's
2 Exhibit 29 and 30; correct?

3 A Yes, sir.

4 Q And it's accurate, to the best of your
5 knowledge; correct?

6 A Yes.

7 MR. DURANT: Your Honor, at this time, we'd
8 offer State's 31 into evidence, I believe without
9 objection.

10 THE COURT: Any objection to 31? It's the
11 summary of the time --

12 MR. DURANT: Do you need to see it?

13 MR. PENNINGTON: All right. No, I don't need
14 to see it.

15 I still stand on my earlier objection, as it
16 relates to the content of the same matters, and, so,
17 therefore, I interpose the same objection. Other than
18 that, no additional objections.

19 THE COURT: No objection to what's -- you are
20 objecting to what's -- as to the video, but you're not
21 objecting as to the accuracy of what's contained in the
22 timeline; is that correct?

23 MR. PENNINGTON: I have no objection about the
24 accuracy of the document.

25 THE COURT: All right. State's 31 into

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1 evidence.

2 (State's Exhibit No. 31 is admitted into
3 evidence.)

4 MR. DURANT: Court's indulgence for just a
5 moment?

6 THE COURT: Take your time.

7 MR. DURANT: If you would, please answer any
8 questions that Mr. Pennington may have for you.

9 THE WITNESS: Yes, sir.

10 (Mr. DuRant and Mr. Pennington have a
11 discussion off the record.)

12 MR. DURANT: In that case, your Honor, we would
13 request to publish State's Exhibit 30. -- 29, excuse
14 me.

15 THE COURT: All right. So at this time, you're
16 publishing the video, and then you're going to save your
17 Cross until after the video is published?

18 MR. PENNINGTON: That is correct, your Honor.

19 THE COURT: All right. Thank you.

20 And you wish for the detective to remain on the
21 stand; is that correct?

22 MS. WILSON: Yes, ma'am.

23 THE COURT: Thank you.

24 (Time is 4:08 p.m.)

25 MR. DURANT: Your Honor, we've agreed to

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1 fast-forward through the parts that the officers are not
2 actually in the room.

3 THE COURT: All right.

4 MR. PENNINGTON: That's correct, your Honor.

5 THE COURT: All right. Thank you.

6 (Time is 4:19 p.m.)

7 (Video is played.)

8 (Time is 4:45 p.m.)

9 THE COURT: Your Honor, the next segment is
10 about 25 minutes long.

11 THE COURT: All right. We indicated we would
12 stop at 5:00, so we'll just go ahead and stop.

13 Ladies and gentlemen, you indicated that you
14 wish to stop at 5:00, so we're trying to end as quickly
15 as -- or as close to 5:00 as we can. You also indicated
16 that you could be here before 9:30 in the morning. The
17 courthouse does not open its doors until 8:30. So we
18 will begin -- if you will report at 8:55, we'll begin as
19 close to that time as we can.

20 Is that acceptable to the State and to the
21 Defendant?

22 MS. WILSON: Yes, ma'am.

23 MR. PENNINGTON: Yes, your Honor.

24 THE COURT: All right. Ladies and gentlemen,
25 please remember all of my admonitions. Do not begin

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1 (Time is 8:58 a.m.; the video is being played
2 for the jury.)

3 CONTINUED DIRECT EXAMINATION

4 OF S. LAMART WILLIAMS

5 BY MR. DURANT:

6 Q Detective, I have a question. Who were y'all
7 trying to determine the identity of at that time?

8 A We were trying to determine the identity of the
9 person he said that gave him the gun to sell. His name
10 was Gee (phonetic).

11 Q Okay. Thank you.

12 (Video is played.)

13 Q (By Mr. DuRant) Detective, who did you have a
14 picture of? Who did you show him a picture of?

15 A A picture of George Brown.

16 Q Thank you.

17 (Time is 9:25 a.m.)

18 (Video is played.)

19 Q (By Mr. DuRant) Detective, do you recall what
20 that was a photograph of?

21 A I believe that was the photograph of the media
22 release footage of the Marley Lion incident, the parking
23 lot, and the person walking by the vehicle.

24 Q The person in the white T-shirt walking by the
25 vehicle?

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1 A Yes, yes.

2 (Time is 9:45 a.m.)

3 (Video is played.)

4 Q (By Mr. DuRant) Detective, did I understand
5 him to say that he received the money for the weed and
6 not for the gun?

7 A Yes. He basically said that the picture -- I
8 think it was in the picture, he was making a transaction
9 for the weed, received the weed from selling it.

10 Q Y'all had a picture of the transaction from
11 inside the car?

12 A Yes, sir.

13 Q And him receiving the money?

14 A Yes, sir.

15 Q Thank you.

16 (Time is 9:54 p.m.)

17 (Video is played.)

18 MS. WILSON: Your Honor, might be a good point
19 to take a stretch break.

20 THE COURT: Take a break if you're so inclined.

21 (Time is 10:11 a.m.)

22 MS. WILSON: Judge, may we approach?

23 (Ms. Wilson and Mr. Pennington approach the
24 bench for a discussion off the record.)

25 THE COURT: Mr. Foreperson, does anyone need a

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1 seated.

2 You may continue playing the video.

3 MR. DURANT: Thank you, your Honor.

4 (Video is played.)

5 Q (By Mr. DuRant) Detective, what just went on
6 before that?

7 A Warrants were served on -- on Ryan Deleston.

8 Q Those were the warrants for murder and
9 attempted armed robbery and the two weapons offenses; is
10 that correct?

11 A Yes, yes.

12 Q Thank you.

13 (Video is played.)

14 Q (By Mr. DuRant) Detective, that was the end
15 of the morning session; is that right?

16 A Yes, it was.

17 (Time is 10:42 a.m.)

18 MR. DURANT: This is State's Exhibit 30, your
19 Honor.

20 (State's Exhibit 30 is played for the jury.)

21 (Time is 10:43 a.m.)

22 Q (By Mr. DuRant) Detective, this is the
23 beginning of the evening session. This occurs about
24 8:00 p.m; correct?

25 A That's correct.

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1 (Time is 10:44 a.m.)

2 (Video is played.)

3 (Time is 12:36 p.m.)

4 MR. DURANT: That would be the State's Exhibit
5 No. 30, your Honor.

6 Could you please answer any questions that
7 Mr. Pennington has?

8 THE COURT: All right. Ladies and gentlemen,
9 it would be an appropriate time to take a break. Please
10 let me know if you need a break at this time.

11 Mr. Pennington.

12 MR. PENNINGTON: I have no further questions.

13 THE COURT: All right. You may step down,
14 Detective. Thank you.

15 Call your next witness.

16 MS. WILSON: Your Honor, the State rests.

17 THE COURT: Ladies and gentlemen, that
18 indicates to the Court that there's a matter of law that
19 I'm going to take up outside of your presence. Your
20 lunch has arrived, so it will be an appropriate time for
21 you to begin eating lunch. There are some things I must
22 take up outside of your presence. We will receive you
23 back into the courtroom shortly.

24 Please rise for the jury.

25 (The jury is escorted from the courtroom at

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1 12:38 p.m.)

2 THE COURT: Thank you. Be seated.

3 MR. DURANT: May I return the exhibits, your
4 Honor?

5 THE COURT: You may.

6 Is there anything that we need to address as
7 far as -- I think we went over last evening which
8 exhibits have been admitted, and I think the Court's and
9 the court reporter's and the State's list.

10 MR. DURANT: And I think we're all in
11 agreement; correct?

12 THE COURT: Correct. That was my
13 understanding. So with that, if there is nothing
14 further from the State?

15 MR. DURANT: No, ma'am.

16 THE COURT: Mr. Pennington, any motions or
17 matters?

18 MR. PENNINGTON: Yes, your Honor. At this
19 time, we would move for a directed verdict of acquittal.
20 Based on the pending evidence in its totality and
21 putting in the light most favorable to the State, we
22 contend that there is insufficient evidence for this
23 case to move forward.

24 We further renew the objections made earlier,
25 in that the -- with regard to the suppression of the

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1 statement of the two photographs that were put in with
2 regard to the dying boy in this case that are
3 inflammatory and prejudicial; and, finally, the
4 inability to thoroughly cross-examine witnesses in
5 relation to the prior shooting by Bryan Rivers of
6 Chopper, as we've -- the Court has already ruled upon.

7 And if I may ask for the Court's indulgence.

8 Thank you, your Honor. That's all I have.

9 THE COURT: Any response from the State? Whose
10 argument will this be?

11 MR. DURANT: Your Honor, I think, obviously,
12 there's ample evidence to send it back to the jury on
13 all the charges, based upon the direct testimony of the
14 Codefendants and nothing else.

15 Sorry. I'm not talking loud enough, am I?

16 THE COURT: I'm struggling, so I always assume
17 that my court reporter is as well.

18 MR. DURANT: I said that obviously there's
19 ample evidence in this case, based upon the testimony of
20 the Codefendants alone, to meet all the elements of
21 the -- of the offenses that have been presented to the
22 jury.

23 THE COURT: All right, sir.

24 Mr. Pennington, any response?

25 MR. PENNINGTON: No rebuttal, your Honor.

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1 THE COURT: Counsel, as you know, in ruling on
2 a motion for a directed verdict, I must consider and
3 view the evidence and all reasonable inferences in the
4 light most favorable to the nonmoving party. So in this
5 incident, it is the State. I am concerned only with the
6 existence or nonexistence of the evidence.

7 Based upon the testimony that has been
8 presented, considering all the testimony and the
9 exhibits that have been presented, I deny your Motion
10 for Directed Verdict as to the charge of murder,
11 attempted armed robbery, possession of a handgun with
12 obliterated serial number, and possession of a firearm
13 during the commission of a violent crime. There is
14 evidence to present all four of those Indictments to the
15 jury.

16 As to your remaining motions, the Court stands
17 by its rulings as -- and I believe that all of those
18 motions which you've made at your directed verdict
19 stage, Mr. Pennington, have been raised prior to this.
20 Am I correct?

21 MR. PENNINGTON: Yes, your Honor, that's
22 correct.

23 THE COURT: And as of now, I have heard nothing
24 and no additional arguments that would cause the Court
25 to change its ruling. Note your exception to my ruling.

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1 All right. Mr. Pennington, do you have
2 witnesses besides your client that will testify?

3 MR. PENNINGTON: The Defense will rest.

4 THE COURT: All right. Just out of an
5 abundance of caution, I want to inquire of your client.

6 Mr. Deleston, would you please stand?

7 And let's go ahead and reswear Mr. Deleston at
8 this time.

9 THE DEPUTY CLERK OF COURT: Please raise your
10 right hand.

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

13 THE DEFENDANT: Yes.

14 THE DEPUTY CLERK OF COURT: Thank you, sir.

15 THE COURT: Mr. Deleston, please remain
16 standing. Do you remember when I advised you of your
17 right to -- that you could testify?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you need me to go over any of
20 those things with you?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Have you had an opportunity to meet
23 with your attorneys, either separately or together, to
24 discuss the benefits and the consequence of your right
25 to testify?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you need any additional time to
3 meet with your attorneys?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Have you made a decision whether or
6 not you will testify?

7 THE DEFENDANT: I will not testify.

8 THE COURT: All right. And thank you,
9 Mr. Deleston. You may have a seat.

10 Mr. Pennington, do you need, based upon what
11 has been presented today, to meet with your client is
12 there as well -- we haven't had a break -- but to meet
13 your client concerning that decision?

14 MR. PENNINGTON: I will, during the lunch hour,
15 touch base with him just to confirm. But everything
16 that I have -- all communications and understandings
17 we've had up to this point would lead me to believe that
18 that is a firm decision, and it's based on a thorough
19 understanding of his circumstances.

20 THE COURT: I just wanted to make sure that
21 you've had adequate opportunity to meet with him and to
22 go over all of those consequences of his decision. So
23 with that, the Defense rests.

24 All right. So then that leaves us just
25 charging and closing; is that correct?

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1 All right. So, Ms. Wilson, you are ready to
2 bring the jury in?

3 MS. WILSON: I need the clerk to turn on that
4 screen.

5 THE COURT: Well, we're going to -- we'll bring
6 the jury in. He just stepped out for a moment. I need
7 to advise them what we're doing, so that will give us
8 just a few moments.

9 MR. DURANT: I E-mailed that exhibit list to
10 your Clerk.

11 THE COURT: Thank you. Thank you so much.

12 (The jury is escorted into the courtroom at
13 2:05 p.m.)

14 THE COURT: Thank you. Please be seated.

15 Counsel, approach just briefly.

16 THE COURT: All right. Ladies and gentlemen,
17 did every member of the jury comply with the Court's
18 instructions? If you did not comply with my
19 instructions, please raise your hand.

20 All the jurors have complied with the Court's
21 instructions.

22 Mr. Pennington.

23 MR. PENNINGTON: Yes, your Honor. The Defense
24 rests.

25 THE COURT: Ladies and gentlemen, that

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1 indicates to the Court that you have now heard all of
2 the evidence in this case and received into evidence all
3 the exhibits that will be made part of the record in
4 this case. As I've indicated to you throughout this
5 trial, the exhibits that have been made part of the
6 record in this case will actually go back with you
7 during your deliberation into the deliberation room.

8 Ladies and gentlemen, we reached the stage in
9 the trial where you will now hear closing arguments on
10 behalf of counsel. Ladies and gentlemen, just as I
11 indicated to you, what was contained in openings
12 statements is not to be considered evidence, neither is
13 what is contained in closing arguments.

14 After you've heard closing arguments on behalf
15 of the State and the Defendant, I will instruct you on
16 the law applicable to this case. Ladies and gentlemen,
17 at that time, then you will retire to consider your
18 verdict. Please give your strict attention.

19 Ms. Wilson.

20 MR. PENNINGTON: And just as an abundance of
21 caution, your Honor, I would renew any motions that we
22 discussed earlier.

23 THE COURT: Thank you. And the Court stands by
24 all previous rulings. Thank you.

25 MR. PENNINGTON: Thank you.

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1 MS. WILSON: May it please the Court?

2 THE COURT: Yes, ma'am.

3 CLOSING ARGUMENTS

4 MS. WILSON: Thank y'all for being here. I
5 know it's been a long week. You've had to put up with a
6 lot, had to be very patient with our computers, one of
7 which will be in the trash when we finish. But it's
8 been clear that y'all have been alert and paid
9 attention. We can tell that by the way you look at the
10 witnesses, the way you watched the videos. I know it
11 was a long time. As I said at the beginning, you saw a
12 lot of people who got excused from this case, who got
13 excused from this week. Y'all didn't try to do that.
14 Y'all hung in there, and sincerely thank you. On behalf
15 of Marley Lion's family, I thank you for your undivided
16 attention.

17 Before I go into the facts of the case, I'm
18 going to talk to you a little bit --

19 If we could just keep that one on and not that
20 one.

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

22 MS. WILSON: I'm going to talk to you a little
23 bit about the law. Now, you just sat through four hours
24 of video, and while we appreciate Detective Burckhardt
25 giving some of their version of the law, the law that

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1 you must follow is going to come from Judge Harrington,
2 and she will tell you what the law is. I'm going to go
3 over some of those principles, but she'll tell you in a
4 whole lot more detail what the law is that you've taken
5 an oath to follow. Some of that I talked with you about
6 in opening.

7 The charges in this case sort of not talk much
8 about that. We've got murder, attempted armed robbery,
9 possession of a weapon during a violent crime, and
10 possession of a firearm with an obliterated serial
11 number. You will hear in detail the elements of those
12 case -- of those charges. The gun charges are very
13 self-explanatory. A murder occurred. An attempted
14 armed robbery occurred. A gun was used during that.
15 That's pretty obvious. You have a gun that was used in
16 the murder. You have a gun that you saw video after
17 video, heard two witnesses testify that this gun was
18 sold to them, and then you heard the lady from SLED
19 talking about the obliterated serial number that was on
20 it. That's fairly simple.

21 The attempted armed robbery, you heard
22 testimony galore about the motive to go down and rob
23 Joe's, or the employees leaving Joe's, and Marley Lion
24 comes and interrupts. They decide to hit that.
25 Attempted armed robbery, you saw the shooter go up to

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1 the car, Ryan Deleston go up to the car, and you heard
2 the testimony. The intent was to rob. I'll go into
3 murder in just a second.

4 The issue here is not whether or not these
5 crimes were committed. I doubt Mr. Pennington will
6 argue that those crimes were committed. The question is
7 who did it. That's what you're here for. And what we
8 have to prove, and what we have to prove beyond a
9 reasonable doubt, which means we have to leave you
10 firmly convinced, firmly convinced that Ryan Deleston
11 was an active participant in these crimes. Not that he
12 was the trigger man, but that he was an active
13 participant. And I submit you just heard several hours
14 of recordings showing how active he was, how involved he
15 was in these crimes.

16 I told you when we started out, and the Judge
17 will tell you more about it, proof beyond a reasonable
18 doubt does not mean beyond a shadow of a doubt. It
19 means evidence that leaves you firmly convinced. We
20 could never ever prove something to you 100 percent.
21 And that's not what the law requires. So keep that in
22 mind when you look at the evidence in this case, which,
23 by the way, you're going to have all of that. I know it
24 was probably frustrating for you when we introduce
25 something and not show it to you. But, for example, you

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1 know, these plea agreements, if we pass this around to
2 each of you to read, you know, four pages, single
3 spaced, a plea agreement, we'd be here for longer than
4 we needed to be. You will have it back there.

5 You will also have a laptop with a drive in it
6 so that you can play the videos. The clerk will be
7 giving you instructions so that you can control all
8 that. Good luck to you. The Mantek video, as we told
9 you, doesn't have a pause on it so it's a little bit
10 difficult. But you're going to be able to watch it and
11 watch it and watch it to your heart's content. You will
12 be in control of that. I hope your laptop works better
13 than ours. But if it doesn't, the clerk will be able to
14 help y'all with that. All of that is going to be yours,
15 yours to interpret, yours to analyze. And when you look
16 at all of that, and when you remember what you heard and
17 what you saw from that witness stand, you'll know that
18 we've proved this case beyond a reasonable doubt. And
19 we've proved it beyond a shadow of a doubt.

20 Murder is the killing of another person with
21 malice aforethought, expressed or implied. What that
22 means -- the expressed part means if someone were to
23 say, I hate you. I'm going to kill you. Implied is
24 another way for you to see or find malice. Not when
25 someone expressly said it, but by their action you can

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1 tell that they're malicious. The use of a gun, shooting
2 five times, shows malice. You will see, and the Judge
3 will tell you, that a reckless disregard for someone's
4 life is indicative of malice. There's no requirement
5 that we prove that Ryan Deleston or Bryan Rivers, and
6 Julius Brown, for that matter, that they knew Marley,
7 that they hated him, that they had any feelings about
8 him whatsoever.

9 What we have to show is that the act was done
10 maliciously, not that they had some feeling towards him.
11 And that video shows you the callousness, the wantonness
12 of that execution. You think about that when you're
13 thinking about proof beyond a reasonable doubt.
14 Shooting five times.

15 You've heard a lot about this not only from the
16 Codefendants and from the video, but you'll hear about
17 it more from the Judge, and I talked with you about this
18 at the very beginning because this is very important.
19 And that is the concept, the principle that we call the
20 hand of one is the hand of all. And if a crime is
21 committed by two or more people who are acting together
22 in the commission of an offense, that act of one is the
23 act of all. When accomplices are acting together,
24 assisting each other, encouraging each other -- I don't
25 want to go, you go, you go -- the act of one is the act

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1 of all; the hand of one is the hand of all.

2 There's another corollary, another similar
3 principle in the law that you'll hear about.. It is
4 immaterial whether the Defendant knew beforehand that an
5 accomplice was going to hurt the victim. It is not the
6 State's position that when Marley Lion pulled into that
7 parking lot, that there became this plan to kill him.
8 There is no proof of that. That is not what the
9 standard is. It does not matter that that was not the
10 plan beforehand. What matters is when it is the natural
11 and probable consequence of your actions when someone is
12 involved in a violent crime. Armed robbery, attempted
13 armed robbery, it is natural, even probable consequence
14 that somebody's going to get hurt. That's why people
15 are armed. The natural and probable consequence; was it
16 foreseeable?

17 And you heard Mr. Pennington ask Bryan Rivers
18 some questions about that. You were surprised. You
19 didn't know that was going to happen. You didn't mean
20 for that to happen. Julius said, bust out the window,
21 or Julius said, hit it, whatever Julius said. I didn't
22 know it was going to happen, didn't know he was going to
23 do that. Well, guess what? How dare they say to
24 Marley Lion, to Marley Lion's mother, oops, we didn't
25 know that was going to happen when we took a loaded gun

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1 to a robbery. It doesn't work like that. The law
2 doesn't allow that.

3 Foreseeability? Y'all might not have caught
4 this, or -- or thought about why it was so important to
5 this case when you were watching those three and four
6 hours of the Defendant's statement. Towards the end,
7 just this morning, when Detective Osborne comes in, he
8 tells Deleston, I want to talk to you about some other
9 things, some other crimes. And he starts going through
10 and asking him about other instances. And some of them
11 Deleston said, I don't know anything about. You might
12 remember the one he did know something about or he
13 claimed to. The shooting of a guy named Chopper.
14 Remember that? He says Bryan Rivers shot a guy named
15 Chopper with the murder weapon. Okay.

16 So Bryan Rivers is now alleged to have shot
17 someone with a murder weapon. He knows about it, and he
18 goes to an armed robbery with it? He buys into robbing
19 Joe's, he helps out in attempting to rob Marley, and
20 he's going to say it's an accident, it wasn't
21 foreseeable? Bryan Rivers is a convict. You heard
22 Mr. Pennington ask him. You heard me bring out assault
23 with intent to kill, assault and battery of a high and
24 aggravated nature. His friend, his buddy, that he goes
25 to an armed robbery with a loaded gun. I submit to you

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1 the evidence is beyond the pale, that it was very
2 foreseeable that this could happen, that somebody in the
3 course of the armed robbery would be hurt.

4 You're going to hear a lot of talk about mere
5 presence, I suspect. That's the other thing. I don't
6 get to come back and talk to you again. I got to kind
7 of guess what Mr. Pennington says. And I'm going to
8 imagine that he's going to have a lot to say about mere
9 presence, because it's hard to get around all the things
10 that the Defendant says showing he has very intimate
11 knowledge of what went on in that parking lot. There's
12 the poster child for mere presence.

13 You want to see mere presence, you look at --
14 if anybody was just merely present, it was Rayshawn
15 "Duke" Milligan. Y'all might remember him. He was very
16 short. He is the brother of Julius. He was raised up
17 by his grandparents. He goes by "Duke." I think you
18 could probably tell he was nervous as a cat. He said
19 "yes, ma'am" whether it was Mr. Pennington, whether it
20 was me. Every question he answered, he kind of
21 hesitated, Yeah, yeah, yeah, the whole time. I think
22 you could also tell that he probably -- well, he clearly
23 was not very educated and may not have been that
24 intelligent. But what every witness said about him is,
25 he was not up for any armed robberies. That was not his

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1 bag. He was in the back of that Suburban as they rode
2 around smoking weed, drinking beer, not involved. He
3 didn't give a gun to anybody. He didn't drive the car.
4 He did nothing. He lied. He lied when he was first
5 asked about it. But you heard Mr. Deleston talking
6 about being a snitch and how favorably that's looked
7 upon. But when he started talking to the police, he
8 told some very key things early, early on that they
9 didn't know about.

10 But when you think about mere presence, compare
11 Duke Milligan to this Defendant. There is no
12 comparison. They set out to rob the Famous Joe's.
13 Where is Duke Milligan? He's still in the carport,
14 still drinking, still smoking. His girlfriend is
15 calling and harassing him because he needs to be home.
16 And she's still harassing him because he didn't come
17 home. And look at what mess he's in now, having to sit
18 up there in front of all this.

19 I'm going to show you a very rudimentary
20 portion of video. You will have, again, the video back
21 there. This section is at -- between 9:15 and 9:20.
22 And what this shows you, if you can hear, is how
23 intertwined Ryan Deleston was. And he explains why
24 Julius is making the loop. And you'll hear Detective
25 Burckhardt asking him, So tell us about Julius' role.

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1 Because all of these guys are minimizing their roles.
2 There's no doubt about that. What did Julius do? Why
3 was he doing it? Was he doing it so y'all could do that
4 thing?

5 Yeah. Yeah.

6 That's what Deleston says. Not so Bryan Rivers
7 could go do that thing. So they could go do that thing.

8 Mr. DuRant.

9 (Video is played.)

10 MS. WILSON: So you guys could do the thing.

11 Julius is making that loop because he thought
12 Marley pulled up with somebody else in the truck. He's
13 thinking somebody else was in there and they might have
14 gone into Joe's. So Julius is going to check that out.
15 Why? Because Deleston is telling him somebody else is
16 there. He's in it. He's not merely present. He's in
17 it. He's helping Julius. Julius is helping him.
18 That's why Julius made the loop, for him and
19 Bryan Rivers.

20 So Mr. Pennington, through his questions and
21 perhaps through his argument, would have you believe
22 that there's this big conspiracy on behalf, on behalf of
23 Bryan Rivers, as if all these guys are so loyal and have
24 such allegiance to Mr. Bryan Rivers that they're just
25 throwing Mr. Deleston under the bus. They're just

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1 selling him out because they love their friend,
2 Bryan Rivers. Think about that. You are put on this
3 jury to use your common sense. Think about these
4 relationships.

5 And let's start with Old Man Middleton, Frank
6 Middleton. And -- let's start with Frank Middleton and
7 the police. The police built this investigation brick
8 by brick. They didn't just go get some old guy in jail
9 who said, Oh, I think that might be Ryan Deleston, and
10 arrest a guy. We know that that is not a positive
11 identification. We know that Frank Middleton couldn't
12 100 percent say, because he couldn't see the face of the
13 shooter. But what does he tell the police? I've been
14 with this guy, hanging out with him several times a week
15 for over a year, and it looks like him.

16 When I walked down the hall in my office just
17 the other day -- and this is kind of embarrassing -- a
18 guy says to me, I don't even have to look back and tell
19 that's you, Scarlett. I can tell by the way you walk.
20 That's horrible. But, as my mother would say, I walk
21 like a gorilla. And people know that. Mothers, they
22 can hear one syllable of their child's sentence and they
23 know that it's their child. You get me in a K-Mart, and
24 there can be a child who calls out "Momma," not every
25 mother in the store runs. One mom runs because she

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1 knows. Frank Middleton knows Ryan Deleston, and he said
2 he was aggressive in the way he approached, his stance,
3 his build, his size, everything. Ryan Deleston. Frank
4 Middleton knew.

5 And they didn't stop with Frank Middleton.
6 Julius Brown and Rayshawn Milligan Brown -- or
7 Brown Milligan. So they were supposedly all loyal to
8 Bryan Rivers. How crazy that? Their sister is with
9 this guy. He says on that tape, he calls her his wife.
10 They're together. Yeah, they got in some squabble at a
11 family reunion some time before, but on the day of his
12 arrest, where is he living? He's living with her.

13 And by the way, you did hear a lot about calls,
14 and you're going to have the Miranda card back there,
15 where he was given his rights under the law. You see it
16 on TV all the time. You don't have a right to a phone
17 call. These are your rights. So I don't want you to
18 get caught up on what you've seen on TV and the movies,
19 that you have a right to this one call.. Yeah, you have
20 the right to a lawyer if you ask for one to help you
21 answer questions. But he wants to call his girlfriend.
22 They can't let him call his girlfriend, because remember
23 what's going on? Her house is being searched. They
24 can't allow him to do that. But this -- this is his
25 so-called wife, he says.

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1 There's this fight at Edisto Beach at the
2 family reunion. Who gets excommunicated? Who gets
3 kicked out? Not that he ever had a key. Down and out,
4 out of prison and he's flopping somewhere.

5 Bryan Rivers, after the big fight at the family
6 reunion, gets kicked out. The Brown family didn't stand
7 by Bryan Rivers. They stood by Ryan Deleston. Just
8 last week you heard testimony. Rayshawn? He drove his
9 sister to see him. There's no conspiracy to stand up
10 for Bryan Rivers. They said Ryan Deleston was the
11 shooter because he was, because he was.

12 George Brown, this is perhaps the best member
13 of this so-called conspiracy, because George Brown --
14 remember, he's like family to the Browns, of which his
15 girlfriend, slash, wife is. He's at Ryan and
16 Stephanie's house all the time. That's where they go;
17 that's where they hang. He brings her cigarettes. They
18 hang out together.

19 He was shot five times once before being a
20 snitch. He says, I didn't want to talk because I didn't
21 want to talk about Julius. Not because he loves Julius.
22 He's scared of Julius, as he should be. That's why he
23 didn't want to talk. But the kicker, the kicker with
24 George Brown? He didn't know Bryan Rivers for two weeks
25 when this happened.

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1 Remember, George told you he met -- or knew
2 Bryan Rivers from the time Bryan got out of jail, got
3 out of prison. Bryan got out of prison on June 1st.
4 You heard that testimony. Just weeks before. So
5 George Brown now all of a sudden is going to sell down
6 Deleston for this guy he's known for two weeks? That
7 doesn't make sense. George Rivers is -- George Brown,
8 as hard as it was, and as bad as he wants to deny it,
9 eventually told the truth, because he knew telling lies
10 was not getting him anywhere. Every time he told a lie,
11 he got caught. And maybe you might understand -- when
12 someone who's been shot five times for being a snitch,
13 for cooperating, maybe you can understand why he might
14 be a little reluctant to tell it all from the start.

15 And then finally, there is Bryan Rivers.
16 Obviously he wants to protect himself. I think
17 everybody knows and understands that. And he recently
18 gets out of prison. He's got nowhere to go. And he
19 stays with Stephanie and Ryan Deleston. But he
20 volunteers, he testified he didn't have any immunity.
21 You'll have this plea agreement. You will see. He's
22 not immune from prosecution. He has an agreement. He
23 has pled guilty to voluntary manslaughter. He's looking
24 at 30 years in prison. He's not going home. He doesn't
25 think he's going home. He told you he didn't know if he

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1 was going to be charged with that. And what does he do
2 with that robbery? Who does he frame for it? There's
3 no video. You remember me asking about, have you seen
4 any video of that? You're down on Rutledge Avenue, you
5 heard one of the victims -- one of the victims from that
6 come in, there's no video of that. But they weren't in
7 this conspiracy about Raymond Ryan Deleston. Let's make
8 it look good. Make him the shooter. Make him the
9 robber. Nobody would ever know. We would never know.
10 But they didn't do that.
11 George Brown told you Ryan and Bryan, Little B, got out.
12 Rayshawn told you they got out. Rayshawn told you he
13 didn't see who did it. They all could have said
14 Ryan Deleston is the one who did that robbery.

15 Then we get Bryan Rivers himself who says, I
16 got out. I went to go do this robbery. He looks and
17 Ryan's gone. He chickened out or something. He went
18 the other direction. If he's so busy trying to put
19 Ryan Deleston under the jail, trying to frame him, make
20 him the robber. That's not what he did. And he did it
21 at his own peril.

22 The credibility of the witnesses here, as the
23 Judge is going to tell you, is all yours, as I told you
24 in the beginning. You can believe all of it, part of
25 it, none of it. You, now that you have all the

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1 evidence, can consider how much alcohol was involved,
2 how much pot was smoked, how late it was, how tired
3 people were, and how people want to look out for
4 themselves. You could watch it. Mr. Deleston's
5 interview with Detective Burckhardt, Detective Williams,
6 Detective Osborne is classic. It's classic in the way
7 these things evolve. It's classic in showing how people
8 want to distance themselves.

9 Just for -- as an example, I submit to you that
10 you could see the psychology of it working. If someone
11 has used the gun, when inevitably they'll say is, Oh, I
12 just held it. I didn't fire the gun, but I held it.
13 And if someone has only held the gun, they don't want to
14 tell you they held it, but they'll say, Oh, I just saw
15 it. They back themselves away. And it not only happens
16 with things like that, it happens in, really, physical
17 proximity. You can tell by the way Bryan and Julius are
18 telling their story. What are they trying to do?
19 They're trying to get away from that car. They're
20 trying to put themselves behind that fence the whole
21 time. And you'll see, as I go through this, they
22 weren't always behind that fence. But that's a great
23 barrier. It makes you feel less involved. They think
24 it's convincing to you, or maybe even they think it's
25 convincing to us, I was way, way back there; therefore,

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1 I wasn't all the way in it like he was. Don't fall for
2 that. Be careful for that. Look at what fits and what
3 doesn't. Look at how the witnesses fit together and how
4 they differ in things that they're telling, how smart
5 they are.

6 I talked to you about the plea agreements,
7 which you'll have. The proffer agreement, George Brown
8 told you -- showed you how the State will do what it
9 says it's going to do. His agreement was, if you'll
10 come in, if you'll tell the truth, nothing you say will
11 be used against you. Well, he couldn't come in and tell
12 the truth. He didn't tell us about the downtown
13 robbery. He didn't tell us about them casing out Famous
14 Joe's. Didn't tell us about that, and what happened?
15 He also couldn't tell, he could not give up that that
16 was his gun. Well, he messed around, he lost this, and
17 he got charged with more charges. And he told you he's
18 going to prison too. And he is. Plea agreements, plea
19 negotiations are legal. It's not a dirty word. It is
20 something that should cause you some concern. It causes
21 us some concern.

22 But look at how their testimony fits together
23 and look at where it doesn't. Here's -- here's the -- a
24 prime example. Julius was adamant that when they were
25 going back down to Famous Joe's to get that hat that was

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1 left behind the wall. Remember, he said he went. And
2 then Ryan wouldn't go up and get it, and so he went and
3 got it, and then they were stopped by the police. Not
4 stopped, excuse me. They saw the police. And you
5 remember we had Vance here, who said, I saw Deleston,
6 and I knew him from a few weeks before when we had
7 talked about the flashlight.

8 Julius was adamant that there was no
9 conversation between Deleston and the cop. Does that
10 mean that Julius was lying about it? I submit to you,
11 no. I submit his memory is different. He remembers
12 something about the cop. He remembers something about
13 Deleston talking about the flashlight and that cop
14 having stopped him before, but he doesn't remember it in
15 the sense of there was an exchange. That's perfectly
16 understandable that their memories of that would be
17 different, when he wasn't the one engaged in that
18 conversation. It's also perfectly understandable that
19 the officer didn't see the hat. Nobody testified that
20 anybody put on that red hat. Julius said he went and he
21 picked it up. He's the one who got it.

22 Mr. Pennington tried to make the point that --
23 that when the officer saw Ryan Deleston, you know, he
24 only had on the clothes he had on, the white T-shirt and
25 whatever, because he's already changed. But if he were

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1 trying to make these people say stuff just so it would
2 fit together just to convince you, the things like that
3 that don't fit, we'd correct. It ain't our place to
4 correct that stuff. You got to see all that and make
5 your own judgment. And I submit to you, where those
6 things fit, who put the gun under the pool? Ryan
7 Deleston says Little B did. Julius and Little B say
8 Ryan Deleston did. All of those statements together
9 tell you what? Somebody put the gun under the pool.
10 And those are facts that where -- where they differ on
11 who did what with that, you know that that happened.
12 Think about that when you're looking at credibility and
13 think about the opportunity to know. Were they drunk or
14 how were they even there?

15 There's another example. Rayshawn tells you --
16 everybody's consistent. This Defendant, after the
17 shooting, changes his clothes. Well, Rayshawn said he
18 didn't. He was bare-chested, didn't have on a shirt
19 when he saw him when he left. Everybody else said he
20 had on a white shirt, after he took off his shirt that
21 he wore in the murder. Does that mean Rayshawn is
22 lying? He remembers a change of clothing. He doesn't
23 remember what Deleston had on. I submit to you that is
24 not evidence of a lie. That's evidence of a different
25 recollection. The key thing that he remembers is that

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1 the guy changes his clothes after the shooting. Why?
2 There's no evidence that anybody else changed their
3 clothes. One person is worried about what he's got on.
4 One.

5 So Bryan Rivers, all this has been done to
6 protect Bryan Rivers. And what did he tell you? Well,
7 he told me, I'll see y'all October 7th. You ain't got
8 nothing on me. I'm ready to go to trial. That was
9 -- that's how he felt. You got nothing on me, and I
10 ain't look like -- what am I going to look like taking
11 some deal for manslaughter? That -- all that means is
12 saying, I killed somebody, when I know I didn't kill
13 nobody.

14 This letter, going back to what I told you in a
15 -- this letter shows what he's thinking about Marley,
16 what he feels like he deserves, and what he feels like
17 is right. He feels like, I didn't kill nobody. And
18 while he may not have killed the -- pulled the trigger,
19 he's guilty of killing Marley Lion. And at some point,
20 somehow, some way, he realized that. And he and his
21 lawyer came and took the deal.

22 And what did Bryan Rivers do? You're going to
23 probably ask yourselves or -- the Judge will tell you
24 this at the end -- all of these exhibits I told you will
25 come back to you. If there's something that you want

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1 that you don't have, you can't have it. You've heard
2 both sides in questioning refer to all sorts of things
3 that are in evidence. That -- we have all kind of rules
4 that allow what we do. Mr. Pennington, Mr. Deleston,
5 they're not trying to hide from you. We're not trying
6 to hide from you. The admissible evidence, it is -- is
7 there for you.

8 But you will recall when I was questioning
9 Bryan Rivers, and I asked him, Do you remember what you
10 said when you were alone in that interview room? And
11 now y'all have seen the interview room. And I said, Do
12 you remember what you said 3:44 or 4:44, whatever time
13 it was?

14 And he said, No, I don't remember that.

15 And I said, Will it refresh your recollection
16 if you see a summary of what you said?

17 And he said, Yeah. And he looked at it. His
18 memory was refreshed.

19 And I said, Mr. Rivers, what did you say when
20 you were alone in that interview room when you thought
21 nobody was looking, when you thought nobody was
22 listening?

23 What does he say to himself? When he's there
24 alone and he has a moment to reflect and he doesn't know
25 we can know, he says to himself, the one person you

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1 don't lie to: F him. F him. He shoot that
2 motherfucker.

3 Things that these guys, George Brown,
4 Julius Brown, Bryan Rivers, told the police that they
5 didn't know about. You'll see the pictures from the
6 first search warrant that are just pictures of the
7 kitchen, pictures of the bedroom. There's no zoom-in on
8 the Clorox, because they didn't know the Clorox was
9 important until later they were told Ryan Deleston
10 washed his hands with Clorox, not because of his own --
11 his own idea; because Julius told him to go wash his
12 hands. He might have gunpowder on it.

13 They told them about the burn spot. There was
14 no reason for the police to know to search for a burn
15 spot in the backyard until George, and Julius, Rayshawn
16 tell them that that guy burned his clothes. And so what
17 do they do? They go back, because they have the first
18 day of search warrants. They aren't looking for that.
19 They do the interviews, they go back, and they're
20 looking for it. What do they -- they find? They find
21 some burned, melted things. They don't find a shirt.
22 It's six weeks later. And I think Rayshawn said lighter
23 fluid was used. But they find this stuff that nobody
24 knows is that important. And then, lo and behold, we
25 find out about the robbery downtown where a tan purse

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1 was taken. Do you remember the testimony that he also
2 burned the purse? And what do they find in there?
3 Buckles that look like purse buckles, little pieces of
4 leather, snaps that go with a purse. That's how you can
5 know and judge the credibility of those witnesses.

6 Bryan Rivers, downtown an hour before
7 Marley Lion was executed, doing a robbery. You heard
8 from the victim of that robbery, saying the build of
9 Bryan Rivers, five-ten, five-eleven; 150 to 160. He's a
10 beanpole. He could tell he was a beanpole. He told you
11 he had on lighter pants, khakis, one hour before the
12 robbery. The drive-thru of Famous Joe's that I told you
13 about, the difference in the descriptions. Not my word.
14 Their word. Again, five-eleven, 162; Ryan Deleston, six
15 feet, 215. There's a big different in that.

16 You know who knows there's a big difference in
17 that? Ryan Deleston knows there a big difference in
18 that. The shoes. You show the shooter when he runs up.
19 He's got on white shows. What did Bryan and Julius tell
20 you? The Defendant has white Willie Dee's. Willie
21 Dee's can be black; they can be white. He has white
22 ones. You saw the picture of them in his house. I
23 don't know why they didn't collect the other shoe, but
24 you got pictures of both shoes in his house.

25 You will hear Mr. Pennington talk about DNA, I

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1 feel certain. Keep your eye on the ball, ladies and
2 gentlemen. Remember not what I say, what the scientist
3 said. Jeff Miller, who works for crime scene, said he
4 swabbed areas where he thought that the Defendant had
5 touched. And he didn't just swab the whole side of the
6 car. He looked. He swabbed the handles of the -- the
7 driver door and the driver back door. And then he swabs
8 some other places. There were no results from that that
9 could be tied to the Defendants, any of them. And what
10 does she tell you? The reason she didn't go back and
11 look at that driver door was because if she did those
12 tests, it wouldn't be valid, it wouldn't be -- it was
13 insufficient to make a positive identification. Okay.

14 So Mr. Pennington will say, Well, they could
15 have excluded -- they could have excluded my client.
16 We'll give him that. Your client's excluded, even
17 though the scientist says, You can't do that test
18 because it's not valid. You got to give him that. He's
19 excluded. It doesn't matter. Why doesn't it matter?
20 When you watch that video a thousand times, you're going
21 to see what they saw and why they didn't raise cane with
22 SLED about getting it tested. The shooter doesn't try
23 to get in the front door. He just doesn't.

24 And we're going to show you just a piece of
25 this clip. Hold up a minute. And just so you -- you

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1 know how fast it goes. This clip is going to start from
2 just after he's run up. Watch this left shoulder and
3 watch this left hand because he's going to come in fast,
4 and it starts about right there. Watch how the shoulder
5 turns and how he goes up. He's not doing that. He's
6 not pulling on it. He's not touching it at all.

7 Again, you'll get to watch it over and over as
8 many times as you want. When Ryan Deleston runs up to
9 that car, he immediately does that, and does whatever he
10 does with the window. He's not trying to get in that
11 front door. There ain't anything in the front door for
12 him. Remember, they've watched Marley get in the back
13 seat. They watched Marley lock the door to keep himself
14 safe. He knows exactly where Marley is. That's where
15 he goes. I'm 100 percent positive that Ryan Deleston's
16 DNA is not on that front door handle. He didn't touch
17 it.

18 Showed you this at the beginning.
19 George Brown, obviously; I don't have Rayshawn on here,
20 way too short; Julius Brown, too short; and, again,
21 Bryan Rivers, too skinny. Remember, one hour before
22 this, the description of Bryan Rivers, he looked
23 five-ten, 150 to 160 an hour earlier by someone who saw
24 him. He didn't look 215. Ryan Deleston agrees with
25 that. Ryan Deleston agrees that Bryan Rivers is too

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1 skinny to be the guy on that videotape. You know how
2 you know? You don't have to take my word for it. You
3 take his words for it. Before, while he's being
4 interviewed, and they're talking to him about that
5 video, and Detective Burckhardt is talking to him about
6 how, Man, but you don't fit. It doesn't fit. You're so
7 big. Bryan's skinny. What does he come up with? Now
8 all of a sudden, in the middle of the summer, June 16th,
9 2012, according to Ryan Deleston, Bryan Rivers, all of a
10 sudden, has on four shirts. Four shirts. Come on,
11 people.

12 (Video is played.)

13 MS. WILSON: He needs to make Bryan Rivers
14 bigger. He needs to have a reason that Bryan Rivers is
15 bigger. Bryan Rivers has just gotten out of prison. He
16 probably doesn't have four shirts to his name. The
17 shoes that he has came from Julius Brown. He's got
18 black shoes. They are a size nine. He wears a size
19 nine. Ryan Deleston, the bigger guy, size ten..

20 THE DEFENDANT: I wear 11.

21 MS. WILSON: He wears 11. He was squeezed in
22 that thing.

23 When Ryan Deleston is put in the corner with
24 the evidence in front of him -- when Ryan Deleston is
25 put in a corner, he starts with the absurd.

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1 Bryan Rivers has -- now has on three or four shirts.

2 Bryan Rivers has on three or four shirts.

3 When you were thinking about mere presence,
4 don't take my word. Take his word. Look at what he
5 says about how close he was to Marley Lion, what he
6 could see, and how Julius was coaching him from behind
7 the fence.

8 (Video is played.)

9 MS. WILSON: the cell phone.

10 (Video is played.)

11 MS. WILSON: He's so close. So close.

12 Remember before, they couldn't tell how many people
13 Marley had in the car with him. They were concerned
14 about what was going on. They couldn't see from that
15 back fence. He's so close that he could see Marley
16 Lion, as he is scared to death that he's going to die,
17 has a cell phone in his hand. He has a cell phone
18 because he knows he's under attack. He's trying to get
19 help as he's pulling away. Who could see that? He
20 could see it because he was right there.

21 You heard hours of this video, and I hope, and
22 I submit to you that those detectives, despite that
23 guy's attitude, treated him with nothing but dignity and
24 respect. They gave him his rights. The Judge will tell
25 you that the only thing that's up -- for you to decide

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1 about that statement is whether or not it was knowing
2 and willing and voluntarily and intelligently made.

3 Who was in control of that interview? Y'all
4 watched that first hour. Ryan Deleston was very in
5 control of what he was doing. You saw how he acted.
6 And it doesn't matter how loud he got and how obnoxious
7 he was, he knew exactly what he was saying. And he
8 tried and he tried and he tried to wiggle out of it. He
9 even brings up -- diming out some guy, Tino, who was
10 alibied at Mosquito Beach. You know, there was nothing
11 too low for him. A totally innocent guy, he's going to
12 bring in and name. Those guys were professional. They
13 were respectful. They gave him breaks. They gave him
14 food.

15 You think about that when you look at the
16 credibility of what he said. Deleston says at one point
17 only five people know what really happened out there.
18 And then he backs off, because he says it's me, it's
19 Julius, it's Little B. Tino might, because Tino and
20 Little B are tight, and Little B may have told him.
21 He says Duke might know, but now I'm not sure about
22 Duke. So really what he's saying is three people know
23 what's out there. Three people know what happened.
24 Only three people. Listen to what he says once again
25 about how close he is, because, remember, they didn't

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1 release the whole video. And they told him throughout
2 that interview that he doesn't know everything. And he
3 says to them -- he tells them where he was. And he
4 says, Don't know if y'all could see me. Listen to this.

5 (Video is played.)

6 MS. WILSON: Standing right there. But he was
7 wrong, wasn't he? He was wrong. Not just three people
8 knew. Marley Lion knew. When Officer Deal came up and
9 Marley Lion was dying, what did he tell him? There was
10 no reason for him to think Julius Brown had anything to
11 do with this. Julius Brown was 12 minutes gone, if he
12 even saw Julius walk through. Marley had been there a
13 long time. Laid down to go to sleep. Doing what we
14 hope our children will do when they make a bad decision
15 to have too much to drink. We hope they'll pull over.
16 We hope they'll sleep it off. We pray for that. He was
17 in that car asleep. And when he was awoken by someone
18 sticking a gun in his face, telling him to open the
19 door, when he pulls that cell phone up, who can see it?
20 Ryan Deleston can see it. When he's sitting there in
21 fear of his life, when Officer Deal asks him, Who did
22 this? He says there were two of them. One of them had
23 on all black. He doesn't describe the other one. He's
24 in pain. He's wondering when EMS will get there. He
25 doesn't describe the striped golf shirt that Julius told

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1 you about, but you will be able to see on that video
2 when you get a chance to watch it. There were two of
3 them out there. Ryan Deleston told you that. He knew
4 it too. That's why he's saying, Burckhardt, I don't
5 know if y'all saw me or not. If he had been behind that
6 fence, there's no chance, no chance that he was seen.
7 He knows that Julius Rivers hadn't been seen --
8 Julius Brown hadn't been seen because he went back
9 there.

10 That's the hand of one. That's how you know
11 that Ryan Deleston is in this thing up to his eyeballs.
12 And I submit to you the reason that Ryan Deleston knows
13 that Marley Lion was told to open the fucking door, give
14 them the fucking money is because Ryan Deleston is the
15 one that told him to do it.

16 Ladies and gentlemen, I'm about to sit down,
17 and that's one of the hardest things to do when you
18 don't get to stand back up again. At the very beginning
19 I told you we were going to ask for a verdict that spoke
20 the truth, and that's what we're asking for. The truth
21 of this case is the hand of one is the hand of all. The
22 truth of this case is that it was very foreseeable that
23 someone would get hurt when a bunch of thieves are out
24 committing armed robberies. The truth of this case is
25 that someone so in need that they're willing to take and

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1 sell a gun that they know has been used to kill
2 somebody, that they're so in need of money that they'll
3 risk their freedom by selling a gun for 80 bucks when
4 they know it's hot, when they know it's killed someone.
5 Who does that? Someone who is desperate.

6 Ryan Deleston was desperate. Ryan Deleston did
7 not care about Marley Lion or anybody else. You know,
8 it's been said, I don't know by whom, but it's been said
9 that the opposite of love is not hate. The opposite of
10 love is indifference. They didn't care. It didn't
11 matter.

12 But thank goodness the community did. Thank
13 goodness. That's not something to be ashamed of.
14 That's something to be proud of. You heard the
15 detectives. Yes, people were upset. They were
16 outraged, because they didn't just have to hear about
17 it. They had to watch it on the news over and over and
18 see how ridiculous it is.

19 For no reason that child was executed. He had
20 everything to live for. There's no reason that a mother
21 had to listen on her dead child's 18th birthday that
22 these thugs were lying through their teeth. It didn't
23 have to happen that way. And how dare they claim that
24 they didn't know something like this could happen. And
25 how dare anyone say that Ryan Deleston was merely

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1 present. How dare they. There's one person who was
2 merely present. There was one person who was innocent
3 that night. He was Marley Lion. He didn't deserve
4 that. He didn't deserve it.

5 But Ryan Deleston deserves what you have to
6 give him under the facts and the evidence of this case.
7 Ryan Deleston deserves and has earned a guilty verdict.
8 We have proven it beyond a reasonable doubt. And I ask
9 you that you follow your oath and that you give him that
10 guilty verdict.

11 THE COURT: Mr. Pennington.

12 MR. PENNINGTON: Please the Court.

13 **CLOSING ARGUMENTS**

14 MR. PENNINGTON: The evidence shows that Ryan
15 thought that he was going to see Bryan Rivers rob
16 Marley Lion. And when you looked at that video, it's a
17 little bit surprising. Ryan did not foresee Bryan's
18 murder 21 seconds after he'd run away, after Bryan had
19 run away. He did not foresee that would make any sense
20 to anyone under any circumstances to go back 21 seconds
21 later and shoot. That hadn't been part of any plan that
22 had been discussed or shared or thought about or that
23 would be thinkable. The robbery had failed. It was
24 over. The alarm came on. You've seen it. When you
25 listen or look at the video, it's not like the alarm

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1 goes off and you run over, you jog back and they're
2 shooting right away. Instead, there is this
3 inexplicable 21 seconds. Twenty-one seconds. You know
4 the robbery is all fouled up. You know that the car
5 alarm is on. And so you see Bryan back away and run
6 off, and you think it's over. And you wait. What's
7 going on? It's over. It's over, isn't it? Nothing's
8 happened yet. Shots. Because a new plan got hatched.
9 A new plan between Julius and Bryan.

10 You heard testimony, undisputed testimony.
11 Julius said, hit that guy; hit that guy. And for
12 reasons known only to Bryan, he decided that it made
13 some sort of inexplicable sense to go back and shoot out
14 the windows. Was he trying to hurt somebody, kill
15 somebody? Was he trying to think that if you break the
16 window and then there'd be a good opportunity to have a
17 regular stickup or search the car? It makes no sense.
18 It's not foreseeable. You don't see this every day.
19 It's not your textbook armed robbery gone bad.

20 So how do we know, first of all? Let's focus
21 on why do we know it's Bryan That's the shooter? Well,
22 there are a number of hugely important facts that we
23 were able to elicit on Cross-Examination for you in this
24 courtroom. Bryan had the gun that night. Bryan,
25 earlier that day, had been out in the neighborhood with

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1 the gun. He had gone to this video production by Shawn
2 Turner. You heard that testimony. And what does he do?
3 He's described as intoxicated and crazy by
4 Bobby Warthaw. And what does he do? He pulls out the
5 pistol, and he's waving it around and frightening people
6 and probably going to get someone to call the law in.
7 And so it upsets and gets attention. It's aberrant.
8 It's unusual. It's weird. He does it anyway.

9 And, by the way, Bobby describes him that day
10 wearing black with Willie Dee's. He doesn't say black
11 Willie Dee's. He says Willie Dee's. "Willie Dee's"
12 doesn't tell you a color. He's not a guy that always
13 wears all black. We know that from the video. You
14 remember at first he thought he was going to get away
15 with saying, Yeah, you know, I'm always wearing black.
16 But then I had to refresh him a little bit that at the
17 days succeeding this, you remember he sold that
18 imitation crack, and he was wearing a white T-shirt. He
19 doesn't always wear all black. He doesn't only have one
20 shirt.

21 So let's stop and ask ourselves about these
22 multiple shirts. Why does a guy wear multiple shirts if
23 he's in the business as a stick-up artist? Use your
24 common sense. It's the great throw-away shirt routine.
25 You wear multiple shirts, you discard the shirt, and

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1 then the -- you can walk down the street and they're
2 looking for the wrong-colored shirt guy. That's why you
3 have multiple shirts on. That's why he looks more bulky
4 than perhaps when he's been sitting in jail for over a
5 year eating just jail food and waiting for his day in
6 court, and he cuts his hair down for you, trying to look
7 as groomed as possible.

8 Another fact, how do we know it's Bryan? How
9 do we know it's Bryan? Well, Bryan is the fellow who,
10 everybody agrees -- there's not a moment of dispute --
11 is out one hour before, 2:45, on his own, sticking a gun
12 in the face of two other people and robbing them. No --
13 no dispute. Same gun. No dispute. And the other thing
14 that's interesting is that Ryan's not there. You
15 remember the plan had been that supposedly they were
16 getting out to both do the robbery on Rutledge Avenue,
17 but they described to you, then Ryan went the other way?
18 He abandoned. He held back. He went away. He ended up
19 down on what would be Spring Street, you know, in the
20 Crosstown by the McDonald's. He had to call to get a
21 lift back to Ardmore. Undisputed testimony.

22 So who was the guy that was acting crazy that
23 night? Not Ryan. In fact, the testimony is, is that
24 after that, there were other times where they were
25 criticizing Ryan because he wouldn't get onboard with

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1 doing other robberies with these fellows. You remember
2 the discussion during his interview, his interrogation
3 by the police, he describes how one of the reasons there
4 was a falling-out between him and the Brown clan was
5 because he wouldn't go along with another armed robbery,
6 the one at the barbershop.

7 He's the hesitant one. It's funny how roles
8 change. But, you know, when police create a perfect
9 avenue for people to flip the story around and suddenly
10 the guy can play a new character. He can play the
11 Ryan Deleston character, the guy that hung back, the guy
12 that was just there kind of watching but was tentative.
13 You remember the description of the guns passing back
14 and forth. Of course, now the story there, according to
15 Little B, is that, what did he say? You know, it was
16 almost as if he was like a choirboy. He was saying, you
17 know, I went and he tried to hand me back the gun, and,
18 you know, I had a change of heart. I just didn't want a
19 thing to do with it. So I kind of just backed away, and
20 I went over and I stood. And then I kind of moved over
21 here to where the gravel part was, and I really didn't
22 have any part in this whole thing.

23 Now, this is a fellow who has -- he's kind of
24 seemingly upside down, if that's what he did. And he
25 really withdrew from the robbery, and he should be here

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1 in trial right now. But he didn't make that choice.
2 And the Solicitor is so charitable as to suggest to you,
3 in an absurd fashion, that the reason that he came in is
4 because, whereas in August, you remember he wrote that
5 nasty letter that you have in evidence, where he says,
6 You know what, Solicitor? I'll see you in court. I
7 didn't do anything. I'm innocent. I have -- I want a
8 trial.

9 She describes that that change in September,
10 that big difference was, is that somehow the remorse
11 light bulb came on, and he began to feel guilty about
12 the fact that he withdrew from the conspiracy and that
13 he stood over there. Really, he's more of a witness.

14 Or is it really that he learned -- and this was
15 through the Cross-Examination -- and admitted that he
16 knew that the Codefendant, Julius, had made a deal weeks
17 before, published -- publicly, that Julius Brown is
18 going to testify for the State? So suddenly now he
19 knows he is in big trouble. It's not going to be the
20 easy walk in the park. Doesn't know exactly what he's
21 going to say, but he knows that there's now a witness
22 that's going to be against him. And so he decides, Boy,
23 I better do exactly what the police said that I should
24 do when I was in that interview room back on Lockwood,
25 which is, I needed to get on board the team.

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1 So Bryan is the guy that has the gun earlier.
2 Bryan's the guy who does a robbery of two people
3 down -- random folks. So you have to ask yourself, how
4 did we get in this kind of confused situation, where all
5 the spotlight and all the focus and all the energy
6 really gets turned to Ryan Deleston? And I submit to
7 you that it's not through some sort of evil intent or
8 bad will on anyone's part. But it's sort of human that
9 we begin to believe what we want to see. It's our loss
10 of objectivity about where you begin you think you know
11 something and then everything else gets bent and
12 squished and reshaped to fit what you want it to be.

13 So, you see, the police didn't yet know that
14 Bryan had done another robbery the hour before. And
15 yet, it's hard to be so charitable to the police in a
16 sense, because two days after this crime, two days after
17 this crime -- I'm sorry -- yeah, two days into this
18 crime, two days, June 18th, Sergeant Osborne told us
19 that they had gotten a tip from Leroy Townsend that
20 Bryan Rivers was involved in this shooting. Two days in
21 Bryan Rivers' name was at the top of the list from the
22 community.

23 So there were signs that the truth was right
24 there. Well, where do we go from there? The police
25 naturally looked at several key factors. And they're

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1 very understandable. One is, is that you know that
2 about 18 minutes after the shooting, you have Ryan and
3 Julius at Julius' momma's house, 635, which is not
4 exactly on top of Joe's. It's down the street a couple
5 of blocks. Referring to State's Exhibit 4, which you'll
6 have back in the jury room and you'll be able to see. I
7 don't know that anyone's quite gotten this close. But
8 this is our unfortunate crime scene. And the house that
9 we're talking about is 635, right over here. So you can
10 see several doors down.

11 Now, he's not wearing black. He's not wearing
12 a striped shirt. He's wearing a white T-shirt tank top
13 and gray shorts, on a bicycle. And we're not saying
14 Julius is not involved, and we're not saying that they
15 weren't involved. I'm going to tell you why those
16 Codefendants have kind of told you a whopper. You know,
17 if you really think about the time, if you watch the
18 video, what you get, if you look at timing, the first
19 responder, Officer Deal, you can see from the individual
20 itself that on Mantek time, which is the company that
21 has the clock, it's 3:56. But we've agreed and talked
22 about through the testimony that that was actually about
23 11 to 12 minutes slow, so that we know that the actual
24 shooting -- the actual shooting occurred the moment of
25 the shot, not when the police responded. The moment of

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1 the shot was between 4:07 and 4:08 a.m. Okay?

2 Now, that's an important time. Remember that
3 time. Okay? Because the next thing that you heard --
4 and this was based on the call records of the
5 officers -- is that we have -- do you remember we had
6 Ulysius Vance, the man who responded, and he was going
7 to back up the first officer? There was some kind of
8 discussion and then had an encounter with Ryan. And he
9 said -- he estimated that that time was from 4:20 to
10 4:25 a.m. So being as generous and conservative, that
11 gives you a difference of about 18 minutes max that the
12 following would have had to have occurred.

13 Do you remember the litany that it was not just
14 that they had run through the backyards at Balsam, but
15 then they had come back all the way past White Oak
16 through the backyards of Balsam? Remember there had
17 been a stop along the way. And there, you remember that
18 one of the stops was because, even though they didn't
19 know it, you remember Julius said that Little B just
20 went on down Evergreen. But I guess the story couldn't
21 get quite set up right, and so you have now Little B
22 admitting that he's over here at the pool where the gun
23 is hidden. Then after that, they go back over here and
24 back to Cashew Street right over here.

25 And a lot of things happen there. And I ask

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1 you to use your common sense. You've got 18 minutes
2 that they've got to get back to and be knocking on the
3 door of Dolores Brown's house, get inside, get the
4 flashlight, get the bicycles, come out, all within 18
5 minutes. Doesn't make sense that you could squeeze in,
6 not just that trip, cover-up trip, which we concede
7 happened, but there was also all this discussion and
8 criticism of Ryan and that Ryan had to come up with a
9 plan and Ryan washed his hands and Ryan smelled like
10 bleach and he changed his clothes and then they walked
11 down to her house. And they're feeling so bold that
12 they're going to go right back to the scene where Ryan
13 had just shot this poor young man to death. This is the
14 fellow that's too timid to go and participate in the
15 Rutledge Avenue robbery.

16 Or is it much more likely that they run their
17 route back to the house, Bryan is hiding the gun, and
18 then they get back and Bryan stays behind, and Julius,
19 who has his mother's house to go to, but wants to see
20 what's going on, and Ryan goes with him? Not nearly as
21 nervous about being questioned because he knew he wasn't
22 the shooter. And so he ends up down there.

23 Now, you hear the description of Julius.
24 Julius even goes further in describing how they ride
25 down to just look and see, and they're trying to get

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1 that hat that got dropped or left behind. And Ryan
2 won't even go over to get the hat.

3 So what I'm saying is, is that the time frame
4 doesn't fit, in terms of, it doesn't fit what we know
5 happened. We know when the shots occurred, and we know
6 when Ryan, my client, is at 635 White Oak. It does not
7 make sense that you can squeeze in their version of the
8 story, the way they say it happened, which was, is that
9 we go back and we converse and there's criticism and a
10 plan and we're going to bleach up the hands and change
11 the clothes and make it back.

12 Let's move ahead. Obviously the police were
13 focused on that they had him out there. They had a lot
14 of people, but they had him out there. What was the
15 next clue? Well, 11 days after the shooting, Ryan does
16 something that was obviously stupid, especially if
17 you're the shooter -- doesn't make sense if you're the
18 shooter -- which is, is that you begin to let people in
19 the community know that you've got a hot gun to sell. I
20 mean to tell you, if you are the shooter, makes no
21 sense. But if you're doing it for your friends,
22 particularly not the shooter, but you're doing it for
23 George and for Julius, and you're really not thinking
24 too much about it, and it just seems like a way to make
25 a little money and move that out of the way, that makes

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1 a lot more sense. Ryan was willing to try to sell a gun
2 cheap, and he wasn't afraid, that these two -- to
3 eliminate stat (phonetic), that the people in the
4 community would know. And sure enough, it did get the
5 community's attention. And Bobby Warthaw saw this great
6 business opportunity. He calls the police and has a
7 meeting on the 27th on the -- 11 days after this.

8 And he's pumping him up. You know, I think
9 this could be the murder weapon. You know, we could
10 really -- you know, could I get the reward? Now, that
11 would naturally, I think, stir the police to think, Wow.
12 Okay. This guy was out there. Now we've got him maybe
13 connected to the gun, and maybe they're just thinking,
14 Okay. Now we're finally getting some traction in this
15 case where we have no clues and no leads. It's kind of
16 exciting. It seems important. At least it's something
17 positive that's coming in. And so they get a little bit
18 psyched.

19 Again, what the police don't know is that three
20 days later there is this falling out at the Brown family
21 reunion. This bad blood begins to develop between
22 George and Julius and Ryan, and even he has to go and
23 stay at his mom's house for awhile because he and
24 Stephanie are on the outs over this public -- where he
25 had disrespected Stephanie.

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1 But why do I raise that? Well, what you have
2 is, the community is talking and maybe talking a little
3 bit more freely. But the -- the clincher, in the mind
4 of Detective Osborne, is what happens because people are
5 talking. He deliberately chooses as a strategy, the
6 next strategy to derive the truth, the search for the
7 truth, to find and secure the best evidence in this
8 case, is to go to the jail and talk to the king of crime
9 of Ardmore, who's been locked up, Frank Middleton. But
10 not because he thinks he has some sort of divine powers
11 of prophecy, but because he knows he has his ear to the
12 ground and is going to have heard what's going on in the
13 street, and he's looking for more intel.
14 Understandable. Reasonable tactic. But that seems to
15 be where the objectivity in this investigation began to
16 just disappear.

17 They rely on a man who gives them inaccurate
18 information about the first guy walking through. He
19 says, Yeah, that could be Big Boy, a friend of
20 Raphael Simmons. Eh. Mistake. Error. A guy from
21 Melrose -- he describes in more detail this guy from
22 Melrose. Again, inaccurate. But then he looks at the
23 video. He can't see the face. Not out there himself.
24 But he says, I think that's Ryan. And then by the time
25 he gets to court, you could hardly hold him back. He

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1 was positive. Over and over again, I am certain that
2 that's Ryan.

3 One thing we know is that he's certain that he
4 wants you and you to think that it's Ryan because that's
5 what's going to advance his cause. What makes him a
6 little bit iffy on the reliability side is, this is a
7 guy, when asked direct questions, simple questions, not
8 hard, just softball questions like, you know, did you
9 ask for anything at the end of the interview?

10 No.

11 Then he kind of softened a little bit.

12 Maybe.

13 And then you heard Detective Kosarko, who was
14 right there immediately afterwards, and Kosarko was just
15 as simple and straightforward, Of course. Yes, he did.
16 He wanted something.

17 Now, it's not a big deal. It's normal to think
18 that he might want something. But my point is, he came
19 here and tried to mislead you good folks. He's got an
20 agenda, and he's trying to make himself look like as
21 good a witness as he can be to earn those brownie points
22 that are going to get that armed robbery charge that he
23 has legitimate concerns about, since it's minimum ten
24 years. He's looking at going to the penitentiary for
25 ten years unless these good folks knock that charge down

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1 to strong arm. So he's got a big dog in this fight
2 himself.

3 You know, where you begin to realize that we've
4 run off the track is when you begin to say that his I.D.
5 matters. Here's a man who would look you in the eye and
6 proudly say, right at the beginning of his testimony, I
7 didn't hear any street talk in the jail. Don't know
8 anything about what's going on in the street because
9 I've been locked up. And yet we know beyond any doubt
10 that that's the whole reason that the police went there
11 to see him, because he would be very tied in with what
12 was going on on the street. And what would he have
13 heard on the street? What we're talking about now. He
14 had a gun to sell. It's the buzz. And it becomes the
15 big buzz, the thing that is going to sort of break open
16 this case. And, of course, it did in a way. But does
17 it solve the puzzle that I'm asking you that I think you
18 must try to solve, which is, who is the shooter in this
19 case? He's trying to solve it for you. I submit that
20 he also is not worthy of your belief.

21 You know, one of the shocking -- is that it's
22 so nonobjective, in the sense of, that he admits freely,
23 on the one hand, I don't know how Bryan Rivers handles
24 the gun. I don't know how Little B handles a gun. So
25 he would dare -- talk about dare -- raise the question,

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1 how could he dare claim that he could make a convincing,
2 positive, absolute, I'm certain I.D. of Ryan Deleston as
3 the shooter, when he has nothing to compare it to? But
4 what's even more shocking is that it kind of leaks out
5 that he is the former roommate of Bryan Rivers at
6 Allendale Prison. He knows Little B. They were
7 roommates in prison. Maybe he wouldn't want to call
8 Little B's name. Maybe Ryan is sort of fair game at
9 this point because there's a falling out between him and
10 the Browns and he's out there selling the gun, and maybe
11 we can just sort of cast off Ryan. Ryan is expendable.
12 Certainly the truth is expendable, because I'm not going
13 to tell you that I asked for anything from the police.
14 Y'all don't need to know the truth.

15 But something not so good happened from that
16 moment on. Sergeant Osborne tells you that he became
17 convinced, in looking at the video, that it was Ryan.
18 And from that moment on, the train was on the track,
19 where every question that was asked people was, isn't
20 this Ryan? And when he gets -- the plan is, is that
21 we're going to now use Bobbie Warthaw as our -- one of
22 our guides on how to get the truth. And the truth is,
23 is to lie to Bryan Rivers and see if Bryan Rivers will
24 also join in the chorus and say that it's Ryan who did
25 the crime. What a perfect opportunity for Bryan Rivers.

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1 He's charged, and he knows he's guilty. And they give
2 him this golden opportunity to say, Wasn't me; it was
3 him. And that's exactly what he did. That's exactly
4 what he did. Is that objective, or is that just
5 basically getting what you want to hear?

6 The police were very clear during the
7 interrogations. They say, you know, This is your
8 opportunity. They said, We want you on the team. If
9 it's so clear, if it's so trustworthy and reliable, if
10 it's the kind of thing that you can bank on and feel
11 good about, why not go get a warrant at that point? Go
12 to the judge and say, We have a reliable, confidential
13 informant, and that confidential informant has sworn to
14 us under oath, and he's reviewed the tape, and he can
15 recognize the perpetrator? Why not? Well, because you
16 know that Frank Middleton is not reliable. You know
17 he's just not a good source. And so -- and then he has
18 all these axes to grind that I just finished talking
19 about. But that doesn't seem to stymie this commitment
20 to move in the direction of, let's put on the blinders
21 and just go for this Ryan who has the gun and see if we
22 can't get things to begin to fit around that framework.

23 So there's no dispute. I want you to
24 understand. I know I can see we've been talking awhile.
25 I don't want to put y'all to sleep. But I have just a

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1 couple of more things to say that are kind of important.
2 One is, is that we're not disputing that Ryan was out
3 there as part of a plan to do a robbery of Marley.
4 That's not the issue. The issue in this case is whether
5 or not Bryan Rivers' outrageous and unforeseeable
6 conduct in going back and shooting, Julius Brown's
7 outrageous and unforeseeable conduct in saying, go hit
8 that guy, it came out of left field.

9 Now, you can say I'm being too picky. You
10 know, it's so convenient to be such a critic. All I'm
11 doing is throwing around criticism. But how will we
12 feel when they finally test that -- Bryan Rivers' DNA
13 and it's consistent with the door handle? The Solicitor
14 can say you've looked at it and you can judge yourself.
15 You can judge. You can -- how many times in your life
16 do you go through life where you're so cocksure that you
17 know something, and then suddenly you find out that
18 things aren't what you thought they were? You know,
19 we can think we know things, but "why" doesn't have any
20 science at all. Why take evidence? Why test evidence?
21 You know, they didn't send those deputies down there
22 with those search warrants to get the swabs of
23 Bryan Rivers' cheek just because it was something to do.
24 It was because standard protocol is, is that you test
25 the unknown evidence to find out what you're going to

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1 learn. It's a search for the truth. The only thing
2 that can go wrong is, you'll have a no-result. But
3 maybe we'd be sitting here with a different defendant
4 sitting at that table.

5 Now, Bobby Warthaw, I don't want to get too
6 wound up about Bobby Warthaw. He is what he is. The
7 gun thing is kind of important, but it's also kind
8 of -- doesn't answer the question that you're trying to
9 get to in this case, because the ground plan letting
10 Ryan be the face of the sale of that gun doesn't tell
11 you a thing about who had the gun in their hand that
12 night. It -- certainly, it shows that he's part of a
13 cover-up. And if he was indicted for accessory after
14 the fact of murder or accessory after the fact, which is
15 a crime that is about covering up another person's
16 crime, that'd be a different story. That's what selling
17 that gun is all about. But it doesn't answer the
18 question of who used that weapon on the 16th of June.

19 So let's go through, finally, and kind of a
20 summation of where we really are. It was Julius's plan.
21 Nobody disputes that. His own family says that he was
22 the guy who was saying, Let's go. It's going to
23 be -- let's go down to Joe's. It's George's gun. I
24 think it was George who said it was Julius' plan.
25 And -- but what's interesting is, is that they took the

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1 gun back. If they're like, you know what, Ryan, it's on
2 you, it'd be like, I don't want to see that thing again.
3 It's your baby now. You go deal with it. But, no.

4 A key moment in this case, maybe even the most
5 important moment, I think, in figuring out that
6 Bryan Rivers is the shooter, it's a tiny little moment,
7 but I think if you think back, you will remember it with
8 me, of something that I think was very revealing. The
9 mask slipped and fell just a little bit. It came at
10 that moment where -- I think he was on Direct
11 Examination, and the question was asked: During the
12 robbery, Bryan, was it knocking on the windows that set
13 off the car alarm, or was it Marley who set off the car
14 alarm?

15 And did you notice that he brightened up, and
16 he stated with confidence, Oh, no, it was Marley that
17 set off the car alarm? At that moment, you could tell
18 that his whole testimony had been a fraud, because he
19 had told you, you remember, that he was standing over at
20 the gravel when all this thing happened. He came here
21 to you, took an oath to tell the truth, said trust me,
22 I'm going to give it to you, and then lied to you,
23 because he was right there on top of the scene with the
24 gun, and he could see the light from the cell phone as
25 it's being activated, which mine is not. It's very

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1 revealing to me.

2 He admitted that he went to Jason's pool.

3 There is no way on God's green earth that he would have
4 had a reason not to do what Julius said he did, which is
5 to just shoot straight down -- I mean, run straight down
6 Evergreen back to Cashew, if he was this guy who was as
7 he represented himself to be, just sort of this
8 hanger-on, he had no good reason to want to try to be
9 involved in hiding that pistol, running through the
10 backyards of Cashew.

11 You know, the -- Chris McCandlish, the
12 gentleman that came in here that was robbed the night of
13 an hour before, he described that Bryan was wearing a
14 dark shirt and lighter pants. He wasn't sure now. He'd
15 said khakis on the night of the crime. But, of course,
16 he was focused on the weapon and focused on his
17 girlfriend or his friend, and all the other
18 circumstances that he was able to relate to you in
19 pretty clear detail. But interesting is that, when you
20 remember Rayshawn, who was the brother that's not
21 charged, Bryan's the one -- I mean, rather, he told
22 Osborne explicitly that Bryan Rivers, Little B, had on
23 dark clothes, and so does Bobby Warthaw. You remember
24 the description of clothes that Bobby Warthaw gave from
25 the music video. Dark clothes. So don't get all balled

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1 up about the confusion of an armed robbery witness
2 about -- because he's a little bit shy and tentative
3 about that. Bobby's waving the gun around, and it fits
4 what Rayshawn told you too.

5 We know Bryan Rivers, convicted -- convicted
6 previously of assault with intent to kill, and on a
7 separate occasion, assault and battery of a high and
8 aggravated nature. Look at Julius' statement on June
9 21st. Kind of a teller here. You know, there's certain
10 things that you can sort of tell where an attorney gets
11 skipped over, but if you sort back -- I cross-examined.
12 And Julius remembered that he had, in an interview, June
13 21st -- however many days that is, five, six days
14 afterwards -- he had been interviewed by the police in
15 an informal, noncustodial, he had gone down, he'd been
16 put on tape, he was interviewed, and he -- he gave quite
17 a little description. He said, you know, the person
18 that you really need to be looking at on this is this
19 guy, Bryan Rivers, Little B. Just got out of prison.
20 And he gave kind of a litany to the detective -- I think
21 it was Detective Burckhardt -- that day, six days in,
22 that it was Little B. The police knew that. They're
23 trying to tell you the truth, but people aren't
24 listening. We've now made up our minds.

25 Then look at how things changed. I've already

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1 covered how Ryan being involved with slapping Stephanie
2 sort of turning things upside down between him. And
3 then you hear today further, from the video, that there
4 had been disputes and problems between Julius and Ryan
5 over drugs that kind of put him on the outs. Truth is,
6 is that the -- he is, in their view, expendable. He is
7 the moocher who was with his -- their sister, taking
8 advantage of her and her check. And the reality is, is
9 that he was sort of the guy that they were willing
10 to -- sort of like "let Mikey do it." We'll let Ryan
11 sell the gun and let him be out front on this thing.

12 You've been through almost, I say, it's sort of
13 like some sort of torture of watching that long video.
14 I apologize that videos go so long, but it's the best
15 evidence, and I thank you for your attention. But what
16 did you get? The take-away was, he told you and he told
17 you and he told you and he told you. He kept telling,
18 and nobody was listening: I -- I was there. I knew
19 what was going on, but I didn't -- I'm not the shooter.
20 I'm not the shooter. I'm not the shooter. They weren't
21 listening. Fortunately, you can.

22 You know, if our case hinged on my client,
23 Ryan, being a gentleman and always using good language
24 and being educated and well-bred and polite, we're going
25 to lose. But I hope that you will forgive him for his

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1 bad language. If he was on trial for bad language and
2 being uncouth and unpleasant, then there'd be only one
3 verdict to render, which would be guilty. But that's
4 not what he's on trial for. And what he tried to do, he
5 tried to mask and hide, he tried to protect George, he
6 didn't want to be a snitch. He didn't trust them with
7 the truth. He kept telling you, you know, I don't think
8 there's anybody on my side of this. There's nobody on
9 my side of this.

10 And so he then got into that scenario where he
11 finally was willing to open up and tell them and trust
12 them, that I'll tell you what really happened, and it
13 was that I was there, but I didn't do this. I stepped
14 out. I saw what was happening, looked -- the alarm went
15 off, we ran. Julius was the one who said, Hit him, hit
16 him, hit him, and Bobby went back and shot that boy.
17 It's outrageous. It's upsetting. It's wrong. It's
18 unforeseeable. It didn't fit the plan. It didn't fit
19 the 21 seconds.

20 The law says that trials are really not a
21 search for you to be able to answer with precision every
22 question. The question you're only asked is whether or
23 not -- on the murder indictment, whether or not this
24 idea of the hand of one is the hand of all completely
25 fits this case. If it does, he's guilty; if it does

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1 not, then the only true and just verdict is not guilty.
2 And the law that the Judge is going to give you is that
3 there must have been a common design or intent to commit
4 the crime, and the crime must have been committed
5 pursuant thereto with the person aiding and abetting by
6 some covert act. The intent means intending the result
7 which actually occurs. Let me say that again. Intent
8 means intending the result that actually occurs, not
9 accidentally or involuntarily.

10 Intent may be shown by acts and conduct of the
11 Defendant and other circumstances which you may
12 naturally and reasonably infer intent. It's a lot of
13 language. You're going to hear more language like that
14 from the Judge. But that's a highlight of what we're
15 talking about and what I talked about in my opening
16 statement, that when we go and we agree to do crime A,
17 when that ends, in other words, when we withdraw from
18 that because it didn't work, when your Codefendant goes
19 back and he does an unforeseeable crime B, the law says
20 that if you didn't sign up for it, it's not yours.

21 We're here on this murder charge. You can't
22 always feel good to have to sort through this. You guys
23 have sacrificed a week heroically in service to this
24 community by patiently listening to this. And now the
25 hard work is about to begin. And, you know, with all

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1 the expectation and pressure for this high-profile case,
2 there can be this notion that we don't want to
3 disappoint, we don't want to let anybody down, we don't
4 want to let the community down. But the truth is, is
5 that you have no one to reward and no one to punish.
6 Your obligation, just like a judge has an obligation, is
7 to be objective and to let your verdict speak to what
8 has been proven.

9 The question is, has there been proof? You, as
10 jurors, have to do that individually and, soon,
11 collectively. But when you go back there in your jury
12 room and you're actively talking about this, the law
13 says that my client, or any person that's on trial, you
14 or me, is not guilty where there's a real possibility
15 that the defendant is not guilty. "Not guilty" meaning
16 the reasonable doubt. Where there's reasonable doubt, a
17 doubt that creates for you a real possibility in your
18 mind that the Defendant is not guilty, then the only
19 verdict you can render is not guilty. The Judge will
20 tell you that.

21 So the question is going to be, what is a real
22 possibility? Is it a real possibility that
23 Rayshawn Brown Milligan, the ride-along in the armed
24 robbery downtown, if he's defined as being sort of a
25 bystander that's not guilty, you have to admit that he's

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1 there. You have to admit that he had to have heard all
2 of the discussion. They were cruising around looking
3 for targets, but the Solicitor told you that, in her
4 view, he is the mere presence. He's merely present. He
5 doesn't have that cache, that quality of joining in due
6 to some sort of overt act in support of the crime.

7 Now, my client is on trial for attempted armed
8 robbery, and for that you should find him guilty,
9 because he's told you he's guilty of attempted armed
10 robbery. But there was a break, a 21-second break,
11 where things changed. And like Rayshawn, he was there
12 as a bystander, watching the outrageous conduct of other
13 people.

14 And so when you go back to your jury room and
15 you're kicking around what is the correct and true
16 verdict in this case, it may not feel good to say that
17 we don't know all the answers, and that we have a
18 legitimate concern that when that DNA is ultimately
19 tested someday and it's consistent with Bryan Rivers,
20 that we will not have done our job well by convicting
21 the wrong man.

22 THE COURT: Can I have you move it just
23 a little bit more, Mr. Pennington?

24 MR. PENNINGTON: I'm sorry?

25 THE COURT: Little bit more.

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1 MR. PENNINGTON: Should it go back over here,
2 perhaps?

3 THE COURT: Just move it closer to my bailiff.
4 Thank you.

5 Ladies and gentlemen, do y'all need a short
6 break?

7 THE FOREPERSON: I think we're fine.

8 **JURY CHARGE**

9 THE COURT: Ladies and gentlemen, I remind you
10 that during this trial you and I have had certain duties
11 to perform. As the trial judge, it has been my
12 responsibility to preside over the trial of this case,
13 and I have the duty to rule on the admissibility of the
14 evidence that has been offered during this trial. You
15 are to consider only the evidence before you. If there
16 was any testimony ordered stricken from the record, you
17 must disregard that testimony. You are to consider only
18 the testimony that has been presented to you from the
19 witness stand, the exhibits that have been made part of
20 the record in this case, as well as the stipulations of
21 counsel.

22 I have the additional duty to charge you the
23 law applicable to this case. Ladies and gentlemen, I
24 typically do not send a copy of these charges back to
25 you, so it is vitally important that you pay close

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1 attention.

2 As the presiding judge, I am the sole judge of
3 the law in this case. It is your duty to accept and
4 apply the law exactly as I state it to you now. If you
5 have any idea as to what the law is or what the law
6 ought to be and it does not agree with what I'm about to
7 tell you, you must abandon your own idea, because you
8 are sworn to accept the law and apply the law exactly as
9 I state it to you.

10 In every case tried in this court before a
11 jury, the jury becomes the sole and exclusive judges of
12 the facts. A trial judge may not make any comment
13 regarding the facts in this case. Do not think by
14 anything that I have said or done throughout the
15 progress of this case or during my charge on the law
16 that I have any opinion about the facts in this case.
17 The law does not allow me to have an opinion about the
18 facts in this case. This is a matter solely for you to
19 determine. As jurors, it becomes your duty to determine
20 the effect, value, and weight, and the truth of the
21 evidence that has been presented.

22 The Indictments in this case charge the
23 Defendant with murder, attempted armed robbery,
24 possession of a handgun with obliterated serial number,
25 and possession of a firearm during the commission of a

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1 violent crime. I remind you the fact that the Defendant
2 was arrested, charged, and indicted in this case is not
3 evidence in this case and cannot be considered by you as
4 evidence of guilt, nor does it create any presumption or
5 inference of guilt. The Indictment is simply the formal
6 document that contains the charge made against the
7 Defendant. It is the formal document by which this case
8 was brought into court.

9 Just as the Indictments in this case are not
10 evidence, any terminologies or labels that have been
11 used to refer to the individuals involved in this case
12 cannot be considered as evidence. For example, the word
13 "defendant" is merely a formal label. It may not be
14 consider by you as evidence in this case.

15 The Indictments in this case allege four
16 different offenses against the Defendant. The charges
17 are Indictment 2012-GS-10-6361, murder; Indictment
18 2012-GS-10-6362, attempted armed robbery;
19 2012-GS-10-6363, possession of a handgun with an
20 obliterated serial number; and Indictment
21 2012-GS-10-6364, possession of a firearm during the
22 commission of a crime. There is no significance in the
23 order that I referenced the above Indictments. It's
24 simply, something must go on the paper first. Each
25 Indictment charges a separate and distinctive charge.

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1 You must decide each Indictment separately on the
2 evidence and the law applicable to it, uninfluenced by
3 your decisions as to the other Indictments. The
4 Defendant may be convicted or acquitted on any or all of
5 the offenses charged.

6 Mr. Foreperson, you will be asked to write a
7 separate verdict for each offense.

8 The Defense -- the Defendant has pled not
9 guilty to each Indictment. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself innocent. I charge you it is
12 an important rule of law that the Defendant in a
13 criminal trial, no matter what the seriousness of the
14 charge may be, will always be presumed to be innocent of
15 the crime for which the Indictment was issued, unless
16 guilt has been proven by evidence satisfying you of that
17 guilt beyond a reasonable doubt. This presumption of
18 innocence does not end when you begin your
19 deliberations, but it accompanies the Defendant
20 throughout the trial until you reach a verdict based
21 upon the evidence. The presumption of innocence is not
22 mere legal theory. It is not a legal phrase -- it is
23 not just a legal phrase. It is a substantial right to
24 which every defendant is entitled, unless you, the jury,
25 are satisfied from the evidence of the Defendant's guilt

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1 beyond a reasonable doubt.

2 The State has the burden of proving the
3 Defendant guilty beyond a reasonable doubt. Some of you
4 may have served as jurors before in civil cases, where
5 you were told that it is only necessary to prove that a
6 fact is more likely true than not true, such as by a
7 greater weight or preponderance of the evidence. In
8 criminal cases, the State's proof must be more palatable
9 than that. It must be beyond a reasonable doubt. Proof
10 beyond a reasonable doubt is proof that leaves you
11 firmly convinced of the Defendant's guilt. There are
12 very few things in this world that we do know with
13 absolute certainty. And in criminal cases, the law does
14 not require proof that overcomes every possible doubt.
15 If, based upon your consideration of the evidence, you
16 are firmly convinced that the Defendant is guilty of the
17 crimes charged, you must find the Defendant guilty. On
18 the other hand, if you think there is a real possibility
19 that the Defendant is not guilty, you must give the
20 Defendant the benefit of the doubt and find him not
21 guilty.

22 There are two types of evidence that are
23 generally presented throughout a trial: Direct evidence
24 and circumstantial evidence. Direct evidence is --
25 excuse me -- crimes may be proven by circumstantial

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1 evidence. The law makes no distinction between the
2 weight or values to be given either direct or
3 circumstantial evidence. Direct evidence directly
4 proves the existence of the fact and does not require a
5 deduction. Circumstantial evidence is proof of a chain
6 of facts and circumstances indicating the existence of
7 fact. To the extent the State relies on circumstantial
8 evidence, all of the circumstances must be consistent
9 with each other, and when taken together, point
10 conclusively to the guilt of the accused beyond a
11 reasonable doubt. If these circumstances merely portray
12 the Defendant's behavior as suspicious, the proof has
13 failed.

14 The State has the burden of proving the
15 Defendant guilty beyond a reasonable doubt.
16 This burden rests with the State regardless of whether
17 the State relies on direct evidence, circumstantial
18 evidence, or some combination of the two. Necessarily,
19 you must determine the credibility of the witnesses who
20 have testified in this case. Credibility simply means
21 believability. It becomes your duty as jurors to
22 analyze the evidence and determine which evidence
23 convinces you of its truth.

24 In determining the believability of the
25 witnesses who have testified in this case, you may

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1 believe one witness over several witnesses or several
2 witnesses over one witness. You may believe part of the
3 testimony of a witness and reject the remaining part of
4 the testimony of that same witness. You may believe the
5 testimony of a witness in its entirety or reject the
6 testimony of a witness in its entirety. You may
7 consider whether the witness has exhibited to you any
8 interest, bias, prejudice, or other motive in this case.
9 You may also consider the appearance and manner of the
10 witness while on the witness stand.

11 A person who has a past criminal record is
12 competent to testify during the trial. A past record
13 does not affect the ability of that witness to testify.
14 The past record may be considered by you, if at all, in
15 determining the witness' believability. Remember, you
16 are the sole judges of the facts in this case and of the
17 believability of any and all of the witnesses.

18 The rules of evidence ordinarily do not permit
19 witnesses to testify to opinions or to conclusions. An
20 exception to this rule exists for witnesses we call
21 expert witnesses. A witness who by education and
22 experience has become expert in some art, science,
23 profession, or calling may state an opinion as to
24 relevant and material matter in which the witness claims
25 to be an expert and may also state the reasons for that

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1 opinion. You should consider any expert opinion
2 received into evidence in this case, and, like any other
3 evidence, give it the weight which you think it
4 deserves. If you decide that the opinion of an expert
5 witness is not based on sufficient education and
6 experience, or if you conclude that the reasons given in
7 support of the opinion are not sound or that the opinion
8 is outweighed by other evidence, you may disregard that
9 opinion entirely. An expert witness' testimony is to be
10 given no greater weight than that of any other witness
11 simply because the witness is an expert. Further, you
12 are not required to accept an expert's opinion even
13 though it was not contradicted.

14 I instruct and emphasize the fact that the
15 Defendant did not testify is not a factor to be
16 considered by you in any way in your deliberations and
17 in your consideration on the question of the guilt of
18 the Defendant. It must not be considered by you in any
19 manner whatsoever. A Defendant has the 'constitutional
20 right to remain silent, and the assertion of this right
21 must not be considered by you in your deliberations. I
22 repeat, under your oath, you are to draw no conclusion
23 whatsoever with the fact that the Defendant in this case
24 did not testify. The fact that this Defendant did not
25 testify cannot and should not be discussed in the jury

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1 room.

2 Mr. Foreperson, that is one of your
3 responsibilities as the -- presiding over the jury.

4 The Defendant is not required to prove his
5 innocence. The burden of proof remains on the State to
6 prove guilt beyond a reasonable doubt.

7 A statement alleged to have been made by the
8 Defendant has been admitted into evidence. While I have
9 determined that the statement is admissible, I instruct
10 you that you make the ultimate decision of whether or
11 not the Defendant made this statement. If the Defendant
12 did make the statement, you must determine whether the
13 statement was made by the Defendant voluntarily and of
14 his own free will. This means the statement was not
15 caused by the pressure, force, fear, threats, coercion,
16 or intimidation for a hope of promise of leniency or a
17 reward of any kind. In determining whether the
18 statement was voluntary, you should consider the
19 characteristics of the Defendant and the details of the
20 questioning. Some of the factors that you must consider
21 are the age of the Defendant, the Defendant's education
22 or lack of education, the Defendant's mental ability or
23 capacity, the Defendant's IQ, the Defendant's background
24 and environment, the place and length of detention, the
25 nature of the questioning, and the advice or lack

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1 thereof to the Defendant of his constitutional rights,
2 including, but not limited to, the right to remain
3 silent; that any statement could have -- could be used
4 against him in a court of law; the right to have a
5 lawyer present, but if he could not afford a lawyer, a
6 lawyer would be appointed to represent him without any
7 cost; and that he could stop making his statement at any
8 time. You must carefully consider all of the
9 surrounding circumstances before you give any weight to
10 an alleged statement.

11 The State has the burden of proving beyond a
12 reasonable doubt that the alleged statement was
13 voluntary. If you determine it was, you may give the
14 statement any further consideration that you deem
15 proper. You must decide what weight, if any, should be
16 given to the alleged statement. If you determine the
17 alleged statement was not the free and voluntary
18 statement of the Defendant, you should not consider the
19 statement at all.

20 You have heard evidence that the Defendant
21 committed bad a act other -- other than the one for
22 which the Defendant is now on trial. You must not
23 consider this testimony as proof of the Defendant's
24 guilt of the charge we are trying today.

25 An issue in this case is the identification of

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1 the Defendant as the person who committed or
2 participated in the crimes charged. The State has the
3 burden of proving identity beyond a reasonable doubt.
4 You must be satisfied beyond a reasonable doubt of the
5 accuracy of the identification of the Defendant before
6 you may convict the Defendant. Identification testimony
7 is an expression of belief or impression by a witness.
8 You must determine the accuracy of the identification of
9 the Defendant.

10 You must consider the believability of the
11 identification witness in the same way as any other
12 witness, considering whether the witness is truthful and
13 whether the witness has the capacity and the opportunity
14 to make a reliable observation on the matter other than
15 the witness's testimony. You may consider whether the
16 witness has an adequate opportunity to observe the
17 person at the time of the offense. This will be
18 affected by things like how long or short a time is
19 available, how far or close the witness was, the
20 lighting conditions, and whether the witness had the
21 chance to see or know the person in the past.

22 You must also be satisfied that the
23 identification made by the witness was the product of
24 the witness's own recollection. You may take into
25 account both the strength of the identification and the

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1 circumstances under which the identification was made.
2 You may consider the length of time that lapsed between
3 the occurrence of the crime and the next opportunity the
4 witness had to see the Defendant as a factor bearing on
5 the reliability of the identification. You may also
6 take into account any indications in which the witness
7 failed to make an identification of the Defendant or
8 make an identification that was inconsistent with his
9 identification at trial.

10 Once again, I instruct you, the burden of proof
11 on the State extends to every element of the crime
12 charged, and this includes burden of proving beyond a
13 reasonable doubt the identity of the Defendant as the
14 person who committed or participated in the crime. If,
15 after examining the testimony, you have reasonable doubt
16 as to the accuracy of the identification, you must find
17 the Defendant not guilty.

18 Mere presence at the scene is not sufficient to
19 prove someone guilty. A defendant's presence where a
20 crime is being committed or mere association with the
21 person who commits a crime does not make a defendant an
22 accomplice or an aider and abettor of the person
23 committing a crime.

24 The burden is on the State to prove every
25 element of the crime charged. If you find, after

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1 reviewing all of the evidence, that the State has proved
2 that the Defendant was only present at the scene of the
3 crime and that they have not proved beyond a reasonable
4 doubt any other participation in the crime, then you
5 must find the Defendant not guilty. The law is, the
6 proof at the scene of the crime is not sufficient to
7 find someone guilty.

8 If a crime is committed by two or more people
9 who were acting together in committing a crime, the act
10 of one is the act of all. A person who joins with
11 another to commit an unlawful act is criminally
12 responsible for everything done by the other person
13 which happens as a probable or natural consequences of
14 the acts done in carrying out the common plan and
15 purpose. For example, two people can be guilty of
16 killing another person when only one of the two had a
17 gun, there was only one bullet, and only one of the two
18 fired the shot that caused the death. If two or more
19 people are together, acting together, assisting each
20 other in committing the offense, the act of one is the
21 act of all, or as it is sometimes said, the hand of one
22 is the hand of all. Accomplice liability applies to
23 murder, which is the natural and probable consequence of
24 the intended crime.

25 Prior knowledge that a crime is going to be

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1 committed without more is not sufficient to make a
2 person guilty of a crime. Mere knowledge that another
3 person is going to commit a crime, even if the Defendant
4 is present when the crime is committed, is not
5 sufficient to convict the Defendant as a principal.
6 Guilt is a principal, if shown by actual or constructive
7 presence at the scene, as a result of a prior
8 arrangement. Therefore, a finding of a prior arranged
9 plan or scheme is necessary for the finding of guilt as
10 a principal. The State must prove beyond a reasonable
11 doubt by competent evidence the theory of the hand of
12 one is the hand of all.

13 A principal in a crime is the one who either
14 actually commits the crime or who is present, aiding,
15 abetting, or assisting in committing a crime. When a
16 person does an act in the presence of and with the
17 assistance of another, the act is done by both. Where
18 two or more acting with a common plan or intent are
19 present at the commission of a crime, it does not matter
20 who actually commits the crime. All are guilty. The
21 hand of one is the hand of all. Present at the
22 commission of a crime means to be sufficiently near to
23 aid and abet and assist in the commission of a crime.
24 However, mere presence at the scene of the crime is not
25 sufficient to convict one as a principal on the theory

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1 of aiding and abetting.

2 Intent is also a necessary element where there
3 must have been some common design or intent to commit
4 the crime, and the crime must have been committed
5 pursuant thereto with the person aiding and abetting by
6 some overt act. Intent may be shown by acts of conduct
7 of the Defendant and other circumstances from which he
8 may naturally and reasonably infer intent. The State
9 must prove these elements beyond a reasonable doubt.

10 In order to establish criminal liability,
11 criminal intent is required. For example, the mental
12 state required to be proven by the State for a
13 particular crime might be purpose, intent, knowledge,
14 recklessness, or criminal negligence. Criminal intent
15 must be proven by the State beyond a reasonable doubt.
16 Criminal intent is always a matter that must be
17 determined by the jury from the circumstances shown to
18 have existed surrounding the situation. There is no way
19 to prove intent to a mathematical certainty. Because
20 there is no way to tell with exact certainty what the
21 person had in mind, the law says that criminal intent
22 may be inferred from the circumstances shown to have
23 existed. This is how you make a determination of
24 whether or not the element required and the intent was
25 present. It is not necessary to establish intent by

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1 direct and positive evidence. But intent may be
2 established by inference in the same way as any other
3 fact by taking into consideration the acts of the
4 parties and all the facts and circumstances of the case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the
7 Defendant intended to do based upon the circumstances
8 shown to have existed. Criminal intent can arise from
9 actions or a failure to act. It may arise from
10 negligence, recklessness, or an indifference to duty or
11 to consequences that is considered by the law to be the
12 equivalent of criminal intent.

13 Insanity caused by the use of drugs or alcohol
14 may be a defense if the insanity is permanent and
15 destroys the Defendant's ability to know right from
16 wrong. However, when voluntary intoxication has not
17 produced permanent insanity, it is not a defense to a
18 crime. A person who voluntarily becomes intoxicated is
19 just as responsible for the facts committed while
20 intoxicated as when the person is not intoxicated.

21 The Defendant is charged with murder. The
22 State must prove beyond a reasonable doubt that the
23 Defendant killed another person with malice
24 aforethought. Malice is hatred, ill-will, or hostility
25 towards another person. It is the intentional doing of

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1 a wrongful act without just cause or excuse and with an
2 intent to inflict injury or under circumstances that the
3 law will incur an evil intent.

4 Malice aforethought does require that malice
5 exists for any particular time before the act is
6 committed, but malice must exist in the mind of the
7 Defendant just before and at the time the act is
8 committed; therefore, there must be a combination of the
9 previous evil intent and the act. Malice aforethought
10 may be expressed or inferred. These terms, "expressed"
11 and "inferred," do not mean different types of malice,
12 but merely the manner in which malice may be shown; that
13 is, either by direct evidence or by inference from the
14 facts which are proved. Expressed malice is shown when
15 a person speaks words or which -- words which express
16 hatred or ill-will of another person or when the person
17 prepared beforehand to do the act which was later
18 accomplished. For example, lying in wait for a person
19 or any other acts of preparation going to show that the
20 deed was within the Defendant's mind would be expressed
21 malice.

22 Malice may be inferred from conduct showing a
23 total disregard for human life. Inferred malice may
24 also arrive when the deed -- may arise when the deed is
25 done with a deadly weapon. A deadly weapon is any

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1 article, instrument, or substance which is likely to
2 cause death or great bodily harm. Whether an instrument
3 has been used as a deadly weapon depends upon the facts
4 and circumstances of each case. The following are
5 examples of instruments which may be deadly weapons: A
6 pistol, a shotgun, a rifle, metal knuckles, razor,
7 lighter fluid. A gun may be a deadly weapon even if it
8 is not operated. If one intentionally kills another
9 during the commission of a felony, the inference of
10 malice may arise. A felony is a serious crime usually
11 punishable by imprisonment for more than one year. If
12 facts are proved beyond a reasonable doubt sufficient to
13 raise an inference of malice to your satisfaction, this
14 inference simply would be an evidentiary fact to be
15 taken into consideration by you, along with all other
16 evidence in this case, and you may give it the weight
17 that you think that it should receive.

18 I charge you that attempted armed robbery is a
19 felony under South Carolina law. The Defendant is
20 charged with attempted armed robbery. An attempt is an
21 effort to accomplish a crime which does not succeed.
22 Attempt includes a specific intent to do a particular
23 criminal act along with an act falling short of the act
24 intended. The State must show more than mere
25 preparation and intent. There must be some overt act

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1 committed in the effort to commit the crime.

2 Intent means intending the result which
3 actually occurs. Again, that's accidentally or
4 involuntarily. Intent may be shown by act and conduct
5 of the Defendant and other circumstances from which you
6 may naturally and reasonably infer intent. A person is
7 guilty of attempted armed robbery if the person has a
8 specific intent to commit armed robbery.

9 For the offense of armed robbery, the State
10 must prove that the Defendant took personal property
11 from the person or presence of another person. Property
12 is in the presence of another if it is within the
13 person's reach, inspection, observation, or control so
14 that person could, if not overcome with violence or
15 prevented by fear, keep possession of the property.

16 For the offense of armed robbery, the State
17 must also prove that the Defendant carried the property
18 away intending to permanently deprive the owner of the
19 property and to keep the property for the Defendant's
20 own use. The slightest removal of the property or the
21 complete possession of the property even for an instant
22 by the Defendant is sufficient to show the taking and
23 carrying away of the property. The taking and carrying
24 away of the property must have been done with violence
25 or by putting the owner of the property in fear of

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1 violence.

2 Finally, for the offense of armed robbery, the
3 State must prove that the Defendant was armed with a
4 deadly weapon during the robbery. A deadly weapon is
5 any article, instruments, or substance which is likely
6 to cause death or great bodily harm. Again, as I
7 instructed you previously, whether an instrument has
8 been used as a deadly weapon depends upon the facts and
9 circumstances of each case.

10 The Defendant is charged with possession of a
11 handgun with an obliterated serial number. The State
12 must prove beyond a reasonable doubt that the Defendant
13 knowingly bought, sold, transported, pawned, received,
14 or possessed a stolen handgun or one from which the
15 original serial number was removed or obliterated.
16 Obliterated means to wipe out, rub off, or erase, or to
17 remove from existence, or to destroy all traces of.

18 The Defendant is charged with possession of a
19 firearm during the commission of a violent crime. The
20 State must prove beyond a reasonable doubt that the
21 Defendant was in possession of a firearm or visibly
22 displayed what appeared to be a firearm during the
23 commission of a violent crime. A firearm means a
24 machine gun, automatic rifle, revolver, pistol, or any
25 weapon which will or is designed to or may be readily

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1 converted to expel a projectile. In order to find the
2 Defendant guilty of possession of the weapon during the
3 commission of a violent crime, you must first find the
4 Defendant guilty of either committing a violent crime or
5 attempting to commit a violent crime. Murder and
6 attempted armed robbery are considered violent crimes
7 under laws of South Carolina.

8 You have heard testimony considering and
9 concerning the penalty a person can serve for the crimes
10 alleged in the Indictment. In determining the guilt or
11 innocence of the Defendant, you cannot consider any
12 possible punishment for any particular crime. The
13 punishment for the crimes is a matter for me to
14 determine and should never be considered by you in any
15 way whatsoever in arriving at a fair and impartial
16 verdict as to the guilt or the innocence of the
17 Defendant.

18 Ladies and gentlemen, I'm now going to go over
19 the verdict forms with you. As I indicated to you,
20 there's absolutely no significance in the way that I'm
21 going to read the charges or what's contained on the
22 verdict form. It's simply, something has to go on the
23 paper first.

24 There -- Mr. Foreperson, you have a separate
25 verdict form for each offense, and you must consider

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1 each one, as I indicated to you, separate and distinct
2 from the others. Mr. Foreperson, the verdict -- verdict
3 must be unanimous, meaning all 12 of you must agree.

4 In the Court of General Sessions for the 9th
5 Judicial Circuit, 2012-GS-10-6361, as to the Indictment
6 for murder, we, the jury, find the Defendant not guilty;
7 or we, the jury, find the Defendant guilty. After you
8 have reached a unanimous decision on that verdict, you
9 will sign the verdict form, Mr. Foreperson, and date the
10 verdict form.

11 Indictment 2012-GS-10-6362, on the Indictment
12 for attempted armed robbery, we, the jury, find the
13 Defendant not guilty; or we, the jury, find the
14 Defendant guilty. Again, that must be a unanimous
15 decision of the jury. You will sign that verdict form,
16 date it.

17 On the Indictment for possession of a handgun
18 with an obliterated serial number, we, the jury, find
19 the Defendant not guilty; or we, the jury, find the
20 Defendant guilty. Again, unanimous decision as to that
21 Indictment. On that verdict form was -- you will sign
22 that, once you have reached a unanimous decision, and
23 date the verdict form.

24 Indictment 2012-GS-10-6364, on the Indictment
25 for possession of a firearm during the commission of a

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1 violent crime, we, the jury, find the Defendant not
2 guilty; or we, the jury, find the Defendant guilty.
3 Again, you will sign on the verdict form indicating that
4 you have reached a unanimous decision as to that
5 Indictment and date the Indictments.

6 Once you have completed all four verdict forms,
7 you will knock on the jury room door and indicate to the
8 bailiff that you have reached a verdict.

9 Mr. Foreperson, several forepersons prior to
10 you have asked. You will not be reading the verdict
11 form. I go over the verdict form, and then the clerk
12 reads them out. So that does not need to be a
13 consideration as you are preparing to come back into the
14 room.

15 Ladies and gentlemen, is there any member of
16 the first 12 that, for whatever reason, you feel that
17 you cannot continue with your deliberations at this
18 time? If you feel that you cannot continue with your
19 deliberations -- I'm going to now send you to the jury
20 room -- please let me know at this time. Is there any
21 of my first 12 that cannot continue with your -- or
22 begin your deliberations at this time? If so, please
23 signify by raising your hand.

24 All 12 jurors have indicated that they are
25 ready to begin deliberations.

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1 Ladies and gentlemen, this is the last time
2 that I'm going to say this to you. Do not begin your
3 deliberations at this time. Do not begin deciding any
4 issue in this case. Do not discuss this case amongst
5 yourselves. We are gathering the verdict forms and all
6 of the evidence to go back to you, and as you know, it's
7 quite a bit. It's going to take us just a few moments
8 to accomplish all of that. So until you are told to
9 begin your deliberations, once the bailiffs -- the
10 bailiffs will bring you the exhibits and the verdict
11 forms, and then they'll indicate to you when you may
12 begin your deliberations. So until you are told to do
13 so, do not begin your deliberations.

14 To my alternates, you are going to stay with us
15 for just a few moments. The same admonition to you.
16 I'm going to keep you separate from the first 12, but
17 the three of you will remain together. So, please,
18 again, same admonitions to you. Do not begin discussing
19 this case or deliberating in any way.

20 Ladies and gentlemen, you are excused. We'll
21 be bringing the evidence back to you.

22 Please rise for the jury.

23 (The jury is escorted from the courtroom at
24 4:26 p.m.)

25 THE COURT: Thank you. Be seated.

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1 Any objections, corrections, addition to the
2 charge as read?

3 MS. WILSON: No, ma'am, not from the State.

4 MR. PENNINGTON: Your Honor, from the Defense,
5 we would renew our request for the jury charge 9 on the
6 credibility of those who have entered into agreements or
7 been made promises. And with regard to 7, my request,
8 which was -- is that there will be no proof of
9 relationship between witness and confidence and accuracy
10 of the I.D.

11 THE COURT: Your requests are again noted, and
12 yours are Court's Number 7.

13 Anything I need -- Counsel, just come and
14 review the verdict forms before they go back. And as to
15 whether or not the Indictments go back, your preference,
16 Ms. Wilson --

17 MS. WILSON: Yes, ma'am.

18 THE COURT: Thank you.

19 MR. PENNINGTON: I have no objection.

20 (Ms. Wilson and Mr. Pennington are at the bench
21 with the Judge going over the verdict forms.)

22 (The attorneys reviewed all of the exhibits.)

23 THE COURT: All right. Ms. Wilson, you were in
24 agreement with the verdict forms, the Indictments going
25 back, and all the evidence; is that correct?

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1 MS. WILSON: Yes, ma'am.
2 THE COURT: Mr. Pennington?
3 MR. PENNINGTON: Yes, ma'am.
4 THE COURT: Anything before we await the
5 verdict?
6 MR. DURANT: Nothing from the State, your
7 Honor.
8 MS. WILSON: Do you have our numbers?
9 (Admitted exhibits, verdicts forms, and
10 Indictments go back to the jury at 4:35 p.m.)
11 (Notified of jury verdict at 6:37 p.m.)
12 (The Judge resumes the bench at 6:46 p.m.)
13 THE COURT: We have a verdict. Anything before
14 we bring in the jury, from the State?
15 MS. WILSON: No, ma'am.
16 MR. PENNINGTON: No, ma'am.
17 THE COURT: Just so you know, the three
18 alternates decided to stay. They have been kept in a
19 separate room and -- but they wish to see the verdict.
20 So I'm going to bring them in. I just didn't want
21 anybody to be concerned that they had been part of the
22 deliberation.
23 We received two notes from the jury. I have
24 E-mailed both of you to indicate what they were.
25 Neither one of you had any problems with the Court's

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1 response. Those will be Court's 9 and 10.

2 (Court's Exhibit Nos. 9 and 10 are marked for
3 identification.)

4 THE COURT: Let's bring in the jury. Go ahead
5 and bring in the alternates first.

6 All right, ladies and gentlemen, those are the
7 alternates. You may be seated. The jury is in the
8 elevator. So it will be just a few moments.

9 (The jury is escorted into the courtroom at
10 6:49 p.m.)

11 THE BAILIFF: Jurors present, your Honor.

12 THE COURT: Thank you. Please be seated.

13 Mr. Foreperson, I understand that you have
14 reached a verdict. If you will hand the verdict forms
15 to the bailiff.

16 (Document is handed to the bailiff and then to
17 the Judge.)

18 (Respite.)

19 THE COURT: I put them in numerical order for
20 you.

21 THE DEPUTY CLERK OF COURT: Thank you.

22 (Defendant rises.)

23 **VERDICT**

24 THE DEPUTY CLERK OF COURT: As to Indictment
25 Number 2012-GS-10-6361, State of South Carolina versus

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1 Ryan Deleston, on the Indictment for murder. We, the
2 jury, find the Defendant guilty. Signed, Gregory Hibbs,
3 October 11th, 2013.

4 Case number 2012-GS-10-6362, State of South
5 Carolina versus Ryan V. Deleston. We, the jury, find
6 the Defendant guilty on the Indictment for armed
7 robbery. Signed, Foreperson, October 11th, 2013.

8 As to Case Number 2012-GS-10-6363, State of
9 South Carolina versus Ryan Deleston, on the Indictment
10 for possession of a handgun with an obliterated serial
11 number. We, the jury, find the Defendant guilty.
12 Signed, Gregory Hibbs, October 11, 2013.

13 Indictment Number 2012-GS-10-6264, The State of
14 South Carolina versus Ryan Deleston, on the Indictment
15 for possession of a firearm during the commission of a
16 violent crime. We, the jury, find the Defendant guilty.
17 Signed, Gregory Hibbs, Foreperson, October 11th 2013.

18 Mr. Foreperson, ladies and gentlemen of the
19 jury, if this is your verdict, please indicate by
20 raising your right hand.

21 Thank you, your Honor.

22 THE COURT: Anything further required of the
23 jury, from the State?

24 MS. WILSON: No, ma'am.

25 THE COURT: From the Defendant?

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1 for me is that, before this incident, he was employed
2 for six months at the -- a local restaurant in West
3 Ashley. He had lost that employment. He -- this crime
4 occurred. And then he actually went back to work and
5 had been working for weeks at the time of his arrest,
6 and according to the reports of his employer, was
7 actually someone who they appreciated having on staff.

8 So that Ryan is more than the act that he
9 stands convicted of here, he and I have spent time
10 discussing the likely lengthy periods of incarceration
11 that he would be facing. He has expressed to me,
12 explicitly at times, his regret for all that has
13 transpired here. There were times where he -- the
14 Codefendants were not anxious to plead guilty, and we
15 explored whether or not there would be an opportunity,
16 perhaps, to negotiate some outcome with the State. That
17 never materialized. But I do not think that my client
18 is utterly without feeling for what has happened here
19 and has asked me to express his sorrow to the Court.

20 THE COURT: Mr. Pennington, you've advised
21 your -- is there anyone else that wishes to address the
22 Court?

23 MR. PENNINGTON: I don't believe so, your
24 Honor. I would say there is one sentencing wrinkle that
25 I'll remind the Court of. And that is that given -- in

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1 cases under the possession of a firearm during the
2 commission of a violent crime, the Subsection A provides
3 that it does not apply in certain instances. And so if
4 the Court does impose a life without parole sentence,
5 then that essentially mutes out that statute.

6 So I don't know what the Court is
7 contemplating. We would ask for as much mercy as the
8 Court can find. And -- but if the Court is considering
9 a life without parole on the murder, then I believe that
10 essentially negates that one conviction -- or that one
11 sentence under 16-23-490(A). I have a copy of the
12 statute for the Court.

13 THE COURT: Are you going forward under (A) or
14 (E)?

15 Or at this point, Ms. Wilson, does it -- tell
16 me which Subsection you're going forward on. It doesn't
17 indicate in the Indictment.

18 MS. WILSON: Can I take a look at it?

19 (Mr. Pennington and Ms. Wilson speak off the
20 record.)

21 MS. WILSON: May we approach?

22 THE COURT: Yes.

23 (Ms. Wilson and Mr. Pennington approach the
24 bench for an off-the-record discussion.)

25 THE COURT: As far as sentencing, you agree

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1 that, on the murder, it's the minimum mandatory of 30
2 to life? Is that what you advised your client,
3 Mr. Pennington?

4 MR. PENNINGTON: That is, your Honor.

5 THE COURT: And it's classified as a violent
6 and a most serious, and that's what you advised your
7 client?

8 MR. PENNINGTON: Yes, ma'am.

9 THE COURT: As to the attempted armed robbery,
10 not more than 20?

11 MR. PENNINGTON: Yes, ma'am.

12 THE COURT: Violent and most serious?

13 MR. PENNINGTON: Correct.

14 THE COURT: As to the possession of a handgun
15 with obliterated serial number, that carries up to five
16 years and a potential of \$2,000 fine?

17 MR. PENNINGTON: That is correct, your Honor.

18 THE COURT: And as to the possession of a
19 firearm during the commission of a violent crime, it
20 does carry five years, and I could impose that
21 consecutive to anything that I impose less than life?

22 MR. PENNINGTON: That is correct. That's my
23 reading of the statute.

24 THE COURT: You have advised your client what
25 the classification of violent and most serious means to

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1 him?

2 MR. PENNINGTON: Yes, I have.

3 THE COURT: And you have advised your client as
4 to his appellant rights?

5 MR. PENNINGTON: We certainly have.

6 THE COURT: Anything before I impose sentence?

7 MR. PENNINGTON: No, ma'am.

8 THE COURT: Anything further from the State?

9 MS. WILSON: No, ma'am.

10 THE COURT: Mr. Deleston, please stand as I
11 impose sentence.

12 Mr. Deleston, you have had the benefit of an
13 exceptional attorney. He has provided the Court with
14 the necessary documents, and I -- as the Solicitor
15 indicated, I have spent last week, over the weekend, and
16 now all of this week listening to the confession and to
17 all of the case law that your attorney has provided to
18 me. I have sat here throughout this week, and my one
19 question has always been why. And the common word that
20 I've heard from witness after witness is that this was
21 senseless. I have been unable to make sense of why you
22 committed these acts, why you would be in a position to
23 allow yourself to continue to be around people that
24 commit these acts, and I just don't have that answer.

25 And so taking into account that I don't have an

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1 answer as to why, there's absolutely no explanation as
2 to what caused you to commit these crimes, it's the
3 order of the Court, on Indictment 2012-GS-10-6361, that
4 you be committed to the State Department of Corrections
5 the rest of your natural life.

6 It's the order of the Court, on Indictment
7 2012-GS-10-6362, that you be committed to the State
8 Department of Corrections for a term of 20 years.

9 It's the order of the Court, on Indictment
10 2012-GS-10-6363, that you be committed to the State
11 Department of Corrections for a term of five years.

12 Those Indictments will run concurrent.

13 So ordered the Court, on 2012-GS-10-6364, that
14 I cannot impose a sentence due -- under Subsection A
15 because I have imposed a life sentence.

16 Good luck to you, sir.

17 MR. PENNINGTON: Thank you, your Honor.

18 THE COURT: Anything further?

19 MS. WILSON: No, ma'am.

20 MR. PENNINGTON: No, your Honor.

21 THE COURT: I need for you to make arrangements
22 for the firearms and for the maps. I am going to
23 release the jury. Anything further needed?

24 MR. PENNINGTON: Not from the Defense.

25 MS. WILSON: No, ma'am.

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2013 OCT 17 11 31 AM)
NINTH JUDICIAL CIRCUIT

CLERK OF COURT
STRONG

STATE OF SOUTH CAROLINA)
V.)
RYAN DELESTON,)
Defendant.)

STATE'S MOTION IN LIMINE RE
REVERSE 404(B) EVIDENCE

Warrants:

2012A1010900083; 0084; 0085; and 0086

Indictments:

2012GS1006361; 6362; 6363; and 6364

INTRODUCTION

The State, by and through its undersigned attorney, files this Motion in Limine to prohibit the Defendant from offering remote and irrelevant testimony regarding Bryan Rivers' use of the murder weapon during an armed robbery and shooting two weeks before the murder of Marley Lions. The Defendant is not prejudiced by the exclusion of the weapon because Bryan Rivers will admit that he used and possessed the weapon within hours of Lion's killing.

FACTS

During the early morning hours of July 16, 2012, Bryan Rivers, Julius Brown, Defendant Ryan Deleston and others left Defendant's house in the Ardmore area to find someone to rob. They made their way downtown where George Brown's gun was used by Rivers and Defendant to rob a couple walking near Rutledge Avenue. The two stole the woman's purse but did not get any cash.

The crew left downtown and discussed robbing the Famous Joe's bar in the West Ashley area of Charleston County. As they approached Ardmore, they pulled through the Famous Joe's

parking lot to check-out the situation at and around the bar. They returned to Defendant's home and continued to discuss the Famous Joe's robbery.

Shortly before 4AM, Defendant, Rivers and Julius Brown walked down the street with plans to rob Famous Joe's employees as they left the bar with money. They were staking-out the area as Marley Lion pulled into the parking lot of Famous Joe's. Lion was concerned that he had too much to drink so he parked his white Nissan Pathfinder and climbed into the backseat to "sleep it off."

Within 10 minutes of Marley's climbing in the backseat, a surveillance video shows Julius Brown walking at a fast pace by Marley's car in the parking lot. The video shows that approximately 12 minutes later, Defendant approached the car and appeared to attempt to open the door to the backseat. When Marley's car alarm sounded, Defendant backed out of camera view for several seconds then re-approached the car and began shooting. In all, he struck Marley 5 of the 6 times he shot at Marley.

An investigation ensued and Defendant, Rivers and Julius Brown were developed as suspects. An undercover operation secured the purchase of the murder weapon from the Defendant. As a result of the undercover operation, George Brown gave information that Julius Brown, Rivers and Defendant were involved in Marley's murder. Upon his arrest, Defendant gave a statement implicating Julius Brown, Rivers and himself-- though he claimed Rivers was the trigger man.

Since their own guilty pleas, Julius Brown and Rivers have confirmed their own involvement in the attempted armed robbery of Marley Lion after the Joe's plan fell through. They confirm that the Defendant shot Marley Lion using George Brown's firearm. Julius Brown

and Rivers also admitted their involvement in the robbery of the couple downtown. According to both of them, Rivers used the same George Brown firearm that later was used to kill Lion.

Julius Brown, George Brown and Rivers also revealed that the Marley Lion murder weapon was used on June 1, 2012, by Rivers and another man (Valentino Heyward) when they robbed and shot Leroy "Chopper" Townsend. Chopper survived. According to all of them, Chopper is a drug dealer who they knew would have cash. Furthermore, Rivers had disliked Chopper for years. They rode with George Brown in his SUV to an area where they had created a ruse in which Chopper believed he was meeting someone to buy drugs at an apartment. When Chopper came out of the apartment, Rivers and Heyward robbed him of \$1300 and Rivers shot Chopper with George Brown's gun.

LAW

The Supreme Court of South Carolina recently upheld a trial judge's refusal to admit evidence of the prior crimes of a codefendant in *State v. Cope*, -- S.E. 2nd --, 2013 WL 4553427, August 28, 2013 (No. 2009-143966, 27303). The *Cope* facts involved the sexual assault and murder of a 12 year old daughter of the defendant. The child was brutally sexually assaulted in her home, which showed no signs of forced entry. The defendant gave a sordid confession that did not mention his co-defendant, James Sanders. James Sanders' DNA was found in a bite mark on the child's breast and in semen on the child's pants.

Our Supreme Court upheld the exclusion of evidence regarding Sanders' multiple assaults against women, which were committed in the vicinity of Cope's home shortly after the murder of Child. On four occasions between December 12, 2001, and January 12, 2002, Sanders gained entry into residences and either raped or attempted to sexually assault victims ranging in age from nineteen years old to sixty years old.

Cope's defense relied in part on the theory that Sanders acted alone. In support of this contention, Cope sought to establish Sanders was capable of entering the home without signs of forced entry by introducing evidence that Sanders had committed similar crimes in Cope's neighborhood around the time of Child's assault. Prior to trial, Cope proffered the testimony of four other victims.

Although the trial court found Cope had presented clear and convincing evidence that Sanders committed these other crimes, it declined to allow in the testimony, holding the other crimes were not sufficiently similar to be admitted under Rule 404(b), SCRE. The Court of Appeals noted that although other jurisdictions have adopted a lesser standard of similarity in evaluating this type of reverse 404(b) evidence—where evidence of other crimes has been offered in exculpation by the defendant—the crimes in *Cope* were too dissimilar to pass even a lesser threshold. The Supreme Court affirmed but declined to address the lesser standard of similarity issue as it was not preserved in the trial court. The Supreme Court found no abuse of discretion in the exclusion of this evidence. The Court noted that although there were some similarities between the crime charged and the other acts, there also were many distinctions.

The admission or exclusion of evidence is committed to the sound discretion of the trial court. *State v. Clasby*, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Rule 404(b), SCRE; *see State v. Lyle*, 125 S.C. 406, 415–16, 118 S.E. 803, 807 (1923). “However, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Rule 404(b). As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE. *Clasby*, 385 S.C. at 154, 682 S.E.2d at 895. If the

trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within an exception in Rule 404(b). *Id.*

Where there is a close degree of similarity between the crime charged and the prior bad act, the prior bad act is admissible to demonstrate a common scheme or plan. *Id.* at 155, 682 S.E.2d at 896. “When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity.” *Id.* The evidence is admissible if the similarities outweigh the dissimilarities. *Id.* “If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing.” *State v. Gaines*, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008).

ANALYSIS

In this case, the defense cannot demonstrate evidence of the Chopper robbery falls with one of those exceptions: motive, identity, common scheme or plan, the absence of mistake or accident or intent. The defense has no need to show motive, absence of mistake or accident or intent. Proving that Bryan Rivers used the murder weapon a full two-weeks prior does not prove his identity as the shooter, and the facts of the two cases are so wildly different that there is no common scheme or plan and it does not establish identity (it is not a “signature” crime). *See* Attachment.

Even if prior bad act evidence is clear and convincing¹ and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. *Clasby*, 385 S.C. at 155, 682 S.E.2d at 896. In the case at bar, the defense will be able to show that Bryan Rivers used the murder weapon in an armed robbery downtown within a few hours of Marley Lion’s murder. In fact, the downtown robbery is part of

¹ The State agrees that evidence of the “Chopper shooting” is clear and convincing.

the *res gestae* of this case.² The Defendant is not prejudiced by the exclusion of Bryan Rivers' use of the weapon some two weeks earlier. The temporal proximity of the crimes is key. See *State v. Forney*, 321 S.C. 353, 468 S.E. 2d 641 (1996). The State's and Defendant's evidence will also show that the murder weapon actually belonged to George Brown. Others' access to the murder weapon will be obvious throughout the trial. The real and obvious reason that the Defendant seeks to introduce the robbery and shooting of Chopper is an attempt to prove that Rivers' acted in "conformity therewith" and, therefore, must have killed Marley Lion. This use of other bad acts is strictly prohibited by the Rule, even if offered in exculpation by a Defendant. The admission of this evidence is highly prejudicial to the state and the victim in this case and under Rule 403, SCRE, the evidence should be excluded. See *State v. Gillian*, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007) (applying probative versus prejudicial test of Rule 403, SCRE, to "other crimes" evidence).

CONCLUSION

The Defendant cannot show the evidence of the "Chopper shooting" falls within one of the exceptions outlined in Rule 404(b). Evidence regarding the Chopper shooting it is not at all similar to the murder of Marley Lion. Furthermore, it is remote in time and will only cast clumsy aspersions that Bryan Rivers is the triggerman in this case. The Defendant is not prejudiced by the exclusion of this evidence because there will be ample testimony that the gun did not belong to the Defendant and that others had ample access to the gun, including during a

² "Under the *res gestae* theory, evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." See *State v. Gillian*, 360 S.C. 433, 602 S.E.2d 62 (Ct.App.2004) (citing *State v. Owens*, 346 S.C. 637, 552 S.E.2d 745 (2001); *State v. King*, 334 S.C. 504, 514 S.E.2d 578 (1999)); see also *State v. Adams*, 354 S.C. 361, 580 S.E.2d 785 (Ct.App.2003) (holding evidence of prior burglary was "necessary and relevant for a full presentation of the case."); *State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (Ct.App.2002) (finding evidence of burglary occurring the same night as the burglary for which defendant was convicted "was necessary for a full presentation of the case without fragmentation."). Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime. *Owens*, 346 S.C. 637, 552 S.E.2d 745.

robbery earlier on the night of the murder. For all these reasons, this Court should grant the State's Motion in Limine to exclude any evidence regarding the "Chopper shooting."

Respectfully submitted



Scarlett Wilson
Ninth Circuit Solicitor

FILED
2013 OCT -7 AM 8:48
CLERK OF COURT
BY 

ATTACHMENT

	Chopper Shooting	Marley Lion's Murder
Date: June 1 (v. June 16 remote in time from instant offense)	X	
Targeted Victim	X	
Victim Known to Assailants	X	
"Bad blood" with Victim	X	
Victim B/M, 30 yoa	X	
Victim Shot Once Creating Minor Injury	X	
Victim Forced to Strip	X	
Victim Robbed of \$1300	X	
Assailants Driven to Crime Scene	X	
Partner in Robbery: Valentino Heyward	X	
Shooting at an Apartment Complex	X	
Shooting not in Ardmore	X	
Shooting early-mid evening ≈ 9:30 pm	X	
<i>George Brown's gun used</i>	X	X
Date: June 16 (v. July 1 remote from Chopper shooting)		X
Victim of Circumstance		X
Victim Unknown to Assailants		X
No "Bad blood" with Victim		X
Victim W/M, 17 yoa		X
Victim Shot 5 times, fatally		X
Victim Not Actually Robbed		X
Assailants Walked to Crime Scene		X
Partners in Att. Robbery/Murder: Deleston & J. Brown		X
Shooting in the Parking Lot Businesses		X
Shooting in Ardmore		X
Shooting early morning hours ≈ 4:05am		X

STATE OF SOUTH CAROLINA

FILEDIN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

2013 OCT -7

Case No(s): 2012-GS-10-06361, 62, 63, 64

Warrant No(s): 2012A1010900083, 84, 85, 86

JULIE J. ARMSTRONG
CLERK OF COURTCharge(s): Murder; Att. AR; Poss Weapon; Poss.
Weapon During Violent Crime

STATE OF SOUTH CAROLINA

vs.

RYAN P. DELESTON,

Defendant

MOTION TO REVEAL RULE 404(B)
STATE vs. LYLE EVIDENCE

The Defendant, Ryan P. Deleston, through the Charleston County Public Defender's Office and its attorney D. Ashley Pennington, moves for an order requiring the State to disclose evidence of other crimes, bad acts or wrongs which the State intends to introduce pursuant to State vs. Lyle and South Carolina Rules of Evidence Rule 404(B). Specifically, defense counsel requests the substance of the bad act and its source.

In support of this request, defense counsel relies on South Carolina Rule of Evidence 102 which provides that the South Carolina Rules of Evidence shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. The Defendant has already made a timely request pursuant to Rule 5(a)(1)(b) for the Defendant's record. The Defendant takes the position that this provision is intended to provide notice of any and all evidence of criminal activity which might be introduced at trial. Defense counsel also relies on Rule 5(a)(2) which authorizes the Court to declare, on an adequate showing, when witness statements shall be disclosed before the commencement of the trial or the testimony of a witness. Each of these provisions of South Carolina evidence law and the rule on criminal procedure show an intent to avoid "trial by ambush". Defense counsel contends that it

is essential to the fundamental right of notice of the charges against you, the right to counsel and full investigation, and the right to confront your accusers that this information be made available as soon as it is known to the Solicitor. Defense counsel expressly relies on the United States Constitution Amendment 5; Amendment 14 and the 6th Amendment rights to confront witnesses and the right to the effective assistance of counsel.

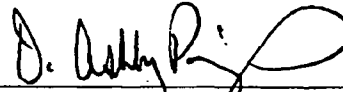
Counsel also relies on the South Carolina Constitution Section 3, Due Process Clause and the South Carolina Constitution Section 14, which provides the right to be confronted with the witnesses against him and the right to counsel.

This issue seems to be largely undeveloped in South Carolina. Counsel concedes that South Carolina failed to adopt the notice provisions of the Federal Rules of Evidence. This is viewed as consistent with the existing state of South Carolina law which has not previously declared a mandatory requirement of notice in every case. However, the aforementioned sections clearly provide the Court with supervisory authority over pre-trial matters and the administration of the State and Federal Constitutions. Furthermore, the case law in South Carolina involving the admission of Lyle evidence requires an in limine finding that the evidence meets the three prong test for admissibility. The Court must be satisfied by the solicitor that the evidence is directly relevant to a contested issue in the prosecution relating to motive, intent, common scheme, absence of mistake, or identity. South Carolina Rule of Evidence 404(B)(b). Furthermore, South Carolina cases require that the proof of the prior bad act be clear and convincing. State v. Smith, 300 S.C. 216, 387 S.E.2d 285 (1989); State v. Hough, , 319 S.C. 104, 459 S.E.2d 863, 865 (Ct. App. 1995). Finally, South Carolina case law requires that the Court make an individual finding that the probative value of the proffered evidence substantially

outweighs the danger of unfair prejudice arising from the evidence. State v. Gardner, 304 S.C. 220, 403 S.E.2d 631 (1991); State v. Johnson, 293 S.C. 321, 360 S.E.2d 317, 320 (n.2, 1987).

In order to allow the effective assistance of counsel and the confrontation rights of the accused pursuant to the State and Federal Constitutions, court rules give the judge the authority and discretion to require the early disclosure of Lyle evidence so that a proper investigation of such evidence could be conducted. Otherwise, the trial might have to be stopped or delayed so that counsel could investigate last minute new evidence. In order to avoid the likely delays described above and to ensure that the proceedings rationally proceed in the search of truth, defense counsel requests notice of this proffered Lyle evidence by noon, Thursday October 3, 2013.

Respectfully submitted,



D. Ashley Pennington
Ninth Circuit Public Defender
Counsel for Ryan P. Deleston

Charleston, South Carolina

Oct. 1, 2013

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JULIE ARMSTRONG
CLERK OF COURT
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 STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)
) Case No(s): 2012-GS-10-06361, 62, 63, 64
 COUNTY OF CHARLESTON) Warrant No(s): 2012A1010900083, 84, 85, 86
) Charge(s): Murder; Att. AR; Poss Weapon; Poss.
) Weapon During Violent Crime

STATE OF SOUTH CAROLINA)
)
 vs.) DEFENSE'S RESPONSE TO THE
) STATE'S MOTION IN LIMINE RE
 RYAN P. DELESTON,) REVERSE 404(B), SCRE, EVIDENCE
)
 Defendant)

INTRODUCTION

Ryan Deleston, by and through his undersigned attorney, files this response to the State's Motion in Limine to prohibit the Defense from introducing relevant testimony regarding Bryan Rivers' use of the murder weapon during an armed robbery and shooting only two weeks before the attempted armed robbery and shooting of Marley Lion. The testimony of these other crimes is not only admissible as evidence of third-party guilty, but is also admissible under the protections and strictures of *Lyle* and Rule 404(b), SCRE.

FACTS

On June 1, 2012, under the cover of darkness, Julius Brown, George Brown, Bryan Rivers, and Valentino Heyward planned and executed an armed robbery of Leroy Townsend, A.K.A. "Chopper." Two of these robbers, Rivers and Heyward, were wearing all black and lying in wait as Townsend returned to St. Andrews Gardens Apartments where his parents reside. Rivers and Heyward eventually approached Townsend, and Rivers pointed George Brown's 9mm Sig Sauer pistol while yelling "Give it up! Give it up!"

After stealing Townsend's pants that contained his belongings, Heyward runs off towards the "cut," which leads to the Shiers Apartment complex. Meanwhile, Rivers attempts to follow Heyward on foot, but then turns around, fires George Brown's gun multiple times, and shoots Townsend in the leg. Ultimately, none of the individuals involved in this armed robbery and shooting are charged, due in large part to Townsend unwillingness to want to press charges.

A mere two weeks later, Julius Brown, George Brown, and Bryan Rivers attempt another robbery of Lorna Parkinson and Christopher McCandish in the area of 195 Rutledge Avenue, as the two victims were walking home from a bar in the area of King Street and Morris Street. Parkinson and McCandish tell police responding to the scene that the offender, now admittedly known to be Bryan Rivers, approached them, pointed a gun, and stated "Give me your purse! Give me your wallet!" After retrieving Ms. Parkinson's purse, Rivers fled east on foot across the street, the south on Rutledge Avenue. Luckily, these victims were not shot.

Apparently, Ms. Parkinson's purse did not contain any money, so this crew of thieves planned to rob Famous Joe's bar in the West Ashley area of Charleston County, approximately .7 miles from St. Andrews Gardens Apartments, where Rivers' first-known armed robbery occurred. As they approached Ardmore between 3:09 A.M.- 3:20 A.M., George Brown drives through the Famous Joe's parking lot to check out the scene so that they can plan their next armed robbery. Shortly thereafter, surveillance video shows Marley Lion pull into the parking lot of Famous Joe's, park in a well-lit area, a proceed to place his belongings in the trunk of his SUV as he climbs into the backseat to go to sleep.

Surveillance video also shows that within ten (10) minutes of Marley Lion climbing into the backseat, Julius Brown walks at a fast pace by the SUV in the parking lot. Approximately twelve (12) minutes later, Bryan Rivers approaches Lion's SUV and appears to attempt to open

the door to the backseat. When Lion's car alarm is sounded, Rivers appears to flee on foot just off camera, but then reappears on the video and fires George Brown's gun multiple times, striking Lion five (5) times, once fatally.

An investigation ensues and an undercover operation was implemented to secure the purchase of George Brown's gun from Ryan Deleston. During this operation, George Brown is seen bringing his gun to Deleston for him to sell. Deleston sells George's gun and is eventually arrested by the Charleston Police Department, along with Julius Brown, George Brown, and Bryan Rivers. During interrogation, Julius, George, and Bryan eventually tell police of their involvement in the shooting, but they allege Deleston was the shooter of Marley Lion. Deleston, however, adamantly denies shooting Lion, and claims that Rivers, and Rivers alone, was the trigger-man.

ARGUMENT

I. Due Process Requires That Deleston Be Allowed To Present Testimony Regarding Brian Rivers' Use Of The Murder Weapon In A Previous Armed Robbery And Shooting As Evidence Of Third-Party Guilt

"[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986); *California v. Trombetta*, 467 U.S. 479, 485 (1984). Indeed, "where constitutional rights directly affecting the ascertainment of guilt are implicated," the "ends of justice" must override "mechanistic" application of evidentiary rules. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1979); see also *United States v. Scheffer*, 523 U.S. 303, 316 n.12 (1998).

For this reason, South Carolina law provides that defendants be permitted to introduce evidence of a third party's guilt whenever such evidence shows facts that are "inconsistent with [the defendant's] own guilt ... [and] rais[e] a reasonable inference or presumption as to ... [a

defendant's] own innocence." *State v. Gregory*, 198 S.C. 98, 104-05 (1941); accord *State v. Gay*, 343 S.C. 543 (2001); *State v. Cooper*, 334 S.C. 540 (1999); *State v. Parker*, 294 S.C. 465 (1988). To be sure, "evidence which can have (no) [sic] other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible," *Gregory*, 198 S.C. at 104-05 (internal citation omitted), nor is evidence lacking "a train of facts or circumstances, as tends clearly to point out such other person as the guilty party." *Id.* Evidence, however, that does support a claim of innocence, does clearly indicate the guilt of another and is itself supported by credible foundational facts, is admissible by a defendant. Indeed, such evidence becomes essential where, as here, other affirmative evidence of innocence—such as alibi testimony or exonerative forensics—is not available or applicable.

a. Strong Logical Connection

As the United States Supreme Court reaffirmed in *Holmes v. South Carolina*, the Constitution requires that any evidentiary determination adversely affecting a defendant's right to present a complete defense be rationally related to the purpose of state evidentiary rules—"focus[ing] the trial on the central issues by excluding evidence that has only a very weak logical connection to central issues." 547 U.S. 319, 330 (2006). The Court further exclaimed that, "[j]ust because the prosecution's evidence, if credited, would provide strong support for a guilty verdict, it does not follow that evidence of third-party guilty has only a weak logical connection to the central issues in the case." *Id.* (emphasis in original). Further still, the *Holmes* Court opines that "where the credibility of the prosecution's witnesses or the reliability of its evidence is not conceded, the strength of the prosecution's case cannot be assessed without making the sort of factual findings that have traditionally been reserved for the trier of fact..." *Id.*

Although the admissibility of "other crimes" as third-party guilt evidence has not yet been expressly addressed by the South Carolina courts, nothing in South Carolina law indicates that the standard for admitting third party guilt evidence is altered in any way when the proffered evidence relates to a third party's other crime or crimes. In addition, many other courts have addressed this precise question and have reversed convictions in cases very similar to Deleston's. In *State v. Cotton*, 351 S.E.2d 277 (N.C. 1987), for example, the defendant, who was charged with rape and burglary, sought to introduce evidence of two similar attacks committed by an unidentified individual on the same evening and in the same neighborhood as the assault in question. The North Carolina Supreme Court reversed the trial court's exclusion of this evidence, relying on a standard nearly identical to South Carolina's third party guilt rule. Specifically, the *Cotton* court ruled that where a series of similar assaults appears to have been committed by a lone third party in a manner and location that suggest that the third party, and not the defendant, could have committed the offense at issue, it is an abuse of discretion to prevent the defendant from presenting those other crimes to the jury. *Id.* at 280.

Similarly, in *State v. Williams*, 518 A.2d 234 (N.J. Super. 1986), a New Jersey appellate court reversed the attempted murder conviction of a defendant who had sought to introduce evidence of two other assaults committed nearby both before and after the offense at issue. Although these other assault were far from identical to the crime with which the defendant was charged, the appellate court ruled that their exclusion nonetheless "eviscerated the defense entirely and denied [the] defendant a fair trial," *Id.* at 235. Noting that "a lower standard of similarity of offenses is required to justify the use of such evidence by a defendant than is required when the state offers ... [other crimes] evidence," the *Williams* court found sufficient correspondence between the charge offense—an outdoor stabbing wherein no sexual assault

occurred—and the other crimes—rape abductions wherein only one victim was stabbed and wherein both victims were transported to off-street locations—to rule exclusion of the other offenses reversible error.¹ *Id.* at 238.

Numerous other appellate courts have also found reversible error where material and substantiated evidence of similar third party crimes has been excluded.² Significantly, in each of these cases, neither the evidence linking the third party to the proffered other crimes, nor the evidence linking the third party to the crime with which the defendant was charged was nearly as strong as the evidence that links Bryan Rivers to both the crime at issue here and to the attempted armed robbery and shooting of Marley Lion. If, then, as these cases show, it is reversible error to exclude defense evidence regarding a third party merely suspected of similar crimes, surely it must be reversible error to exclude Deleston's evidence, which proves that a particular third

¹ Notably, the level of similarity required in these cases is generally deemed considerably lower than the standard applied to other crimes evidence offered against the accused. While the prosecution must establish a virtually unique modus operandi to introduce such evidence against a defendant, "a lower standard of degree of similarity of offenses may justly be required of a defendant using other-crimes evidence defensively than is exacted from the State." *United State v. Steven*, 935 F.2d 1380, 1403 (3rd Cir. 1991) (quoting *State v. Garfole*, 388 A.2d 587, 591 (N.J. 1978)); accord *Perry v. Watts*, 520 F.Supp. 550, 560 (N.D. Cal. 1981); *State v. Williams*, 518 A.2d 234, 238 (N.J. 1986); *Commonwealth v. Jewett*, 467 N.E.2d 155, 158 (Mass. 1984); *People v. Bueno*, 626 P.2d 1167, 1169 (Colo. Ct. App. 1981); see also Joan L. Larsen, *Of Propensity, Prejudice, and Plain Meaning: The Accused's Use of Exculpatory Specific Acts Evidence and the Need to Amend Rule 404(b)*, 87 NW. U. L. Rev. 651, 660-62 (1993).

² See e.g., *United State v. Steven*, 935 F.2d 1380, 1401-06 (3rd Cir. 1991) (reversible error to exclude evidence that victim of similar crime did not identify defendant as assailant); *Kucki v. State*, 483 N.E.2d 788 (Ind. Ct. App. 1985) (reversible error to exclude fact that third part was suspected of committing similar crimes in the area, even though evidence suggested third party was out of state at time of offense at issue); *State v. Burge*, 487 A.2d 532, 545 (Conn. 1985) (reversible error to exclude evidence regarding third party who "lived in the vicinity of the scene of the crime ... [and who] had confessed to the recent commission of a similar assault under similar circumstances at a location near to the place where the victim in this case has been assaulted and killed"); *Commonwealth v. Jewett*, 458 N.E.2d 769, 771 (Mass. Ct. App. 1984) *aff'd* 467 N.E.2d 155, 158 (Mass. 1984) (reversible error to exclude evidence that man who resembled defendant had recently committed similar sexual assault under similar circumstances); *People v. Bueno*, 626 P.2d 1167, 1169 (Colo. Ct. App. 1981) (reversible error to exclude information regarding similar crimes from which the defendant had been excluded as a suspect); *Commonwealth v. Rini*, 427 A.2d 1385, 1388 (Pa. Super. 1981) (reversible error to exclude "evidence that someone else committed a crime which bears a highly detailed similarity to the crime with which the defendant is charged"); *State v. LeClair*, 425 A.2d 182, 187 (Me. 1981) (reversible error to exclude evidence about similar crime occurring at home of third party on the day following crime at issue); *Commonwealth v. Keizer*, 385 N.E.2d 1001, 1003 (Mass. 1979) (reversible error to exclude evidence of a crime committed by similar method while defendant was in custody); *State v. Bock*, 39 N.W.2d 887, 458 (Minn. 1949) (reversible error to exclude "crimes of a similar nature [that] have been committed by some other person when the acts of such other person are so closely connected in point and time and method of operation as to cast doubt upon the identification of the defendant as the person who committed the crime charged against him").

party, Bryan Rivers: (1) was serially committing similar crimes at the time of offense at issue; and (2) participated in the offense at issue. This remains the case—given the extraordinary evidentiary strength of these two connections—even in a jurisdiction such as South Carolina where the nexus between the third party and the crimes at issue must be relatively robust.

Thus, while it may be permissible to exclude third-party other crimes evidence where witnesses or other evidence tend to exclude the third party from the crime at issue, *see, e.g., Daniel v. State*, 395 S.E.2d 638 (Ga. 1990), or where the evidence of third-party crimes is inadmissible hearsay, *see, e.g., Gates v. United States*, 481 A.2d 120 (D.C. 1984), where, as here, the predicate evidence is uncontradicted, entirely competent, highly probative, and essential to the defense, it must be admitted in order to accord the defendant a fair trial.

b. No Prejudice

The State's conclusive assertion that "[t]he admission of this evidence is highly prejudicial to the state and the victim in this case," State's Motion p. 7, is patently absurd. Not only does this blanket statement failed to grasp the rational underlying the *Gregory* rule—the promotion of logical, relevant evidence—it is seemingly devoid of any example showing exactly how the state or the victim are prejudiced by allowing the jury to be presented with this very strong relevant evidence. Essentially, the State is attempting to convince this Court that they would be prejudiced by Deleston introducing relevant evidence that, if believed, tends to prove his innocence through showing that a specific individual, Bryan Rivers, who the State knows was actually involved in the crime, murdered Marley Lion. In other words, the State is claiming prejudice by Deleston attempting to put up a defense by testimony tending to prove he did not commit the alleged crime. Moreover, there is no risk of prejudice to the Defendant as Deleston himself seeks admission of the other crimes evidence.

II. The Evidence That Will Be Presented By Deleston Regarding Rivers' Other Crimes Satisfies The Admissibility Standards Of Lyle And 404(b), SCRE

Deleston further submits that even if this Court declines to hold that due process requires Deleston to present this testimony as evidence of third-party guilt, Rivers' other crimes evidence still satisfies the traditional *Lyle*/404(b), SCRE, standards for admission. The State's attempt to obscure the similarities across these two armed robberies and shootings notwithstanding, these similarities in fact meet or exceed the standards applied by South Carolina courts for admission of other crimes.³

a. Similarities Between The Two Armed Robberies And Shootings

Under normal "common scheme" circumstances, the state is seeking to establish a signature *modus operandi* on the part of the defendant and to argue that, by virtue of their similarity alone, the defendant's past crimes tend to prove that the defendant also committed the crime charged. In such cases, the extent and import of the alleged similarities is the very gravamen of admissibility as it is the similarities alone that make the other crimes relevant to the crime at issue. For this reason—and because in such situations there is a great risk that a jury will be prejudiced against a defendant by exposure to other bad conduct on his part—a very high level of similarity is required before such evidence become legitimately indicative of something other than criminal propensity, and thus more probative than prejudicial.

South Carolina courts have repeated relied on just one or two such similarities when applying *Lyle* exceptions. *See, e.g., Lyle*, 118 S.E. at 808 (close geographical concentration of offenses); *Beck*, 342 S.C. at 136-37 (concentrated timeline of offenses); *State v. Hallman*, 298

³ As a threshold matter, it is clear that other crimes evidence may be offered by one defendant against another. In *State v. Good*, 315 S.C. 135 (1993), the South Carolina Supreme Court affirmed introduction of evidence by one defendant that his co-defendant had previously robbed the murder victim. Rejecting all objections to the admissibility of this evidence, the court noted that "[t]here would be little question about admissibility [of the other crime] if the State had attempted to introduce this evidence," and, as such, "the trial judge did not err in allowing the...[co-defendant] to introduce it," *Good*, 315 S.C. at 140.

S.C. 172, 175 (1989) (similarity of method of commencing crimes); *State v. Blanton*, 316 S.C. 31, 33 (similarity in type of abuse perpetrated). The striking commonalities between the armed robbery and shooting of Chopper and Rivers' other crimes are accordingly more than sufficient to satisfy the identity and common plan and scheme exceptions of *Lyle* and Rule 404(b).

The State attempts to distract the Court from these similarities by distorting Deleston's argument and by placing undue emphasis on differences between the two armed robberies and shootings that are entirely irrelevant given the specific commonalities alleged. See State's Motion, Exhibit A. Cf. Defense Exhibit A – Similarity Chart (attached). The facts remain, however, that both of these crimes were planned by the same individuals (Julius Brown, George Brown, and Brian Rivers), and that common plan (to rob a targeted individual) was executed by the same person (Brian Rivers), in the same manner (rob at gunpoint, fleeing on foot, and turning around to shoot multiple times), with the same weapon (9mm Sig Sauer), under the same conditions (nighttime), within a very close proximity of each other (0.69 miles distance between both crimes). The common plan was simple: approach a targeted individual at night and rob them of their possessions at gun-point.

b. Temporal Proximity Of The Crimes Is NOT Key In *Lyle* Analysis

The State also attempts to persuade this Court that the two week time period between Brian Rivers' first-known armed robbery and shooting of Chopper and his second- and third-known robberies are too remote in time to fall under *Lyle*'s common plan or scheme exception. Specifically, the State cites to *State v. Forney*, 321 S.C. 353, 468 S.E.2d 641 (1996), as espousing *Lyle*'s common plan or scheme exception in that "[t]he temporal proximity of the crimes is key." State's Motion In Limine p. 6. *Forney*, however, derives no such theory, but rather affirms Deleston's evidentiary issue currently before this court.

Forney was convicted of murder, criminal conspiracy, and armed robbery for the killing of Officer Brent McCants of Rock Hill. *Id.* at 355. The trial judge severed the trials of Forney and his co-defendant Mar-Reece Hughes, and Forney testified he was with Hughes at the time of the murder but that Hughes was the triggerman. *Id.* Over Forney's objection, the trial judge admitted evidence that Forney and Hughes stole an automobile in Charlotte, North Carolina, approximately two hours before the killing of Officer McCants. *Id.* at 357. The victims of the North Carolina armed robbery testified that Forney made one of the victims lie down on the pavement by holding a gun to his head and robbed him while Hughes brought the other victim around to the driver's side of the car. *Id.* According to further testimony of the victim, Forney handed one of the victims her car keys and had her unlock the door. *Id.* at 358. Appellant got into the driver's side of the car and Hughes went around to the passenger side, and as the two men drove off Forney said to the male victim, "If you move, we'll kill your whore." *Id.*

The Supreme Court found that, "the fact [that Forney] was the gunmen during the North Carolina robbery was relevant to establish it was appellant and not Hughes who actually killed McCants." *Id.* This evidence was relevant because it "served to contradict appellant's testimony that Hughes had the gun and he, Forney, was merely present at the scene of McCants's killing and did not participate." *Id.* Examining this evidence under *Lyle*, the Court found that the evidence was admissible "to establish [Forney]'s intent and his identity as the gunman." *Id.* The temporal proximity of the two crimes is not a factor that is even discussed in the Court's opinion.

As was the case in *Forney*, Deleston eliciting testimony of Rivers' other crimes is also relevant evidence of intent and the identity of the person who really shot Lion, Bryan Rivers. Nevertheless, the State attempts to obscure the law as stated in *Lyle* with the legal theory concerning the *res gestae* of a crime. In *State v. Smith*, 424 S.E.2d 496, 501 (1992), then Justice

Toal notes in her dissent that "there is apparently some confusion as to how the *res gestae* theory interrelates with the exceptions enunciated in *State v. Lyle*," and attempts to clarify this distinction for the bench and the bar:

[S]ome of the South Carolina cases appear to confuse the *res gestae* theory with the fourth *Lyle* exception . . . The *res gestae* theory is a separate and independent method by which evidence of other criminal acts can be admitted into evidence. Under the *res gestae* theory, events leading up to the crime or occurring after the crime are admissible to complete the story of the crime. Thus, under the *Lyle* exception, the crimes need not be part of the same criminal episode; rather, the crimes may occur over a period of time if they are so related by common scheme or plan. Under *res gestae*, the other crimes or bad acts must be a part of the immediate context of the crime on trial, but need not establish a common scheme or plan involving the commission of two or more crimes which are so related to each other that proof of one tends to establish the others.

Smith, 309 S.C. at 501 (Toal, J., dissenting)

Thus, while temporal proximity is key in presenting evidence under *res gestae*, this is not a proper analysis under *Lyle* with respect to the common plan or scheme exception. See *State v. Hallman*, 298 S.C. 172, 173-75 (1989) (finding common scheme even though (1) the other crimes occurred seven years prior to the charged offense, (2) the complainants ranged in age from four to thirteen, (3) the crimes occurred in a variety of locations and (4) the manner and severity of the crimes varied amongst the incidents); *State v. Blanton*, 316 S.C. 31, 32-33 (1994) (finding common scheme even though the other crimes preceded the charged offense by seven and eight years and even though the other crimes involved strangers while the complainant in the charged offense was the defendant's granddaughter). Accordingly, the passage of a mere two weeks does not make Rivers' other crimes so remote as to preclude them from a common plan or scheme analysis under *Lyle*.

c. A Lesser Standard Of Admissibility Should Be Applied When Presenting "Other Crimes" Evidence Against Someone Other Than The Defendant

Lastly, working from a "one size fits all" conception of other crimes admissibility, the State ignores the fact-sensitivity of both *Lyle* and 404(b), SCRE, and urges the Court to subject a defendant's effort to introduce favorable (indeed, crucial) evidence to restrictions that only properly apply when a party seeks to introduce such evidence against a defendant at trial. In so doing, the state errs with respect to both stages of the two-part *Lyle*/404(b), SCRE, analysis, ignores the constitutional magnitude of Deleston's request and seeks to misapply a rule that is designed to protect a defendant.⁴

The State relies heavily on *State v. Cope*, No. 2009-143966 (Aug. 28, 2013)⁵, for the proposition that even if this lesser standard of admissibility was applied within the case, the crimes at issue in that case would be "too dissimilar to pass even a lesser threshold." State's Motion p. 4. The State's reliance on *Cope* is misplaced for several reasons: First, as was pointed out by the state, the Court declined to address the lesser standard of similarity issue as it was not preserved in the trial court; however, the Court did note that the issue "has some appeal." *Cope*, at 14; Second, *Cope* deals with a joint-trial in which evidence was proffered against Cope's co-defendant without objection from the state. Unlike the present case, the trial judge found that the evidence was not admissible under *Lyle*'s common plan or scheme exceptions because it was offered against a *defendant*, therefore, it did not reach the high standard of admissibility under

⁴ This protection is well-founded in South Carolina law. See e.g., *State v. Cutro*, 365 S.C. 366, 374 (2005) ("*Lyle* and its progeny protect a defendant from the unrestricted admission of bad act evidence") (emphasis added). Indeed, as the Court of Appeals has reiterated, the strictures of *Lyle* and 404(b), SCRE, are "grounded upon the familiar and salutary general rule, universally recognized and firmly established in all English-speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the state's theory of the defendant's guilt," *State v. Tuffour*, 364 S.C. 497, 502 (Ct. App. 2005), *vacated on unrelated grounds*, *State v. Tuffour*, 371 S.C. 511 (2007) (quoting *Lyle*, 125 S.C. at 415-16).

⁵ It is important to note that the *Cope* case was recently file, thus the decision is not final until time expires to file rehearing motion and, if filed, determined.

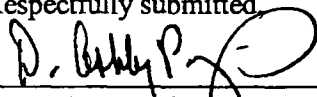
Lyle. Id. Here, we are not concerned with protecting the rights of a defendant on trial, as Rivers has already pled guilty to charges related to this incident.

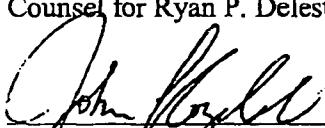
The protections of *Lyle*/404(b), SCRE, are designed as a shield for a defendant against the risk that his jury might be distracted and inflamed by evidence of his own other crimes; allowing the state to use these protections as a sword, and to thereby cut a defendant off from evidence essential to his own defense, perverts the rule entirely. Where, as here, this deprivation denies a defendant his constitutional right to present his defense, this Court can not countenance such an arbitrary and unconstitutional misapplication of state evidentiary rules.

CONCLUSION

The State attempts to have this Court blindly follow their theory of the case by asking to limit the admissibility of relevant evidence that would prove Deleston's innocence. As such, testimony concerning Bryan Rivers' other crimes, including the armed robbery and shooting of Chopper, are admissible as evidence of third-party guilt. Moreover, Rivers' other crimes fall under numerous exceptions outline in Rule 404(b), SCRE, and *Lyle*, including common plan or scheme, identity of the perpetrator, and intent. Therefore, for all these reasons, this Court should deny the State's Motion in Limine to exclude any evidence regarding the "Chopper shooting."

Respectfully submitted,


 D. Ashley Pennington
 Ninth Circuit Public Defender
 Counsel for Ryan P. Deleston


 John J. Kozelski, III
 Assistant Public Defender
 Counsel for Ryan P. Deleston

Charleston, South Carolina
 October 6, 2013

FILED
 2013 OCT -7 AM 8:43
 CLERK OF COURT
 STRONG

Exhibit A – Similarity Chart

Common Plan	Leroy "Chopper" Townsend Armed Robbery/Shooting	Marley Lion Attempted Armed Robbery/Shooting
Planned In Advance	✓	✓
Targeted Individuals	✓	✓
Perps – Julius, George, and Bryan	✓	✓
George Brown's Gun Used	✓	✓
Approached Individuals on foot	✓	✓
Nighttime	✓	✓
Rob at gun-point	✓	✓
Perps fled on foot	✓	✓
Rivers turns while fleeing and fires gun	✓	✓
Multiple gunshots	✓	✓
Hit Victim with gunshot	✓	✓
Motive was to get money	✓	✓
Locations < 1 mile proximity	✓	✓
Known Victim	✓	

FILED

2013 OCT -7 AM 8:43

JULIE S. ARMS IRUNG
CLERK OF COURT

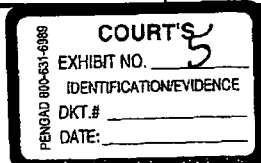
MK

		INCIDENT/INVESTIGATION REPORT				Case#			
Agency Name		Charleston Police Department				12-09072			
ORI		SC0100100				Date / Time Reported 06/01/2012 21:39 Fri			
Location of Incident		Premise Type		Zone/Tract		Last Known Secure			
		Highway/road/alley		426		06/01/2012 21:33 Fri			
At Found						06/01/2012 21:33 Fri			
I N C I D E N T D A T A	#1	Crime Incident(s) (Com)		Weapon / Tools		Activity			
		Robbery / Firearm		Handgun		N			
		120A		Entry		Exit			
				Security					
	#2	Crime Incident ()		Weapon / Tools		Activity			
				Entry		Exit			
	#3	Crime Incident ()		Weapon / Tools		Activity			
				Entry		Exit			
				Security					
MO									
V I C T I M	# of Victims		Type: INDIVIDUAL / NOT LAW		Injury: Apparent Minor Injury				
	Victim/Business Name (Last, First, Middle)		Victim of Crime #		DOB	Race	Sex		
	TOWNSEND, LEROY A		1		Age 30	B	M		
	SS#: [REDACTED]				Relationship To Offender	Resident Status	Military Branch/Status		
	Home Address				Home Phone				
	Employer Name/Address				Business Phone		Mobile Phone		
				843-793-3391					
VYR		Make	Model	Style	Color	Lic/Lis	VIN		
CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim) Type: INDIVIDUAL / NOT LAW ENFORCEMENT Injury:									
O T H E R S	Code	Name (Last, First, Middle)		Victim of Crime #	DOB	Race	Sex		
	CO	TOWNSEND, LEROY A		1	Age 30	B	M		
	Home Address				Home Phone				
	Employer Name/Address				Business Phone		Mobile Phone		
					843-793-3391				
	Type: INDIVIDUAL / NOT LAW ENFORCEMENT Injury:								
I N V O L V E D	Code	Name (Last, First, Middle)		Victim of Crime #	DOB	Race	Sex		
	O'	BROWN, ADELPHIA ANIONETTE		1	Age 54	B	F		
	Home Address				Home Phone				
	Employer Name/Address				Business Phone		Mobile Phone		
					843-343-4875				
	Type: INDIVIDUAL / NOT LAW ENFORCEMENT Injury:								
I = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)									
P R O P E R T Y	VI #	Code	Status From To	Value	OJ	QTY	Property Description	Make/Model	Serial Number
	1	77	7	\$5.00		1	KEYS		
		01	1	\$0.00		1	1998 TAN-TAN BYC962 SC	ACUR 3.2 TI	J1HUA3641WC001514
		17	1	\$0.00	NCP	1	1996 BLK. GSE302 SC	CHEV Suburban	1GNFK16R1T340442
Officer/ID#		TERRELL, E. J. (WPTL, TM4P) (1578)				Outstanding Stolen Val (Total Stolen): \$5.00 (\$5.00)			
Invest ID#		OSBORNE, D. L. (CENT, YCU) (1267)				Supervisor MITCHELL, T. (WPTL, TM4P) (726)			
Status	Complainant Signature		Case Status		Case Disposition:		Page 1		
			Pending Inactive		09/05/2012				

Printed By: MORTONS,

Sys#: 73134

09/27/2013 08:41:50



P5 SAW/DRD 1344

Incident Report Additional Name List

Charleston Police Department

OCA: 12-09072

Additional Name List

Page 2

Name Code/ID	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) OT 2	BROWN, CARLA MARIE			30	B	F
Address	[REDACTED] North Charleston, SC					
Emp/Addr	[REDACTED]					
			II:	[REDACTED]		
			B:	[REDACTED]		
			Mobile #:	[REDACTED]		
2) HT 1	BERRY, CHERYL			35	B	F
Address	[REDACTED]					
Emp/Addr	[REDACTED]					
			II:	[REDACTED]		
			B:	[REDACTED]		
			Mobile #:	[REDACTED]		
3) OT 3	BROWN, GERALD			25	B	M
Address	[REDACTED]					
Emp/Addr	[REDACTED]					
			II:	[REDACTED]		
			B:	[REDACTED]		
			Mobile #:	[REDACTED]		
4) OT 4	HAYWARD, VALENTINO MARTELL			22	B	M
Address	[REDACTED]					
Emp/Addr	Azalea Motors, 2319 Savannah Highway					
			II:	[REDACTED]		
			B:	[REDACTED]		
			Mobile #:	[REDACTED]		

INCIDENT/INVESTIGATION REPORT

By: MORTONS,

09/27/2013 08:41

Page 3

Charleston Police Department

Case# 12-09072

Status Codes	1 = None	2 = Burned	3 = Counterfeit / Forged	4 = Damaged / Vandalized	5 = Recovered	6 = Seized	7 = Stolen	8 = Unknown
IBR	Status	Quantity	Type Measure	Suspected Type		Up to 3 types of activity		
D								
R								
U								
G								
S								

Assisting Officers:

Suspect Hate / Bias / Motivated: None

INCIDENT/INVESTIGATION REPORT

Narr. (cont.) OCA: 12-09072

Charleston Police Department

Page 3

NARRATIVE

On 6/1/12 at approximately 2139 hrs. RO responded to 1385 Ashley River Rd. building 32 in reference to a shooting that just occurred. Upon arrival RO met with the victim/complainant Leroy Townsend who stated that he was shot in the leg. RO observed that the victim had a gun shot wound on lower left leg. Mr. Townsend stated that he was taking food to his parents when he was approached by two black males between building 31 and 32. The suspects forced him to take off his clothes and they stole his keys and an undisclosed amount of US currency from the victim. The two suspects then fled the scene on foot toward the Shire Apt complex. EMS Medic 4 and St. Andrews Rescue Truck 301 responded. The victim was transported to the MUSC by Medic 4 to be treated. Lt. Sierko, Sgt. McLaughlin, Sgt. Ray, and Sgt. Stagers were all advised and responded. CST R. Charles was advised and responded to process the scene. K9 Ofc. Tharp and K9 Ofc. Salkeld were both advised and responded. See supplemental.

Incident Report Suspect List

Charleston Police Department

OCA: 12-09072

1	Name (Last, First, Middle) * No name *						Also Known As				Home Address																																											
	Business Address																																																					
	DOB.	Age	Race B	Sex M	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State.																																											
	Scars, Marks, Tattoos, or other distinguishing features																																																					
<table border="1"> <tr> <td colspan="2">Reported Suspect Detail</td> <td colspan="2">Suspect Age</td> <td>Race</td> <td>Sex</td> <td>Eth</td> <td colspan="2">Height</td> <td colspan="2">Weight</td> <td colspan="2">SSN</td> </tr> <tr> <td colspan="2">Weapon, Type</td> <td colspan="2">Feature</td> <td colspan="2">Make</td> <td colspan="2">Model</td> <td colspan="2">Color</td> <td colspan="2">Caliber</td> <td colspan="2">Dir of Travel Mode of Travel</td> </tr> <tr> <td colspan="4">Veh Yr/Make/Model</td> <td>Drs</td> <td colspan="2">Style</td> <td colspan="2">Color</td> <td colspan="2">Lic/St</td> <td colspan="3">VIN</td> </tr> </table>														Reported Suspect Detail		Suspect Age		Race	Sex	Eth	Height		Weight		SSN		Weapon, Type		Feature		Make		Model		Color		Caliber		Dir of Travel Mode of Travel		Veh Yr/Make/Model				Drs	Style		Color		Lic/St		VIN		
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	Business Address																																																					
	DOB.	Age	Race B	Sex M	Eth	Hgt	Wgt	Hair	Eye	Skin	Driver's License / State.																																											
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Reported Suspect Detail		Suspect Age		Race	Sex	Eth	Height		Weight		SSN																																											
Weapon, Type		Feature		Make		Model		Color		Caliber		Dir of Travel Mode of Travel																																										
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Notes																																																						
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Incident Report Suspect List

Charleston Police Department

OCA: 12-09072

3	Name (Last, First, Middle) BROWN, GEORGE ELLIS					Also Known As BROWN, GEORGE ELLIS					Home Address CHARLESTON, SC 29414																																							
	Business Address																																																	
	DOB. [REDACTED]	Age 27	Race B	Sex M	Eth N	Hgt 510	Wgt 300	Hair	Eye	Skin	Driver's License / State																																							
Scars, Marks, Tattoos, or other distinguishing features:																																																		
<table border="1"> <tr> <td colspan="2">Reported Suspect Detail</td> <td colspan="2">Suspect Age</td> <td>Race</td> <td>Sex</td> <td>Eth</td> <td>Height</td> <td colspan="2">Weight</td> <td colspan="2">SSN</td> </tr> <tr> <td>Weapon, Type</td> <td>Feature</td> <td colspan="2">Make</td> <td colspan="2">Model</td> <td>Color</td> <td>Caliber</td> <td colspan="2">Dir of Travel</td> <td colspan="2">Mode of Travel</td> </tr> <tr> <td colspan="2">Veh Yr/Make/Model</td> <td>Drs</td> <td>Style</td> <td colspan="2">Color</td> <td colspan="2">Lic/St</td> <td colspan="2">VIN</td> <td colspan="2"></td> </tr> </table>															Reported Suspect Detail		Suspect Age		Race	Sex	Eth	Height	Weight		SSN		Weapon, Type	Feature	Make		Model		Color	Caliber	Dir of Travel		Mode of Travel		Veh Yr/Make/Model		Drs	Style	Color		Lic/St		VIN			
Reported Suspect Detail		Suspect Age		Race	Sex	Eth	Height	Weight		SSN																																								
Weapon, Type	Feature	Make		Model		Color	Caliber	Dir of Travel		Mode of Travel																																								
Veh Yr/Make/Model		Drs	Style	Color		Lic/St		VIN																																										
Notes:																																																		
Physical Char																																																		

Incident Report Related Vehicle List

Charleston Police Department

OCA: 12-09072

1	VehYr/Make/Model 1998 ACUR, 3.2 T		Style 4S		Color TAN/TAN		Lic/Lis BYG962 SC 2012		Vin JH4UA364JWC001514		
IBR Status None			Date .NULL.		Location SC						
Condition		Value \$0.00		Offense Code		Jurisdiction Locally		State #		NIC #	
Name (Last, First, Middle) White, Latoya					Also Known As			Home Address [REDACTED]			
Business Address											
DOB. / /		Age 0	Race	Sex	Hgt	Wgt	Scars, Marks, Tattoos, or other distinguishing features				

Notes

2	VehYr/Make/Model 1996 CHEV, Suburban		Style 4T		Color BLK		Lic/Lis GSE302 SC 2012		Vin 1GNFK16R1TJ340442		
IBR Status None			Date 06/02/2012		Location 7620 RIVERS AVE, CHARLESTON SC						
Condition MINOR		Value \$0.00		Offense Code 120		Jurisdiction Other Jurisdiction		State #		NIC #	
Name (Last, First, Middle) Brown, George Ellis					Also Known As BROWN, GEORGE ELLIS			Home Address CHIA [REDACTED]			
Business Address											
DOB. [REDACTED]		Age 27	Race B	Sex M	Hgt 510	Wgt 300	Scars, Marks, Tattoos, or other distinguishing features				

Notes

Vehicle towed to Crime Scene office ref to search warrant [06/02/2012 15:50, BRADLEYG, 1014, CPD]

Incident Report Related Property List

Charleson Police Department

OCA: 12-09072

1 Property Description: KEYS		Make		Model		Caliber	
Color Silver Or	Serial No.		Value \$5.00		Qty 1.000	Unit	Jurisdiction Locally
Status Stolen	Date 06/01/2012	NIC #		State #	Local #		OAN
Name (Last, First, Middle) Townsend, Leroy A				DOB [REDACTED]	Age 30	Race B	Sex M

Notes:

Silver car keys

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*Investigator: *FREDERICK, J. R. (1635)*

Date / Time: 06/01/2012 22:55:19, Friday

Supervisor: *MITCHELL, T. (726)*

Supervisor Review Date / Time: 06/01/2012 23:20:05, Friday

Contact:

Reference: *Supplemental Report*

On 06-01-2012 at approximately 2200hrs R/O Frederick responded to [REDACTED] in regards to a follow up in regards to the shooting that had taken place at 1385 Ashley River Rd. While in the area of where the shooting took place, Officers received information that two black males were observed getting into a dark in color Suburban(SC tags GSE302) in the area of the Shires Apts located at 1020 Little John Dr shortly after the shooting took place. The tags to the mentioned vehicle came back to a 1996 Chevy Suburban registered to George Ellis Brown of [REDACTED]. R/O notes that there was a gray in color 1997 Chevy Suburban bearing SC tags GCF913 sitting in the driveway of the mentioned location. R/O spoke with Adelphia Brown at the above mentioned address. Brown stated that the only Suburban that belongs to the address was the vehicle that was in the driveway. R/O asked Brown if she had any children who resided with her. Brown stated she has a son named George Ellis Brown who lives with her. Brown Stated that her son was not home and that he was with his older brother/Jermaine Brown who lives in North Charleston. Brown was unable to give an address of the older brother. Brown stated her younger son's date of birth is [REDACTED]. Upon further inquiry into RMS, R/O discovered that George Brown's date of birth may be [REDACTED]. R/O notes that Adelphia Brown was unable to explain why a 1996 Chevy Suburban with SC tags GSE302 came back registered to her address under her younger son's name. R/O also notes that according to Adelphia Brown, her son had not been at home all evening.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Investigator: THARP, D. (734)

Date / Time: 06/01/2012 23:06:35, Friday

Supervisor: THARP, D. (734)

Supervisor Review Date / Time: 06/01/2012 23:21:37, Friday

Contact:

Reference: Supplemental Report

On 01 June 2012, I responded to 1375 Ashley River Rd in reference to shooting. I used k9 Panzer to attempt to locate a direction of flight and to locate any evidence. Panzer followed a scent from between building 31 and 32 to the rear of the apartment to the drainage ditch line. Panzer followed the ditch to the right and went across at the end of a fence into the woods that leads to the Shires Apartments. k9 lost scent in the rear parking lot of building 100.

Investigator Signature: _____

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P5 SAW/DRD 1352

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Investigator: POWELL, A. J. (1911)

Date / Time: 06/01/2012 23:30:00, Friday

Supervisor: MCLAUGHLIN, P. G. (1249)

Supervisor Review Date / Time: 06/02/2012 01:40:49, Saturday

Contact:

Reference: Supplemental Report

On 06-01-2012 at approximately 2320 hours, R/O Powell responded to [REDACTED] Charleston, SC 29407. R/O was advised by CDO Lt. Sierko to have the victim's vehicle (Tan 1998 Acura 3.2 TL - SC License Tag: BYG962) towed to Turkey's Towing for safe keeping, due to the victim stating that the offenders took the key to the vehicle during the robbery.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING INACTIVE

Case Mng. Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

Investigator: TERRELL, E. J. (1578)

Date / Time: 06/01/2012 23:58:43, Friday

Supervisor: MITCHELL, T. (726)

Supervisor Review Date / Time: 06/02/2012 00:35:15, Saturday

Contact:

Reference: Crime Scene Log

Crime Scene Log

St Andrews Rescue Truck 301

Medic 4

Lt Sierko

CST R. Charles

K9 Ofc. Tharp

K9 Ofc. Salkeld

Inv. Lane

Sgt McLaughlin

Sgt Ray

Ofc. Flaherty

Inv. Glover

Inv. R. Holmes

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*Occurred: *06/01/2012*Offense: *ROBBERY / FIREARM*Investigator: *TERRELL, E. J. (1578)*Date / Time: *06/02/2012 00:04:25, Saturday*Supervisor: *MITCHELL, T. (726)*Supervisor Review Date / Time: *06/02/2012 00:35:15, Saturday*

Contact:

Reference: *Supplemental Report*

On 6/1/12 at approximately 2139 hrs RO responded to 1385 Ashley River Rd building 32 in reference to a shooting that just occurred. Upon arrival RO met with the victim/complainant Leroy Townsend who stated that he was shot in the leg. RO observed that the victim had a gun shot wound on lower left leg. Mr Townsend stated that he was taking food to his parents when he was approached by two black males between building 31 and 32. The suspects forced him to take off his clothes and they stole his keys an approximately \$400 in cash from the victim. The two suspects then fled the scene on foot toward the Shire Apt complex. It should be noted that the victim wasn't able to provide a description of the suspects at the scene. EMS Medic 4 and St Andrews Rescue Truck 301 responded. The victim was transported to the MUSC by Medic 4 to be treated. Lt Sierko, Sgt McLaughlin, Sgt Ray, and Sgt Staggers were all advised and responded. CST R. Charles was advised and responded to process the scene. K9 Ofc Tharp was advised and responded to conduct a track. K9 Ofc Salkeld was advised and responded to search for a bullet case.

It should also be noted that a witness observed two black males running from the scene. They were observed getting into the rear of a Chevy Suburban with sc tag of GSE302. See additional supplements.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING/INACTIVE

Case Mng Status: PENDING/INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

Investigator: BROWN, Y. D. (1191)

Date / Time: 06/02/2012 00:28:59, Saturday

Supervisor: OSBORNE, D. L. (1267)

Supervisor Review Date / Time: 06/02/2012 09:30:32, Saturday

Contact:

Reference: Supplemental Report

Incident Type: Assault and Battery

Incident Location: 1385 Ashley River Road (area of building 31 and 32)

Incident #: 1209072

On June 1, 2012 at approximately 2255hrs I, Det. Y. Brown, responded to the area of St. Andrews Garden Apartments in reference to a shooting incident. Det. Brown was advised that Ofc. Garrison was in the area of the Shires Apartment (1020 Little John Drive) with witness, Cheryl Patrice Berry (b/f, dob: [REDACTED] SCDL: [REDACTED] ph#: [REDACTED]) who resides at [REDACTED]

Once on scene at the Shires Apartment Det. Y. Brown conducted an audio recorded interview with witness, Ms. Berry. Ms. Berry stated that while exiting her vehicle which was parked in between the 100 building and the 200 building her along with her children heard a noise that sounded similar to fire works. Ms. Berry stated that they sat on the steps in the breezeway of the 100 building near the apartment (116) in which she visiting. She stated that she and the children were eating food she bought outside on the steps because she was locked out of the apartment that she was visiting. Ms. Berry noted that the sound came from area of St. Andrew Gardens Apartment.

Ms. Berry continued to state that she observed a dark colored truck traveling slowly in the area and she got up to see where it was heading because she thought it was the local towing company for the apartment complex and she did not want to get towed away. It should be noted that Ms. Berry later learned that the vehicle belong to NCPD which was conducting surveillance in the area.

In addition to the truck traveling in the area Ms. Berry observed two unknown black males (approx. 17-22yoa; dark complexion; one subject approx. 5' 10; thin build) running lowering their bodies behind the 100 and 200 building. She noted that both subjects were dressed similar in style wearing black shirts with dark hats. Ms. Berry stated that she was not sure of the type of pants (possibly one subject wearing cargo style pants) and shoes the subjects were wearing. Ms. Berry stated that while standing on the sidewalk in front of the building she then observed a dark colored 1990's style large suv (possibly suburban) bearing SC tags GSE 302 (dark tinted windows) travel from the rear of building 200 then slowing in front of building 100 allowing the two unknown subjects to enter then leaving the area. Ms. Berry stated that the series of events seemed unusual so she documented the vehicle tag number for the suv.

The witness stated that she looked into the face of one of the subject but would not be able to provide a sketch or identify the subject if she saw the subject again. Ms. Berry stated that she then observed CPD marked units enter into the area shortly after. Ms. Berry stated that the NCPD vehicle was still in the area when the suv fled and she stopped the NCPD vehicle advising them that she just observed the two subjects run from the rear of building 100 fleeing in the dark suv. It should be noted that at the time she flagged the NCPD vehicle down she was unaware that they were officers.

Ms. Berry stated that she did notice that the suv had a decal/placard hanging from the inner mirror. Ms. Berry stated that

Investigator Signature: _____

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DE SAW/DRD 1256

CASE SUPPLEMENTAL REPORT

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Charleston Police Department

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

she did not notice any other identifying factor about the vehicle or the subjects.

The witness was advised and issued a business card.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*Investigator: *MULKEY, L. B. (1307)*Date / Time: *06/02/2012 00:59:34, Saturday*Supervisor: *OSBORNE, D. L. (1267)*Supervisor Review Date / Time: *06/02/2012 09:31:24, Saturday*

Contact:

Reference: *Supplemental Report*Incident: *Armed Robbery/Shooting*Location: *1385 Ashley River Road (St. Andrews Gardens Apartments)*Date: *6/1/12*Time: *Approx. 2140 hours*

I/O responded to the area of 1385 Ashley River Road, specifically the areas of buildings #31 and #32, in reference to an armed robbery/shooting that had occurred earlier. The Victim had already been transported to MUSC and I/O was briefed by the Detectives and Officers on scene.

I/O assisted Det. Brown with the canvas and was unable to locate any additional witnesses or shell casings (see Det. Brown's supplemental for additional).

NCPD Officers who were in the area around the time of the incident provided information to CPD Dispatch regarding two (2) black males seen running and jumping into a dark Chevrolet Suburban bearing SC (GSE 302). The tags come back to a 1996 Chevrolet Suburban registered to George Ellis Brown of [REDACTED] in the Ponderosa subdivision. Ofc. Frederick responded to said location and was unable to locate the vehicle or the owner (see Ofc. Fredericks supplemental for further).

A BOLO for the aforementioned information was created using actual images of the vehicle from ALPRS and disseminated to CPD-Sworn, CIU, and LORCIC.

Investigation continues . . .

Investigator Signature: _____

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RE SAW/DRD 1358

CASE SUPPLEMENTAL REPORT

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Charleston Police Department

OCA: 1209072

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Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY/FIREARM*Investigator: *LANE, J. W. (1304)*

Date / Time: 06/02/2012 03:18:12, Saturday

Supervisor: *OSBORNE, D. L. (1267)*

Supervisor Review Date / Time: 06/02/2012 09:32:24, Saturday

Contact:

Reference: *Supplemental Report*

INCIDENT: AGGRAVATED ASSAULT FIREARM/ARMED ROBBERY
 LOCATION: 1385 ASHLEY RIVER RD. BUILDING 32 CHARLESTON, SC 29407
 DATE AND TIME: 06-01-12 AT APPROX. 2145HRS.

On 06-01-12 I/O Lane responded to St. Andrews Gardens Apartments (1385 Ashley River Rd.) in reference to a shooting that had just occurred. I/O met with CDO Lt. Sierko who had already established a perimeter and contained the crime scene surrounding the incident location. The victim, Leroy Townsend (B/M 12-21-81), had suffered a single gunshot wound to his lower leg. Mr. Townsend, also known as "Skat-man or Stat-man," was transported to MUSC by EMS, where he was later interviewed by Det. Habbestad (see Habbestad's supplemental). I/O was unable to locate any witnesses who observed the events that had led up to the victim getting shot.

I/O made contact with the victim's father, Leroy Townsend Jr. (793-3391), who resides at [REDACTED] in St. Andrews Gardens Apartments. Mr. Townsend Jr. advised that his son had been at his residence earlier in the evening, but had returned around 2145hrs suffering from a gunshot wound. Mr. Townsend Jr. was unsure of the circumstances surrounding the incident involving his son. I/O Lane then made contact with the victim's child's mother, Carla Brown (B/F [REDACTED]), who stated that she observed the victim leave his father's apartment at approximately 2015hrs for an unknown reason. The next time she saw him, Mr. Townsend was walking into [REDACTED] with no pants on and suffering from a gunshot wound to his leg. Ms. Brown and the victim share a 9 day old child together and she was there at his father's apartment that evening in order to allow the victim to meet his child for the first time. The following apartments were canvassed for information:

32-B: Resident heard a gunshot, but did not have any further information about the incident. She did wish to leave her information.

32-C: Kim Reid and her friend Horatio Francis heard several gunshots outside of the apartment, but did not have any further information on the incident.

32-D: Sonya Davis heard two gunshots, however did not have any further information.

Outside of the incident location, I/O canvassed the area for any evidence of the incident. I/O located a blood trail which led down the sidewalk in between buildings 32 and 31 and then continued behind building 31.

The investigation continues.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

Investigator: CHARLES, R. (846)

Date/Time: 06/02/2012 04:57:23, Saturday

Supervisor: WOOLEY, J. L. (1269)

Supervisor Review Date/Time: 06/04/2012 14:45:22, Monday

Contact:

Reference: Crime Scene Log

Case Number: 1209072

Date/Time of Response: 06/01/2012 @ 22:00 hours

Location of Response: [REDACTED]

Reporting CST: R Charles

Evidence Collected: Yes

Evidence sent to Latent Recovery: No

Photos taken: Yes

Video taken: No

Fingerprint processing at scene: No

Number of latent lifts: 0

Weather: Clear

On 06/01/2012 at approximately 2200 hours, this investigator responded to 1385 Ashley River Road (Saint Andrews Apartment) in reference to an Armed Robbery/Shooting. Upon arrival, Officer Terrell informed me that the victim Leroy Townsend B/M and DOB: [REDACTED] was walking between the building 31 and 32 when two black male suspects approached the victim armed with handgun. The suspects forced the victim to take off his clothes, took his money, car keys and also the victim's cell phone.

The suspects shot the victim in the leg during the robbery and fled the scene on foot towards the Shires Apartment. Officer Terrell also advised me that after the shooting, the victim went back to his parents apartment located at building 32-A.

Charleston County EMS Medic 4 responded on scene and transported the victim to MUSC for single gunshot wound to the lower left leg.

R/I photographed the area between building 31 and 32, the blood drops on the ground behind the building 31, the bloods stains on the floor outside the apartment 32-A and also on the carpet inside of the residence. CPD Officers, K-9 unit along with this R/I searched the area for fired cartridge cases and projectiles yielding negative results. R/I collected blood samples from the area between building 31 and 32.

R/I later responded to MUSC and took photos of the victim's gunshot wound to the leg. R/I also collected the victim's pants and one GSR (gunshot residue) kit. The blood samples, the victim's pants and the GSR kit were collected and placed into evidence.

Item#	Description
101	Blood samples
102	GSR kit from Leroy Townsend

Investigator Signature: _____

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RE SAW/DRD 1360

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

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Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*

103 One pair of blue jeansTask completed.
END/RC.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*Investigator: *HABBESTAD, J. J. (1454)*

Date/Time: 06/02/2012 05:40:05, Saturday

Supervisor: *OSBORNE, D. L. (1267)*

Supervisor Review Date/Time: 06/02/2012 09:27:52, Saturday

Contact:

Reference: *Supplemental Report*

OCA #: 12-09072

INCIDENT: *Agg. Assault (Firearm)/Armed Robbery*LOCATION: *1385 Ashley River Rd (near buildings 31/32)*DATE/TIME: *06-01-2012 at approx 2130 hours*VICTIM: *Townsend, Leroy Antonio (B/M, 12-21-1981)*

On 06-01-2012 at approximately 2215 hours, I/O responded to MUSC to meet with the victim (Leroy A. Townsend) from an armed robbery and shooting that occurred at 1385 Ashley River Rd approximately 30 minutes prior. Officer Sanders and Lt Byrne also arrived on scene. While doctors and nurses were assisting the victim, I/O began interviewing the victim. The first portion of the interview was audio recorded and is summarized as follows:

That earlier in the evening on 06-01-2012, the victim arrived at his mother's residence located at 1385 Ashley River Rd, Apartment 32-A, where he met with his mother (Anna Lee Townsend), his father (Leroy Townsend), and his child's mother (Carla Brown). The victim advised that sometime after 2000 hours, he left the residence and drove to the Panda Express to pick up some food for everyone at the house. The victim advised that after purchasing 2 shrimp fried rice bowls and 2 chicken rice bowls (approximate cost of \$14), he then returned to St. Andrews Gardens Apartments and parked his 1998 tan in color Acura (SC #BYG-962) in front of building 32. The victim advised that he then got out of his vehicle and walked between buildings 31 and 32, where he observed two unknown black males standing in the pathway. The victim stated that the first suspect (B/M, approx. 507-509, thin build, black t-shirt, black pants, dark ski mask) and the second suspect (B/M, 511-600, thicker build, dark-skinned, dark ski mask) both approached him, while the second suspect, who was holding a chrome in color large handgun (unknown on type) and pointed it at him while yelling "Give it up! Give it up!" The victim advised that he then began taking out his black in color Boost Mobile cell phone (ph# [REDACTED]) to give to the suspects, at which time the suspect then demanded that the victim takes his pants off too. The victim began taking his black in color cargo-style shorts off, at which time the first suspect grabbed the shorts off the ground and both suspects began running away from the victim. The victim stated that the first suspect ran off towards the "cut", which leads to the Shiers Apartment complex (1020 Little John Dr). Meanwhile the second suspect (who was holding the firearm), ran off behind the other suspect, but then turned around shot the victim in the shin area of his left leg. The victim advised that after being shot, he ran back to his mother's residence ([REDACTED]) in which he was just wearing his black t-shirt and boxer shorts, due to the fact that the suspects took his black shorts with them from the scene. It is to be noted that along with the shorts and his cell phone, the suspects also took his black in color leather wallet which contained his SC ID card # [REDACTED] and approximately \$400 in U.S. Currency (mostly \$20 bills), as well as his key ring which contained a silver car key to his Acura. The victim also noted that the suspects also took his Panda Express take-out order of food. The victim advised that after getting in the residence, he told his family that he had just been shot and he then called 911. The victim further advised I/O that he did not know the two suspects, nor did he advise of anyone who he thought would want to harm him. Based on the doctor's medical assessment, it was found that the gunshot wound to the victim's left leg was fairly minor, in which the victim was released at approximately 2345 hours. The path of the bullet also traveled completely through the outer part of the victim's shin area, in which no bullet was recovered. CSO Charles also responded to MUSC, where several photographs were taken of the victim's injuries. In addition, a GSR test was conducted on both of the victim's hands. The victim was further

Investigator Signature: _____

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DE SAW/DPH 1260

CASE SUPPLEMENTAL REPORT

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

advised and issued a CPD business card by I/O.

In addition to speaking with the victim, I/O was notified that the victim's brother was in the ER waiting room. I/O went to speak with the brother, finding out that he was instead his cousin, but as he stated "like a brother." The cousin, Tramel Hamilton (B/M, [REDACTED] ph# [REDACTED] or [REDACTED] and his friend, Jermaine Wright (B/M, [REDACTED] ph# [REDACTED] or [REDACTED] arrived after receiving a phone call about the victim being shot. Hamilton advised that at 2201 hours, he received a phone call from a "Larry" (he believes a last name of Scott), who called him from ph# [REDACTED] while he was traveling down to Charleston from the Orangeburg area. Hamilton advised that "Larry" heard from "Gavin", who is the victim's nephew that the victim had been shot and was at MUSC. Hamilton advised that Gavin's last name should be "Brown." Hamilton stated that he usually spoke with the victim multiple times a day about various things. The victim last spoke with Hamilton on the previous night, 05-31-2012, in which they argued about relationship issues with girlfriends, etc. Hamilton stated that the victim never alluded to any sort of trouble he was having with anyone that might have possibly shot him tonight. Hamilton, at this point in time, did not provide I/O with any additional information regarding this investigation.

It is to be noted that the victim's demeanor was extremely calm and upon questioning his opinion about what should happen to the suspects that robbed him, he did not seem too concerned. He hesitantly stated "I guess they'll get locked up." The victim did not appear to be too concerned about the overall situation. It is also to be noted that after speaking with the victim at a later time at the hospital, he advised that the first suspect (shorter black male) also had a firearm, but was not sure what the color of it was. The victim advised that it was a larger gun, in a similar style of I/O's CPD issued firearm. Note that the victim did not originally advise I/O that the first suspect also had a firearm. During the first portion of the interview (which was audio-recorded), I/O questioned which suspect had the gun, in which the victim advised the taller suspect had the gun. The victim did not advise at that time about the shorter suspect having a gun.

This investigation continues.

Victim's contact information:

-Leroy Antonio Townsend (B/M, [REDACTED])

-ph# [REDACTED] (home)

-stays w/ mother and father at [REDACTED]

-also stays with girlfriend, Latoya White (unknown phone #- it was in victim's cell phone that was stolen); White lives somewhere off of Dorchester Rd (possibly Fairfield Apts) in North Charleston.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

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Case Status: PENDING INACTIVE

Case/Mug Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Investigator: OSBORNE, D. L. (1267)

Date/Time: 06/02/2012 16:12:27, Saturday

Supervisor: BRADLEY, G. W. (1014)

Supervisor Review Date/Time: 06/02/2012 16:12:45, Saturday

Contact:

Reference: Supplemental Report

OCA# 12-09072

Incident: Armed Robbery / Aggravated Assault

Date and Time: 6-1-12 / 2133 hrs.

Location: 1385 Ashley River Rd. Bldg. 31 Charleston, SC 29407

Person Interviewed: Brown, Gerald B/M [REDACTED]

© 4 [REDACTED] (Alt.) Mother Adelpia Brown [REDACTED]

Person Interviewed: Brown, George, B/M [REDACTED]

© [REDACTED] (Alt.) Father George Brown Sr. [REDACTED]

June 2, 2012

Sergeant David Osborne became aware of the above listed incident that occurred the night before. Based on witness statements, two subjects were seen getting into a dark colored Chevrolet Suburban SC/GSE302. Sergeant George Bradley and Officer Jeff Thom researched the registered owner George Brown and learned he had a brother Jermaine Brown who resided in North Charleston. Officers went to the brother's residence and located the Suburban. Officers conducted surveillance on the vehicle until it stopped at the Dollar General on 7620 Rivers Ave. Officers called North Charleston Police who arrived and assisted with the stop.

Officer Jeff Thom had the vehicle towed to the CPD Crime Scene Office to be processed. The I/O arrived on scene and learned the vehicle was occupied by Gerald and George Brown. The I/O spoke to Gerald and he agreed to accompany the I/O to the police station. Sergeant Bradley drove George to the station.

Once at the station, the I/O spoke to Gerald who stated he was with Jermaine and his wife Kia last night. Gerald received a phone call that night around midnight from his mother who said the police were looking for George. Gerald called George around midnight and he said he was at a girlfriend's house. George stated he wasn't worried about the police and remembered riding by the police earlier. George came to the apartment later that night. The next day, George and Gerald went to run some errands and they were stopped by the police. Gerald wasn't familiar with who George associated with. At the end of the interview, Gerald was given a ride home by a CPD Officer.

The I/O and Sergeant Bradley then interviewed George. The I/O first read George his Miranda warnings read from a CPD Miranda warnings card, which he indicated he understood and signed accordingly. George then provided a video recorded statement, in which he relayed the following:

Last night, George went to Alicia Matthews' apartment off Sequoia St. Later in the night, George went to meet "T" by the Shires Apartments to purchase \$20 of marijuana. George pulled into the Shires driving his Chevrolet Suburban. He backed into a handicap spot and T came to the driver's side window. He purchased the marijuana from T then they both

Investigator Signature: _____

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P5 SAW/DRD 1264

CASE SUPPLEMENTAL REPORT

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

noticed a dark colored Tahoe they believed were police officers. T then entered the front seat of the vehicle to avoid detection. The Tahoe drove around the back of the parking area then out turning right. T then got out of the vehicle and George drove off. As George turned right out of the parking area, he observed the Tahoe facing out of the Shires and a marked Charleston City Police vehicle facing the opposite direction. As George paused, two unknown b/m's ran behind his vehicle headed toward Locksley. George then drove back to Alicia's apartment. George observed a female with two children talking to the occupant of the Tahoe.

He later received a phone call from his mother saying the police were looking for him. George spent the night at his brother's residence.

T was described as a short b/m with dreads, thin build, and dark complexion. George met T in the neighborhood a couple months ago when he was asking random people if they sold marijuana. He had purchased marijuana from T on about four different occasions.

George agreed to allow the I/O to look through some of his calls from the night before. The I/O observed the following numbers that appeared of note:

460- [REDACTED] George said this belonged to T

730- [REDACTED] George said this belonged to Alicia

926- [REDACTED] George said this belonged to Snook who also sold marijuana.

The two subjects George observed running behind his vehicle were described as:

#1: b/m, dark complexion, 5'8"-5'9", mid 20's, low cut, thin build, and wearing all black clothing.

#2: b/m, light complexion, 5'8"-5'9", mid 20's, low cut, thin build, and wearing all black clothing. This subject was carrying some type of clothing that appeared to be a black or gray jacket.

The I/O told George his vehicle would be released to him tomorrow after CPD Crime Scene had finished processing the vehicle. Officer Thom gave George a ride from the station.

Any additional information will be submitted in a supplemental report.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

Investigator: OSBORNE, D. L. (1267)

Date/Time: 06/03/2012 10:43:21, Sunday

Supervisor: OSBORNE, D. L. (1267)

Supervisor Review Date/Time: 06/03/2012 10:45:02, Sunday

Contact:

Reference: Supplemental Report

OCA# 12:09072

Incident: Aggravated Assault / Armed Robbery

Date and Time: 6-1-12 / 2133 hrs

Location: 1385 Ashley River Rd. Bldg. 32 Charleston, SC 29407

Person Interviewed: Berry, Cheryl B/F [REDACTED] Simpsonville, SC 29681

June 3, 2012

At about 1000 hrs., Sergeant David Osborne conducted a phone interview with Cheryl Berry who added the following to her previous statement:

On the night of the incident, she observed a Suburban driving out of a side parking lot headed out of the Shires. The Suburban stopped momentarily as it was facing a Tahoe and a CPD marked unit, which was further up the road. At this point, two b/m's came running from the building toward the Suburban. Subject #1 stopped at the rear passenger window and tapped on the window. The driver did not open the door. It appeared to Cheryl as if the driver did not want to let the subjects in the vehicle. Cheryl was "almost positive" the subjects entered the vehicle, but she could not recall any doors opening. The Suburban then proceeded out of the Shires passed the Tahoe and marked CPD unit.

She spoke to the occupants in the Tahoe and learned they were NCPD Officers. She did not speak to the officers until after the Suburban had left.

Cheryl observed both subjects to be b/m's, dark complexion, and about the same height. Prior to the subjects approaching the vehicle, Cheryl observed the subjects crouching down behind the apartment building. At that point, she looked directly at Subject #1. She believed she would be able to identify Subject #1 if seen again.

Subject #1 was described as being a b/m, 17-20, 5'7"-5'10", thin build, clean shaven, and wearing a black baseball hat, and dark clothing.

Cheryl later called the I/O back and stated a b/f nicknamed Grandma was in the first set of apartment building on the right and she should have seen whether the subjects entered the Suburban for sure or not.

The I/O called the number George provided for T ([REDACTED]). The individual who answered the phone took the I/O's number and said he would call him when he got up.

Any additional information will be submitted in a supplemental report.

Investigator Signature: _____

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PE SAW/DRD 1366

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: PENDING INACTIVE

Case Mng. Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY.

Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

Investigator: OSBORNE, D. L. (1267)

Date/Time: 06/03/2012 14:50:12, Sunday

Supervisor: OSBORNE, D. L. (1267)

Supervisor Review Date/Time: 06/03/2012 14:50:46, Sunday

Contact:

Reference: Supplemental Report

OCA# 12-09072

Incident: Aggravated Assault / Armed Robbery

Date and Time: 6-1-12 / 2133 hrs.

Location: 1385 Ashley River Rd. Bldg. 32 Charleston, SC 29407

Person Interviewed: Hayward, Valentino B/M: [REDACTED] Charleston, SC 29407 [REDACTED]

Person Interviewed: Coaxum, Johanna B/F aka (Grandma) Shires Apartment Complex Apt. 401

Person Interviewed: Burns, Gwendolyn B/F aka (Ms. Dana) Shires Apartment Complex Apt. 121

June 3, 2012

At about 1320 hrs., Sergeant David Osborne met with Valentino Hayward at the Pep Boys parking lot on Savannah Hwy. Valentino relayed the following:

On Friday night, he called George (aka Big G) and asked him if he had any marijuana for sale. George stated he would need to go to the Shires to get it. George said he was leaving from Alicia's apartment and would get it soon. Valentino called back and said, "How long it gonna take?" George said he was coming now. Valentino asked him to go to the gas station and buy him "blunts" to go with the marijuana.

Valentino later met with George near Alicia's apartment and bought \$40 worth of marijuana. George did not go to the gas station and buy the blunts as Valentino asked.

The I/O asked Valentino if George made any mention of what occurred at the Shires and Valentino said George said, "Narco was out there." Valentino had no information about the shooting. He had just heard about the shooting prior to meeting the I/O from the newspaper.

The I/O then canvassed the Shires apartment complex in search of "Grandma". The I/O met with Johanna Coaxum who resided in apartment 401. Ms. Coaxum was an older b/f who resided in the building where "Grandma" was said to reside. Ms. Coaxum said she was sitting in the breezeway of her building on Friday night. She did recall seeing two dark colored SUV's. She believed one might have been a police vehicle. She did not see two b/m's running nor did she see if anyone entered either vehicle. Ms. Coaxum added that Ms. Dana in apartment [REDACTED] may have seen more.

The I/O went to apartment [REDACTED] and spoke to Gwendolyn Burns (aka Ms. Dana). Gwendolyn stated she was standing on her breezeway looking outside Friday night and did observe two dark colored SUV's. She did not see two b/m's running nor did she see anyone enter either vehicle.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Any additional information will be submitted in a supplemental report.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Investigator: MOORE, A. M. (1144)

Date / Time: 06/03/2012 22:47:57, Sunday

Supervisor: WOOLEY, J. L. (1269)

Supervisor Review Date / Time: 06/04/2012 15:03:24, Monday

Contact:

Reference: Crime Scene Log

Case Number: 1209072

Date/Time of Response: 6/2/2012 @ 1510

Location of Response: Crime Scene Office

Reporting CST: Moore, A.

Evidence Collected: Yes

Evidence sent to Latent Recovery: No

Photos taken: Yes

Video taken: No

Fingerprint processing at scene: Yes

Number of latent lifts: 36

Weather: Hot / Clear

On the above date and time this CST received a search warrant in reference to a robbery with firearm / shooting to an individual that occurred earlier in the morning.

The search warrant was for a black Chevy Suburban SC / GSE302 VIN/ 1GNFK16R1TJ340442 possible involved and to obtain any relevant evidence to the above crime. The warrant states to search and seize any of the following: firearm, firearm ammunition, black leather wallet containing \$ 400.00 in US currency, key to an Acura vehicle, Boost mobile cell phone: [REDACTED], dark colored mask, photographs, fingerprints, DNA swabs, and any other items commonly associated with the commission of an armed robbery/shooting.

Photographs were taken of the exterior of the vehicle showing overall appearance, tags and VIN. The interior was also photographed to show its initial condition and content. Any items of interest, hats, insurance papers, registration papers and several more hats and a pair of jean shorts were also photographed.

A complete vehicle inventory was completed as the vehicle was searched and is listed below.

The vehicle was searched for any weapons in the following locations with negative results including areas such as under seats, behind glove box, under center console, any areas that appeared to have been tampered with or loose.

Five items were collected from the vehicle: 601- black hat from the passenger floorboard; 602- black hat from the area between the middle seat and the portion that on the back of the seat that unhooks to lay flat on the rear seat; 603- black hat from rear seat under clothes; 604- Black hat from rear seat under clothes; and 605- pair of black jean shorts with the right leg cuff tied to the right side with a brown string (undone by CSA to check area).

Investigator Signature: _____

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DE SAW/DRD 1370

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

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Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

The exterior and interior of the vehicle was processed for latent prints with 34 total lifts collected. Items inside the vehicle processed yielding lifts included the CD out of a CD case from the driver floorboard and a cd envelope from the passenger floorboard. Items processed with negative results included but not limited to 2 cigarette packs, cigar package, numerous cd's from both the driver side and passenger floorboard and two glasses located in the rear seat.

I spoke with Detective Bradley before completing the processing of the vehicle and advised him about clothing contents, some debit cards, gold teeth covers and cd's in a case and the center console. He stated the cd's in the case and center console did not need printing, just any loose cd's or any in player and the only items they requested collected were the hats and jean shorts.

Evidence:

6-601 Black knit hat	Passenger floor board
7-602 Black knit hat	Rear of middle seat
8-606 Black ski mask with bill	Rear seat
9-607 Black hat with bill	Rear seat
10-608 Black jean shorts	Rear seat

Complete Inventory:

Driver door pocket

Assortment of tools

Phone Charger

Plastic bag

Front driver floorboard

CD in a case

Business card

Front driver visor

Receipts

Open pack of cigarettes

Sunglass holder on ceiling

Three visa cards names George Ellis and George Brown

Business cards - Joseph Richardson Bank of America

Front compartment of Center Console

Eight Crown Royal bags

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*

Receipt for Motel 6 for George Brown
iPod car adaptor
7 Cd's

Center console lid

Two vehicle detail brushes
Parking ticket
Napkins

Center console main compartment

Chap Stick
Hair bow - child's
Jewelry polish cloth with yellow in color metal teeth covers
A large quantity of CD's
Enterprise receipt for George Brown
Sunglasses
Lighter
Bluetooth
T-Mobile Sim Card
Receipts
Northwoods Auto Sales Late payment notice - George Brown

Ceiling drop-down compartment

Large amount of napkins

Front Dash

License vanity plate

Floor board in front of console

Cd's
Napkins
Phone Charger cords

Glove Box

Misc. car papers
Receipts
Sears Card paperwork
Best buy paperwork
Napkins

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: PENDING INACTIVE

Case Mng>Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY / FIREARM

Front passenger floorboard

Black Hat Item number 601
CD's
Insurance paperwork
Condom package with condoms
Vehicle paperwork
Enterprise rental car receipt
Envelope
Room Key holder for Red Roof Inn
SS Card paperwork
Comb

Middle Seat floorboard passenger side

White t-shirt
2 pieces to speaker

Under Middle Seat driver side

Green Cactus Car wash jacket with rope in right pocket
Plastic bag with several pieces of dirty clothing
Brown baseball cap with White A on front
Black sock

Behind Middle Seat driver side (between seat and fold down piece)

Black hat Item number 602
Broken piece of a/c unit control panel

Rear Seat

Plastic bag with powder soap box
Bank of America folder with papers no name
Coke Glass
Wash clothes
Black hat Item number 603
Black Ski mask Item number 604
Grey Reebok jacket
Pair of Nike air shoes (old)
Pair of Nike Air shoes (newer)
Pair of slippers
Red baseball jersey with A
Black t-shirt
Black 3x1 sweat pants with crotch cut or torn out

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*

Black jean shorts size 50 Item number 605
Black jeans size 38
Levis jeans size 36
White glove

Rear cargo area

Tire
Tire iron
Pipe - metal
Assorted vehicle parts
Vehicle cleaning supplies
Radio - old
Speaker box

END/AMM

Investigator Signature: _____

Page: 3.1

P5 SAW/DRD 1374

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *PENDING INACTIVE*Case Mng Status: *PENDING INACTIVE*

Occurred: 06/01/2012

Offense: *ROBBERY / FIREARM*Investigator: *SMALLS, C. (1821)*

Date/Time: 06/06/2012 09:12:27, Wednesday

Supervisor: *LYCZANY, M. A. (644)*

Supervisor Review Date/Time: 06/06/2012 10:59:25, Wednesday

Contact:

Reference: *Supplemental Report*

Victim: Leroy Townsend

On today 06.06.2012, I mailed victim's assistance letter along with victim's rights brochure. I will wait to hear from victim requesting services.

Investigator Signature: _____

CASE SUPPLEMENTAL REPORT

Printed: 09/27/2013 08:41

Charleston Police Department

OCA: 1209072

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: PENDING INACTIVE

Case Mng Status: PENDING INACTIVE

Occurred: 06/01/2012

Offense: ROBBERY/FIREARM

Investigator: OSBORNE, D. L. (1267)

Date / Time: 09/04/2012 16:13:48, Tuesday

Supervisor: OSBORNE, D. L. (1267)

Supervisor Review Date / Time: 09/04/2012 16:14:47, Tuesday

Contact:

Reference: Supplemental Report

OCA# 12-09072

Incident: Aggravated Assault

Date and Time: 6-1-12 / 2139 hrs.

Location: [REDACTED] Charleston, SC 29407

September 4, 2012

The investigation into the above listed incident has yielded no leads sufficient to list the case as open. This investigation ran concurrent to the murder investigation of Marley Lion documented under 12-09910. George Brown was a person believed to have information in both investigations. George was interviewed on multiple occasions and his story changed about every time. George was subsequently charged with Accessory After the Fact to Murder for his involvement in the Lion murder case.

It is believed that the victim, Leroy Townsend, was not completely honest regarding this case. He came to the station on one occasion and said he believed the individuals who shot Lion were the same suspects who shot him. Detectives found the alleged source of this information and it could not be verified. It was learned during the investigation that Leroy was a drug dealer. Sergeant David Osborne believes it likely Leroy was robbed during a drug transaction, although this information cannot be proven.

There are no leads to further this investigation at this time nor any new evidence. Therefore, this case should be administratively closed.

Pending Inactive

Investigator Signature: _____

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DE SAAM/DRD 1376

DBD20120805712

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1209910

ARREST WARRANT NUMBER

2012A1010900083

DATE OF ARREST

July 30, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 08 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date:

10-11-2013

INDICT.DOT

DOCKET NO. 2012GS1006361

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October 2012 Term

THE STATE

vs.

RYAN DELESTON

DOB: [REDACTED]

B/M

Indictment for

MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

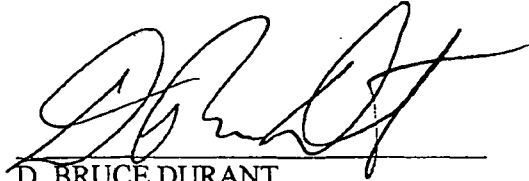
INDICTMENT

At a Court of General Sessions, convened on October 8, 2012, the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about June 16, 2012, while in concert with others and with malice aforethought, **RYAN DELESTON** did kill and murder Marley Lion by means of shooting him with a handgun, and that Marley Lion did die in Charleston County as a proximate result thereof on June 16, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


D. BRUCE DURANT
ASSISTANT SOLICITOR

DBD20120805712

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1209910

ARREST WARRANT NUMBER

2012A1010900084

DATE OF ARREST

July 30, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 8 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2012GS1006362

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2012

THE STATE

vs.

RYAN DELESTON
DOB [REDACTED]

Indictment for

ATTEMPTED ARMED ROBBERY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

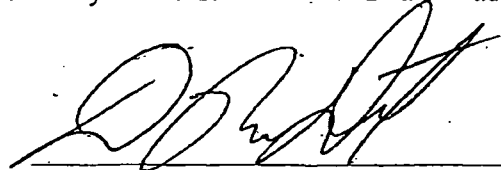
INDICTMENT

At a Court of General Sessions, convened on October 8, 2012, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED ARMED ROBBERY

That on or about June 16, 2012, in Charleston County, South Carolina, at 1662 Savannah Highway, while acting in concert with others, the Defendant, **RYAN DELESTON**, by use of force, threats or intimidation, in concert with others and while armed with a deadly weapon, to wit: a handgun, did attempt to take and carry away goods and/or monies from the person or immediate presence of Marley Lion with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20120805712

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1209910

ARREST WARRANT NUMBER

2012A1010900085

DATE OF ARREST

July 30, 2012

ACTION OF GRAND JURY

TRUE BILL
*EM*Foreperson of Grand Jury
Date: 020 03 2012

VERDICT

Guilty

Foreperson of Petit Jury

INDICT.DOT

10-11-2013
Date:

DOCKET NO. 2012GS1006363

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December 2012 Term

THE STATE

vs.

RYAN DELESTON

DOB: [REDACTED]
B/M

Indictment for

POSSESSION OF A HANDGUN WITH AN
OBLITERATED SERIAL NUMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

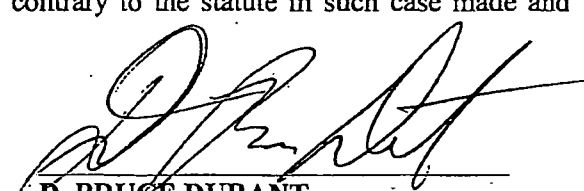
INDICTMENT

At a Court of General Sessions, convened on December 3, 2012, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A HANDGUN WITH AN OBLITERATED SERIAL NUMBER

That in Charleston County, South Carolina, on or about July 15, 2012, the Defendant, **RYAN DELESTON**, did unlawfully have in his possession a Sig Sauer handgun from which the original serial number had been removed or obliterated. All in violation of Section 16-23-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

DBD20120805712

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1209910

ARREST WARRANT NUMBER

2012A1010900086

DATE OF ARREST

July 30, 2012

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

OCT 08 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date:

10-11-2013

INDICT.DOT

DOCKET NO. 2012GS1006364

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October 2012 Term

THE STATE

vs.

RYAN DELESTON

DOB [REDACTED]

B/M

Indictment for

POSSESSION OF A FIREARM DURING
THE COMMISSION OF A
VIOLENT CRIME

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

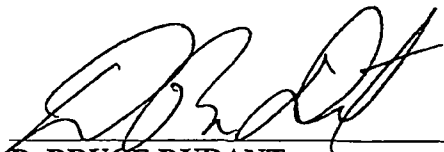
INDICTMENT

At a Court of General Sessions, convened on October 8, 2012, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about June 16, 2012, the Defendant, **RYAN DELESTON**, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of the violent crimes of murder and attempted armed robbery. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

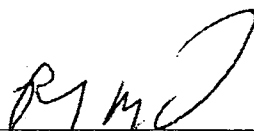


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 14th, 2015



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT